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WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1991

ENROLLED

Committee Substitute for Committee Substitute
for SENATE BILL NO. 18

(By Senators *Kendall*, Mr. President and
Baley, By Request of the Executive)

PASSED October 18, 1991

In Effect from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 18

(BY SENATOR BURDETTE, MR. PRESIDENT,
BY REQUEST OF THE EXECUTIVE)

[Passed October 18, 1991; in effect from passage.]

AN ACT to amend and reenact sections three, four, five, six, ten, eleven, twelve, fourteen, fifteen and sixteen, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact section five, article one, chapter twenty of said code; to amend and reenact sections three and six, article five-e of said chapter; to further amend said article by adding thereto a new section, designated section twenty-five; to amend and reenact sections one, two, four, four-a, four-b, five, five-a, six and eight, article five-f of said chapter; to further amend said article by adding thereto six new sections, designated sections four-c, four-d, nine, ten, eleven and twelve; to further amend said chapter by adding thereto a new article, designated article five-n; to amend article seven of said chapter by adding thereto a new section,

designated section one-c; to amend and reenact sections one, two, three, four, five-a, six, seven, eight, nine, ten, twelve, twelve-a, twelve-b, twelve-c, twelve-d and thirteen, article nine of said chapter; to further amend said article by adding thereto two new sections, designated sections twelve-e and twelve-f; to amend and reenact sections one, two, three, five, six and seven, article eleven of said chapter; to further amend said article by adding thereto seven new sections, designated sections five-a, five-b, eight, nine, ten, eleven and twelve; to amend and reenact section three, article one, chapter twenty-four of said code; to amend and reenact sections one, one-b and one-c, article two of said chapter; to further amend said article by adding thereto a new section, designated section one-h; and to amend and reenact section three, article one, chapter twenty-four-a, all relating to waste management, waste disposal and recycling generally; definitions; continuing solid waste management board; designation of disposal sheds; powers and duties of the solid waste management board; authority to make loans and grants; development of state solid waste management plan; authority to issue bonds, limitations, projects, lawful expenditures; increasing bonding authority; expanding projects; abolishing trustee and trust agreements; establishing reserve funds and sinking funds; water development authority as fiscal agent; responsibilities of water development authority, technical, financial assistance; criteria for bond issuance; legal remedies; audit of funds disbursed by board; revenues; investments; salary increase, director, division of natural resources; hazardous waste management; definitions; promulgation of rules; certification of personnel; household hazardous waste, study; solid waste management; legislative intent; definitions; powers and duties of director, division of natural resources; promulgation of rules; right of entry; open dumps, prohibitions; expenditure of funds; identification of interests, related parties, compliance, violations, convictions, reporting, disclosure; freedom of information; fee for filing certificate of site approval; relating to free dump day, limitations; limit on size of solid waste facilities; exemption for certain

facilities; handling in excess of thirty thousand tons per month, by referendum; prohibitions; disposal of solid waste; dead animal carcasses; unauthorized dumps; open dumps; permit requirements, permit conditions; condition of permit; repayment of closure costs; permit revocation, suspension, modification, additional grounds; imposition of permit fee; describing unlawful activities; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; orders, inspections, enforcement; authority of chief, director; civil penalties; criminal penalties; injunctions; limited extension of landfill closure deadline, procedure, criteria; judicial review; condition on receiving permit, repayment of closure costs; moratorium on municipal solid waste incineration, exceptions; prohibiting backhauling; feasibility of state ownership; county assessment for Class A facilities; landfill closure cost assistance program; definitions; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; authorizing solid waste management board to issue closure bonds, water development authority, fiscal agent, technical support; establishing accounts; legal remedies of bondholders; bonds and notes not to create debt of state; lawful investments; limitation on assistance; application for closure assistance; solid waste facility closure cost assistance fund; promulgation of rules; personal liability; owner or operator liability; procedure for handling remedial actions; payment of costs for remedial actions; right of entry; authority of director to accept value for fund; management and control of project, report; conservation officers, ranks, salary schedule, base pay, exceptions; county and regional solid waste authorities; legislative intent; definitions; solid waste authorities, continued, appointment of board of directors; regional

solid waste authorities, continued, appointment of board of directors; county commission, assumption of powers, time limitation; solid waste authorities, management and control in board; authority to develop litter and solid waste control programs, criteria; assistance provided to authorities; mandatory disposal; civil penalties; solid waste management board and public service commission, joint report, mandatory fee for collection, feasibility; public service commission and division of human services, joint report, low-income assistance for collection fees; acquisitions, public landfills; powers and duties of solid waste authorities, issue bonds, promulgate rules, public facilities, additional powers, construction projects, prohibit dumping outside hours of operation, enforce hours of operation and mandatory disposal; commercial solid waste facility siting plans; certificate of site approval, solid waste authority, criteria, when required, modification; appeal; judicial review; approval of Class A facilities, prerequisites, approval, mandatory referendum, notice, procedure; approval Class B to Class A facility, prerequisites, petition for referendum, notice, procedure; increase monthly tonnage for Class A facility, petition for referendum, prerequisites, notice, procedure; judicial review of certificate of site approval; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; recycling program; legislative intent; recycling goals generally; mandatory recycling, municipalities, population ten thousand, time period, requirements, public information, education; county recycling referendum, petition, procedure, notice, continuation; exception from mandatory recycling for certain municipalities establishing materials recovery facilities; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; imposition of fees, collec-

tion, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; statewide recycling program, certain mandatory provisions; procurement of recycled products, goals, state responsibility, discount, procurement procedures, plans, requirements, report; prohibition on grass, leaves, lead-acid batteries and tires in landfill, effective date, solid waste management board, division of natural resources, plan, implementation date, report; establishing recycled oil advisory committee created, members, appointment, duties, functions; newsprint advisory committee created, members, appointment, duties, functions, goals, study, research; feasibility study of recycling industries; special exemptions for certain recycling facilities; public service commission, continued; salary increase for commissioners; powers and duties of commission; jurisdiction of commission; additional jurisdiction over solid waste facilities; certificate of need, criteria, exemptions, application, disclosable information; procedure; appeal; transfer, sale or lease of certificate; public service commission, expanded jurisdiction and duties; solid waste flow control; promulgation of rules and regulations; limited motor carrier exemption from jurisdiction, exceptions.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, ten, eleven, twelve, fourteen, fifteen and sixteen, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-a; that section five, article one, chapter twenty of said code be amended and reenacted; that sections three and six, article five-e of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-five; that sections one, two, four, four-a, four-b, five, five-a, six and eight, article five-f of said chapter be amended and reenacted; that said article be

further amended by adding thereto six new sections, designated sections four-c, four-d, nine, ten, eleven and twelve; that said chapter be further amended by adding thereto a new article, designated article five-n; that article seven of said chapter be amended by adding thereto a new section, designated section one-c; that sections one, two, three, four, five-a, six, seven, eight, nine, ten, twelve, twelve-a, twelve-b, twelve-c, twelve-d and thirteen, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections twelve-e and twelve-f; that sections one, two, three, five, six and seven, article eleven of said chapter be amended and reenacted; that said article be further amended by adding thereto seven new sections, designated sections five-a, five-b, eight, nine, ten, eleven and twelve; that section three, article one, chapter twenty-four of said code be amended and reenacted; that sections one, one-b and one-c, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-h; and that section three, article one, chapter twenty-four-a of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.

§16-26-3. Definitions.

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

3 (1) "Board" means the solid waste management
4 board created in section four of this article, heretofore
5 known as the West Virginia state solid waste authority,
6 the duties, powers, responsibilities and functions of
7 which are specified in this article. All references in
8 this code to the West Virginia resource recovery —
9 solid waste disposal authority shall be construed as
10 references to the solid waste management board.

11 (2) "Bond" or "solid waste disposal revenue bond"
12 means a revenue bond or note issued by the solid
13 waste management board, heretofore known as the

14 West Virginia resource recovery — solid waste disposal
15 authority, to effect the intents and purposes of this
16 article.

17 (3) "Construction" includes reconstruction, enlarge-
18 ment, improvement and providing furnishings or
19 equipment for a solid waste disposal project.

20 (4) "Cost" means, as applied to solid waste disposal
21 projects, the cost of their acquisition and construction;
22 the cost of acquisition of all land, rights-of-way,
23 property, rights, easements, franchise rights and
24 interests required by the board for such acquisition
25 and construction; the cost of demolishing or removing
26 any buildings or structures on land so acquired,
27 including the cost of acquiring any land to which such
28 buildings or structures may be moved; the cost of
29 diverting highways, interchange of highways and
30 access roads to private property, including the cost of
31 land or easements therefor; the cost of all machinery,
32 furnishings and equipment; all financing charges and
33 interest prior to and during construction and for no
34 more than eighteen months after completion of con-
35 struction; the cost of all engineering services and all
36 expenses of research and development with respect to
37 solid waste facilities; the cost of all legal services and
38 expenses; the cost of all plans, specifications, surveys
39 and estimates of cost and revenues; all working capital
40 and other expenses necessary or incident to determin-
41 ing the feasibility or practicability of acquiring or
42 constructing any such project; all administrative
43 expenses and such other expenses as may be necessary
44 or incident to the acquisition or construction of the
45 project; the financing of such acquisition or construc-
46 tion, including the amount authorized in the resolu-
47 tion of the board providing for the issuance of solid
48 waste disposal revenue bonds to be paid into any
49 special funds from the proceeds of such bonds; and the
50 financing of the placing of any such project in opera-
51 tion. Any obligation or expenses incurred after the
52 effective date of this article by any governmental
53 agency, with the approval of the board, for surveys,
54 borings, preparation of plans and specifications and

55 other engineering services in connection with the
56 acquisition or construction of a project shall be
57 regarded as a part of the cost of such project and shall
58 be reimbursed out of the proceeds of loans or solid
59 waste disposal revenue bonds as authorized by the
60 provisions of this article.

61 (5) "Governmental agency" means the state govern-
62 ment or any agency, department, division or unit
63 thereof; counties; municipalities; watershed improve-
64 ment districts; soil conservation districts; sanitary
65 districts; public service districts; drainage districts;
66 regional governmental authorities and any other
67 governmental agency, entity, political subdivision,
68 public corporation or agency having the authority to
69 acquire, construct or operate solid waste facilities; the
70 United States government or any agency, department,
71 division or unit thereof; and any agency, commission
72 or authority established pursuant to an interstate
73 compact or agreement.

74 (6) "Industrial waste" means any solid waste sub-
75 stance resulting from or incidental to any process of
76 industry, manufacturing, trade or business, or from or
77 incidental to the development, processing or recovery
78 of any natural resource.

79 (7) "Owner" includes all persons, partnerships or
80 governmental agencies having any title or interest in
81 any property rights, easements and interests autho-
82 rized to be acquired by this article.

83 (8) "Person" means any public or private corpora-
84 tion, institution, association, firm or company organ-
85 ized or existing under the laws of this or any other
86 state or country; the United States or the state of West
87 Virginia; governmental agency; political subdivision;
88 county commission; municipality; industry; sanitary
89 district; public service district; drainage district; soil
90 conservation district; solid waste disposal shed district;
91 partnership; trust; estate; individual; group of individ-
92 uals acting individually or as a group; or any other
93 legal entity whatever.

94 (9) "Pollution" means the discharge, release, escape

95 or deposit, directly or indirectly, of solid waste of
96 whatever kind or character, on lands or in waters in
97 the state in an uncontrolled, unregulated or unap-
98 proved manner.

99 (10) "Revenue" means any money or thing of value
100 collected by, or paid to, the solid waste management
101 board as rent, use fee, service charge or other charge
102 for use of, or in connection with, any solid waste
103 disposal project, or as principal of or interest, charges
104 or other fees on loans, or any other collections on loans
105 made by the solid waste management board to govern-
106 mental agencies to finance in whole or in part the
107 acquisition or construction of any solid waste develop-
108 ment project or projects, or other money or property
109 which is received and may be expended for or pledged
110 as revenues pursuant to this article.

111 (11) "Solid waste" means any garbage, paper, litter,
112 refuse, cans, bottles, waste processed for the express
113 purpose of incineration, sludge from a waste treatment
114 plant, water supply treatment plant or air pollution
115 control facility, other discarded material, including
116 offensive or unsightly matter, solid, liquid, semisolid
117 or contained liquid or gaseous material resulting from
118 industrial, commercial, mining or community activi-
119 ties but does not include solid or dissolved material in
120 sewage, or solid or dissolved materials in irrigation
121 return flows or industrial discharges which are point
122 sources and have permits under article five-a, chapter
123 twenty of this code, or source, special nuclear or by-
124 product material as defined by the Atomic Energy Act
125 of 1954, as amended, including any nuclear or by-
126 product material considered by federal standards to be
127 below regulatory concern, or a hazardous waste either
128 identified or listed under article five-e, chapter twenty
129 of this code, or refuse, slurry, overburden or other
130 waste or material resulting from coal-fired electric
131 power or steam generation, the exploration, develop-
132 ment, production, storage and recovery of coal, oil and
133 gas, and other mineral resources placed or disposed of
134 at a facility which is regulated under chapter twenty-
135 two, twenty-two-a or twenty-two-b of this code, so

136 long as such placement or disposal is in conformance
137 with a permit issued pursuant to said chapters. "Solid
138 waste" shall also not include materials which are
139 recycled by being used or reused in an industrial
140 process to make a product, as effective substitutes for
141 commercial products, or are returned to the original
142 process as a substitute for raw material feedstock.

143 (12) "Solid waste facility" means any system, facil-
144 ity, land, contiguous land, improvements on land,
145 structures or other appurtenances or methods used for
146 processing, recycling or disposing of solid waste,
147 including landfills, transfer stations, materials recov-
148 ery facilities and other such facilities not herein
149 specified. Such facility shall be deemed to be situated,
150 for purposes of this article, in the county where the
151 majority of the spatial area of such facility is located.

152 (13) "Solid waste disposal project" or "project"
153 means any solid waste facility, wastewater treatment
154 plants, sewer treatment plants, water and sewer
155 systems and connecting pipelines the acquisition or
156 construction of which is authorized by the solid waste
157 management board or any acquisition or construction
158 which is financed in whole or in part from funds made
159 available by grant or loan by, or through, the board as
160 provided in this article, including all buildings and
161 facilities which the board deems necessary for the
162 operation of the project, together with all property,
163 rights, easements and interests which may be required
164 for the operation of the project.

165 (14) "Solid waste disposal shed" or "shed" means a
166 geographical area which the solid waste management
167 board designates as provided in section eight of this
168 article for solid waste management.

**§16-26-4. West Virginia resource recovery — solid waste
disposal authority redesignated solid waste
management board; organization of board;
appointment and qualification of board
members; their term of office, compensation
and expenses; director of board.**

1 The West Virginia resource recovery — solid waste

2 disposal authority is hereby continued in all respects
3 as heretofore constituted but is hereafter designated
4 and shall be known as the solid waste management
5 board. All references in this code to the West Virginia
6 resource recovery — solid waste disposal authority
7 shall be construed as references to the solid waste
8 management board. The board is a governmental
9 instrumentality of the state and a body corporate. The
10 exercise by the board of the powers conferred on it by
11 this article and the carrying out of its purposes and
12 duties are essential governmental functions and are
13 for a public purpose.

14 The board shall be composed of seven members. The
15 secretary of the department of health and human
16 resources and the director of the division of natural
17 resources, or their designees, shall be members ex
18 officio of the board. The other five members of the
19 board shall be appointed by the governor, on the
20 effective date of this section, by and with the advice
21 and consent of the Senate, for terms of one, two, three,
22 four and five years, respectively. Two appointees shall
23 be persons having at least three years of professional
24 experience in solid waste management, civil engineer-
25 ing or regional planning and three appointees shall be
26 representatives of the general public. The successor of
27 each such appointed member shall be appointed for a
28 term of five years in the same manner the original
29 appointments were made and so that the representa-
30 tion on the board as set forth in this section is
31 preserved, except that any person appointed to fill a
32 vacancy occurring prior to the expiration of the term
33 for which his predecessor was appointed shall be
34 appointed only for the remainder of such term. Each
35 board member shall serve until the appointment and
36 qualification of his successor.

37 No more than three of the appointed board members
38 may at any one time be from the same congressional
39 district or belong to the same political party. No
40 appointed board member may be an officer or
41 employee of the United States or this state. Appointed
42 board members may be reappointed to serve addi-

43 tional terms. All members of the board shall be
44 citizens of the state. Each appointed member of the
45 board, before entering upon his duties, shall comply
46 with the requirements of article one, chapter six of
47 this code and give bond in the sum of twenty-five
48 thousand dollars. Appointed members may be
49 removed from the board only for the same causes as
50 elective state officers may be removed.

51 Annually the board shall elect one of its appointed
52 members as chairman, another as vice chairman and
53 appoint a secretary-treasurer, who need not be a
54 member of the board. Four members of the board
55 shall constitute a quorum and the affirmative vote of
56 four members shall be necessary for any action taken
57 by vote of the board. No vacancy in the membership
58 of the board shall impair the rights of a quorum by
59 such vote to exercise all the rights and perform all the
60 duties of the board. The person appointed as secretary-
61 treasurer shall give bond in the sum of fifty thousand
62 dollars. If a board member is appointed as secretary-
63 treasurer, he shall give bond in the sum of twenty-five
64 thousand dollars in addition to the bond required in
65 the preceding paragraph.

66 The ex officio members of the board shall not
67 receive any compensation for serving as a board
68 member. Each of the five appointed members of the
69 board shall receive compensation of fifty dollars for
70 each day actually spent in attending meetings of the
71 board or in the discharge of his duties as a member of
72 the board, but not to exceed two thousand five hun-
73 dred dollars in any fiscal year. Each of the seven board
74 members shall be reimbursed for all reasonable and
75 necessary expenses actually incurred in the perfor-
76 mance of his duties as a member of the board. All such
77 compensation and expenses incurred by board
78 members shall be payable solely from funds of the
79 board or from funds appropriated for such purpose by
80 the Legislature and no liability or obligation shall be
81 incurred by the board beyond the extent to which
82 moneys are available from funds of the board or from
83 such appropriation.

84 The board shall meet at least four times annually
 85 and at any time upon the call of its chairman or upon
 86 the request in writing to the chairman of four board
 87 members.

88 The board shall appoint a director as its chief
 89 executive officer. The director shall have successfully
 90 completed an undergraduate education and, in addi-
 91 tion, shall have two years of professional experience in
 92 solid waste management, civil engineering, public
 93 administration or regional planning.

**§16-26-5. Board to designate and establish disposal sheds;
 construction, maintenance, etc., of disposal
 projects; loan agreements; compliance with
 federal and state law.**

1 To accomplish the public policy and purpose and to
 2 meet the responsibility of the state as set forth in this
 3 article, the solid waste management board shall
 4 designate and establish solid waste disposal sheds and
 5 it may initiate, acquire, construct, maintain, repair
 6 and operate solid waste disposal projects or cause the
 7 same to be operated pursuant to a lease, sublease or
 8 agreement with any person or governmental agency;
 9 may make loans and grants to persons and to govern-
 10 mental agencies for the acquisition or construction of
 11 solid waste disposal projects by such persons and
 12 governmental agencies; and may issue solid waste
 13 disposal revenue bonds of this state, payable solely
 14 from revenues, to pay the cost of, or finance, in whole
 15 or in part, by loans to governmental agencies, such
 16 projects. A solid waste disposal project shall not be
 17 undertaken unless the board determines that the
 18 project is consistent with federal law, with its solid
 19 waste disposal shed plan, with the standards set by the
 20 state water resources board and the section of water
 21 resources of the division of natural resources for any
 22 waters of the state which may be affected thereby,
 23 with the air quality standards set by the West Virginia
 24 air pollution control commission and with health
 25 standards set by the division of health. Any resolution
 26 of the board providing for acquiring or constructing
 27 such projects or for making a loan or grant for such

28 projects shall include a finding by the board that such
29 determinations have been made. A loan agreement
30 shall be entered into between the board and each
31 governmental agency to which a loan is made for the
32 acquisition or construction of a solid waste disposal
33 project, which loan agreement shall include without
34 limitation the following provisions:

35 (1) The cost of such project, the amount of the loan,
36 the terms of repayment of such loan and the security
37 therefor, which may include, in addition to the pledge
38 of all revenues from such project after a reasonable
39 allowance for operation and maintenance expenses, a
40 deed of trust or other appropriate security instrument
41 creating a lien on such project;

42 (2) The specific purposes for which the proceeds of
43 the loan shall be expended, the procedures as to the
44 disbursement of loan proceeds and the duties and
45 obligations imposed upon the governmental agency in
46 regard to the construction or acquisition of the project;

47 (3) The agreement of the governmental agency to
48 impose, collect, and, if required to repay the obliga-
49 tions of such governmental agency under the loan
50 agreement, increase service charges from persons
51 using said project, which service charges shall be
52 pledged for the repayment of such loan together with
53 all interest, fees and charges thereon and all other
54 financial obligations of such governmental agency
55 under the loan agreement; (4) The agreement of the
56 governmental agency to comply with all applicable
57 laws, rules and regulations issued by the board or
58 other state, federal and local bodies in regard to the
59 construction, operation, maintenance and use of the
60 project; and

61 (5) Such other provisions, terms or conditions as the
62 board may reasonably require.

63 The board shall comply with all of the provisions of
64 federal law and of article one of this chapter and any
65 rules and regulations promulgated thereunder which
66 pertain to solid waste collection and disposal.

§16-26-6. Powers, duties and responsibilities of board generally.

1 (a) The solid waste management board may exercise
2 all powers necessary or appropriate to carry out and
3 effectuate its corporate purpose. The board may:

4 (1) Adopt, and from time to time, amend and repeal
5 bylaws necessary and proper for the regulation of its
6 affairs and the conduct of its business, and rules and
7 regulations, promulgated pursuant to the provisions of
8 chapter twenty-nine-a of this code, to implement and
9 make effective its powers and duties.

10 (2) Adopt an official seal.

11 (3) Maintain a principal office which shall be in
12 Kanawha County, and, if necessary, regional suboffi-
13 ces at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and
15 be impleaded in its own name, and particularly to
16 enforce the obligations and covenants made under
17 sections ten, eleven and sixteen of this article. Any
18 actions against the board shall be brought in the
19 circuit court of Kanawha County.

20 (5) Make loans and grants to persons and to govern-
21 mental agencies for the acquisition or construction of
22 solid waste disposal projects and adopt rules and
23 procedures for making such loans and grants.

24 (6) Acquire, construct, reconstruct, enlarge, improve,
25 furnish, equip, maintain, repair, operate, lease or rent
26 to, or contract for operation by a governmental agency
27 or person, solid waste disposal projects, and, in accor-
28 dance with chapter twenty-nine-a of this code, adopt
29 rules and regulations for the use of such projects.

30 (7) Make available the use or services of any solid
31 waste disposal project to one or more persons, one or
32 more governmental agencies, or any combination
33 thereof.

34 (8) Issue solid waste disposal revenue bonds and
35 notes and solid waste disposal revenue refunding
36 bonds of the state, payable solely from revenues as

37 provided in section ten of this article, unless the bonds
38 are refunded by refunding bond, for the purpose of
39 paying all or any part of the cost of acquiring, con-
40 structing, reconstructing, enlarging, improving, fur-
41 nishing, equipping, or repairing solid waste disposal
42 projects, or making loans to persons or to governmen-
43 tal agencies for the acquisition, design or construction
44 of solid waste disposal projects or parts thereof.

45 (9) Acquire by gift or purchase, hold and dispose of
46 real and personal property in the exercise of its
47 powers and the performance of its duties as set forth
48 in this article.

49 (10) Acquire in the name of the state, by purchase or
50 otherwise, on such terms and in such manner as it
51 deems proper, or by the exercise of the right of
52 eminent domain in the manner provided in chapter
53 fifty-four of this code, such public or private lands, or
54 parts thereof or rights therein, rights-of-way, property,
55 rights, easements and interests it deems necessary for
56 carrying out the provisions of this article, but exclud-
57 ing the acquisition by the exercise of the right of
58 eminent domain of any solid waste facility operated
59 under permits issued pursuant to the provisions of
60 article five-f, chapter twenty of this code and owned
61 by any person or governmental agency. This article
62 does not authorize the board to take or disturb
63 property or facilities belonging to any public utility or
64 to a common carrier, which property or facilities are
65 required for the proper and convenient operation of
66 such public utility or common carrier, unless provision
67 is made for the restoration, relocation or duplication of
68 such property or facilities elsewhere at the sole cost of
69 the board.

70 (11) Make and enter into all contracts and agree-
71 ments and execute all instruments necessary or
72 incidental to the performance of its duties and the
73 execution of its powers. When the cost under any such
74 contract or agreement, other than compensation for
75 personal services, involves an expenditure of more
76 than two thousand dollars, the board shall make a
77 written contract with the lowest responsible bidder

78 after public notice published as a Class II legal
79 advertisement in compliance with the provisions of
80 article three, chapter fifty-nine of this code, the
81 publication area for such publication to be the county
82 wherein the work is to be performed or which is
83 affected by the contract, which notice shall state the
84 general character of the work and the general charac-
85 ter of the materials to be furnished, the place where
86 plans and specifications therefor may be examined and
87 the time and place of receiving bids. A contract or
88 lease for the operation of a solid waste disposal project
89 constructed and owned by the board or an agreement
90 for cooperation in the acquisition or construction of a
91 solid waste disposal project pursuant to section sixteen
92 of this article is not subject to the foregoing require-
93 ments and the board may enter into such contract or
94 lease or such agreement pursuant to negotiation and
95 upon such terms and conditions and for such period as
96 it finds to be reasonable and proper under the circum-
97 stances and in the best interests of proper operation or
98 of efficient acquisition or construction of such project.
99 The board may reject any and all bids. A bond with
100 good and sufficient surety, approved by the board,
101 shall be required of all contractors in an amount equal
102 to at least fifty percent of the contract price, condi-
103 tioned upon the faithful performance of the contract.

104 (12) Employ managers, superintendents, engineers,
105 accountants, auditors and other employees, and retain
106 or contract with consulting engineers, financial consul-
107 tants, accounting experts, architects, attorneys and
108 such other consultants and independent contractors as
109 are necessary in its judgment to carry out the provi-
110 sions of this article, and fix the compensation or fees
111 thereof. All expenses thereof shall be payable solely
112 from the proceeds of solid waste disposal revenue
113 bonds or notes issued by the board, from revenues and
114 from funds appropriated for such purpose by the
115 Legislature.

116 (13) Receive and accept from any federal agency,
117 subject to the approval of the governor, grants for or
118 in aid of the construction of any solid waste disposal

119 project or for research and development with respect
120 to solid waste disposal projects and solid waste disposal
121 sheds and receive and accept from any source aid or
122 contributions of money, property, labor or other things
123 of value, to be held, used and applied only for the
124 purposes for which such grants and contributions are
125 made.

126 (14) Engage in research and development with
127 respect to solid waste disposal projects and solid waste
128 disposal sheds.

129 (15) Purchase fire and extended coverage and liabil-
130 ity insurance for any solid waste disposal project and
131 for the principal office and suboffices of the board,
132 insurance protecting the board and its officers and
133 employees against liability, if any, for damage to
134 property or injury to or death of persons arising from
135 its operations and any other insurance the board may
136 agree to provide under any resolution authorizing the
137 issuance of solid waste disposal revenue bonds.

138 (16) Charge, alter and collect rentals and other
139 charges for the use or services of any solid waste
140 disposal project as provided in this article, and charge
141 and collect reasonable interest, fees and other charges
142 in connection with the making and servicing of loans
143 to governmental agencies in furtherance of the pur-
144 poses of this article.

145 (17) Establish or increase reserves from moneys
146 received or to be received by the board to secure or to
147 pay the principal of and interest on the bonds and
148 notes issued by the board pursuant to this article.

149 (18) Do all acts necessary and proper to carry out the
150 powers expressly granted to the board in this article.

151 (b) The solid waste management board may not
152 expend an amount of money greater than one thou-
153 sand dollars on any one purchase nor disburse grant
154 moneys without first obtaining the written approval of
155 the secretary of commerce, labor and environmental
156 resources.

§16-26-6a. Development of state solid waste management plan.

1 On or before the first day of January, one thousand
2 nine hundred ninety-three, the solid waste manage-
3 ment board shall prepare an overall state plan for the
4 proper management of solid waste: *Provided*, That
5 such plan shall be consistent with the findings and
6 purposes of articles five-f, nine and eleven of chapter
7 twenty of this code: *Provided, however*, That such
8 plan shall incorporate the county or regional plans
9 developed pursuant to sections seven and twelve-a of
10 article nine of chapter twenty of this code, as
11 amended: *Provided further*, That such plan shall be
12 updated every two years following its initial
13 preparation.

§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

1 The board is hereby empowered to issue, from time
2 to time, solid waste disposal revenue bonds and notes
3 of the state in such principal amounts as the board
4 deems necessary to pay the cost of or finance in whole
5 or in part by loans to governmental agencies, one or
6 more solid waste development projects, but the aggre-
7 gate amount of all issues of bonds and notes outstand-
8 ing at one time for all projects authorized hereunder
9 shall not exceed that amount capable of being serviced
10 by revenues received from such projects, and shall not
11 exceed in the aggregate the sum of one hundred
12 million dollars: *Provided*, That up to twenty-five
13 million dollars may be issued for projects located or to
14 be located in areas which lack adequate sewer or
15 water service and the area is in need of such services
16 to comply with federal requirements.

17 The board may, from time to time, issue renewal
18 notes, issue bonds to pay such notes and whenever it
19 deems refunding expedient, refund any bonds by the
20 issuance of solid waste disposal revenue refunding
21 bonds of the state. Except as may otherwise be

22 expressly provided in this article or by the board,
23 every issue of its bonds or notes shall be obligations of
24 the board payable out of the revenues and reserves
25 created for such purposes by the board, which are
26 pledged for such payment, without preference or
27 priority of the first bonds issued, subject only to any
28 agreements with the holders of particular bonds or
29 notes pledging any particular revenues. Such pledge
30 shall be valid and binding from the time the pledge is
31 made and the revenue so pledged and thereafter
32 received by the board shall immediately be subject to
33 the lien of such pledge without any physical delivery
34 thereof or further act and the lien of any such pledge
35 shall be valid and binding as against all parties having
36 claims of any kind in tort, contract or otherwise
37 against the board irrespective of whether such parties
38 have notice thereof. All such bonds and notes shall
39 have all the qualities of negotiable instruments.

40 The bonds and notes shall be authorized by resolu-
41 tion of the board, shall bear such dates and shall
42 mature at such times, in the case of any such note or
43 any renewals thereof not exceeding five years from
44 the date of issue of such original note, and in the case
45 of any such bond not exceeding fifty years from the
46 date of issue, as such resolution may provide. The
47 bonds and notes shall bear interest at such rate, be in
48 such denominations, be in such form, either coupon or
49 registered, carry such registration privileges, be
50 payable in such medium of payment, at such place and
51 be subject to such terms of redemption as the board
52 may authorize. The board may sell such bonds and
53 notes at public or private sale, at the price the board
54 determines. The bonds and notes shall be executed by
55 the chairman and vice chairman of the board, both of
56 whom may use facsimile signatures. The official seal
57 of the board or a facsimile thereof shall be affixed
58 thereto or printed thereon and attested, manually or
59 by facsimile signature, by the secretary-treasurer of
60 the board, and any coupons attached thereto shall bear
61 the signature or facsimile signature of the chairman of
62 the board. In case any officer whose signature, or a
63 facsimile of whose signature, appears on any bonds,

64 notes or coupons ceases to be such officer before
65 delivery of such bonds or notes, such signature or
66 facsimile is nevertheless sufficient for all purposes the
67 same as if he had remained in office until such
68 delivery and, in case the seal of the board has been
69 changed after a facsimile has been imprinted on such
70 bonds or notes, such facsimile seal will continue to be
71 sufficient for all purposes.

72 Any resolution authorizing any bonds or notes or
73 any issue thereof may contain provisions (subject to
74 such agreements with bondholders or noteholders as
75 may then exist, which provisions shall be a part of the
76 contract with the holders thereof) as to pledging all or
77 any part of the revenues of the board to secure the
78 payment of the bonds or notes or of any issue thereof;
79 the use and disposition of revenues of the board; a
80 covenant to fix, alter and collect rentals, fees, service
81 charges and other charges so that pledged revenues
82 will be sufficient to pay the costs of operation, main-
83 tenance and repairs, pay principal of and interest on
84 bonds or notes secured by the pledge of such revenues
85 and provide such reserves as may be required by the
86 applicable resolution; the setting aside of reserve
87 funds, sinking funds or replacement and improvement
88 funds and the regulation and disposition thereof; the
89 crediting of the proceeds of the sale of bonds or notes
90 to and among the funds referred to or provided for in
91 the resolution authorizing the issuance of the bonds or
92 notes; the use, lease, sale or other disposition of any
93 solid waste disposal project or any other assets of the
94 board; limitations on the purpose to which the pro-
95 ceeds of sale of bonds or notes may be applied and
96 pledging such proceeds to secure the payment of the
97 bonds or notes or of any issue thereof; agreement of
98 the board to do all things necessary for the authoriza-
99 tion, issuance and sale of bonds in such amounts as
100 may be necessary for the timely retirement of notes
101 issued in anticipation of the issuance of bonds; limita-
102 tions on the issuance of additional bonds or notes; the
103 terms upon which additional bonds or notes may be
104 issued and secured; the refunding of outstanding bonds
105 or notes; the procedure, if any, by which the terms of

106 any contract with bondholders or noteholders may be
107 amended or abrogated, the holders of which must
108 consent thereto, and the manner in which such
109 consent may be given; limitations on the amount of
110 moneys to be expended by the board for operating,
111 administrative or other expenses of the board; and any
112 other matters, of like or different character, which in
113 any way affect the security or protection of the bonds
114 or notes.

115 In the event that the sum of all reserves pledged to
116 the payment of such bonds or notes shall be less than
117 the minimum reserve requirements established in any
118 resolution or resolutions authorizing the issuance of
119 such bonds or notes, the chairman of the board shall
120 certify, on or before the first day of December of each
121 year, the amount of such deficiency to the governor of
122 the state, for inclusion, if the governor shall so elect,
123 of the amount of such deficiency in the budget to be
124 submitted to the next session of the Legislature for
125 appropriation to the board to be pledged for payment
126 of such bonds or notes: *Provided*, That the Legislature
127 shall not be required to make any appropriation so
128 requested, and the amount of such deficiencies shall
129 not constitute a debt or liability of the state.

130 Neither the members of the board nor any person
131 executing the bonds or notes shall be liable personally
132 on the bonds or notes or be subject to any personal
133 liability or accountability by reason of the issuance
134 thereof.

**§16-26-11. Establishment of reserve funds, replacement and
improvement funds and sinking funds; fiscal
agent; purposes for use of bond proceeds;
application of surplus.**

1 (a) Before issuing any revenue bonds in accordance
2 with the provisions of this article, the board shall
3 consult with and be advised by the West Virginia
4 water development authority as to the feasibility and
5 necessity of the proposed issuance of revenue bonds.
6 Such consultation shall include, but not be limited to,
7 the following subjects:

8 (1) The relationship of the proposed issuance of
9 revenue bonds to the statutory debt limitation pro-
10 vided for in section ten of this article;

11 (2) The degree to which the proceeds will be used
12 for capital improvements in the form of real or
13 personal property;

14 (3) The extent to which the proposed use of proceeds
15 coincides with the purposes of this article;

16 (4) A weighing of the public benefit to be derived
17 from the issuance as opposed to any private gain; and

18 (5) The sufficiency of projected revenues available to
19 the board to pay the interest on indebtedness as it falls
20 due, to constitute a sinking fund for the payment
21 thereof at maturity, or to discharge the principal
22 within a prescribed period of time.

23 (b) Prior to issuing revenue bonds under the provi-
24 sions of this article, the board shall enter into agree-
25 ments satisfactory to the water development authority
26 with regard to the selection of all consultants, advisors
27 and other experts to be employed in connection with
28 the issuance of such bonds and the fees and expenses
29 to be charged by such persons, and to establish any
30 necessary reserve funds and replacement and
31 improvement funds, all such funds to be administered
32 by the water development authority, and, so long as
33 any such bonds remain outstanding, to establish and
34 maintain a sinking fund or funds to retire such bonds
35 and pay the interest thereon as the same may become
36 due. The amounts in any such sinking fund, as and
37 when so set apart by the board, shall be remitted to
38 the West Virginia water development authority at
39 least thirty days previous to the time interest or
40 principal payments become due, to be retained and
41 paid out by the water development authority, as agent
42 for the board, in a manner consistent with the provi-
43 sions of this article and with the resolution pursuant
44 to which the bonds have been issued. The water,
45 development authority shall act as fiscal agent for the
46 administration of any sinking fund and reserve fund
47 established under each resolution authorizing the

48 issuance of revenue bonds pursuant to the provisions
49 of this article, and shall invest all funds not required
50 for immediate disbursement in the same manner as
51 funds are invested pursuant to the provisions of
52 section thirteen, article five-c, chapter twenty of this
53 code.

54 (c) Notwithstanding any other provision of this
55 article to the contrary, no revenue bonds shall be
56 issued, nor the proceeds thereof expended or distrib-
57 uted, pursuant to the provisions of this article, without
58 the prior approval of the water development author-
59 ity. Upon such approval, the proceeds of revenue
60 bonds shall be used solely for the following purposes:

61 (1) To pay the cost of acquiring, constructing,
62 reconstructing, enlarging, improving, furnishing,
63 equipping, or repairing solid waste disposal projects;

64 (2) To make loans to persons or to governmental
65 agencies for the acquisition, design and construction of
66 solid waste disposal projects, taking such collateral
67 security for any such loans as may be approved by the
68 water development authority; and

69 (3) To pay the costs and expenses incidental to or
70 necessary for the issuance of such bonds.

71 (d) If the proceeds of revenue bonds issued for any
72 solid waste disposal project shall exceed the cost
73 thereof, the surplus shall be paid into the fund herein
74 provided for the payment of principal and interest
75 upon such bonds. Such fund may be used by the fiscal
76 agent for the purchase or redemption of any of the
77 outstanding bonds payable from such fund at the
78 market price, but not at a price exceeding the price at
79 which any of such bonds shall in the same year be
80 redeemable, as fixed by the board in its said resolu-
81 tion, and all bonds redeemed or purchased shall
82 forthwith be canceled, and shall not again be issued.

§16-26-12. Legal remedies of bondholders.

1 Any holder of solid waste disposal revenue bonds
2 issued under the authority of this article or any of the
3 coupons appertaining thereto, except to the extent the

4 rights given by this article may be restricted by the
 5 applicable resolution, may by civil action, mandamus
 6 or other proceeding, protect and enforce any rights
 7 granted under the laws of this state or granted under
 8 this article, by the resolution authorizing the issuance
 9 of such bonds, and may enforce and compel the
 10 performance of all duties required by this article, or
 11 by the resolution, to be performed by the board or any
 12 officer or employee thereof, including the fixing,
 13 charging and collecting of sufficient rentals, fees,
 14 service charges or other charges.

§16-26-14. Use of funds, properties, etc., by board; restrictions thereon.

1 All moneys, properties and assets acquired by the
 2 board, whether as proceeds from the sale of solid
 3 waste disposal revenue bonds or as revenues or
 4 otherwise, shall be held by it in trust for the purposes
 5 of carrying out its powers and duties, and shall be used
 6 and reused in accordance with the purposes and
 7 provisions of this article. Such moneys shall at no time
 8 be commingled with other public funds. Such moneys,
 9 except as otherwise provided in any resolution autho-
 10 rizing the issuance of solid waste disposal revenue
 11 bonds or except when invested pursuant to section
 12 fifteen of this article, shall be kept in appropriate
 13 depositories and secured as provided and required by
 14 law. The resolution authorizing the issuance of such
 15 bonds of any issue shall provide that any officer to
 16 whom such moneys are paid shall act as trustee of
 17 such moneys and hold and apply them for the pur-
 18 poses hereof, subject to the conditions this article and
 19 such resolution provide.

§16-26-15. Audit of funds disbursed by the board and recipients thereof.

1 Beginning in the fiscal year ending the thirtieth day
 2 of June, one thousand nine hundred ninety-two, and
 3 every second fiscal year thereafter, the Legislature
 4 shall cause to be performed a post audit and a perfor-
 5 mance audit for the intervening two year period of the
 6 recipients of any grant or loan provided by the solid

7 waste management board. The audit shall cover the
8 disbursement of such loans or grants provided pursu-
9 ant to section thirteen, article nine, chapter twenty of
10 this code, the use of such loans or grants by the
11 recipient as well as all other appropriate subject
12 matter.

**§16-26-16. Rentals, fees, service charges and other revenues
from solid waste disposal projects; contracts
and leases of board; cooperation of other
governmental agencies; bonds of such
agencies.**

1 This section shall apply to any solid waste disposal
2 project or projects which are owned in whole or in
3 part by the board.

4 The board may charge, alter and collect rentals, fees,
5 service charges or other charges for the use or services
6 of any solid waste disposal project, and contract in the
7 manner provided by this section with one or more
8 persons, one or more governmental agencies, or any
9 combination thereof, desiring the use or services
10 thereof, and fix the terms, conditions, rentals, fees,
11 service charges or other charges for such use or
12 services. Such rentals, fees, service charges or other
13 charges shall not be subject to supervision or regula-
14 tion by any other authority, department, commission,
15 board, bureau or agency of the state, and such contract
16 may provide for acquisition by such person or govern-
17 mental agency of all or any part of such solid waste
18 disposal project for such consideration payable over
19 the period of the contract or otherwise as the board in
20 its sole discretion determines to be appropriate, but
21 subject to the provisions of any resolution authorizing
22 the issuance of solid waste disposal revenue bonds or
23 notes or solid waste disposal revenue refunding bonds
24 of the board. Any governmental agency which has
25 power to construct, operate and maintain solid waste
26 disposal facilities may enter into a contract or lease
27 with the board whereby the use or services of any
28 solid waste disposal project of the board will be made
29 available to such governmental agency and pay for
30 such use or services such rentals, fees, service charges

31 or other charges as may be agreed to by such govern-
32 mental agency and the board.

33 Any governmental agency or agencies or combina-
34 tion thereof may cooperate with the board in the
35 acquisition or construction of a solid waste disposal
36 project and shall enter into such agreements with the
37 board as are necessary, with a view to effective
38 cooperative action and safeguarding of the respective
39 interests of the parties thereto, which agreements
40 shall provide for such contributions by the parties
41 thereto in such proportion as may be agreed upon and
42 such other terms as may be mutually satisfactory to
43 the parties, including, without limitation, the authori-
44 zation of the construction of the project by one of the
45 parties acting as agent for all of the parties and the
46 ownership and control of the project by the board to
47 the extent necessary or appropriate for purposes of the
48 issuance of solid waste disposal revenue bonds by the
49 board. Any governmental agency may provide such
50 contribution as is required under such agreements by
51 the appropriation of money or, if authorized by a
52 favorable vote of the electors to issue bonds or notes
53 or levy taxes or assessments and issue notes or bonds
54 in anticipation of the collection thereof, by the issu-
55 ance of bonds or notes or by the levying of taxes or
56 assessments and the issuance of bonds or notes in
57 anticipation of the collection thereof, and by the
58 payment of such appropriated money or the proceeds
59 of such bonds or notes to the board pursuant to such
60 agreements.

61 Any governmental agency, pursuant to a favorable
62 vote of the electors in an election held before or after
63 the effective date of this section for the purpose of
64 issuing bonds to provide funds to acquire, construct or
65 equip, or provide real estate and interests in real
66 estate for a solid waste disposal project, whether or not
67 the governmental agency at the time of such election
68 had the board to pay the proceeds from such bonds or
69 notes issued in anticipation thereof to the board as
70 provided in this section, may issue such bonds or notes
71 in anticipation of the issuance thereof and pay the

72 proceeds thereof to the board in accordance with an
73 agreement between such governmental agency and
74 the board: *Provided*, That the legislative board of the
75 governmental agency finds and determines that the
76 solid waste disposal project to be acquired or con-
77 structed by the board in cooperation with such govern-
78 mental agency will serve the same public purpose and
79 meet substantially the same public need as the project
80 otherwise proposed to be acquired or constructed by
81 the governmental agency with the proceeds of such
82 bonds or notes.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-5. Salary, expenses, oath and bond of director.

1 Any other provision of this code to the contrary
2 notwithstanding, the director shall receive an annual
3 salary of sixty-five thousand dollars, payable in equal
4 monthly installments, and shall be allowed and paid
5 necessary expenses incident to the performance of his
6 official duties. Prior to the assumption of the duties of
7 his office, he shall take and subscribe to the oath
8 required of public officers by the constitution of West
9 Virginia and shall execute a bond, with surety
10 approved by the governor, in the penal sum of ten
11 thousand dollars, which executed oath and bond shall
12 be filed in the office of the secretary of state. Premi-
13 ums on the bond shall be paid from division funds.

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-3. Definitions.

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

3 (1) "Chief" means the chief of the section of waste
4 management of the division of natural resources;

5 (2) "Director" means the director of the division of
6 natural resources;

7 (3) "Disposal" means the discharge, deposit, injec-
8 tion, dumping, spilling, leaking or placing of any

9 hazardous waste into or on any land or water so that
10 such hazardous waste or any constituent thereof may
11 enter the environment or be emitted into the air, or
12 discharged into any waters, including ground waters;

13 (4) "Division" means the division of natural
14 resources;

15 (5) "Generation" means the act or process of produc-
16 ing hazardous waste materials;

17 (6) "Hazardous and Solid Waste Amendments of
18 1984" means the federal Hazardous and Solid Waste
19 Amendments of 1984 (P.L. 98-616) amending the
20 Resource Conservation and Recovery Act;

21 (7) "Hazardous waste" means a waste or combina-
22 tion of wastes, which because of its quantity, concen-
23 tration or physical, chemical or infectious characteris-
24 tics, may: (A) Cause, or significantly contribute to, an
25 increase in mortality or an increase in serious irre-
26 versible, or incapacitating reversible, illness; or (B)
27 pose a substantial present or potential hazard to
28 human health or the environment when improperly
29 treated, stored, transported, disposed of or otherwise
30 managed;

31 (8) "Hazardous waste fuel" means fuel produced
32 from any hazardous waste identified or listed pursuant
33 to subdivision (2), subsection (a), section six of this
34 article, or produced from any hazardous waste identi-
35 fied or listed pursuant to section six;

36 (9) "Hazardous waste management" means the
37 systematic control of the collection, source separation,
38 storage, transportation, processing, treatment, recov-
39 ery and disposal of hazardous wastes;

40 (10) "Land disposal" means any placement of haz-
41 ardous waste in a landfill, surface impoundment,
42 waste pile, injection well, land treatment facility, salt
43 dome formation, salt bed formation, or underground
44 mine or cave;

45 (11) "Manifest" means the form used for identifying
46 the quantity, composition and the origin, routing and

47 destination of hazardous waste during its transporta-
48 tion from the point of generation to the point of
49 disposal, treatment or storage;

50 (12) "Person" means any individual, trust, firm,
51 joint stock company, public, private or government
52 corporation, partnership, association, state or federal
53 agency, the United States government, this state or
54 any other state, municipality, county commission or
55 any other political subdivision of a state or any
56 interstate body;

57 (13) "Resource Conservation and Recovery Act"
58 means the federal Resource Conservation and Recov-
59 ery Act of 1976, 90 Stat. 2806, as amended;

60 (14) "Section" means the section of waste manage-
61 ment of the division of natural resources;

62 (15) "Site work zones" means an exclusion zone, a
63 decontamination zone, or a clean zone established at a
64 hazardous waste site before clean-up work begins to
65 prevent or reduce the movement of contaminants
66 from the site to uncontaminated areas and to control
67 public, employee and equipment exposure to hazard-
68 ous substances;

69 (A) The exclusion zone is the innermost of the zones
70 and is where contamination exists.

71 (B) The decontamination zone is the zone between
72 the exclusion zone and the clean zone and serves as a
73 transition and buffer between the contaminated and
74 clean zones to further reduce the physical transfer of
75 contaminating substances to the public, employees and
76 equipment.

77 (C) The clean zone is the outermost of the zones and
78 is uncontaminated;

79 (16) "Storage" means the containment of hazardous
80 waste, either on a temporary basis or for a period of
81 years, in such a manner as not to constitute disposal of
82 such hazardous waste;

83 (17) "Subtitle C" means Subtitle C of the Resource
84 Conservation and Recovery Act;

85 (18) "Treatment" means any method, technique or
 86 process, including neutralization, designed to change
 87 the physical, chemical or biological character or
 88 composition of any hazardous waste so as to neutralize
 89 such waste or so as to render such waste nonhazard-
 90 ous, safer for transport, amenable to recovery, amena-
 91 ble to storage or reduced in volume. Such term
 92 includes any activity or processing designed to change
 93 the physical form or chemical composition of hazard-
 94 ous waste so as to render it nonhazardous;

95 (19) "Waste" means any garbage, refuse, sludge from
 96 a waste treatment plant, water supply treatment plant
 97 or air pollution control facility and other discarded
 98 material including solid, liquid, semisolid or contained
 99 gaseous material resulting from industrial, commer-
 100 cial, mining and agricultural operations, and from
 101 community activities, but does not include solid or
 102 dissolved material in domestic sewage, or solid or
 103 dissolved materials in irrigation return flows or
 104 industrial discharges which are point sources subject
 105 to permits under Section 402 of the federal Water
 106 Pollution Control Act, as amended, or source, special
 107 nuclear or by-product material as defined by the
 108 federal Atomic Energy Act of 1954, as amended.

§20-5E-6. Promulgation of regulations by director.

1 (a) The director has overall responsibility for the
 2 promulgation of rules and regulations under this
 3 article. The director shall promulgate the following
 4 rules and regulations, in consultation with the depart-
 5 ment of health and human resources, the air pollution
 6 control commission, the office of emergency services,
 7 the public service commission, the state fire marshal,
 8 the department of public safety, the division of
 9 highways, the department of agriculture, the water
 10 resources board and the division of energy, offices of
 11 mines and minerals and oil and gas. In promulgating
 12 and revising such rules and regulations the director
 13 shall comply with the provisions of chapter twenty-
 14 nine-a of this code, shall avoid duplication to the
 15 maximum extent practicable with the appropriate
 16 provisions of the acts and laws set out in subsection

17 (b), section five of this article and shall be consistent
18 with but no more expansive in coverage nor more
19 stringent in effect than the rules and regulations
20 promulgated by the federal environmental protection
21 agency pursuant to the Resource Conservation and
22 Recovery Act:

23 (1) Rules and regulations establishing a plan for the
24 safe and effective management of hazardous wastes
25 within the state;

26 (2) Rules and regulations establishing criteria for
27 identifying the characteristics of hazardous waste,
28 identifying the characteristics of hazardous waste and
29 listing particular hazardous wastes which are subject
30 to the provisions of this article: *Provided, That:*

31 (A) Each waste listed below shall, except as provided
32 in paragraph (B) of this subdivision, be subject only to
33 regulation under other applicable provisions of federal
34 or state law in lieu of this article until proclamation by
35 the governor finding that at least six months have
36 elapsed since the date of submission of the applicable
37 study required to be conducted under Section 8002 of
38 the federal Solid Waste Disposal Act, as amended, and
39 that regulations have been promulgated with respect
40 to such wastes in accordance with Section 3001
41 (b)(3)(C) of the Resource Conservation and Recovery
42 Act, and finding in the case of the wastes identified in
43 subparagraph (iv) of this paragraph that the regulation
44 of such wastes has been authorized by an act of
45 Congress in accordance with Section 3001 (b)(2) of the
46 Resource Conservation and Recovery Act:

47 (i) Fly ash waste, bottom ash waste, slag waste and
48 flue gas emission control waste generated primarily
49 from the combustion of coal or other fossil fuels;

50 (ii) Solid waste from the extraction, beneficiation
51 and processing of ores and minerals, including phos-
52 phate rock and overburden from the mining of ura-
53 nium ore;

54 (iii) Cement kiln dust waste; and

55 (iv) Drilling fluids, produced waters and other

56 wastes associated with the exploration, development or
57 production of crude oil or natural gas or geothermal
58 energy.

59 (B) Owners and operators of disposal sites for wastes
60 listed in paragraph (A) of this subdivision may be
61 required by the director of the division of natural
62 resources through regulation prescribed under author-
63 ity of this section:

64 (i) As to disposal sites for such wastes which are to
65 be closed, to identify the locations of such sites
66 through surveying, platting or other measures,
67 together with recordation of such information on the
68 public record, to assure that the locations where such
69 wastes are disposed of are known and can be located
70 in the future; and

71 (ii) To provide chemical and physical analysis and
72 composition of such wastes, based on available infor-
73 mation, to be placed on the public record;

74 (3) Rules and regulations establishing such standards
75 applicable to generators of hazardous waste identified
76 or listed under this article as may be necessary to
77 protect public health and safety and the environment,
78 which standards shall establish requirements respect-
79 ing: (A) Record-keeping practices that accurately
80 identify the quantities of such hazardous waste gener-
81 ated, the constituents thereof which are significant in
82 quantity or in potential harm to public health or the
83 environment and the disposition of such wastes; (B)
84 labeling practices for any containers used for the
85 storage, transport or disposal of such hazardous waste
86 such as will identify accurately such waste; (C) use of
87 appropriate containers for such hazardous waste; (D)
88 furnishing of information on the general chemical
89 composition of such hazardous wastes to persons
90 transporting, treating, storing or disposing of such
91 wastes; (E) use of a manifest system and any other
92 reasonable means necessary to assure that all such
93 hazardous waste generated is designated for treat-
94 ment, storage or disposal in, and arrives at treatment,
95 storage or disposal facilities (other than facilities on

96 the premises where the waste is generated) with
97 respect to which permits have been issued which are
98 required: (i) By this article or any rule and regulation
99 required by this article to be promulgated; (ii) by
100 Subtitle C of the Resource Conservation and Recovery
101 Act; (iii) by the laws of any other state which has an
102 authorized hazardous waste program pursuant to
103 Section 3006 of the Resource Conservation and Recov-
104 ery Act; or (iv) by Title I of the federal Marine
105 Protection, Research and Sanctuaries Act; and (F) the
106 submission of reports to the director at such times as
107 the director deems necessary setting out the quantities
108 of hazardous wastes identified or listed under this
109 article that the generator has generated during a
110 particular time period, and the disposition of all such
111 hazardous waste;

112 (4) Rules and regulations establishing such perfor-
113 mance standards applicable to owners and operators of
114 facilities for the treatment, storage or disposal of
115 hazardous waste identified or listed under this article
116 as may be necessary to protect public health and
117 safety and the environment, which standards shall,
118 where appropriate, distinguish in such standards
119 between requirements appropriate for new facilities
120 and for facilities in existence on the date of promulga-
121 tion of such rules and regulations and shall include,
122 but need not be limited to, requirements respecting:
123 (A) Maintaining records of all hazardous wastes
124 identified or listed under this article which are
125 treated, stored or disposed of, as the case may be, and
126 the manner in which such wastes were treated, stored
127 or disposed of; (B) satisfactory reporting, monitoring
128 and inspection and compliance with the manifest
129 system referred to in subdivision (3) of subsection (a)
130 of this section; (C) treatment, storage or disposal of all
131 such waste received by the facility pursuant to such
132 operating methods, techniques and practices as may be
133 satisfactory to the director; (D) the location, design and
134 construction of such hazardous waste treatment,
135 disposal or storage facilities; (E) contingency plans for
136 effective action to minimize unanticipated damage
137 from any treatment, storage or disposal of any such

138 hazardous waste; (F) the maintenance of operation of
139 such facilities and requiring such additional qualifica-
140 tions as to ownership, continuity of operation, training
141 for personnel and financial responsibility as may be
142 necessary or desirable; however, no private entity may
143 be precluded by reason of criteria established under
144 this subsection from the ownership or operation of
145 facilities providing hazardous waste treatment, storage
146 or disposal services where such entity can provide
147 assurances of financial responsibility and continuity of
148 operation consistent with the degree and duration of
149 risks associated with the treatment, storage or disposal
150 of specified hazardous waste; and (G) compliance with
151 the requirements of section eight of this article
152 respecting permits for treatment, storage or disposal;

153 (5) Rules and regulations specifying the terms and
154 conditions under which the chief shall issue, modify,
155 suspend, revoke or deny such permits as may be
156 required by this article;

157 (6) Rules and regulations for the establishment and
158 maintenance of records; the making of reports; the
159 taking of samples and the performing of tests and
160 analyses; the installing, calibrating, operating and
161 maintaining of monitoring equipment or methods; and
162 the providing of any other information as may be
163 necessary to achieve the purposes of this article;

164 (7) Rules and regulations establishing standards and
165 procedures for the certification of personnel at hazard-
166 ous waste treatment, storage or disposal facilities or
167 sites: *Provided*, That with respect to clean-up opera-
168 tions at any site work zone at a hazardous waste site
169 not having a valid treatment, storage or disposal
170 permit pursuant to section eight of this article, such
171 rules and regulations shall provide that:

172 (A) Workers engaged in hazardous waste operation
173 within the exclusion zone and the decontamination
174 zone shall first have received a minimum of eighty
175 hours of instruction off the site, and a minimum of
176 three days actual field experience under the direct
177 supervision of a trained, experienced supervisor.

178 (B) Equipment operators and transport vehicle
179 operators engaged in hazardous waste operation
180 within the exclusion zone and the decontamination
181 zone shall first have received a minimum of forty
182 hours of training, and a minimum of three days actual
183 field experience under the direct supervision of a
184 trained, experienced supervisor.

185 (C) Supervisors engaged in hazardous waste opera-
186 tion within the exclusion zone and the decontamina-
187 tion zone shall first have received as a minimum the
188 same number of hours of instruction as the workers
189 for whom the supervisor is directly responsible, and a
190 minimum of three days actual field experience under
191 the direct supervision of a trained, experienced
192 supervisor;

193 (8) Rules and regulations for public participation in
194 the implementation of this article;

195 (9) Rules and regulations establishing procedures
196 and requirements for the use of a manifest during the
197 transport of hazardous wastes;

198 (10) Rules and regulations establishing procedures
199 and requirements for the submission and approval of
200 a plan, applicable to owners or operators of hazardous
201 waste storage, treatment and disposal facilities, as
202 necessary or desirable for closure of the facility, post-
203 closure monitoring and maintenance, sudden and
204 accidental occurrences and nonsudden and accidental
205 occurrences;

206 (11) Rules and regulations establishing a schedule of
207 fees to recover the costs of processing permit applica-
208 tions and permit renewals;

209 (12) Rules and regulations, including exemptions and
210 variances, as appropriate: (A) Establishing standards
211 and prohibitions relating to the management of haz-
212 ardous waste by land disposal methods; (B) establish-
213 ing standards and prohibitions relating to the land
214 disposal of liquid hazardous wastes or free liquids
215 contained in hazardous wastes and any other liquids
216 which are not hazardous wastes; (C) establishing

standards applicable to producers, distributors or marketers of hazardous waste fuels; (D) establishing such standards relating to the management of used oil as may be necessary to protect human health and the environment; (E) establishing such standards relating to the management of recycled oil as may be necessary to protect human health and the environment; and (F) as are otherwise necessary to allow the state to assume primacy for the administration of the federal hazardous waste management program under the Resource Conservation and Recovery Act and in particular, the Hazardous and Solid Waste Amendments of 1984: *Provided*, That such rules and regulations authorized by this subdivision shall be consistent with but no more expansive in coverage nor more stringent in effect than rules and regulations promulgated by the federal environmental protection agency under Subtitle C; and

(13) Such other rules and regulations as are necessary to effectuate the purposes of this article.

(b) The rules and regulations required by this article to be promulgated shall be reviewed and, where necessary, revised not less frequently than every three years. Additionally, the rules and regulations required to be promulgated by this article shall be revised, as necessary, within six months of the effective date of any amendment of the Resource Conservation and Recovery Act and within six months of the effective date of any adoption or revision of rules and regulations required to be promulgated by the Resource Conservation and Recovery Act.

(c) Notwithstanding any other provision in this article the director shall not promulgate rules and regulations which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven of this article.

§20-5E-25. Household hazardous wastes.

By the first day of September, one thousand nine hundred ninety-two, the director of the division of

3 natural resources shall prepare and submit a report
4 concerning the proper handling and disposal of house-
5 hold hazardous waste. The report shall include:

6 (1) A proposed definition of what constitutes house-
7 hold hazardous waste;

8 (2) An overview of current disposal methods;

9 (3) An analysis of programs in other states designed
10 to address the subject of household hazardous wastes;

11 (4) Recommendations for the establishment of a
12 comprehensive state program to ensure the proper
13 handling and disposal of household hazardous waste;

14 (5) A projection of the potential costs of the program;

15 (6) A recommendation concerning potential funding
16 sources for the program; and

17 (7) Any other matters deemed appropriate and
18 relevant.

19 Said report shall be submitted to the governor,
20 speaker of the House of Delegates, and the president
21 of the Senate.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

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

1 (a) The purpose of this article is to transfer jurisdic-
2 tion over the management of solid waste under section
3 nine, article one, chapter sixteen of this code from the
4 division of health to the division of natural resources
5 and to establish a comprehensive program of control-
6 ling solid waste disposal.

7 (b) The Legislature finds that uncontrolled, inade-
8 quately controlled and improper collection, transporta-
9 tion, processing and disposal of solid waste: (1) Is a
10 public nuisance and a clear and present danger to
11 people; (2) provides harborages and breeding places for
12 disease-carrying, injurious insects, rodents and other
13 pests harmful to the public health, safety and welfare;
14 (3) constitutes a danger to livestock and domestic
15 animals; (4) decreases the value of private and public

16 property, causes pollution, blight and deterioration of
 17 the natural beauty and resources of the state and has
 18 adverse economic and social effects on the state and its
 19 citizens; (5) results in the squandering of valuable
 20 nonrenewable and nonreplenishable resources con-
 21 tained in solid waste; (6) that materials recovery and
 22 recycling reduces the need for landfills and extends
 23 their life; and that (7) proper disposal, materials
 24 recovery or recycling of solid waste is for the general
 25 welfare of the citizens of this state.

26 (c) The Legislature further finds that disposal in
 27 West Virginia of solid waste of unknown composition
 28 threatens the environment and the public health,
 29 safety and welfare, and therefore, it is in the interest
 30 of the public to identify the type, amount and origin
 31 of solid waste accepted for disposal at West Virginia
 32 solid waste facilities.

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

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

§20-5F-2. Definitions.

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

3 (a) "Approved solid waste facility" means a solid

4 waste facility or practice which has a valid permit
5 under this article.

6 (b) "Backhauling" means the practice of using the
7 same container to transport solid waste to transport
8 any substance or material used as food by humans,
9 animals raised for human consumption or reusable
10 item which may be refilled with any substance or
11 material used as food by humans.

12 (c) "Chief" means the chief of the section of waste
13 management of the division of natural resources.

14 (d) "Municipal solid waste incineration" means the
15 burning of any solid waste collected by any municipal
16 or residential solid waste disposal company.

17 (e) "Commercial solid waste facility" means any
18 solid waste facility which accepts solid waste generated
19 by sources other than the owner or operator of the
20 facility and shall not include an approved solid waste
21 facility owned and operated by a person for the sole
22 purpose of disposing of solid wastes created by that
23 person or such person and other persons on a cost-
24 sharing or nonprofit basis and shall not include the
25 legitimate reuse and recycling of materials for struc-
26 tural fill, road base, mine reclamation, and similar
27 applications.

28 (f) "Division" means the division of natural
29 resources.

30 (g) "Director" means the director of the division of
31 natural resources.

32 (h) "Open dump" means any solid waste disposal
33 which does not have a permit under this article, or is
34 in violation of state law, or where solid waste is
35 disposed in a manner that does not protect the
36 environment.

37 (i) "Person", "persons" or "applicant" mean any
38 industrial user, public or private corporation, institu-
39 tion, association, firm or company organized or exist-
40 ing under the laws of this or any other state or
41 country; state of West Virginia; governmental agency,

42 including federal facilities; political subdivision; county
 43 commission; municipal corporation; industry; sanitary
 44 district; public service district; drainage district; soil
 45 conservation district; watershed improvement district;
 46 partnership; trust; estate; person or individual; group
 47 of persons or individuals acting individually or as a
 48 group; or any legal entity whatever.

49 (j) "Sludge" means any solid, semisolid, residue or
 50 precipitate, separated from or created by a municipal,
 51 commercial or industrial waste treatment plant, water
 52 supply treatment plant or air pollution control facility
 53 or any other such waste having similar origin.

54 (k) "Solid waste" means any garbage, paper, litter,
 55 refuse, cans, bottles, waste processed for the express
 56 purpose of incineration, sludge from a waste treatment
 57 plant, water supply treatment plant or air pollution
 58 control facility, other discarded material, including
 59 offensive or unsightly matter, solid, liquid, semisolid
 60 or contained liquid or gaseous material resulting from
 61 industrial, commercial, mining or community activi-
 62 ties but does not include solid or dissolved material in
 63 sewage, or solid or dissolved materials in irrigation
 64 return flows or industrial discharges which are point
 65 sources and have permits under article five-a, chapter
 66 twenty of this code, or source, special nuclear or by-
 67 product material as defined by the Atomic Energy Act
 68 of 1954, as amended, including any nuclear or by-
 69 product material considered by federal standards to be
 70 below regulatory concern, or a hazardous waste either
 71 identified or listed under article five-e of this chapter or
 72 refuse, slurry, overburden or other wastes or material
 73 resulting from coal-fired electric power or steam
 74 generation, the exploration, development, production,
 75 storage and recovery of coal, oil and gas, and other
 76 mineral resources placed or disposed of at a facility
 77 which is regulated under chapter twenty-two, twenty-
 78 two-a or twenty-two-b of this code, so long as such
 79 placement or disposal is in conformance with a permit
 80 issued pursuant to such chapters. "Solid waste" shall
 81 not include materials which are recycled by being
 82 used or reused in an industrial process to make a

83 product, as effective substitute for commercial pro-
84 ducts, or are returned to the original process as a
85 substitute for raw material feed stock.

86 (l) "Solid waste disposal" means the practice of
87 disposing of solid waste including placing, depositing,
88 dumping or throwing or causing to be placed, depos-
89 ited, dumped or thrown any solid waste.

90 (m) "Solid waste disposal shed" means the geo-
91 graphical area which the solid waste management
92 board designates and files in the state register pursu-
93 ant to section eight, article twenty-six, chapter sixteen
94 of this code.

95 (n) "Solid waste facility" means any system, facility,
96 land, contiguous land, improvements on the land,
97 structures or other appurtenances or methods used for
98 processing, recycling or disposing of solid waste,
99 including landfills, transfer stations, materials recov-
100 ery facilities and other such facilities not herein
101 specified. Such facility shall be deemed to be situated,
102 for purposes of this article, in the county where the
103 majority of the spatial area of such facility is located.

104 (o) "Class A facility" means a commercial solid
105 waste facility which handles an aggregate of between
106 ten thousand and thirty thousand tons of solid waste
107 per month. "Class A facility" shall include two or
108 more Class B solid waste landfills owned or operated
109 by the same person in the same county, if the aggre-
110 gate tons of solid waste handled per month by such
111 landfills exceeds nine thousand nine hundred ninety-
112 nine tons of solid waste per month.

113 (p) "Applicant" means the person applying for a
114 commercial solid waste facility permit or similar
115 renewal permit and any person related to such person
116 by virtue of common ownership, common manage-
117 ment or family relationships as the director of the
118 division of natural resources may specify including the
119 following: Spouses, parents and children and siblings.

120 (q) "Energy recovery incinerator" means any solid
121 waste facility at which solid wastes are incinerated

122 with the intention of using the resulting energy for
123 the generation of steam, electricity, or any other use
124 not specified herein.

125 (r) "Incineration technologies" means any technol-
126 ogy that uses controlled flame combustion to ther-
127 mally break down solid waste, including refuse-
128 derived fuel, to an ash residue that contains little or no
129 combustible materials, regardless of whether the
130 purpose is processing, disposal, electric or steam
131 generation, or any other method by which solid waste
132 is incinerated.

133 (s) "Incinerator" means an enclosed device using
134 controlled flame combustion to thermally break down
135 solid waste, including refuse-derived fuel, to an ash
136 residue that contains little or no combustible materials.

137 (t) "Materials recovery facility" means any solid
138 waste facility at which solid wastes are manually or
139 mechanically shredded or separated so that materials
140 are recovered from the general waste stream for
141 purposes of reuse and recycling.

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

1 In addition to all other powers, duties, responsibili-
2 ties and authority granted and assigned to the director
3 and chief in this code and elsewhere described by law,
4 they are hereby empowered as follows:

5 (a) The director shall adopt rules and regulations in
6 compliance with the West Virginia administrative
7 procedures act to carry out the provisions of this
8 article including modifying any existing rules and
9 regulations and establishing permit application fees up
10 to an amount sufficient to defray the costs of permit
11 review. In promulgating rules and regulations the
12 director shall consider and establish requirements
13 based on the quantity of solid waste to be handled,
14 including different requirements for solid waste
15 facilities or approved solid waste facilities which
16 handle more than one hundred tons of solid waste per
17 day, the environmental impact of solid waste disposal,
18 the nature, origin or characteristics of the solid waste,

19 potential for contamination of public water supply,
20 requirements for public roadway standards and design
21 for access to the facilities with approval by the
22 commissioner of the department of highways, public
23 sentiment, the financial capability of the applicant, soil
24 and geological considerations and other natural
25 resource considerations. All existing rules and regula-
26 tions of the department of health relating to solid
27 waste disposal shall remain valid and be enforceable
28 by the division of natural resources on the tenth day
29 of June, one thousand nine hundred eighty-eight, until
30 changed or modified by the director, in compliance
31 with chapter twenty-nine-a of this code.

32 (b) The chief, after public notice and opportunity for
33 public hearing near the affected community, may
34 issue a permit with reasonable terms and conditions
35 for installation, establishment, modification, operation
36 or closure of a solid waste facility: *Provided*, That the
37 director may deny the issuance of a permit on the
38 basis of information in the application or from other
39 sources including public comment, if the solid waste
40 facility is likely to cause adverse impacts on the
41 environment. The director may also prohibit the
42 installation or establishment of specific types and sizes
43 of solid waste facilities in a specified geographical area
44 of the state based on the above cited factor and may
45 delete such geographical area from consideration for
46 that type and size solid waste facility.

47 (c) The director may refuse to grant any permit if he
48 has reasonable cause to believe, as indicated by
49 documented evidence, that the applicant, or any
50 officer, director or manager, thereof, or person owning
51 a five percent or more interest, beneficial or other-
52 wise, or other person conducting or managing the
53 affairs of the applicant or of the proposed licensed
54 premises, in whole or in part:

55 (1) Has demonstrated, either by his police record or
56 by his record as a former permittee under this
57 chapter, a lack of respect for law and order, generally,
58 or for the laws and rules governing the disposal of
59 solid wastes;

60 (2) Has misrepresented a material fact in applying to
61 the director for a permit;

62 (3) Has been convicted of a felony or other crime
63 involving moral turpitude;

64 (4) Has exhibited a pattern of violating environmen-
65 tal laws in any state or the United States or combina-
66 tion thereof; or

67 (5) Has had any permit revoked under the environ-
68 mental laws of any state or the United States.

69 (d) The director, chief or any authorized representa-
70 tive, employee or agent of the division, may at reason-
71 able times, enter onto any approved solid waste
72 facility, open dump or property where solid waste is
73 present for the purpose of making an inspection or
74 investigation of solid waste disposal.

75 (e) The director, chief or any authorized representa-
76 tive, employee or agent of the division may, at reason-
77 able times, enter any approved solid waste facility,
78 open dump or property where solid waste is present
79 and take samples of the waste, soils, air or water or
80 may, upon issuance of an order, require any person to
81 take and analyze samples of such waste, soil, air or
82 water.

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

87 (g) The chief or his authorized representative,
88 employee or agent shall make periodic inspections at
89 every approved solid waste facility to effectively
90 implement and enforce the requirements of this
91 article or its rules and regulations and may, in
92 coordination with the commissioner of the department
93 of highways, conduct at weigh stations or any other
94 adequate site or facility inspections of solid waste in
95 transit.

96 (h) The director or chief shall require and set the
97 amount of performance bonds for persons engaged in

98 the practice of solid waste disposal in this state,
99 pursuant to section five-b of this article.

100 (i) The director shall require: (1) That persons
101 disposing of solid waste at commercial solid waste
102 facilities within the state file with the operator of the
103 commercial solid waste facility records concerning the
104 type, amount and origin of solid waste disposed of by
105 them; and (2) that operators of commercial solid waste
106 facilities within the state maintain records and file
107 them with the director concerning the type, amount
108 and origin of solid waste accepted by them.

109 (j) The director may expend funds from the litter
110 control fund established pursuant to section twenty-
111 six, article seven of this chapter to assist county and
112 regional solid waste authorities in the formulation of
113 their comprehensive litter and solid waste control
114 plans pursuant to section seven, article eight of this
115 chapter and in the construction and maintenance of
116 approved commercial solid waste facilities and collec-
117 tion equipment, including the provision of grants as
118 well as bonding assistance for those authorities which
119 would in the opinion of the director be unable to
120 construct or maintain an approved commercial solid
121 waste facility without grant funds.

122 (k) *Identification of interests.* — The director shall
123 require an applicant for a solid waste facility permit to
124 provide the following information:

125 (1) The names, addresses and telephone numbers of:

126 (A) The permit applicant;

127 (B) Any other person conducting or managing the
128 affairs of the applicant or of the proposed permitted
129 premises, including any contractor for gas or energy
130 recovery from the proposed operation, if the contrac-
131 tor is a person other than the applicant; and

132 (C) Parties related to the applicant by blood, mar-
133 riage or business association, including the relationship
134 to the applicant.

135 (2) The names and addresses of the owners of record

136 of surface and subsurface areas within, and contiguous
137 to, the proposed permit area.

138 (3) The names and addresses of the holders of record
139 to a leasehold interest in surface or subsurface areas
140 within, and contiguous to, the proposed permit area.

141 (4) A statement of whether the applicant is an
142 individual, corporation, partnership, limited partner-
143 ship, government agency, proprietorship, municipality,
144 syndicate, joint venture or other entity. For applicants
145 other than sole proprietorships, the application shall
146 contain the following information, if applicable:

147 (A) Names and addresses of every officer, general
148 and limited partner, director and other persons per-
149 forming a function similar to a director of the applicant;

150 (B) For corporations, the principal shareholders;

151 (C) For corporations, the names, principal places of
152 businesses and internal revenue service tax identifica-
153 tion numbers of United States parent corporations of
154 the applicant, including ultimate parent corporations
155 and United States subsidiary corporations of the
156 applicant and the applicant's parent corporations; and

157 (D) Names and addresses of other persons or entities
158 having or exercising control over any aspect of the
159 proposed facility that is regulated by the division,
160 including, but not limited to, associates and agents.

161 (5) If the applicant or an officer, principal share-
162 holder, general or limited partner or other related
163 party to the applicant, has a beneficial interest in, or
164 otherwise manages or controls another person or
165 municipality engaged in the business of solid waste
166 collection, transportation, storage, processing, treat-
167 ment or disposal, the application shall contain the
168 following information:

169 (A) The name, address and tax identification num-
170 ber or employer identification number of the corpora-
171 tion or other person or municipality; and

172 (B) The nature of the relationship or participation
173 with the corporation or other person or municipality.

174 (6) An application shall list permits or licenses,
175 issued by the division or other environmental regula-
176 tory agency to each person or municipality identified
177 in paragraph (1) and to other related parties to the
178 applicant, that are currently in effect or have been in
179 effect in at least part of the previous ten years. This
180 list shall include the type of permit or license, num-
181 ber, location, issuance date and when applicable, the
182 expiration date.

183 (7) An application shall identify the solid waste
184 facilities in the state which the applicant or a person
185 or municipality identified in paragraph (1) of this
186 subdivision and other related parties to the applicant
187 currently owns or operates, or owned or operated in
188 the previous ten years. For each facility, the applicant
189 shall identify the location, type of operation and state
190 or federal permits under which they operate or have
191 operated. Facilities which are no longer permitted or
192 which were never under permit shall also be listed.

193 (1) *Compliance information.* — An application shall
194 contain the following information for the ten-year
195 period prior to the date on which the application is
196 filed:

197 (1) A description of notices of violation, including the
198 date, location, nature and disposition of the violation,
199 that were sent by the division to the applicant or a
200 related party, concerning any environmental law,
201 regulation, or order of the division, or a condition of a
202 permit or license. In lieu of a description the applicant
203 may provide a copy of notices of violation.

204 (2) A description of administrative orders, civil
205 penalty assessments and bond forfeiture actions by the
206 division, and civil penalty actions adjudicated by the
207 state, against the applicant or a related party concern-
208 ing any environmental law, regulation, or order of the
209 division, or a condition of a permit or license. The
210 description shall include the date, location, nature and
211 disposition of the actions. In lieu of a description, the
212 applicant may provide a copy of the orders, assess-
213 ments and actions.

214 (3) A description of a summary, misdemeanor or
 215 felony conviction, a plea of guilty or plea of no contest
 216 that has been obtained in this state against the
 217 applicant or a related party under any environmental
 218 law or regulation concerning the storage, collection,
 219 treatment, transportation, processing or disposal of
 220 solid waste. The description shall include the date,
 221 location, nature and disposition of the actions.

222 (4) A description of a court proceeding concerning
 223 any environmental law or regulation that was not
 224 described under paragraph (3), subdivision (1) of this
 225 section in which the applicant or a related party has
 226 been party. The description shall include the date,
 227 location, nature and disposition of the proceedings.

228 (5) A description of a consent order, consent adjudi-
 229 cation, consent decree or settlement agreement involv-
 230 ing the applicant or a related party concerning any
 231 environmental law or regulation in which the division,
 232 other governmental agencies, the United States Envir-
 233 onmental Protection Agency, or a county health
 234 department was a party. The description shall include
 235 the date, location, nature and disposition of the action.
 236 In lieu of a description, the applicant may provide a
 237 copy of the order, adjudication, a decree or agreement.

238 (6) For facilities and activities identified under
 239 paragraph (1) of this subdivison, a statement of
 240 whether the facility or activity was the subject of an
 241 administrative order, consent agreement, consent
 242 adjudication, consent order, settlement agreement,
 243 court order, civil penalty, bond forfeiture proceeding,
 244 criminal conviction, guilty or no contest plea to a
 245 criminal charge or permit or license suspension or
 246 revocation under the act or the environmental protec-
 247 tion acts. If the facilities or activities were subject to
 248 these actions, the applicant shall state the date,
 249 location, nature and disposition of the violation. In lieu
 250 of a description, the applicant may provide a copy of
 251 the appropriate document. The application shall also
 252 state whether the division has denied a permit appli-
 253 cation filed by the applicant or a related party, based
 254 on compliance status.

255 (7) When the applicant is a corporation, a list of the
256 principal shareholders that have also been principal
257 shareholders of other corporations which have com-
258 mitted violations or any environmental law or regula-
259 tion. The list shall include the date, location, nature
260 and disposition of the violation, and shall explain the
261 relationship between the principal shareholder and
262 both the applicant and the other corporation.

263 (8) A description of a misdemeanor or felony convic-
264 tion, a plea of guilty and a plea of no contest, by the
265 applicant or a related party for violations outside of
266 this state of any environmental protection laws or
267 regulations. The description shall include the date of
268 the convictions or pleas, and the date, location and
269 nature of the offense.

270 (9) A description of final administrative orders, court
271 orders, court decrees, consent decrees or adjudications,
272 consent orders, final civil penalty adjudications, final
273 bond forfeiture actions or settlement agreements
274 involving the applicant or a related party for violations
275 outside of this state of any environmental protection
276 laws or regulations. The description shall include the
277 date of the action and the location and nature of the
278 underlying violation. In lieu of a description, the
279 applicant may provide a copy of the appropriate
280 document.

281 (m) All of the information provided by the applicant
282 pursuant to this section shall not be confidential and
283 shall be disclosable pursuant to the provisions of
284 chapter twenty-nine-b of this code.

§20-5F-4a. Fee for filing a certificate of site approval.

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

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

1 All commercial and public solid waste facilities shall
2 establish and publish a yearly schedule providing for

3 one day per month on which a person not in the
4 business of hauling or disposing of solid waste, who is
5 a resident of the watershed in which the facility is
6 located, may dispose of an amount of residential solid
7 waste up to one pick-up truckload or its equivalent,
8 free of all charges and fees.

§20-5F-4c. Limit on the size of solid waste facilities.

1 (a) On and after the first day of October, one
2 thousand nine hundred ninety-one, it shall be unlaw-
3 ful to operate any commercial solid waste facility that
4 handles between ten thousand and thirty thousand
5 tons of solid waste per month, except as provided in
6 section four-d of this article and section twelve-c,
7 twelve-d or twelve-e, article nine of this chapter.

8 (b) Except as provided in section four-d of this
9 article, the maximum quantity of solid waste which
10 may lawfully be handled at any commercial solid
11 waste facility shall be thirty thousand tons per month.

§20-5F-4d. Exemption for solid waste facility handling in excess of thirty thousand tons per month.

1 (a) Notwithstanding any provision in this article,
2 article nine of this chapter, article two, chapter
3 twenty-four of this code, any other section of this code,
4 or any prior enactment of the code to the contrary,
5 and notwithstanding any defects in or challenges to
6 any actions which were or are required to be pre-
7 formed in satisfaction of the following criteria, any
8 person who on the first day of October, one thousand
9 nine hundred ninety-one, has:

10 (1) Obtained site approval for a commercial solid
11 waste facility from a county or regional solid waste
12 authority or county commission pursuant to a prior
13 enactment of this code, or has otherwise satisfied the
14 requirements of subsection (a), section twelve-b,
15 article nine of this chapter;

16 (2) Entered into a contract with a county commission
17 regarding the construction and operation of a solid
18 waste facility, which contract contains rates for the
19 disposal of solid waste originating within the county;

20 (3) Obtained, pursuant to section one-f, article two,
21 chapter twenty-four of this code, following a public
22 hearing, an order from the public service commission
23 approving the rates established in the contract with
24 the county commission; and

25 (4) An application for a permit for a commercial
26 solid waste facility pending with the division of
27 natural resources, or is operating under a permit or
28 compliance order, shall be permitted to handle in
29 excess of the limitation established in section four-c of
30 this article up to fifty thousand tons of solid waste per
31 month at a commercial solid waste facility so long as
32 the person complies with the provisions of this section.

33 (b) Any person desiring to operate a commercial
34 solid waste facility which handles an amount of solid
35 waste per month in excess of the limitation established
36 in section four-c of this article, but not exceeding the
37 tonnage limitation described in subsection (a) of this
38 section may file a notice with the county commission
39 of the county in which the facility is or is to be located
40 requesting a countywide referendum. Upon receipt of
41 such notice, the county commission shall order a
42 referendum be placed upon the ballot, not less than
43 fifty-six days before the next primary or general
44 election.

45 (1) Such referendum will be to determine whether
46 it is the will of the voters of the county that a
47 commercial solid waste facility be permitted to handle
48 more than the limitation established in section four-c
49 of this article not to exceed fifty thousand tons per
50 month. Any such election shall be held at the voting
51 precincts established for holding primary or general
52 elections. All of the provisions of the general election
53 laws, when not in conflict with the provisions of this
54 article, shall apply to voting and elections hereunder,
55 insofar as practicable.

56 (2) The ballot, or the ballot labels where voting
57 machines are used, shall have printed thereon sub-
58 stantially the following:

59 "Shall a commercial solid waste facility, permitted to

60 handle up to, but no more than fifty thousand tons of
 61 solid waste per month be located within
 62 _____ County, West Virginia?

63 ☐ For the facility

64 ☐ Against the facility

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

67 If a majority of the legal votes cast upon the
 68 question be against the facility handling an amount of
 69 solid waste of up to fifty thousand tons per month then
 70 the division of natural resources shall not proceed any
 71 further with the application. If a majority of the legal
 72 votes cast upon the question be in favor of permitting
 73 the facility within the county, then the application
 74 process as set forth in this article may proceed:
 75 *Provided*, That such vote shall not be binding on or
 76 require the division of natural resources to issue a
 77 permit.

78 (c) If a person submits to a referendum in accor-
 79 dance with this section, all approvals, certificates, and
 80 permits granted and all actions undertaken by a
 81 regional or county solid waste authority or county
 82 commission with regard to the person’s commercial
 83 solid waste facility within the county under previously
 84 enacted sections of articles five-f and nine of this
 85 chapter shall be deemed valid, complete and in full
 86 compliance with all the requirements of law and any
 87 defects contained in such approvals, certificates,
 88 permits or actions shall be deemed cured and such
 89 defects may not be invoked to invalidate any such
 90 approval, certificate, permit or action.

91 (d) Notwithstanding any provision of this code the
 92 contrary, any person described in subsection (a) of this
 93 section who complies with the referendum require-
 94 ment of this section and complies with the permitting
 95 requirements of the division of natural resources
 96 provided in section five, article five-f of this chapter,
 97 shall not be required to comply with the requirements
 98 of section twelve-b, twelve-c, twelve-d or twelve-e,

99 article nine of this chapter: *Provided*, That such
100 person shall be entitled to receive a certificate of need
101 pursuant to the provisions of subsection (a), section
102 one-c, article two, chapter twenty-four of this code to
103 handle the tonnage level authorized pursuant to
104 subsection (a) of this section.

105 (e) The purpose of this section is to allow any person
106 who satisfies the four criteria contained in subsection
107 (a), notwithstanding any defects in or challenges to
108 any actions which were or are required to be per-
109 formed in satisfaction of such criteria, to submit the
110 question of siting a facility that accepts up to fifty
111 thousand tons within the county to a referendum in
112 order to obtain a decision at the county or regional
113 level regarding the siting of the facility and that
114 submission of this question at the county level shall be
115 the only approval, permit or action required at the
116 county or regional level to establish and site the
117 proposed facility.

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

1 (a) Open dumps are prohibited and it shall be
2 unlawful for any person to create, contribute to or
3 operate an open dump or for any landowner to allow
4 an open dump to exist on his property unless that
5 open dump is under a compliance schedule approved
6 by the chief. Such compliance schedule shall contain
7 an enforceable sequence of actions leading to com-
8 pliance and shall not exceed two years. Open dumps
9 operated prior to the first day of April, one thousand
10 nine hundred eighty-eight, by a landowner or tenant
11 for the disposal of solid waste generated by the
12 landowner or tenant at his or her residence or farm
13 shall not be deemed to constitute a violation of this
14 section if such open dump did not constitute a viola-
15 tion of law on the first day of January, one thousand
16 nine hundred eighty-eight, and unauthorized dumps
17 which were created by unknown persons shall not
18 constitute a violation of this section: *Provided*, That no
19 person shall contribute additional solid waste to any
20 such dump after the first day of April, one thousand
21 nine hundred eighty-eight, except that the owners of

22 the land on which unauthorized dumps have been or
23 are being made shall not be liable for such unautho-
24 rized dumping unless such landowners refuse to
25 cooperate with the division of natural resources in
26 stopping such unauthorized dumping.

27 (b) It shall be unlawful for any person, unless he
28 holds a valid permit from the division to install,
29 establish, construct, modify, operate or abandon any
30 solid waste facility. All approved solid waste facilities
31 shall be installed, established, constructed, modified,
32 operated or abandoned in accordance with this article,
33 plans, specifications, orders, instructions and rules in
34 effect.

35 (c) Any permit issued under this article shall be
36 issued in compliance with the requirements of this
37 article, its rules and article five-a and the rules
38 promulgated thereunder, so that only a single permit
39 shall be required of a solid waste facility under these
40 two articles. Each permit issued under this article
41 shall have a fixed term not to exceed five years:
42 *Provided*, That the chief may administratively extend
43 a permit beyond its five-year term if the approved
44 solid waste facility is in compliance with this article,
45 its rules and article five-a of this chapter and the rules
46 promulgated thereunder: *Provided, however*, That
47 such administrative extension may not be for more
48 than one year. Upon expiration of a permit, renewal
49 permits may be issued in compliance with rules and
50 regulations promulgated by the director of the division
51 of natural resources.

52 (d) All existing permits of the division of health for
53 solid waste facilities under section nine, article one,
54 chapter sixteen of this code shall continue in full force
55 and effect until a permit is issued for that approved
56 solid waste facility under this article: *Provided*, That
57 all such existing permits of the division of health shall
58 expire within five years of the tenth day of June, one
59 thousand nine hundred eighty-eight. Within four years
60 of the the tenth day of June, one thousand nine
61 hundred eighty-eight, all persons holding such division
62 of health permits shall apply to the chief for a permit

63 under this article: *Provided, however,* That the chief
64 may require persons holding such existing health
65 division permits to reapply under this section prior to
66 four years from the tenth day of June, one thousand
67 nine hundred eighty-eight, if persistent violations of
68 this article, any permit term or condition, orders or
69 rules promulgated under this article, exist at that
70 facility. Notwithstanding any other provision con-
71 tained in this subsection, the division of natural
72 resources may enter an extension order for a period of
73 two years while an application for a permit pursuant
74 to this article is pending.

75 (e) No person may dispose in the state of any solid
76 waste, whether such waste originates in state or out of
77 state, in a manner which endangers the environment
78 or the public health, safety or welfare as determined
79 by the director of the division of natural resources:
80 *Provided,* That the carcasses of dead animals may be
81 disposed of in any solid waste facility or in any other
82 manner as provided for in this code. Upon request by
83 the director of the division of natural resources, the
84 director of the division of health shall provide techni-
85 cal advice concerning the disposal of solid waste or
86 carcasses of dead animals within the state.

87 (f) To the extent permissible by law, a commercial
88 solid waste facility shall first ensure that the disposal
89 needs of the county, or if applicable the region, in
90 which it is located are met. If the county solid waste
91 authority, or regional solid waste authority if applica-
92 ble, in which the facility is located determines that the
93 present or future disposal needs of the county, or if
94 applicable the region, are not being, or will not be, met
95 by the commercial solid waste facility, such authority
96 may apply to the director of the division of natural
97 resources to modify the applicable permit in order to
98 reduce the total monthly tonnage of out of county
99 waste, or if applicable, out of region waste, the facility
100 is permitted to accept by an amount that shall not
101 exceed the total monthly tonnage generated by the
102 county, or if applicable the region, in which the
103 facility is located.

104 (g) In addition to all the requirements of this article
105 and the rules promulgated hereunder, a permit to
106 construct a new commercial solid waste facility or to
107 expand the spatial area of an existing facility, not
108 otherwise allowed by an existing permit, may not be
109 issued unless the public service commission has
110 granted a certificate of need, as provided in section
111 one-c, article two, chapter twenty-four of this code. If
112 the director approves a permit or permit modification,
113 the certificate of need shall become a part of the
114 permit and all conditions contained in the certificate of
115 need shall be conditions of the permit and may be
116 enforced by the division of natural resources in
117 accordance with the provisions of this article.

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

§20-5F-5a. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 to be collected and paid as follows: (1) One dollar and
5 twenty-five cents per ton or part thereof of solid
6 waste; and (2) one additional dollar per ton or part
7 thereof of solid waste for solid waste generated from
8 sources outside the solid waste disposal shed in which
9 the solid waste disposal facility is located. The fee
10 imposed by this section shall be in addition to all other
11 fees and taxes levied by law and shall be added to and
12 constitute part of any other fee charged by the
13 operator or owner of the solid waste disposal facility.

14 (b) *Collection, return, payment and records.* — The
15 person disposing of solid waste at the solid waste
16 disposal facility shall pay the fee imposed by this
17 section, whether or not such person owns the solid
18 waste, and the fee shall be collected by the operator of
19 the solid waste facility who shall remit it to the tax
20 commissioner.

21 (1) The fee imposed by this section accrues at the

22 time the solid waste is delivered to the solid waste
23 disposal facility.

24 (2) The operator shall remit the fee imposed by this
25 section to the tax commissioner on or before the
26 fifteenth day of the month next succeeding the month
27 in which the fee accrued. Upon remittance of the fee,
28 the operator shall be required to file returns on forms
29 and in the manner as prescribed by the tax
30 commissioner.

31 (3) The operator shall account to the state for all fees
32 collected under this section and shall hold them in
33 trust for the state until remitted to the tax
34 commissioner.

35 (4) If any operator fails to collect the fee imposed by
36 this section, he or she shall be personally liable for
37 such amount as he or she failed to collect, plus
38 applicable additions to tax, penalties and interest
39 imposed by article ten, chapter eleven of this code.

40 (5) Whenever any operator fails to collect, truthfully
41 account for, remit the fee, or file returns with the fee
42 as required in this section, the tax commissioner may
43 serve written notice requiring such operator to collect
44 the fees which become collectible after service of such
45 notice, to deposit such fees in a bank approved by the
46 tax commissioner, in a separate account, in trust for
47 and payable to the tax commissioner, and to keep the
48 amount of such fees in such account until remitted to
49 the tax commissioner. Such notice shall remain in
50 effect until a notice of cancellation is served on the
51 operator or owner by the tax commissioner.

52 (6) Whenever the owner of a solid waste disposal
53 facility leases the solid waste facility to an operator,
54 the operator shall be primarily liable for collection and
55 remittance of the fee imposed by this section and the
56 owner shall be secondarily liable for remittance of the
57 fee imposed by this section. However, if the operator
58 fails, in whole or in part, to discharge his obligations
59 under this section, the owner and the operator of the
60 solid waste facility shall be jointly and severally
61 responsible and liable for compliance with the provi-

62 sions of this section.

63 (7) If the operator or owner responsible for collect-
64 ing the fee imposed by this section is an association or
65 corporation, the officers thereof shall be liable, jointly
66 and severally, for any default on the part of the
67 association or corporation, and payment of the fee and
68 any additions to tax, penalties and interest imposed by
69 article ten, chapter eleven of this code may be
70 enforced against them as against the association or
71 corporation which they represent.

72 (8) Each person disposing of solid waste at a solid
73 waste disposal facility and each person required to
74 collect the fee imposed by this section shall keep
75 complete and accurate records in such form as the tax
76 commissioner may require in accordance with the
77 rules and regulations of the tax commissioner.

78 (c) *Regulated motor carriers.* — The fee imposed by
79 this section and section twenty-two, article five,
80 chapter seven of this code shall be considered a
81 necessary and reasonable cost for motor carriers of
82 solid waste subject to the jurisdiction of the public
83 service commission under chapter twenty-four-a of
84 this code. Notwithstanding any provision of law to the
85 contrary, upon the filing of a petition by an affected
86 motor carrier, the public service commission shall,
87 within fourteen days, reflect the cost of said fee in said
88 motor carrier's rates for solid waste removal service.
89 In calculating the amount of said fee to said motor
90 carrier, the commission shall use the national average
91 of pounds of waste generated per person per day as
92 determined by the United States Environmental
93 Protection Agency.

94 (d) *Definition of solid waste disposal facility.* — For
95 purposes of this section, the term "solid waste disposal
96 facility" means any approved solid waste facility or
97 open dump in this state, and includes a transfer station
98 when the solid waste collected at the transfer station
99 is not finally disposed of at a solid waste disposal
100 facility within this state that collects the fee imposed
101 by this section. Nothing herein shall be construed to

102 authorize in any way the creation or operation of or
103 contribution to an open dump.

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

106 (1) Disposal of solid waste at a solid waste disposal
107 facility by the person who owns, operates or leases the
108 solid waste disposal facility if the facility is used
109 exclusively to dispose of waste originally produced by
110 such person in such person's regular business or
111 personal activities or by persons utilizing the facility
112 on a cost-sharing or nonprofit basis;

113 (2) Reuse or recycling of any solid waste; and

114 (3) Disposal of residential solid waste by an individ-
115 ual not in the business of hauling or disposing of solid
116 waste on such days and times as designated by the
117 director of the division of natural resources is exempt
118 from the solid waste assessment fee.

119 (f) *Procedure and administration.* — Notwithstand-
120 ing section three, article ten, chapter eleven of this
121 code, each and every provision of the "West Virginia
122 Tax Procedure and Administration Act" set forth in
123 article ten, chapter eleven of this code shall apply to
124 the fee imposed by this section with like effect as if
125 said act were applicable only to the fee imposed by
126 this section and were set forth in extenso herein.

127 (g) *Criminal penalties.* — Notwithstanding section
128 two, article nine, chapter eleven of this code, sections
129 three through seventeen, article nine, chapter eleven
130 of this code shall apply to the fee imposed by this
131 section with like effect as if said sections were appli-
132 cable only to the fee imposed by this section and were
133 set forth in extenso herein.

134 (h) *Dedication of proceeds.* — The net proceeds of
135 the fee collected by the tax commissioner pursuant to
136 this section shall be deposited, at least monthly in an
137 account designated by the director of the division of
138 natural resources. The director shall allocate twenty-
139 five cents for each ton of solid waste disposed of in this
140 state upon which the fee imposed by this section is

141 collected and shall deposit the total amount so allo-
142 cated into the "Solid Waste Reclamation and Environ-
143 mental Response Fund" to be expended for the
144 purposes hereinafter specified. The first one million
145 dollars of the net proceeds of the fee imposed by this
146 section collected in each fiscal year shall be deposited
147 in the "Solid Waste Enforcement Fund" and expended
148 for the purposes hereinafter specified. The next two
149 hundred fifty thousand dollars of the net proceeds of
150 the fee imposed by this section collected in each fiscal
151 year shall be deposited in the "Resource Recovery —
152 Solid Waste Disposal Authority Reserve Fund" which
153 shall be renamed and hereinafter referred to as the
154 "Solid Waste Management Board Reserve Fund", and
155 expended for the purposes hereinafter specified:
156 *Provided*, That in any year in which the water
157 development authority determines that the solid waste
158 management board reserve fund is adequate to defer
159 any contingent liability of the fund, the water devel-
160 opment authority shall so certify to the director of the
161 division of natural resources and the director shall
162 then cause no less than fifty thousand dollars nor
163 more than two hundred fifty thousand dollars to be
164 deposited to the fund: *Provided, however*, That in any
165 year in which the water development authority
166 determines that the solid waste management board
167 reserve fund is inadequate to defer any contingent
168 liability of the fund, the water development authority
169 shall so certify to the director of the division of natural
170 resources and the director shall then cause not less
171 than two hundred fifty thousand dollars nor more
172 than five hundred thousand dollars to be deposited in
173 the fund: *Provided further*, That if a facility owned or
174 operated by the state of West Virginia is denied site
175 approval by a county or regional solid waste authority,
176 and if such denial contributes in whole or in part to a
177 default, or drawing upon a reserve fund, on any
178 indebtedness issued or approved by the solid waste
179 management board, then in that event the solid waste
180 management board or its fiscal agent may withhold all
181 or any part of any funds which would otherwise be
182 directed to such county or regional authority and shall

183 deposit such withheld funds in the appropriate reserve
184 fund. The director of the division of natural resources
185 shall allocate the remainder, if any, of said net
186 proceeds among the following three special revenue
187 accounts for the purpose of maintaining a reasonable
188 balance in each special revenue account, which are
189 hereby continued in the state treasury:

190 (1) The "Solid Waste Enforcement Fund" which
191 shall be expended by the director of the division of
192 natural resources for administration, inspection,
193 enforcement and permitting activities established
194 pursuant to this article;

195 (2) The "Solid Waste Management Board Reserve
196 Fund", which shall be exclusively dedicated to provid-
197 ing a reserve fund for the issuance and security of
198 solid waste disposal revenue bonds issued by the solid
199 waste management board pursuant to article twenty-
200 six, chapter sixteen of this code;

201 (3) The "Solid Waste Reclamation and Environmen-
202 tal Response Fund" which may be expended by the
203 director of the division of natural resources for the
204 purposes of reclamation, clean-up and remedial actions
205 intended to minimize or mitigate damage to the
206 environment, natural resources, public water supplies,
207 water resources and the public health, safety and
208 welfare which may result from open dumps or solid
209 waste not disposed of in a proper or lawful manner.

210 (i) *Findings.* — In addition to the purposes and
211 legislative findings set forth in section one of this
212 article, the Legislature finds as follows:

213 (1) In-state and out-of-state locations producing solid
214 waste should bear the responsibility of disposing of
215 said solid waste or compensate other localities for costs
216 associated with accepting such solid waste;

217 (2) The costs of maintaining and policing the streets
218 and highways of the state and its communities are
219 increased by long distance transportation of large
220 volumes of solid waste; and

221 (3) Local approved solid waste facilities are being

222 prematurely depleted by solid waste originating from
223 other locations.

224 (j) *Severability*. — If any provision of this section or
225 the application thereof shall for any reason be
226 adjudged by any court of competent jurisdiction to be
227 invalid, such judgment shall not affect, impair or
228 invalidate the remainder of this section, but shall be
229 confined in its operation to the provision thereof
230 directly involved in the controversy in which such
231 judgment shall have been rendered, and the applica-
232 bility of such provision to other person or circumstan-
233 ces shall not be affected thereby.

234 (k) *Effective date*. — This section is effective on the
235 first day of July, one thousand nine hundred eighty-
236 eight.

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

1 (a) If the director or chief, upon inspection or
2 investigation by duly authorized representatives or
3 through other means observes, discovers or learns of a
4 violation of this article, its rules, article five-a of this
5 chapter or its rules, or any permit or order issued
6 under this article, he may:

7 (1) Issue an order stating with reasonable specificity
8 the nature of the alleged violation and requiring
9 compliance immediately or within a specified time. An
10 order under this section includes, but is not limited to,
11 any or all of the following: Orders suspending, revok-
12 ing or modifying permits, orders requiring a person to
13 take remedial action or cease and desist orders;

14 (2) Seek an injunction in accordance with subsection
15 (e) of this section; or

16 (3) Institute a civil action in accordance with subsec-
17 tion (e) of this section; or

18 (4) Request the attorney general, or the prosecuting
19 attorney of the county wherein the alleged violation
20 occurred, to bring an appropriate action, either civil or
21 criminal in accordance with subsection (b) of this

22 section.

23 (b) Any person who willfully or negligently violates
24 the provisions of this article, any permit or any rule,
25 regulation or order issued pursuant to this article shall
26 be subject to the same criminal penalties as set forth
27 in section nineteen, article five-a of this chapter.

28 (c) Any person who violates any provision of this
29 article, any permit or any rule, regulation or order
30 issued pursuant to this article shall be subject to civil
31 administrative penalty, to be levied by the director, of
32 not more than five thousand dollars for each day of
33 such violation, not to exceed a maximum of twenty
34 thousand dollars.

35 (1) In assessing any such penalty, the director shall
36 take into account the seriousness of the violation and
37 any good faith efforts to comply with the applicable
38 requirements as well as any other appropriate factors
39 as may be established by the director by rules and
40 regulations promulgated pursuant to this article and
41 article three, chapter twenty-nine-a of this code. No
42 assessment shall be levied pursuant to this subsection
43 until after the alleged violator has been notified by
44 certified mail or personal service. The notice shall
45 include a reference to the section of the statute, rule,
46 regulation, order or statement of permit conditions
47 that was allegedly violated, a concise statement of the
48 facts alleged to constitute the violation, a statement of
49 the amount of the administrative penalty to be
50 imposed and a statement of the alleged violator's right
51 to an informal hearing. The alleged violator shall have
52 twenty calendar days from receipt of the notice within
53 which to deliver to the director a written request for
54 an informal hearing. If no hearing is requested, the
55 notice shall become a final order after the expiration
56 of the twenty-day period. If a hearing is requested, the
57 director shall inform the alleged violator of the time
58 and place of the hearing. The director may appoint an
59 assessment officer to conduct the informal hearing and
60 then make a written recommendation to the director
61 concerning the assessment of a civil administrative
62 penalty. Within thirty days following the informal

63 hearing, the director shall issue and furnish to the
64 alleged violator a written decision, and the reasons
65 therefor, concerning the assessment of a civil admin-
66 istrative penalty. Within thirty days after notification
67 of the director's decision, the alleged violator may
68 request a formal hearing before the water resources
69 board in accordance with the provisions of section
70 seven of this article. The authority to levy a civil
71 administrative penalty shall be in addition to all other
72 enforcement provisions of this article and the payment
73 of any assessment shall not be deemed to affect the
74 availability of any other enforcement provision in
75 connection with the violation for which the assessment
76 is levied: *Provided*, That no combination of assess-
77 ments against a violator under this section shall
78 exceed twenty-five thousand dollars for each day of
79 such violation: *Provided, however*, That any violation
80 for which the violator has paid a civil administrative
81 penalty assessed under this section shall not be the
82 subject of a separate civil penalty action under this
83 article to the extent of the amount of the civil admin-
84 istrative penalty paid. All administrative penalties
85 shall be levied in accordance with rules and regula-
86 tions issued pursuant to subsection (a), section four of
87 this article. The net proceeds of assessments collected
88 pursuant to this subsection shall be deposited in the
89 solid waste reclamation and environmental response
90 fund established in subdivision (3), subsection (h),
91 section five-a of this article.

92 (2) No assessment levied pursuant to subdivision (1),
93 subsection (c) above shall become due and payable
94 until the procedures for review of such assessment as
95 set out in said subsection have been completed.

96 (d) Any person who violates any provision of this
97 article, any permit or any rule, regulation or order
98 issued pursuant to this article shall be subject to a civil
99 penalty not to exceed twenty-five thousand dollars for
100 each day of such violation, which penalty shall be
101 recovered in a civil action either in the circuit court
102 wherein the violation occurs or in the circuit court of
103 Kanawha County.

104 (e) The director or chief may seek an injunction, or
105 may institute a civil action against any person in
106 violation of any provisions of this article or any
107 permit, rule, regulation or order issued pursuant to
108 this article. In seeking an injunction, it is not neces-
109 sary for the director or chief to post bond nor to allege
110 or prove at any state of the proceeding that irrepara-
111 ble damage will occur if the injunction is not issued or
112 that the remedy at law is inadequate. An application
113 for injunctive relief or a civil penalty action under this
114 section may be filed and relief granted notwithstand-
115 ing the fact that all administrative remedies provided
116 for in this article have not been exhausted or invoked
117 against the person or persons against whom such relief
118 is sought.

119 (f) Upon request of the director or chief, the attor-
120 ney general or the prosecuting attorney of the county
121 in which the violation occurs shall assist the director
122 in any civil action under this section.

123 (g) In any civil action brought pursuant to the
124 provisions of this section, the state, or any agency of
125 the state which prevails, may be awarded costs and
126 reasonable attorney's fees.

127 (h) In addition to all other grounds for revocation,
128 the director may revoke a permit for any of the
129 following reasons:

130 (1) Fraud, deceit or misrepresentation in securing
131 the permit, or in the conduct of the permitted activity;

132 (2) Offering, conferring or agreeing to confer any
133 benefit to induce any other person to violate the
134 provisions of this chapter, or of any other law relating
135 to the collection, transportation, treatment, storage, or
136 disposal of solid waste, or of any rule or regulation
137 adopted pursuant thereto;

138 (3) Coercing a customer by violence or economic
139 reprisal or the threat thereof to utilize the services of
140 any permittee; or

141 (4) Preventing, without authorization of the division,
142 any permittee from disposing of solid waste at a

143 licensed treatment, storage or disposal facility.

§20-5F-8. Limited extension of solid waste facility closure deadline.

1 (a) The director of the division of natural resources
2 shall grant an extension of the closure deadline up to
3 the thirty-first day of March, one thousand nine
4 hundred ninety-three, to a solid waste facility required
5 by solid waste management regulations to close by the
6 thirtieth day of November, one thousand nine hun-
7 dred ninety-one, unless the director determines by a
8 preponderance of the evidence that such extension
9 will pose a significant risk to human health or safety
10 or cause irreparable harm to the environment.

11 (b) No later than the first day of November, one
12 thousand nine hundred ninety-one, any facility seek-
13 ing an extension of its closure deadline must submit to
14 the division of natural resources an application suffi-
15 cient to support the requirements of subsection (a) of
16 this section.

17 (c) The director shall grant or deny the extension no
18 later than the twenty-first day of November, one
19 thousand nine hundred ninety-one. If the director
20 denies an extension, the facility shall cease accepting
21 solid waste on the thirtieth day of November, one
22 thousand nine hundred ninety-one. No person seeking
23 judicial review, pursuant to subsection (d) of this
24 section, of the director's denial of an extension, shall
25 accept solid waste at the facility during the pendency
26 of the judicial review process.

27 (d) Any party who is aggrieved by an order of the
28 director regarding the grant or denial of an extension
29 of the closure deadline for a solid waste facility
30 pursuant to this section, may obtain judicial review
31 thereof in the same manner as provided in section
32 four, article five, chapter twenty-nine-a of this code,
33 which provisions shall apply to and govern such
34 review with like effect as if the provisions of said
35 section were set forth in extenso in this section, except
36 that the petition shall be filed, within the time
37 specified in said section, in the circuit court of Kana-

38 wha County: *Provided*, That the court shall not in any
39 manner permit the continued acceptance of solid
40 waste at the facility pending review of the decision of
41 the director.

42 (e) The judgment of the circuit court shall be final
43 unless reversed, vacated or modified on appeal to the
44 supreme court of appeals, in accordance with the
45 provisions of section one, article six, chapter twenty-
46 nine-a of this code, except that notwithstanding the
47 provisions of said section, the petition seeking such
48 review must be filed with said supreme court of
49 appeals within thirty days from the date of entry of
50 the judgment of the circuit court.

51 (f) The director of the division of natural resources
52 shall grant an extension of the closure deadline not to
53 exceed the thirtieth day of September, one thousand
54 nine hundred ninety-three, to a solid waste facility
55 required by solid waste management regulations to
56 close by the thirtieth day of November, one thousand
57 nine hundred ninety-two.

§20-5F-9. Condition on receiving permit.

1 (a) Notwithstanding any other provision of this code,
2 a permit application for a solid waste landfill facility
3 submitted by any person who has owned, operated or
4 held a permit for a solid waste landfill upon which
5 funds have been, or are to be, expended on pursuant
6 to the provisions of article five-n of this chapter, may
7 be approved under the provisions of this article only if
8 all funds so expended are repaid in full, plus interest,
9 or arrangements, satisfactory to the director, are made
10 for the repayment of the funds and the interest. The
11 repayment shall be made a specific condition of a
12 permit.

13 (b) In the case where a permittee has entered into
14 a repayment arrangement with the director in order
15 to obtain a permit under this article, the repayment of
16 the funds shall be considered by the public service
17 commission a reasonable cost of operating the newly
18 permitted landfill in determining rates to be charged
19 at the landfill.

§20-5F-10. Municipal solid waste incineration and backhauling prohibited; exceptions.

1 (a) Notwithstanding any other provision of this code
2 to the contrary it shall be unlawful to install, establish
3 or construct a new solid waste facility for the purpose
4 of municipal solid waste incineration prior to the first
5 day of May, one thousand nine hundred ninety-three:
6 *Provided*, That such prohibition shall not include the
7 development of small-scale demonstration or pilot
8 projects designed to analyze the efficiency or environ-
9 mental impacts of incineration technologies.

10 (b) It shall be unlawful to engage in the practice of
11 backhauling as such term is defined in section two of
12 this article.

§20-5F-11. Feasibility of state ownership; report requirement.

1 (a) The director and the chairman of the public
2 service commission shall, on or before the first day of
3 January, one thousand nine hundred ninety-two,
4 present to the governor, the president of the Senate
5 and the speaker of the House of Delegates a report
6 examining the feasibility of the state becoming the
7 exclusive entity for the operation of solid waste
8 disposal facilities.

9 (b) The report required by subsection (a) of this
10 section shall include, but not be limited to:

11 (1) Discussion of the feasibility of state ownership of
12 all solid waste disposal facilities;

13 (2) A determination of the cost of said exclusive state
14 ownership;

15 (3) Discussion of the legal issues raised by such state
16 ownership;

17 (4) Discussion of the feasibility of mixed state
18 ownership and operation of solid waste disposal
19 facilities;

20 (5) Discussion of the impact on the environment of
21 state ownership and control of solid waste disposal

22 facilities; and

23 (6) Discussion of the public health, welfare and
24 convenience issues raised by state ownership.

25 (c) The director and the chairman shall utilize as
26 much as practicable the resources, human and other-
27 wise, of the department of natural resources, the
28 public service commission, the solid waste manage-
29 ment board and the county and regional solid waste
30 management authorities.

**§20-5F-12. County assessment for Class A facilities; amount;
restrictions; purposes.**

1 Notwithstanding any provision of this code to the
2 contrary, the county commission of any county con-
3 taining a Class A facility may, in addition to any fee
4 otherwise imposed by law, impose a fee, not to exceed
5 five dollars per ton of solid waste received from
6 outside the wasteshed in which the facility is located
7 and not to exceed two dollars per ton for solid waste
8 received from within said wasteshed for solid waste
9 disposed in said facility: *Provided*, That any moneys
10 received by a county commission pursuant to this
11 section shall be expended exclusively for capital
12 improvements to the infrastructure within the county,
13 including, but not limited to, water supply treatment,
14 waste treatment, sewage systems and road mainte-
15 nance, as well as the expenses associated therewith.

**ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE
PROGRAM.**

§20-5N-1. Legislative findings and purpose.

1 The Legislature finds that:

2 There are numerous landfills throughout the state
3 that must be closed before the thirtieth day of Novem-
4 ber, one thousand nine hundred ninety-two, because
5 they cannot be operated in an environmentally sound
6 manner;

7 The permittees of many of the landfills that will be
8 closing do not have the financial resources to close
9 their landfills in a manner that is timely and environ-

10 mentally sound;

11 As long as these landfills remain open, the threat of
12 continuing harm to the environment and the health
13 and safety of the citizens of West Virginia exists, and
14 the cost to remediate their adverse effects will con-
15 tinue to grow;

16 The untimely and disorderly closure of these land-
17 fills represents a significant threat to the health and
18 safety of the people of West Virginia and its environ-
19 ment; and

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

23 Therefore, it is the purpose of this article to provide
24 an assistance program that will be available to permit-
25 tees of landfills that will facilitate the closure of these
26 landfills in a timely and environmentally sound
27 manner.

§20-5N-2. Definitions.

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

3 (1) "Cost of project" includes the cost of the services
4 authorized in sections three and ten of this article,
5 property, material and labor which are essential
6 thereto, financing charges, interest during construc-
7 tion, and all other expenses, including legal fees,
8 trustees', engineers' and architects' fees which are
9 necessarily or properly incidental to the program;

10 (2) "Director" means the director of the division of
11 natural resources of the department of commerce,
12 labor and environmental resources, or his or her
13 authorized representative;

14 (3) "Landfill" means any solid waste facility for the
15 disposal of solid waste on land, and also means any
16 system, facility, land, contiguous land, improvements
17 on the land, structures or other appurtenances or
18 methods used for processing, recycling or disposing of
19 solid waste, including landfills, transfer stations,

20 resource recovery facilities and other such facilities
21 not herein specified. Such facility shall be deemed to
22 be situated, for purposes of this article, in the county
23 where the majority of the spatial area of such facility
24 is located;

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

28 (5) "Project" means the providing of closure assis-
29 tance to one or more landfills under this article.

30 The definitions provided in section two, article five-f
31 of this chapter, to the extent they are applicable, apply
32 in this article.

**§20-5N-3. Commercial solid waste facility closure assistance
program.**

1 (a) There is established within the section of waste
2 management of the division of natural resources the
3 commercial solid waste landfill closure assistance
4 program. The purpose of the program is to provide
5 assistance for the closure of landfills which are
6 required to cease operations pursuant to the closure
7 deadlines provided for in this chapter.

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

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

18 (2) Construction of all closure-related structures
19 necessary to provide sufficient leachate management,
20 sediment and erosion control, gas management,
21 groundwater monitoring and final cover and cap, all to
22 meet the closure-related requirements of article five-f
23 of this chapter and rules promulgated pursuant

24 thereto; and

25 (3) All surface water and groundwater monitoring
26 activities required pursuant to articles five-a and five-f
27 of this chapter and applicable rules promulgated
28 thereunder.

29 (c) To the extent that there are funds available in
30 the fund established in section seven of this article or
31 subdivision (3), subsection (h), section five-a, article
32 five-f of this chapter, the director may take remedial
33 actions necessary to protect the groundwater and
34 surface water, other natural resources and the health
35 and safety of the citizens of this state.

§20-5N-4. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 in the amount of four dollars per ton or like ratio on
5 any part thereof of solid waste, except as provided in
6 subsections (e) and (i) of this section: *Provided, That*
7 any solid waste disposal facility may deduct from this
8 assessment fee an amount, not to exceed the fee, equal
9 to the amount that such facility is required by the
10 public service commission to set aside for the purpose
11 of closure of that portion of the facility required by the
12 solid waste management regulations to close by the
13 thirtieth day of November, one thousand nine hun-
14 dred ninety-one or ninety-two, including any exten-
15 sions authorized pursuant to section eight, article five-f
16 of this chapter. The fee imposed by this section is in
17 addition to all other fees and taxes levied by law and
18 shall be added to and constitute part of any other fee
19 charged by the operator or owner of the solid waste
20 disposal facility.

21 (b) *Collection, return, payment and records.* — The
22 person disposing of solid waste at the solid waste
23 disposal facility shall pay the fee imposed by this
24 section, whether or not such person owns the solid
25 waste, and the fee shall be collected by the operator of
26 the solid waste facility who shall remit it to the tax
27 commissioner.

28 (1) The fee imposed by this section accrues at the
29 time the solid waste is delivered to the solid waste
30 disposal facility.

31 (2) The operator shall remit the fee imposed by this
32 section to the tax commissioner on or before the
33 fifteenth day of the month next succeeding the month
34 in which the fee accrued. Upon remittance of the fee,
35 the operator shall file returns on forms and in the
36 manner prescribed by the tax commissioner.

37 (3) The operator shall account to the state for all fees
38 collected under this section and shall hold them in
39 trust for the state until they are remitted to the tax
40 commissioner.

41 (4) If any operator fails to collect the fee imposed by
42 this section, he or she shall be personally liable for
43 such amount as he or she failed to collect, plus
44 applicable additions to tax, penalties and interest
45 imposed by article ten, chapter eleven of this code.

46 (5) Whenever any operator fails to collect, truthfully
47 account for, remit the fee, or file returns with the fee
48 as required in this section, the tax commissioner may
49 serve written notice requiring such operator to collect
50 the fees which become collectible after service of such
51 notice, to deposit such fees in a bank approved by the
52 tax commissioner, in a separate account, in trust for
53 and payable to the tax commissioner, and to keep the
54 amount of such fees in such account until remitted to
55 the tax commissioner. Such notice shall remain in
56 effect until a notice of cancellation is served on the
57 operator or owner by the tax commissioner.

58 (6) Whenever the owner of a solid waste disposal
59 facility leases the solid waste facility to an operator,
60 the operator shall be primarily liable for collection and
61 remittance of the fee imposed by this section and the
62 owner shall be secondarily liable for remittance of the
63 fee imposed by this section. However, if the operator
64 fails, in whole or in part, to discharge his obligations
65 under this section, the owner and the operator of the
66 solid waste facility shall be jointly and severally
67 responsible and liable for compliance with the provi-

68 sions of this section.

69 (7) If the operator or owner responsible for collect-
70 ing the fee imposed by this section is an association or
71 corporation, the officers thereof shall be liable, jointly
72 and severally, for any default on the part of the
73 association or corporation, and payment of the fee and
74 any additions to tax, penalties and interest imposed by
75 article ten, chapter eleven of this code may be
76 enforced against them as against the association or
77 corporation which they represent.

78 (8) Each person disposing of solid waste at a solid
79 waste disposal facility and each person required to
80 collect the fee imposed by this section shall keep
81 complete and accurate records in such form as the tax
82 commissioner may require in accordance with the
83 rules and regulations of the tax commissioner.

84 (c) *Regulated motor carriers.* — The fee imposed by
85 this section is a necessary and reasonable cost for
86 motor carriers of solid waste subject to the jurisdiction
87 of the public service commission under chapter
88 twenty-four-a of this code. Notwithstanding any
89 provision of law to the contrary, upon the filing of a
90 petition by an affected motor carrier, the public
91 service commission shall, within fourteen days, reflect
92 the cost of said fee in said motor carrier's rates for
93 solid waste removal service. In calculating the amount
94 of said fee to said motor carrier, the commission shall
95 use the national average of pounds of waste generated
96 per person per day as determined by the United States
97 Environmental Protection Agency.

98 (d) *Definitions.* — For purposes of this section, the
99 term "solid waste disposal facility" means any
100 approved solid waste facility or open dump in this
101 state, and includes a transfer station when the solid
102 waste collected at the transfer station is not finally
103 disposed of at a solid waste facility within this state
104 that collects the fee imposed by this section. Nothing
105 in this section authorizes in any way the creation or
106 operation of or contribution to an open dump.

107 (e) *Exemptions.* — The following transactions are

108 exempt from the fee imposed by this section:

109 (1) Disposal of solid waste at a solid waste disposal
110 facility by the person who owns, operates or leases the
111 solid waste disposal facility if the facility is used
112 exclusively to dispose of waste originally produced by
113 such person in such person's regular business or
114 personal activities or by persons utilizing the facility
115 on a cost-sharing or nonprofit basis;

116 (2) Reuse or recycling of any solid waste; and

117 (3) Disposal of residential solid waste by an individ-
118 ual not in the business of hauling or disposing of solid
119 waste on such days and times as designated by the
120 director of the division of natural resources as exempt
121 from the solid waste assessment fee.

122 (f) *Procedure and administration.* — Notwithstand-
123 ing section three, article ten, chapter eleven of this
124 code, each and every provision of the "West Virginia
125 Tax Procedure and Administration Act" set forth in
126 article ten, chapter eleven of this code applies to the
127 fee imposed by this section with like effect as if said
128 act were applicable only to the fee imposed by this
129 section and were set forth in extenso herein.

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

137 (h) *Dedication of proceeds.* — Fifty percent of the
138 proceeds of the fee collected pursuant to this article in
139 excess of thirty thousand tons per month from any
140 landfill which is permitted to accept in excess of thirty
141 thousand tons per month pursuant to section four-d,
142 article five-f of this chapter shall be remitted, at least
143 monthly, to the county commission in the county in
144 which the landfill is located. The remainder of the
145 proceeds of the fee collected pursuant to this section
146 shall be deposited in the closure cost assistance fund

147 established pursuant to section seven of this article.

148 (i) *Additional fee for out of shed waste.* — In
 149 addition to the four dollar fee imposed pursuant to the
 150 provisions of subsection (a) of this section, on and after
 151 the first day of January, one thousand nine hundred
 152 ninety-three, there shall be imposed an additional two
 153 dollar fee on the disposal of solid waste generated
 154 outside of the wasteshed wherein the solid waste
 155 disposal facility is located.

156 (j) *Effective date.* — This section is effective on the
 157 first day of January, one thousand nine hundred
 158 ninety-two.

**§20-5N-4a. Solid waste management board empowered to
 issue solid waste closure revenue bonds,
 renewal notes and refunding bonds; require-
 ments and manner of such issuance.**

1 The solid waste management board is hereby empo-
 2 wered to issue, from time to time, solid waste closure
 3 revenue bonds and notes of the state in such principal
 4 amounts as the board deems necessary to pay the cost
 5 of or finance in whole or in part the closure of solid
 6 waste landfills by the division of natural resources
 7 pursuant to the provisions of this article, but the
 8 aggregate amount of all issues of bonds and notes
 9 outstanding at one time for all projects authorized
 10 hereunder shall not exceed that amount capable of
 11 being serviced by revenues received from such pro-
 12 jects, and shall not exceed in the aggregate the sum of
 13 one hundred fifty million dollars.

14 The board may, from time to time, issue renewal
 15 notes, issue bonds to pay such notes and whenever it
 16 deems refunding expedient, refund any bonds by the
 17 issuance of solid waste closure revenue refunding
 18 bonds of the state. Except as may otherwise be
 19 expressly provided in this article or by the board,
 20 every issue of its bonds or notes shall be obligations of
 21 the board payable out of the revenues and reserves
 22 created for such purposes by the board, which are
 23 pledged for such payment, without preference or
 24 priority of the first bonds issued, subject only to any

25 agreements with the holders of particular bonds or
26 notes pledging any particular revenues. Such pledge
27 shall be valid and binding from the time the pledge is
28 made and the revenue so pledged and thereafter
29 received by the board shall immediately be subject to
30 the lien of such pledge without any physical delivery
31 thereof or further act and the lien of any such pledge
32 shall be valid and binding as against all parties having
33 claims of any kind in tort, contract or otherwise
34 against the board irrespective of whether such parties
35 have notice thereof. All such bonds and notes shall
36 have all the qualities of negotiable instruments.

37 The bonds and notes shall be authorized by resolu-
38 tion of the board, shall bear such dates and shall
39 mature at such times, in the case of any such note or
40 any renewals thereof not exceeding five years from
41 the date of issue of such original note, and in the case
42 of any such bond not exceeding fifty years from the
43 date of issue, as such resolution may provide. The
44 bonds and notes shall bear interest at such rate, be in
45 such denominations, be in such form, either coupon or
46 registered, carry such registration privileges, be
47 payable in such medium of payment, at such place and
48 be subject to such terms of redemption as the board
49 may authorize. The board may sell such bonds and
50 notes at public or private sale, at the price the board
51 determines. The bonds and notes shall be executed by
52 the chairman and vice chairman of the board, both of
53 whom may use facsimile signatures. The official seal
54 of the board or a facsimile thereof shall be affixed
55 thereto or printed thereon and attested, manually or
56 by facsimile signature, by the secretary-treasurer of
57 the board, and any coupons attached thereto shall bear
58 the signature or facsimile signature of the chairman of
59 the board. In case any officer whose signature, or a
60 facsimile of whose signature, appears on any bonds,
61 notes or coupons ceases to be such officer before
62 delivery of such bonds or notes, such signature or
63 facsimile is nevertheless sufficient for all purposes the
64 same as if he had remained in office until such
65 delivery and, in case the seal of the board has been
66 changed after a facsimile has been imprinted on such

67 bonds or notes, such facsimile seal will continue to be
68 sufficient for all purposes.

69 Any resolution authorizing any bonds or notes or
70 any issue thereof may contain provisions (subject to
71 such agreements with bondholders or noteholders as
72 may then exist, which provisions shall be a part of the
73 contract with the holders thereof) as to pledging all or
74 any part of the revenues of the board to secure the
75 payment of the bonds or notes or of any issue thereof;
76 the use and disposition of revenues of the board; a
77 covenant to fix, alter and collect rentals, fees, service
78 charges and other charges so that pledged revenues
79 will be sufficient to pay the costs of operation, main-
80 tenance and repairs, pay principal of and interest on
81 bonds or notes secured by the pledge of such revenues
82 and provide such reserves as may be required by the
83 applicable resolution; the setting aside of reserve
84 funds, sinking funds or replacement and improvement
85 funds and the regulation and disposition thereof; the
86 crediting of the proceeds of the sale of bonds or notes
87 to and among the funds referred to or provided for in
88 the resolution authorizing the issuance of the bonds or
89 notes; the use, lease, sale or other disposition of any
90 solid waste disposal project or any other assets of the
91 board; limitations on the purpose to which the pro-
92 ceeds of sale of bonds or notes may be applied and
93 pledging such proceeds to secure the payment of the
94 bonds or notes or of any issue thereof; agreement of
95 the board to do all things necessary for the authoriza-
96 tion, issuance and sale of bonds in such amounts as
97 may be necessary for the timely retirement of notes
98 issued in anticipation of the issuance of bonds; limita-
99 tions on the issuance of additional bonds or notes; the
100 terms upon which additional bonds or notes may be
101 issued and secured; the refunding of outstanding bonds
102 or notes; the procedure, if any, by which the terms of
103 any contract with bondholders or noteholders may be
104 amended or abrogated, the holders of which must
105 consent thereto, and the manner in which such
106 consent may be given; limitations on the amount of
107 moneys to be expended by the board for operating,
108 administrative or other expenses of the board; and any

109 other matters, of like or different character, which in
110 any way affect the security or protection of the bonds
111 or notes.

112 In the event that the sum of all reserves pledged to
113 the payment of such bonds or notes shall be less than
114 the minimum reserve requirements established in any
115 resolution or resolutions authorizing the issuance of
116 such bonds or notes, the chairman of the board shall
117 certify, on or before the first day of December of each
118 year, the amount of such deficiency to the governor of
119 the state, for inclusion, if the governor shall so elect,
120 of the amount of such deficiency in the budget to be
121 submitted to the next session of the Legislature for
122 appropriation to the board to be pledged for payment
123 of such bonds or notes: *Provided*, That the Legislature
124 shall not be required to make any appropriation so
125 requested, and the amount of such deficiencies shall
126 not constitute a debt or liability of the state.

127 Neither the members of the board nor any person
128 executing the bonds or notes shall be liable personally
129 on the bonds or notes or be subject to any personal
130 liability or accountability by reason of the issuance
131 thereof.

**§20-5N-4b. Establishment of reserve funds, replacement and
improvement funds and sinking funds; fiscal
agent; purposes for use of bond proceeds;
application of surplus.**

1 (a) Before issuing any revenue bonds in accordance
2 with the provisions of this article, the solid waste
3 management board shall consult with and be advised
4 by the West Virginia water development authority as
5 to the feasibility and necessity of the proposed issu-
6 ance of revenue bonds.

7 (b) Prior to issuing revenue bonds under the provi-
8 sions of this article, the board shall enter into agree-
9 ments satisfactory to the West Virginia water develop-
10 ment authority with regard to the selection of all
11 consultants, advisors and other experts to be employed
12 in connection with the issuance of such bonds and the
13 fees and expenses to be charged by such persons, and

14 to establish any necessary reserve funds and replace-
15 ment and improvement funds, all such funds to be
16 administered by the water development authority,
17 and, so long as any such bonds remain outstanding, to
18 establish and maintain a sinking fund or funds to
19 retire such bonds and pay the interest thereon as the
20 same may become due. The amounts in any such
21 sinking fund, as and when so set apart by the board,
22 shall be remitted to the West Virginia water develop-
23 ment authority at least thirty days previous to the
24 time interest or principal payments become due, to be
25 retained and paid out by the water development
26 authority, as agent for the board, in a manner consis-
27 tent with the provisions of this article and with the
28 resolution pursuant to which the bonds have been
29 issued. The water development authority shall act as
30 fiscal agent for the administration of any sinking fund
31 and reserve fund established under each resolution
32 authorizing the issuance of revenue bonds pursuant to
33 the provisions of this article, and shall invest all funds
34 not required for immediate disbursement in the same
35 manner as funds are invested pursuant to the provi-
36 sions of section thirteen, article five-c, chapter twenty
37 of this code.

38 (c) Notwithstanding any other provision of this
39 article to the contrary, no revenue bonds shall be
40 issued, nor the proceeds thereof expended or distrib-
41 uted, pursuant to the provisions of this article, without
42 the prior approval of the water development authority.

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

§20-5N-4c. Legal remedies of bondholders.

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

**§20-5N-4d. Bonds and notes not debt of state, county,
municipality or of any political subdivision;
expenses incurred pursuant to article.**

1 Solid waste closure revenue bonds and notes and
2 solid waste closure revenue refunding bonds issued
3 under authority of this article and any coupons in
4 connection therewith shall not constitute a debt or a
5 pledge of the faith and credit or taxing power of this
6 state or of any county, municipality or any other
7 political subdivision of this state, and the holders or
8 owners thereof shall have no right to have taxes levied
9 by the Legislature or taxing authority of any county,
10 municipality or any other political subdivision of this
11 state for the payment of the principal thereof or
12 interest thereon, but such bonds and notes shall be
13 payable solely from the revenues and funds pledged
14 for their payment as authorized by this article unless
15 the notes are issued in anticipation of the issuance of
16 bonds or the bonds are refunded by refunding bonds
17 issued under authority of this article, which bonds or
18 refunding bonds shall be payable solely from revenues
19 and funds pledged for their payment as authorized by
20 this article. All such bonds and notes shall contain on
21 the face thereof a statement to the effect that the
22 bonds or notes, as to both principal and interest, are
23 not debts of the state or any county, municipality or

24 political subdivision thereof, but are payable solely
25 from revenues and funds pledged for their payment.

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

§20-5N-4e. Solid waste closure revenue bonds lawful investments.

1 The provisions of sections ten and eleven, article six,
2 chapter twelve of this code notwithstanding, all solid
3 waste closure revenue bonds issued pursuant to this
4 article shall be lawful investments for the West
5 Virginia state board of investments and shall also be
6 lawful investments for financial institutions as defined
7 in section two, article one, chapter thirty-one-a of this
8 code, and for insurance companies.

§20-5N-5. Limitation on assistance.

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

3 (1) The permittee of a landfill that does not have a
4 liner and ceases accepting solid waste on or before the
5 thirtieth day of November, one thousand nine hun-
6 dred ninety-one, except for those landfills granted a
7 limited extension pursuant to the provisions of section
8 eight, article five-f of this chapter and ceases accepting
9 solid waste on or before the extension deadline as
10 determined by the director; or the permittee of a
11 landfill that has only a single liner and ceases accept-
12 ing solid waste on or before the thirtieth day of
13 November, one thousand nine hundred ninety-two;

14 (2) The permittee of the landfill must demonstrate to
15 the satisfaction of the director that it does not have the
16 financial resources on hand or the ability to generate
17 the amounts needed to comply, in a timely manner,
18 with the closure requirements provided in article five-f
19 of this chapter and any rules promulgated pursuant
20 thereto; and

21 (3) The permittee must maintain a permit for the
22 landfill pursuant to the provisions of section five,
23 article five-f of this chapter and maintain the full
24 amount of the bond required to be submitted pursuant
25 to section five-b, article five-f of this chapter.

§20-5N-6. Application for closure assistance.

1 (a) The director shall provide an application and
2 application procedure for all permittees of solid waste
3 landfills desiring to receive closure assistance under
4 this article. At a minimum the procedure shall require
5 that:

6 (1) The permittee of a landfill that does not have a
7 liner system must submit its application no later than
8 the fifteenth day of September, one thousand nine
9 hundred ninety-two, except the permittee of a landfill
10 that has been granted a limited extension pursuant to
11 the provisions of section eight, article five-f of this
12 chapter must submit its application no later than the
13 eleven months following the expiration of the exten-
14 sion; and

15 (2) The permittee of a landfill that has only a single
16 liner system must submit its application no later than
17 the fifteenth day of April, one thousand nine hundred
18 ninety-three, and not prior to the first day of April,
19 one thousand nine hundred ninety-two.

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

§20-5N-7. Solid waste facility closure cost assistance fund.

1 (a) The "Closure Cost Assistance Fund" is hereby
2 created as a special revenue account in the state
3 treasury. The fund shall operate as a special fund
4 whereby all deposits and payments thereto shall not
5 expire to the general revenue fund, but shall remain
6 in such account and be available for expenditure in
7 the succeeding fiscal year. Separate sub-accounts may
8 be established within the special account for the

9 purpose of identification of various revenue resources
10 and payment of specific obligations.

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

13 (c) The fund consists of the following:

14 (1) Moneys collected and deposited in the state
15 treasury which are specifically designated by acts of
16 the Legislature for inclusion in the fund;

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

20 (3) Amounts repaid by permittees pursuant to
21 section nine, article five-f of this chapter; and

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

24 (d) The amounts deposited in the fund may be
25 expended only on the cost of projects as provided for
26 in sections three and ten of this article: *Provided, That*
27 no more than one percent of the annual deposits to
28 such fund may be used for administrative purposes.

§20-5N-8. Promulgation of rules by director.

1 The director shall promulgate rules that are neces-
2 sary for the efficient and orderly implementation and
3 administration of this article no later than the first day
4 of August, one thousand nine hundred ninety-two.
5 Due to the need for the program provided for in this
6 article to begin as soon as possible the Legislature
7 finds and declares that condition warranting rules to
8 be promulgated as emergency rules does exist and that
9 the promulgation of the initial rules required by this
10 section should be accorded emergency status.

§20-5N-9. Liability of owner or operator.

1 Nothing in this article relieves the owner, operator
2 or permittee of a landfill of the legal duties, obligations
3 or liabilities incident to the ownership or operation of
4 a landfill, except that the performance by the director
5 of any of the activities set forth in subsection (b),

6 section three of this article relieves the operator from
7 the requirement to perform such activities.

**§20-5N-10. Procedures for handling remedial actions;
payment of costs of remedial actions to be
paid by owner or operator.**

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

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

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

21 The costs reasonably incurred in any remedial
22 action taken by the director as provided in this article
23 may be paid for initially by amounts available to the
24 director in the fund created in subdivision (3), subsec-
25 tion (h), section five-a, article five-f of this chapter or,
26 to the extent funds are available, from the fund
27 created in section seven of this article, and such sums
28 so expended, if not promptly repaid by the permittee
29 upon request of the director, may be recovered from
30 the permittee by appropriate civil action to be initiated
31 by the attorney general upon request of the director.
32 All funds so recovered shall be deposited in the fund
33 from which said funds were expended.

§20-5N-11. Right of entry.

1 The director or his or her duly authorized represen-

2 tatives have the right, upon presentation of proper
 3 identification, to enter upon any property for the
 4 purpose of conducting studies or exploratory work to
 5 determine the existence of adverse effects of a landfill,
 6 to determine the feasibility of the remediation or
 7 prevention of such adverse effects and to perform the
 8 activities set forth in sections three and ten of this
 9 article. Such entry is as an exercise of the police
 10 power of the state for the protection of public health,
 11 safety and general welfare and is not an act of
 12 condemnation of property or trespass thereon.

§20-5N-12. Authority of director to accept grants and gifts.

1 The director has the authority, on behalf of the
 2 division of natural resources, to accept for deposit in
 3 the closure cost assistance fund established in section
 4 seven of this article, all gifts, grants, property, funds,
 5 security interest, money, materials, labor, supplies or
 6 services from the United States of America or from
 7 any governmental unit or any person, firm or corpo-
 8 ration, and to carry out the terms or provisions of, or
 9 make agreements with respect to, or pledge, any gifts
 10 or grants, and to do any and all things necessary,
 11 useful, desirable or convenient in connection with the
 12 procuring, acceptance or disposition of gifts or grants.

§20-5N-13. Management and control of project.

1 (a) The director shall manage and control all pro-
 2 jects, and may make and enter into all contracts or
 3 agreements necessary and incidental to the perfor-
 4 mance of the duties imposed under this article.

5 (b) On or before the thirty-first day of December,
 6 one thousand nine hundred ninety-two, the director,
 7 in consultation with the public service commission,
 8 shall complete a statewide closure plan, a comprehen-
 9 sive analysis of the total costs of closure anticipated
 10 under such statewide closure plan, and a proposal for
 11 implementation of closure assistance funding. The
 12 director, in consultation with the public service
 13 commission, shall prepare and issue a report which
 14 shall include the following:

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

18 (2) An estimate of the projected closure costs asso-
19 ciated with each such identified landfill, including
20 such engineering and technical analysis as may be
21 necessary to provide a reasonable estimate;

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

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

27 The plan and report required pursuant to the
28 provisions of this section shall be submitted to the
29 Legislature for its approval or rejection by a concur-
30 rent resolution.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

**§20-7-1c. Conservation officers, ranks, salary schedule, base
pay, exceptions.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the ranks within the law-enforcement
3 section of the division of natural resources shall be
4 colonel, lieutenant colonel, major, captain, lieutenant,
5 sergeant, conservation officer and conservation officer-
6 in-training. Each such officer while in uniform shall
7 wear the insignia of rank as provided by the chief
8 conservation officer.

9 (b) Conservation officers shall be paid the minimum
10 annual salaries based on the following schedule:

11 ANNUAL SALARY SCHEDULE (BASE PAY)

12 SUPERVISORY AND NONSUPERVISORY RANKS

13 Conservation Officer-In-Training (first year)	\$18,617
14 Conservation Officer (second year)	\$20,806
15 Conservation Officer (third year)	\$21,078
16 Conservation Officer (fourth year)	\$21,290
17 Conservation Officer (after fifth year)	\$22,868
18 Conservation Officer (after tenth year)	\$24,446

19	Conservation Officer (after fifteenth year)	\$25,846
20	Sergeant	\$29,469
21	Lieutenant	\$32,289
22	Captain	\$36,675
23	Major	\$38,958
24	Lieutenant Colonel	\$41,000
25	Colonel.....	

26 Conservation officers in service at the time the
 27 amendment to this section becomes effective shall be
 28 given credit for prior service and shall be paid such
 29 salaries as the same length of service will entitle them
 30 to receive under the provisions hereof.

31 (c) This section shall not apply to special or emer-
 32 gency conservation officers appointed under the
 33 authority of section one of this article.

34 (d) Nothing in this section shall prohibit other pay
 35 increases as provided for under section two, article
 36 five, chapter five of this code.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncon-
 2 trolled collection, transportation, processing and
 3 disposal of domestic and commercial garbage, refuse
 4 and other solid wastes in the state of West Virginia
 5 results in: (1) A public nuisance and a clear and
 6 present danger to the citizens of West Virginia; (2) the
 7 degradation of the state's environmental quality
 8 including both surface and groundwaters which pro-
 9 vide essential and irreplaceable sources of domestic
 10 and industrial water supplies; (3) provides harborages
 11 and breeding places for disease-carrying, injurious
 12 insects, rodents and other pests injurious to the public
 13 health, safety and welfare; (4) decreases public and
 14 private property values and results in the blight and
 15 deterioration of the natural beauty of the state; (5) has
 16 adverse social and economic effects on the state and its
 17 citizens; and (6) results in the waste and squandering
 18 of valuable nonrenewable resources contained in such
 19 solid wastes which can be recovered through proper

20 recycling and resource-recovery techniques with great
21 social and economic benefits for the state.

22 The Legislature further finds that the proper collec-
23 tion, transportation, processing, recycling and disposal
24 of solid waste is for the general welfare of the citizens
25 of the state and that the lack of proper and effective
26 solid waste collection services and disposal facilities
27 demands that the state of West Virginia and its
28 political subdivisions act promptly to secure such
29 services and facilities in both the public and private
30 sectors.

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

42 The Legislature further finds that the process of
43 developing rational and sound solid waste plans at the
44 county or regional level is impeded by the prolifera-
45 tion of siting proposals for new solid waste facilities.

46 Therefore, it is the purpose of the Legislature to
47 protect the public health and welfare by providing for
48 a comprehensive program of solid waste collection,
49 processing, recycling and disposal to be implemented
50 by state and local government in cooperation with the
51 private sector. The Legislature intends to accomplish
52 this goal by establishing county and regional solid
53 waste authorities throughout the state to develop and
54 implement litter and solid waste control plans. It is the
55 further purpose of the Legislature to restrict and
56 regulate persons and firms from exploiting and endan-
57 gering the public health and welfare of the state by
58 disposing of solid wastes and other dangerous mate-
59 rials which would not be accepted for disposal in the

60 location where such wastes or materials were
61 generated.

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

69 (1) *Source reduction.* — This involves minimizing
70 waste production and generation through product
71 design, reduction of toxic constituents of solid waste,
72 and similar activities.

73 (2) *Recycling, reuse and materials recovery.* — This
74 involves separating and recovering valuable materials
75 from the waste stream, composting food and yard
76 waste, and marketing of recyclables.

77 (3) *Landfilling.* — To the maximum extent possible,
78 this option should be reserved for nonrecyclables and
79 other materials that cannot practically be managed in
80 any other way. This is the lowest priority in the
81 hierarchy and involves the waste management option
82 of last resort.

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

93 The Legislature further finds that affected citizens
94 and local governments often look to state environmen-
95 tal regulatory agencies to resolve local land use
96 conflicts engendered by these proposed facilities. The
97 Legislature also finds that such local land use conflicts
98 are most effectively resolved in a local governmental

99 forum where citizens can most easily participate in the
100 decision-making process and the land use values of
101 local communities most effectively identified and
102 incorporated into a comprehensive policy which
103 reflects the values and goals of those communities.

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

§20-9-2. Definitions.

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

3 (a) "Approved solid waste facility" means a com-
4 mercial solid waste facility or practice which has a
5 valid permit or compliance order under article five-f
6 of this chapter.

7 (b) "Commercial solid waste facility" means any
8 solid waste facility which accepts solid waste generated
9 by sources other than the owner or operator of the
10 facility and shall not include an approved solid waste
11 facility owned and operated by a person for the sole
12 purpose of disposing of solid wastes created by that
13 person or that person and another person on a cost-
14 sharing or nonprofit basis and shall not include the
15 legitimate reuse and recycling of materials for struc-
16 tural fill, road base, mine reclamation, and similar
17 applications.

18 (c) "Class A facility" means a commercial solid
19 waste facility which handles an aggregate of between
20 ten and thirty thousand tons of solid waste per month.
21 "Class A facility" shall include two or more Class B
22 solid waste landfills owned or operated by the same
23 person in the same county, if the aggregate tons of
24 solid waste handled per month by such landfills
25 exceeds nine thousand nine hundred ninety-nine tons
26 of solid waste per month.

27 (d) "Class B facility" means a commercial solid
28 waste facility which receives or is expected to receive

29 an average daily quantity of mixed solid waste equal
30 to or exceeding one hundred tons each working day, or
31 serves or is expected to serve a population equal to or
32 exceeding forty thousand persons, but which does not
33 receive solid waste exceeding an aggregate of ten
34 thousand tons per month. Class B facilities do not
35 include construction/demolition facilities: *Provided*,
36 That the definition of Class B facility may include
37 such reasonable subdivisions or subclassifications as
38 the director may establish by legislative rule proposed
39 in accordance with the provisions of chapter twenty-
40 nine-a of this code.

41 (e) "Compliance order" means an administrative
42 order issued pursuant to section five, article five-f of
43 this chapter authorizing a solid waste facility to
44 operate without a solid waste permit.

45 (f) "Open dump" means any solid waste disposal
46 which does not have a permit under this article, or is
47 in violation of state law, or where solid waste is
48 disposed in a manner that does not protect the
49 environment.

50 (g) "Person" means any industrial user, public or
51 private corporation, institution, association, firm or
52 company organized or existing under the laws of this
53 or any other state or country; the state of West
54 Virginia; governmental agency, including federal
55 facilities; political subdivision; county commission;
56 municipal corporation; industry; sanitary district;
57 public service district; drainage district; soil conserva-
58 tion district; watershed improvement district; partner-
59 ship; trust; estate; person or individual; group of
60 persons or individuals acting individually or as a
61 group; or any legal entity whatever.

62 (h) "Sludge" means any solid, semisolid, residue or
63 precipitate, separated from or created by a municipal,
64 commercial or industrial waste treatment plant, water
65 supply treatment plant or air pollution control facility
66 or any other such waste having similar origin.

67 (i) "Solid waste" means any garbage, paper, litter,
68 refuse, cans, bottles, waste processed for the express

69 purpose of incineration, sludge from a waste treatment
70 plant, water supply treatment plant or air pollution
71 control facility, other discarded material, including
72 offensive or unsightly matter, solid, liquid, semisolid
73 or contained liquid or gaseous material resulting from
74 industrial, commercial, mining or community activi-
75 ties but does not include solid or dissolved material in
76 sewage, or solid or dissolved materials in irrigation
77 return flows or industrial discharges which are point
78 sources and have permits under article five-a of this
79 chapter, or source, special nuclear or by-product
80 material as defined by the Atomic Energy Act of 1954,
81 as amended, including any nuclear or by-product
82 material considered by federal standards to be below
83 regulatory concern, or a hazardous waste either
84 identified or listed under article five-e of this chapter,
85 or refuse, slurry, overburden or other waste or
86 material resulting from coal-fired electric power or
87 steam generation, the exploration, development,
88 production, storage and recovery of coal, oil and gas,
89 and other mineral resources placed or disposed of at a
90 facility which is regulated under chapter twenty-two,
91 twenty-two-a or twenty-two-b of this code, so long as
92 such placement or disposal is in conformance with a
93 permit issued pursuant to said chapters. "Solid waste"
94 shall also not include materials which are recycled by
95 being used or reused in an industrial process to make
96 a product, as effective substitutes for commercial
97 products, or are returned to the original process as a
98 substitute for raw material feedstock.

99 (j) "Solid waste disposal" means the practice of
100 disposing of solid waste including placing, depositing,
101 dumping or throwing or causing to be placed, depos-
102 ited, dumped or thrown any solid waste.

103 (k) "Solid waste disposal shed" means the geograph-
104 ical area which the solid waste management board
105 designates and files in the state register pursuant to
106 section eight, article twenty-six, chapter sixteen of this
107 code.

108 (l) "Solid waste facility" means any system, facility,
109 land, contiguous land, improvements on the land,

110 structures or other appurtenances or methods used for
 111 processing, recycling or disposing of solid waste,
 112 including landfills, transfer stations, resource-recovery
 113 facilities and other such facilities not herein specified.
 114 Such facility shall be deemed to be situated, for
 115 purposes of this article, in the county where the
 116 majority of the spatial area of such facility is located.

117 (m) "Energy recovery incinerator" means any solid
 118 waste facility at which solid wastes are incinerated
 119 with the intention of using the resulting energy for
 120 the generation of steam, electricity, or any other use
 121 not specified herein.

122 (n) "Incineration technologies" means any technol-
 123 ogy that uses controlled flame combustion to ther-
 124 mally break down solid waste, including refuse-
 125 derived fuel, to an ash residue that contains little or no
 126 combustible materials, regardless of whether the
 127 purpose is processing, disposal, electric or steam
 128 generation, or any other method by which solid waste
 129 is incinerated.

130 (o) "Incinerator" means an enclosed device using
 131 controlled flame combustion to thermally break down
 132 solid waste, including refuse-derived fuel, to an ash
 133 residue that contains little or no combustible materials.

134 (p) "Materials recovery facility" means any solid
 135 waste facility at which solid wastes are manually or
 136 mechanically shredded or separated so that materials
 137 are recovered from the general waste stream for
 138 purposes of reuse and recycling.

**§20-9-3. Creation of county solid waste authority; appoint-
 ment to board of directors; vacancies.**

1 (a) Each and every county solid waste authority
 2 authorized and created by the county commission of
 3 any county pursuant to former article sixteen, chapter
 4 seven of this code is hereby abolished on and after the
 5 first day of January, one thousand nine hundred
 6 eighty-nine. On and after the first day of January, one
 7 thousand nine hundred eighty-nine, a new county
 8 solid waste authority is hereby created and established

9 as a public agency in every county of the state and
10 shall be the successor to each county solid waste
11 authority which may have been created by the county
12 commission: *Provided*, That such county solid waste
13 authorities shall not be established or shall cease to
14 exist, as the case may be, in those counties which
15 establish a regional solid waste authority pursuant to
16 section four of this article. The solid waste manage-
17 ment board may require a county solid waste author-
18 ity to cooperate and participate in programs with other
19 authorities if the need arises.

20 (b) The authority board of directors shall be com-
21 prised of five members who shall be appointed as
22 follows: One by the director of the division of natural
23 resources, two by the county commission, one by the
24 board of supervisors for the soil conservation district
25 in which the county is situated and one by the
26 chairman of the public service commission. The
27 members of the board shall be appointed for terms of
28 four years for which the initial terms shall start on the
29 first day of July, one thousand nine hundred eighty-
30 eight: *Provided*, That the first two members appointed
31 by the county commission shall be appointed to initial
32 terms of two and four years, respectively, and for
33 terms of four years for each appointment thereafter.
34 The members of the board shall receive no compensa-
35 tion for their service thereon but shall be reimbursed
36 for their actual expenses incurred in the discharge of
37 their duties. Vacancies in the office of member of the
38 board of directors shall be filled for the balance of the
39 remaining term by the appropriate appointing author-
40 ity within sixty days after such vacancy occurs. No
41 member who has any financial interest in the collec-
42 tion, transportation, processing, recycling or the
43 disposal of refuse, garbage, solid waste or hazardous
44 waste shall vote or act on any matter which shall
45 directly affect the member's personal interests.

**§20-9-4. Establishment of regional solid waste authorities
authorized; successor to county solid waste
authorities; appointments to board of direc-
tors; vacancies.**

1 (a) On and after the first day of January, one

2 thousand nine hundred eighty-nine, any two or more
3 counties within the same solid waste shed and with
4 the approval of the solid waste management board,
5 may establish a regional solid waste authority. Such a
6 regional solid waste authority shall be a public agency
7 and shall be the successor to any county solid waste
8 authority existing on the date of said approval by the
9 solid waste management board. The solid waste man-
10 agement board may require a county authority to
11 cooperate and participate in programs with other
12 county and regional authorities if the need arises.

13 (b) The board of directors of the regional solid waste
14 authority shall be comprised and appointed as follows:
15 One by the director of the division of natural resour-
16 ces, two by the county commission of each county
17 participating therein, one appointed by the board of
18 supervisors for each soil conservation district in which
19 a county of the region is situated, one by the chairman
20 of the public service commission and two municipal
21 representatives from each county having one or more
22 participating municipality to be selected by the mayors
23 of the participating municipality from each such
24 county. The members of the board shall be appointed
25 for terms of four years for which the initial terms
26 shall start on the first day of July, one thousand nine
27 hundred eighty-eight: *Provided*, That the members
28 appointed by the county commission shall be
29 appointed to initial terms of two and four years,
30 respectively, and to terms of four years after the
31 expiration of each such initial term. The members of
32 the board shall receive no compensation for their
33 service thereon but shall be reimbursed their actual
34 expenses incurred in the discharge of their duties.
35 Vacancies in the office of member of the board of
36 directors shall be filled for the balance of the remain-
37 ing term by the appropriate appointing authority
38 within sixty days after such vacancy occurs. No
39 member who has any financial interest in the collec-
40 tion, transportation, processing, recycling or the
41 disposal of refuse, garbage, solid waste or hazardous
42 waste shall vote or act on any matter which shall
43 directly affect the member's personal interests.

§20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.

1 Notwithstanding any provision of this article, any
2 county commission which, on the first day of July, one
3 thousand nine hundred eighty-eight, held a valid
4 permit or compliance order for a commercial solid
5 waste transfer station issued pursuant to article five-
6 f of this chapter, may elect to assume all the duties,
7 powers, obligations, rights, title and interests vested in
8 the county solid waste authority by this chapter. A
9 county commission may, prior to the first day of
10 October, one thousand nine hundred eighty-nine,
11 exercise this right of election by entering an order
12 declaring such election and serving a certified copy
13 thereof upon the solid waste management board.
14 Thirty days after entry of said order by the county
15 commission the county solid waste authority shall
16 cease to exist and the county commission shall assume
17 all the duties, powers, obligations, rights, title and
18 interest vested in the former authority pursuant to
19 this chapter.

§20-9-6. Management of authority vested in board of directors; expenses paid by county commissions, procedure.

1 (a) The management and control of the authority, its
2 property, operations and affairs of any nature shall be
3 vested in and governed by the board of directors.

4 (b) The expenses of any county solid waste authority
5 incurred for necessary secretarial and clerical assis-
6 tance, office supplies and general administrative
7 expenses, in the development of the litter and solid
8 waste control plan under section seven of this article
9 and to provide solid waste collection and disposal
10 services under section nine of this article shall be paid
11 by the county commission from the general funds in
12 the county treasury to the extent that such expenses
13 are not paid by fees, grants and funds received by the
14 authority from other sources. The county commission
15 shall have the authority to determine the amount to
16 be allocated annually to the authority.

17 (c) The expenses of any regional solid waste author-
18 ity incurred for necessary secretarial and clerical
19 assistance, office supplies and general administrative
20 expenses, or for the development of the litter and solid
21 waste control plan under section seven of this article,
22 or to provide solid waste collection and disposal
23 services under section eight of this article shall be paid
24 by the county commissions of each participating
25 county from general funds in the county treasury to
26 the extent that such expenses are not paid by fees,
27 grants and funds from other sources received by the
28 authority. Each county participating in the regional
29 solid waste authority shall pay a pro rata share of such
30 expenses based upon the population of said county in
31 the most recent decennial census conducted by the
32 United States Census Bureau. Prior to any county
33 becoming liable for any expenses of the authority
34 under this subsection, the authority's annual budget
35 must first be approved by the solid waste management
36 board.

37 (d) An organizational meeting of each board of
38 directors shall be held as soon as practicable at which
39 time a chairman and vice chairman shall be elected
40 from among the members of the board to serve a term
41 of one year after which such officers shall be elected
42 annually. The board of directors shall also appoint a
43 secretary-treasurer, who need not be a member of the
44 board of directors, and who shall give bond in a sum
45 determined adequate to protect the interests of the
46 authority by the director of the division of natural
47 resources. The board shall meet at such times and
48 places as it or the chairman may determine. It shall be
49 the duty of the chairman to call a meeting of the board
50 upon the written request of a majority of the
51 members thereof. The board shall maintain an accu-
52 rate record and minutes of all its proceedings and shall
53 be subject to the provisions of the freedom of informa-
54 tion act and the open governmental proceedings. A
55 majority of the board shall constitute a quorum for the
56 transaction of business.

§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.

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

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

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

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

28 (3) The evaluation of the feasibility of requiring or
29 encouraging the separation of residential or commer-
30 cial solid waste at its source prior to collection for the
31 purpose of facilitating the efficient and effective
32 recycling of such wastes and the reduction of those
33 wastes which must be disposed of in landfills or by
34 other nonrecycling means;

35 (4) The establishment of an appropriate mandatory

36 garbage disposal program which shall include methods
37 whereby residents must prove either: (i) Payment of
38 garbage collection fee; or (ii) proper disposal at an
39 approved solid waste facility or in an otherwise lawful
40 manner;

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

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

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

51 (8) The coordination of the plan with the related
52 solid waste collection and disposal services of munici-
53 palities and, if applicable, other counties;

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

57 (10) Innovative incentives to promote recycling
58 efforts;

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

63 (12) Coordination with the division of highways and
64 other local, state and federal agencies in the control
65 and removal of litter and the cleanup of open and
66 unpermitted dumps;

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

71 (14) Provision for the safe and sanitary disposal of all
72 refuse from commercial and industrial sources within

73 the county or region, as the case may be, including
74 refuse from commercial and industrial sources, but
75 excluding refuse from sources owned or operated by
76 the state or federal governments.

77 (c) The solid waste management board shall estab-
78 lish advisory rules to guide and assist the counties in
79 the development of the plans required by this section.

80 (d) Each plan prepared under this section shall be
81 subject to approval by the solid waste management
82 board. Any plan rejected by the solid waste manage-
83 ment board shall be returned to the regional or county
84 solid waste authority with a statement of the insuffi-
85 ciencies in such plan. The authority shall revise the
86 plan to eliminate the insufficiencies and submit it to
87 the director within ninety days.

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

**§20-9-8. Assistance to county or regional solid waste
authorities by the solid waste management
board, division of natural resources, bureau
of health and the attorney general.**

1 (a) The division of natural resources, the solid waste
2 management board, and the bureau of health shall
3 provide technical assistance to each county and
4 regional solid waste authority as reasonable and
5 practicable for the purposes of this article within the
6 existing resources and appropriations of each agency
7 available for such purposes. The attorney general shall
8 provide legal counsel and representation to each
9 county and regional solid waste authority for the
10 purposes of this article within the existing resources
11 and appropriations available for such purposes, or with
12 the written approval of the attorney general, said

13 authority may employ counsel to represent it.

14 (b) The solid waste management board shall provide
15 assistance to the county or regional solid waste author-
16 ities, municipalities and other interested parties in
17 identifying and securing markets for recyclables.

**§20-9-9. Mandatory disposal; proof required; penalty
imposed; requiring solid waste management
board and the public service commission to
file report.**

1 (a) Each person occupying a residence or operating
2 a business establishment in this state shall either:

3 (1) Subscribe to and use a solid waste collection
4 service and pay the fees established therefor; or

5 (2) Provide proper proof that said person properly
6 disposes of solid waste at approved solid waste facilities
7 or in any other lawful manner. The director of the
8 division of natural resources shall promulgate rules
9 pursuant to chapter twenty-nine-a of this code regard-
10 ing an approved method or methods of supplying such
11 proper proof. A civil penalty of one hundred fifty
12 dollars shall be assessed to the person not receiving
13 solid waste collection services in addition to the unpaid
14 fees for every year that a fee is not paid.

15 (b) The solid waste management board in consulta-
16 tion and collaboration with the public service commis-
17 sion shall prepare and submit, no later than the first
18 day of October, one thousand nine hundred ninety-
19 two, a report concerning the feasibility of implement-
20 ing a mandatory fee for the collection and disposal of
21 solid waste in West Virginia: *Provided*, That such plan
22 shall consider such factors as affordability, impact on
23 open dumping and other relevant matters. The report
24 shall be submitted to the governor, the president of
25 the Senate and the speaker of the House of Delegates.

26 (c) The public service commission in consultation
27 and collaboration with the division of human services
28 shall prepare and submit, no later than the first day of
29 October, one thousand nine hundred ninety-two, a
30 report concerning the feasibility of reducing solid

31 waste collection fees to individuals who directly pay
32 such fees and who receive public assistance from state
33 or federal government agencies and are therefore
34 limited in their ability to afford to pay for solid waste
35 disposal. This report shall consider the individual's
36 health and income maintenance and other relevant
37 matters. This report shall also include recommended
38 procedures for individuals or households to qualify for
39 and avail themselves of a reduction in fees. This report
40 shall be submitted to the governor, the president of
41 the Senate and the speaker of the House of Delegates.

**§20-9-10. Acquisition of land; operation of public solid waste
landfills and other facilities; restrictions on
solid wastes generated outside authority
area; fees.**

1 Upon approval of the litter and solid waste control
2 plan by the solid waste management board, the county
3 or regional solid waste authority may acquire, by
4 purchase, lease, gift or otherwise, land for the estab-
5 lishment of solid waste facilities and is authorized to
6 construct, operate, maintain and contract for the
7 operation of such facilities. The authority may pay for
8 lease or acquisition of such lands and the construction,
9 operation and maintenance of such solid waste facili-
10 ties from such fees, grants, financing by the solid
11 waste program of the division of natural resources or
12 funds from other sources as may be available to the
13 authority. The authority may prohibit the deposit of
14 any solid waste in such solid waste facilities owned,
15 leased or operated by the authority which have
16 originated from sources outside the geographic limits
17 of the county or region. The authority board of
18 directors shall establish and charge reasonable fees for
19 the use of such facilities operated by the authority.

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

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

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

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

10 (3) The authority board of directors shall promulgate
11 rules and regulations to implement the provisions of
12 sections eight and nine of this article and is authorized
13 to promulgate rules and regulations for purposes of
14 this article and the general operation and administra-
15 tion of authority affairs.

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

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

22 (6) Acquire, construct, reconstruct, enlarge, improve,
23 furnish, equip, maintain, repair, operate, lease or rent
24 to, or contract for the operation by any person,
25 partnership, corporation or governmental agency, any
26 solid waste facility or collection, transportation and
27 processing facilities related thereto.

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

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

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

42 (10) Make and enter all contracts, leases and agree-
43 ments and to execute all instruments necessary or

44 incidental to the performance of its duties and powers.

45 (11) Employ managers, engineers, accountants,
46 attorneys, planners and such other professional and
47 support personnel as are necessary in its judgment to
48 carry out the provisions of this article.

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

54 (13) Cooperate with and make such recommenda-
55 tions to local, state and federal government and the
56 private sector in the technical, planning and public
57 policy aspects of litter control and solid waste manage-
58 ment as the authority may find appropriate and
59 effective to carry out the purposes of this article.

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

65 (15) Prohibit the dumping of solid waste outside the
66 hours of operation of a solid waste facility.

67 (16) Enforce the hours of operation of a solid waste
68 facility and the mandatory disposal provision in
69 section nine of this article by referring violations to
70 the division of natural resources or the appropriate
71 law-enforcement authorities.

72 (17) Do all acts necessary and proper to carry out the
73 powers expressly granted to the authority by this
74 article and powers conferred upon the authority by
75 this article.

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

**§20-9-12a. Commercial solid waste facility siting plan;
facilities subject to plan; criteria; approval by**

**solid waste management board; effect on
facility siting; public hearings; rules and
regulations.**

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety-one, each county or regional solid
3 waste authority shall prepare and complete a commer-
4 cial solid waste facilities siting plan for the county or
5 counties within its jurisdiction: *Provided*, That the
6 solid waste management board may authorize any
7 reasonable extension of up to one year for the comple-
8 tion of the said siting plan by any county or regional
9 solid waste authority. The siting plan shall identify
10 zones within each county where siting of the following
11 facilities is authorized or prohibited:

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

15 (2) Commercial solid waste facilities which shall
16 accept only less than an aggregate of ten thousand tons
17 of solid waste per month.

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

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

24 (b) The county or regional solid waste authority
25 shall develop the siting plan authorized by this section
26 based upon the consideration of one or more of the
27 following criteria: The efficient disposal of solid waste,
28 including all solid waste generated within the county
29 or region, economic development, transportation
30 facilities, property values, groundwater and surface
31 waters, geological and hydrological conditions, aes-
32 thetic and environmental quality, historic and cultural
33 resources, the present or potential land uses for
34 residential, commercial, recreational, environmental
35 conservation or industrial purposes and the public
36 health, welfare and convenience. The plan shall be

37 developed based upon information readily available.
38 Due to the limited funds and time available the plan
39 need not be an exhaustive and technically detailed
40 analysis of the criteria set forth above. Unless the
41 information readily available clearly establishes that
42 an area is suitable for the location of a commercial
43 solid waste facility or not suitable for such a facility,
44 the area shall be designated as an area in which the
45 location of a commercial solid waste facility is tenta-
46 tively prohibited. Any person making an application
47 for the redesignation of a tentatively prohibited area
48 shall make whatever examination is necessary and
49 submit specific detailed information in order to meet
50 the provision established in subsection (g) of this
51 section.

52 (c) Prior to completion of the siting plan, the county
53 or regional solid waste authority shall complete a draft
54 siting plan and hold at least one public hearing in each
55 county encompassed in said draft siting plan for the
56 purpose of receiving public comment thereon. The
57 authority shall provide notice of such public hearings
58 and encourage and solicit other public participation in
59 the preparation of the siting plan as required by the
60 rules and regulations promulgated by the solid waste
61 management board for this purpose. Upon completion
62 of the siting plan, the county or regional solid waste
63 authority shall file said plan with the solid waste
64 management board.

65 (d) The siting plan shall take effect upon approval by
66 the solid waste management board pursuant to the
67 rules and regulations promulgated for this purpose.
68 Upon approval of said plan, the solid waste manage-
69 ment board shall transmit a copy thereof to the
70 director of the division of natural resources and to the
71 clerk of the county commission of the county encom-
72 passed by said plan which county clerk shall file the
73 plan in an appropriate manner and shall make the
74 plan available for inspection by the public.

75 (e) Effective upon approval of the siting plan by the
76 solid waste management board, it shall be unlawful for
77 any person to establish, construct, install or operate a

78 commercial solid waste facility at a site not authorized
79 by the siting plan: *Provided*, That an existing commercial solid waste facility which, on the eighth day of
80 April, one thousand nine hundred eighty-nine, held a
81 valid solid waste permit or compliance order issued by
82 the division of natural resources pursuant to article
83 five-f of this chapter may continue to operate but may
84 not expand the spatial land area of the said facility
85 beyond that authorized by said solid waste permit or
86 compliance order, and may not increase the aggregate
87 monthly solid waste capacity in excess of ten thousand
88 tons monthly unless such a facility is authorized by
89 the siting plan.
90

91 (f) The county or regional solid waste authority may,
92 from time to time, amend the siting plan in a manner
93 consistent with the requirements of this section for
94 completing the initial siting plan and the rules and
95 regulations promulgated by the solid waste management board for the purpose of such amendments.
96

97 (g) Notwithstanding any provision of this code to the
98 contrary, upon application from a person who has filed
99 a pre-siting notice pursuant to section five-c, article
100 five-f of this chapter, the county or regional solid
101 waste authority or county commission, as appropriate,
102 may amend the siting plan by redesignating a zone
103 that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an
104 area where one is authorized. In such case, the person
105 seeking the change has the burden to affirmatively
106 and clearly demonstrate, based on the criteria set forth
107 in subsection (b) of this section, that a solid waste
108 facility could be appropriately operated in the public
109 interest at such location. The solid waste management
110 board shall provide, within available resources, technical support to a county or regional solid waste authority,
111 or county commission as appropriate, when
112 requested by such authority or commission to assist it
113 in reviewing an application for any such amendment.
114
115

116 (h) The solid waste management board shall prepare
117 and adopt a siting plan for any county or regional solid
118 waste authority which does not complete and file with

119 the said state authority such a siting plan in com-
120 pliance with the provisions of this section and the
121 rules and regulations promulgated thereunder. Any
122 siting plan adopted by the solid waste management
123 board pursuant to this subsection shall comply with
124 the provisions of this section, and the rules and
125 regulations promulgated thereunder, and shall have
126 the same effect as a siting plan prepared by a county
127 or regional solid waste authority and approved by the
128 solid waste management board.

129 (i) The siting plan adopted pursuant to this section
130 shall incorporate the provisions of the litter and solid
131 waste control plan, as approved by the solid waste
132 management board pursuant to section seven of this
133 article, regarding collection and disposal of solid waste
134 and the requirements, if any, for additional commer-
135 cial solid waste facility capacity.

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

**§20-9-12b. Siting approval for solid waste facilities; effect on
facilities with prior approval.**

1 (a) It is the intent of the Legislature that all com-
2 mercial solid waste facilities operating in this state
3 must receive site approval at the local level. Notwith-
4 standing said intent, facilities which obtained such
5 approval from either a county or regional solid waste
6 authority, or from a county commission, under any
7 prior enactment in this code, and facilities which were
8 otherwise exempted from local site approval under
9 any prior enactment in this code, shall be deemed to
10 have satisfied such requirement. All other facilities,
11 including facilities which received such local approval
12 but which seek to expand spatial area or to convert
13 from a Class B facility to a Class A facility, shall obtain
14 such approval only in the manner specified in sections
15 twelve-c, twelve-d and twelve-e of this article.

16 (b) In considering whether to issue or deny the

17 certificate of site approval as specified in sections
 18 twelve-c, twelve-d and twelve-e of this article, the
 19 county or regional solid waste authority or county
 20 commission shall base its determination upon the
 21 following criteria: The efficient disposal of solid waste
 22 generated within the county or region, economic
 23 development, transportation facilities, property values,
 24 groundwater and surface waters, geological and hydro-
 25 logical conditions, aesthetic and environmental quality,
 26 historic or cultural resources, the present or potential
 27 land uses for residential, commercial, recreational,
 28 industrial or environmental conservation purposes and
 29 the public health, welfare and convenience.

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

**§20-9-12c. Approval of new Class A facilities by solid waste
 authorities and county commissions, and
 referendum.**

1 (a) Except as provided below with respect to Class B
 2 facilities, from and after the effective date of this
 3 section, in order to obtain approval to operate a new
 4 Class A facility, an applicant shall:

5 (1) File an application for a certificate of need with,
 6 and obtain approval from, the public service commis-
 7 sion in the manner specified in section one-c, article
 8 two, chapter twenty-four of this code and in section
 9 five-c, article five-f of this chapter;

10 (2) File an application for a certificate of site
 11 approval with, and obtain approval from, the county
 12 or regional solid waste authority for the county or
 13 counties in which the facility is proposed. Such
 14 application shall be submitted on forms prescribed by
 15 the solid waste management board. The county or
 16 regional solid waste authority shall act on such
 17 application and either grant or deny it within thirty
 18 days after the application is determined by the county
 19 or regional solid waste authority to be filed in a

20 completed manner; and

21 (3) File an application for approval of operation as a
22 Class A facility with, and obtain approval from, the
23 county commission for each county in which the
24 facility would be located. Each county commission
25 shall act on such application and either grant or deny
26 it within thirty days after the application is deter-
27 mined by the county commission to be filed in a
28 completed manner. The county commission shall hold
29 at least one public hearing and shall solicit public
30 comment prior to acting on the application. The
31 county commission shall provide notice of such public
32 hearing with publication of a Class II legal advertise-
33 ment in a qualified newspaper serving the county
34 where the proposed site is situated.

35 (b) If applications are approved pursuant to subdivi-
36 sions (1), (2) and (3) of subsection (a) of this section,
37 each county commission shall order that a referendum
38 be placed upon the ballot not less than fifty-six days
39 before the next primary, general or other countywide
40 election.

41 (1) Such referendum will be to determine whether
42 it is the will of the voters of the county that a Class
43 A facility be located in the county. Any such election
44 shall be held at the voting precincts established for
45 holding primary or general elections. All of the
46 provisions of the general election laws, when not in
47 conflict with the provisions of this article, shall apply
48 to voting and elections hereunder, insofar as
49 practicable.

50 (2) The ballot, or the ballot labels where voting
51 machines are used, shall have printed thereon sub-
52 stantially the following:

53 "Shall a solid waste facility handling of between ten
54 and thirty thousand tons of solid waste per month be
55 located within _____ County, West Virginia?

56 ☐ For the facility

57 ☐ Against the facility

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

60 (3) If a majority of the legal votes cast upon the
61 question be against the siting of a Class A facility
62 within the county, then the county commission, the
63 county or regional solid waste authority and the
64 division of natural resources shall not proceed any
65 further with the application. If a majority of the legal
66 votes cast upon the question be for siting a Class A
67 facility within the county, then the application process
68 as set forth in this article and article five-f of this
69 chapter may proceed: *Provided*, That such vote shall
70 not be binding on or require the division of natural
71 resources to issue a permit. If the majority of the legal
72 votes cast be against the question, the question may be
73 submitted to a vote at any subsequent election in the
74 manner herein specified: *Provided, however*, That the
75 question may not be resubmitted to a vote until two
76 years after the date of the previous referendum.

77 (c) After the effective date of this section, the public
78 referendum established in this section shall be manda-
79 tory for every new Class A facility applicant which
80 will accept between ten and thirty thousand tons of
81 solid waste per month. A new Class A facility appli-
82 cant means any applicant for a state solid waste permit
83 for a Class A facility who had not, prior to the
84 effective date of this subsection, obtained a certificate
85 of site approval for a Class A facility from the county
86 or regional solid waste authority to establish, construct
87 or operate a Class A facility, and also means any
88 applicant for a state solid waste permit for a Class A
89 facility if a legal challenge to the issuance of a
90 certificate of site approval by the county or regional
91 solid waste authority or the county commission appro-
92 val for the proposed Class A facility was pending in
93 any state or federal court as of the first day of
94 September, one thousand nine hundred ninety-one.

**§20-9-12d. Approval of conversion from Class B facility to
Class A facility.**

1 (a) From and after the effective date of this article,

2 in order to obtain approval to operate as a Class A
3 facility at a site previously permitted to operate as a
4 Class B facility, an applicant shall:

5 (1) File an application for a certificate of need with,
6 and obtain approval from, the public service commis-
7 sion in the manner specified in section one-c, article
8 two, chapter twenty-four and in section five-c, article
9 five-f of this chapter;

10 (2) File an application for a certificate of site
11 approval with, and obtain approval from, the county
12 or regional solid waste authority for the county or
13 counties in which the facility is located or proposed.
14 Such application shall be submitted on forms pres-
15 cribed by the solid waste management board. The
16 county or regional solid waste authority shall act on
17 such application and either grant or deny it within
18 thirty days after the application is determined by the
19 county or regional solid waste authority to be filed in
20 a completed manner; and

21 (3) File an application for approval of operation as a
22 Class A facility with, and obtain approval from, the
23 county commission for each county in which the
24 facility is or would be located. Each county commis-
25 sion shall act on such application and either grant or
26 deny it within thirty days after the application is
27 determined by the county commission to be filed in a
28 completed manner. The county commission shall hold
29 at least one public hearing and shall solicit public
30 comment prior to acting on the application. The
31 county commission shall provide notice of such public
32 hearing with publication of a Class II legal advertise-
33 ment in a qualified newspaper serving the county
34 where the proposed site is situated.

35 (b) If applications are approved pursuant to subdivi-
36 sions (1), (2) and (3), subsection (a) of this section, the
37 county or regional solid waste authority shall publish
38 a Class II legal advertisement in compliance with the
39 provisions of article three, chapter fifty-nine of this
40 code, in a newspaper of general circulation in the
41 counties wherein the solid waste facility is located.

42 Upon the written petition of registered voters residing
43 in the county equal to not less than fifteen percent of
44 the number of votes cast within the county for
45 governor at the preceding gubernatorial election,
46 which petition shall be filed with the county commis-
47 sion within sixty days after the last date of publication
48 of the notice provided in this section, the county
49 commission shall, upon verification of the required
50 number of signatures on the petition, and not less than
51 fifty-six days before the election, order a referendum
52 be placed upon the ballot. Any referendum conducted
53 pursuant to this section shall be held at the next
54 primary, general or other countywide election.

55 (1) Such referendum will be to determine whether
56 it is the will of the voters of the county that the Class
57 B facility be converted to a Class A facility. Any
58 election at which such question of locating a solid
59 waste facility is voted upon shall be held at the voting
60 precincts established for holding primary or general
61 elections. All of the provisions of the general election
62 laws, when not in conflict with the provisions of this
63 article, shall apply to voting and elections hereunder,
64 insofar as practicable. The secretary of state shall
65 prescribe the form of the petition which shall include
66 the printed name, address and date of birth of each
67 person whose signature appears on the petition.

68 (2) The ballot, or the ballot labels where voting
69 machines are used, shall have printed thereon sub-
70 stantially the following:

71 "Shall the _____ solid waste facility, located
72 within _____ County, West Virginia, be permitted
73 to handle between ten and thirty thousand tons of
74 solid waste per month?

75 ☐ For the facility

76 ☐ Against the facility

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

79 (3) If a majority of the legal votes cast upon the
80 question be against the facility, then the county

81 commission, the county or regional solid waste author-
82 ity and the division of natural resources shall not
83 proceed any further with the application. If a majority
84 of the legal votes cast upon the question be for the
85 facility, then the application process as set forth in this
86 article and article five-f of this chapter may proceed:
87 *Provided*, That such vote shall not be binding on or
88 require the division of natural resources to modify the
89 permit. If the majority of the legal votes cast be
90 against the question, the question may be submitted to
91 a vote at any subsequent election in the manner
92 herein specified: *Provided, however*, That the question
93 may not be resubmitted to a vote until two years after
94 the date of the previous referendum.

**§20-9-12e. Approval of increase in maximum allowable
monthly tonnage of Class A facilities.**

1 (a) From and after the effective date of this article,
2 in order to increase the maximum allowable monthly
3 tonnage handled at a Class A facility by an aggregate
4 amount of more than ten percent of the facility's
5 permit tonnage limitation within a two-year period,
6 the permittee shall:

7 (1) File an application for approval with, and obtain
8 approval from, the county or regional solid waste
9 authority for the county or counties in which the
10 facility is located. Such application shall be a modifi-
11 cation of the Class A facility's certificate of site
12 approval. The county or regional solid waste authority
13 shall act upon such application and either grant or
14 deny it within thirty days after the application is
15 determined by the county or regional solid waste
16 authority to be filed in a completed manner;

17 (2) File an application for approval with, obtain
18 approval from, the public service commission to
19 modify the certificate of need in the manner set forth
20 in section one-c, article two, chapter twenty-four of
21 this code; and

22 (3) File an application for a major permit modifica-
23 tion with the division of natural resources.

24 (b) If applications are approved pursuant to subdivi-
25 sions (1) and (2), subsection (a) of this section and an
26 application has been filed pursuant to subdivision (3),
27 subsection (a) of this section, the county or regional
28 solid waste authority shall publish a Class II legal
29 advertisement in compliance with the provisions of
30 article three, chapter fifty-nine of this code, in a
31 newspaper of general circulation in the counties
32 wherein the solid waste facility is located. Upon the
33 written petition of registered voters residing in the
34 county equal to not less than fifteen percent of the
35 number of votes cast within the county for governor
36 at the preceding gubernatorial election, which petition
37 shall be filed with the county commission within sixty
38 days after the last date of publication of the notice
39 provided in this section, the county commission shall,
40 upon verification of the required number of signatures
41 on the petition, and not less than fifty-six days before
42 the election, order a referendum be placed upon the
43 ballot. Any referendum conducted pursuant to this
44 section shall be held at the next primary, general or
45 other countywide election.

46 (1) Such referendum will be to determine whether
47 it is the will of the voters of the county that the Class
48 A facility applicant be permitted to increase the
49 maximum tonnage allowed to be handled at the
50 facility not to exceed thirty thousand tons per month.
51 Any election at which such question is voted upon
52 shall be held at the voting precincts established for
53 holding primary or general elections. All of the
54 provisions of the general election laws, when not in
55 conflict with the provisions of this article, shall apply
56 to voting and elections hereunder, insofar as practica-
57 ble. The secretary of state shall prescribe the form of
58 the petition which shall include the printed name,
59 address and date of birth of each person whose
60 signature appears on the petition.

61 (2) The ballot, or the ballot labels where voting
62 machines are used, shall have printed thereon sub-
63 stantially the following:

64 "Shall the _____ solid waste facility located
65 within _____ County, West Virginia, be allowed to

66 handle a maximum of _____ solid waste per
67 month?

68 ☐ For the increase in maximum allowable tonnage

69 ☐ Against the increase in maximum allowable
70 tonnage

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

73 (3) If a majority of the legal votes cast upon the
74 question be against allowing the Class A facility to
75 increase the maximum tonnage of solid waste allowed
76 to be handled per month at the facility, then the
77 division of natural resources shall not proceed to
78 modify the Class A facility permit to increase the
79 maximum allowable tonnage. If a majority of the legal
80 votes cast upon the question be for allowing the Class
81 A facility to increase the maximum tonnage of solid
82 waste allowed to be handled per month at such
83 facility, then the application process as set forth in this
84 article and article five-f of this chapter may proceed:
85 *Provided*, That such vote shall not be binding on or
86 require the county or regional solid waste authority or
87 the division of natural resources to approve an appli-
88 cation to modify the permit. If the majority of the
89 legal votes cast be against the question, that does not
90 prevent the question from again being submitted to a
91 vote at any subsequent election in the manner pro-
92 vided for in this section: *Provided, however*, That an
93 applicant may not resubmit the question for a vote
94 prior to a period of two years from the date of the
95 previous referendum herein described.

§20-9-12f. Judicial review of certificate of site approval.

1 (a) Any party aggrieved by a decision of the county
2 or regional solid waste authority or county commission
3 granting or denying a certificate of site approval may
4 obtain judicial review thereof in the same manner
5 provided in section four, article five, chapter twenty-
6 nine-a of this code, which provisions shall govern such
7 review with like effect as if the provisions of said
8 section were set forth in extenso in this section, except

9 that the petition shall be filed, within the time
10 specified in said section, in the circuit court of Kana-
11 wha County.

12 (b) The judgment of the circuit court shall be final
13 unless reversed, vacated or modified on appeal to the
14 supreme court of appeals, in accordance with the
15 provisions of section one, article six, chapter twenty-
16 nine-a of this code, except that notwithstanding the
17 provisions of said section, the petition seeking such
18 review must be filed with supreme court of appeals
19 within ninety days from the date of entry of the
20 judgment of the circuit court.

**§20-9-13. Solid waste assessment interim fee; regulated
motor carriers; dedication of proceeds; crim-
inal penalties.**

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

9 (b) *Collection, return, payment and record.* — The
10 person disposing of solid waste at the solid waste
11 disposal facility shall pay the fee imposed by this
12 section, whether or not such person owns the solid
13 waste, and the fee shall be collected by the operator of
14 the solid waste facility who shall remit it to the tax
15 commissioner.

16 (1) The fee imposed by this section accrues at the
17 time the solid waste is delivered to the solid waste
18 disposal facility.

19 (2) The operator shall remit the fee imposed by this
20 section to the tax commissioner on or before the
21 fifteenth day of the month next succeeding the month
22 in which the fee accrued. Upon remittance of the fee,
23 the operator shall be required to file returns on forms
24 and in the manner as prescribed by the tax

25 commissioner.

26 (3) The operator shall account to the state for all fees
27 collected under this section and shall hold them in
28 trust for the state until they are remitted to the tax
29 commissioner.

30 (4) If any operator fails to collect the fee imposed by
31 this section, he or she shall be personally liable for
32 such amount as he or she failed to collect, plus
33 applicable additions to tax, penalties and interest
34 imposed by article ten, chapter eleven of this code.

35 (5) Whenever any operator fails to collect, truthfully
36 account for, remit the fee, or file returns with the fee
37 as required in this section, the tax commissioner may
38 serve written notice requiring such operator to collect
39 the fees which become collectible after service of such
40 notice, to deposit such fees in a bank approved by the
41 tax commissioner, in a separate account, in trust for
42 and payable to the tax commissioner, and to keep the
43 amount of such fees in such account until remitted to
44 the tax commissioner. Such notice shall remain in
45 effect until a notice of cancellation is served on the
46 operator or owner by the tax commissioner.

47 (6) Whenever the owner of a solid waste disposal
48 facility leases the solid waste facility to an operator,
49 the operator shall be primarily liable for collection and
50 remittance of the fee imposed by this section and the
51 owner shall be secondarily liable for remittance of the
52 fee imposed by this section. However, if the operator
53 fails, in whole or in part, to discharge his obligations
54 under this section, the owner and the operator of the
55 solid waste facility shall be jointly and severally
56 responsible and liable for compliance with the provi-
57 sions of this section.

58 (7) If the operator or owner responsible for collect-
59 ing the fee imposed by this section is an association or
60 corporation, the officers thereof shall be liable, jointly
61 and severally, for any default on the part of the
62 association or corporation, and payment of the fee and
63 any additions to tax, penalties and interest imposed by
64 article ten, chapter eleven of this code may be

65 enforced against them as against the association or
66 corporation which they represent.

67 (8) Each person disposing of solid waste at a solid
68 waste disposal facility and each person required to
69 collect the fee imposed by this section shall keep
70 complete and accurate records in such form as the tax
71 commissioner may require in accordance with the
72 rules and regulations of the tax commissioner.

73 (c) *Regulated motor carriers.* — The fee imposed by
74 this section and section twenty-two, article five,
75 chapter seven of this code shall be considered a
76 necessary and reasonable cost for motor carriers of
77 solid waste subject to the jurisdiction of the public
78 service commission under chapter twenty-four-a of
79 this code. Notwithstanding any provision of law to the
80 contrary, upon the filing of a petition by an affected
81 motor carrier, the public service commission shall,
82 within fourteen days, reflect the cost of said fee in said
83 motor carrier's rates for solid waste removal service.
84 In calculating the amount of said fee to said motor
85 carrier, the commission shall use the national average
86 of pounds of waste generated per person per day as
87 determined by the United States Environmental
88 Protection Agency.

89 (d) *Definition of solid waste disposal facility.* — For
90 purposes of this section, the term "solid waste disposal
91 facility" means any approved solid waste facility or
92 open dump in this state and includes a transfer station
93 when the solid waste collected at the transfer station
94 is not finally disposed of at a solid waste facility within
95 this state that collects the fee imposed by this section.
96 Nothing herein shall be construed to authorize in any
97 way the creation or operation of or contribution to an
98 open dump.

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

101 (1) Disposal of solid waste at a solid waste disposal
102 facility by the person who owns, operates or leases the
103 solid waste disposal facility if it is used exclusively to
104 dispose of waste originally produced by such person in

105 such person's regular business or personal activities or
106 by persons utilizing the facility on a cost-sharing or
107 nonprofit basis;

108 (2) Reuse or recycling of any solid waste; and

109 (3) Disposal of residential solid waste by an individ-
110 ual not in the business of hauling or disposing of solid
111 waste on such days and times as designated by the
112 director of the division of natural resources as exempt
113 from the fee imposed pursuant to section five-a, article
114 five-f chapter twenty of this code.

115 (f) *Procedure and administration.* — Notwithstand-
116 ing section three, article ten, chapter eleven of this
117 code, each and every provision of the "West Virginia
118 Tax Procedure and Administration Act" set forth in
119 article ten, chapter eleven of this code shall apply to
120 the fee imposed by this section with like effect as if
121 said act were applicable only to the fee imposed by
122 this section and were set forth in extenso herein.

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

130 (h) *Dedication of proceeds.* — The net proceeds of
131 the fee collected by the tax commissioner pursuant to
132 this section shall be deposited, at least monthly, in a
133 special revenue account known as the "Solid Waste
134 Planning Fund" which is hereby created. The solid
135 waste management board shall allocate the proceeds of
136 the said fund as follows:

137 (1) Fifty percent of the total proceeds shall be
138 divided equally among, and paid over to, each county
139 solid waste authority to be expended for the purposes
140 of this article: *Provided*, That where a regional solid
141 waste authority exists, such funds shall be paid over to
142 the regional solid waste authority to be expended for
143 the purposes of this article in an amount equal to the

144 total share of all counties within the jurisdiction of
145 said regional solid waste authority; and

146 (2) Fifty percent of the total proceeds shall be
147 expended by the solid waste management board for:

148 (A) Grants to the county or regional solid waste
149 authorities for the purposes of this article; and

150 (B) Administration, technical assistance or other
151 costs of the solid waste management board necessary
152 to implement the purposes of this article and article
153 twenty-six, chapter sixteen of the code of West Vir-
154 ginia, one thousand nine hundred thirty-one, as
155 amended.

156 (i) *Severability*. — If any provision of this section or
157 the application thereof shall for any reason be
158 adjudged by any court of competent jurisdiction to be
159 invalid, such judgment shall not affect, impair or
160 invalidate the remainder of this section, but shall be
161 confined in its operation to the provision thereof
162 directly involved in the controversy in which such
163 judgment shall have been rendered, and the applica-
164 bility of such provision to other persons or circumstan-
165 ces shall not be affected thereby.

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

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-1. Short title.

1 This article shall be known and cited as the “West
2 Virginia Recycling Act”.

§20-11-2. Legislative findings and purpose.

1 The Legislature finds that many citizens desire a
2 recycling program in order to conserve limited natural
3 resources, reduce litter, recycle valuable materials,
4 extend the useful life of solid waste landfills and
5 reduce the need for new landfills.

6 The Legislature further finds that the identification
7 and creation of local, regional, state and national
8 markets for recyclable materials are necessary for the

9 implementation of effective recycling programs.

10 The Legislature further finds that recycling pro-
11 grams can most successfully be established by encour-
12 aging, and in certain instances requiring, the source
13 separation of solid waste and the subsequent curbside
14 collection of recyclables.

15 Therefore, it is the purpose of the Legislature to
16 establish goals for the recycling of solid waste; to
17 require certain municipalities to implement recycling
18 programs; to authorize each county commission, or the
19 citizens of a county by referendum, to adopt a compre-
20 hensive recycling program for solid waste; to encour-
21 age source separation of solid waste; to increase the
22 purchase of recycled products by the various agencies
23 and instrumentalities of government; and to educate
24 the public concerning the benefits of recycling.

§20-11-3. Recycling goals.

1 (a) By the first day of January, two thousand ten, it
2 is the goal of this state to reduce the disposal of
3 municipal solid waste by fifty percent of the amount
4 of per capita solid waste disposed of in one thousand
5 nine hundred ninety-one.

6 (b) By the first day of January, two thousand, it is
7 the interim goal of this state to reduce the disposal of
8 municipal solid waste by thirty percent of the amount
9 of per capita solid waste disposed of in one thousand
10 nine hundred ninety-one.

11 (c) By the first day of January, one thousand nine
12 hundred ninety-four, it is the interim goal of this state
13 to reduce the disposal of municipal solid waste by
14 twenty percent of the amount of per capita solid waste
15 disposed of in one thousand nine hundred ninety-one.

**§20-11-5. Establishment of county recycling programs for
solid waste; petition for referendum; ballot
contents; election procedure; effect of such
election.**

1 (a) Within twelve months following the effective
2 date of this section, each municipality described in

3 subsection (b) of this section shall submit a proposal to
4 the solid waste management board, consistent with the
5 provisions of this section, describing the establishment
6 and implementation of the mandatory recycling pro-
7 gram. The solid waste management board shall review
8 the submitted plans for consistency with the criteria
9 provided in this section, the county or regional solid
10 waste management plan and the statewide manage-
11 ment plan. The solid waste management board may
12 make suggested changes to the plan and shall provide
13 technical assistance to the municipalities in the
14 development of the plans.

15 (b) Within twenty-four months following the effec-
16 tive date of this section, each municipality with a
17 population of ten thousand or more people, as deter-
18 mined by the most recent decennial census by the
19 Bureau of the Census of the United States Department
20 of Commerce, shall establish and commence imple-
21 mentation of a source separation and curbside collec-
22 tion program for recyclable materials. Implementation
23 may be phased in over a six month time period. Such
24 program shall include, at a minimum, the following:

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

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

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

43 collection of solid waste.

44 (4) Provisions to ensure compliance with the ordi-
45 nance, including incentives and penalties.

46 (5) A comprehensive public information and educa-
47 tion program covering the importance and benefits of
48 recycling, as well as the specific features and require-
49 ments of the recycling program. As part of the educa-
50 tion program, each municipality shall, at a minimum,
51 notify all persons occupying residential, commercial,
52 institutional or other premises within its boundaries of
53 the requirements of the program, including how the
54 system will operate, the dates of collection, the
55 responsibilities of persons within the municipality, and
56 incentives and penalties.

57 (6) Consultation with the county or regional solid
58 waste authority in which the municipality is located to
59 avoid duplication, ensure coordination of solid waste
60 programs, and maximize the market for recyclables.

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

67 (1) That, prior to collection at its source, all solid
68 waste shall be segregated into separate identifiable
69 recyclable materials by each person, partnership,
70 corporation and governmental agency subscribing to a
71 solid waste collection service in the county or trans-
72 porting solid waste to a commercial solid waste facility
73 in the county;

74 (2) Each person engaged in the commercial collec-
75 tion, transportation, processing or disposal of solid
76 waste within the county shall accept only such solid
77 waste from which recyclable materials in accordance
78 with said county's comprehensive recycling program
79 have been segregated; and

80 (3) That the provisions of the recycling plan pre-
81 pared pursuant to section four of this article shall, to

82 the extent practicable, be incorporated in said county's
83 comprehensive recycling program.

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

90 (e) A comprehensive recycling program for solid
91 waste may be established in any county of this state
92 by: (1) A petition filed with the county commission
93 bearing the signatures of registered voters of the
94 county equal to not less than five percent of the
95 number of votes cast within the county for governor
96 at the preceding gubernatorial election; and (2) appro-
97 val by a majority of the voters in a subsequent
98 referendum on the issue. A referendum to determine
99 whether it is the will of the voters of a county that a
100 comprehensive recycling program for solid waste be
101 established in the county may be held at any regular
102 primary or general election or in conjunction with any
103 other countywide election. Any election at which the
104 question of establishing a policy of comprehensive
105 recycling for solid waste is voted upon shall be held at
106 the voting precincts established for holding primary or
107 general elections. All of the provisions of the general
108 election laws, when not in conflict with the provisions
109 of this article, shall apply to voting and elections
110 hereunder, insofar as practicable. The secretary of
111 state shall prescribe the form of the petition which
112 shall include the printed name, address and date of
113 birth of each person whose signature appears on the
114 petition. Upon verification of the required number of
115 signatures on the petition, the county commission
116 shall, not less than seventy days before the election,
117 order that the issue be placed on the ballot and
118 referendum held at the next primary, general or
119 special election to determine whether it is the will of
120 the voters of said county that a policy of comprehen-
121 sive recycling of solid waste be established in the
122 county: *Provided*, That the petition bearing the neces-

123 sary signatures has been filed with the county com-
124 mission at least one hundred days prior to the election.

125 The ballot, or the ballot labels where voting
126 machines are used, shall have printed thereon sub-
127 stantially the following:

128 "Shall the County Commission be required to
129 establish a comprehensive recycling program for solid
130 waste in _____ County, West
131 Virginia?

132 ☐ For Recycling

133 ☐ Against Recycling

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

136 If a majority of legal votes cast upon the question be
137 for the establishment of a policy of comprehensive
138 recycling of solid waste, the county commission shall,
139 after the certification of the results of the referendum,
140 thereafter adopt an ordinance, within one hundred
141 eighty days of said certification, establishing a compre-
142 hensive recycling program for solid waste in the
143 county: *Provided*, That such program shall be imple-
144 mented and operational no later than twelve months
145 following said certification. If a majority of the legal
146 votes cast upon the question be against the establish-
147 ment of a policy of comprehensive recycling of solid
148 waste, said policy shall not take effect, but the ques-
149 tion may again be submitted to a vote at any subse-
150 quent election in the manner herein provided.

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

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

158 "Shall the County Commission be required to
159 terminate the comprehensive recycling program for
160 solid waste in _____ County,

161 West Virginia?

162 ☐ Continue Recycling

163 ☐ End Recycling

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

166 (g) If a majority of legal votes cast upon the question
167 be for the termination of a policy of comprehensive
168 recycling of solid waste previously established in the
169 county, the county commission shall, after the certifi-
170 cation of the results of the referendum, thereafter
171 rescind by ordinance the comprehensive recycling
172 program for solid waste in the county within ninety
173 days of said certification. If a majority of the legal
174 votes cast upon the question be for the continuation of
175 the policy of comprehensive recycling of solid waste,
176 said ordinance shall not be rescinded, but the question
177 may again be submitted to a vote at any subsequent
178 election in the manner herein provided.

179 (h) In the case of any municipality having a popu-
180 lation greater than forty thousand persons, as indi-
181 cated by the most recent decennial census conducted
182 by the United States, the governing body of such
183 municipality may by ordinance establish a materials
184 recovery facility in lieu of or in addition to the
185 mandatory recycling program required under the
186 provisions of this section: *Provided*, That such mate-
187 rials recovery facility shall be subject to approval by
188 both the public service commission and the solid waste
189 management board upon a finding by both the public
190 service commission and the solid waste management
191 board that the establishment of such materials recov-
192 ery facility will not hinder, and will be consistent
193 with, the purposes of this article.

**§20-11-5a. Recycling assessment fee; regulated motor
carriers; dedication of proceeds; criminal
penalties.**

1 (a) *Imposition.* — Effective the first day of January,
2 one thousand nine hundred ninety-two, a recycling
3 assessment fee is hereby levied and imposed upon the

4 disposal of solid waste at all solid waste disposal
5 facilities in this state, to be collected at the rate of two
6 dollars per ton or part thereof of solid waste. The fee
7 imposed by this section shall be in addition to all other
8 fees levied by law.

9 (b) *Collection, return, payment and records.* — The
10 person disposing of solid waste at the solid waste
11 disposal facility shall pay the fee imposed by this
12 section, whether or not such person owns the solid
13 waste, and the fee shall be collected by the operator of
14 the solid waste facility who shall remit it to the tax
15 commissioner.

16 (1) The fee imposed by this section accrues at the
17 time the solid waste is delivered to the solid waste
18 disposal facility.

19 (2) The operator shall remit the fee imposed by this
20 section to the tax commissioner on or before the
21 fifteenth day of the month next succeeding the month
22 in which the fee accrued. Upon remittance of the fee,
23 the operator shall be required to file returns on forms
24 and in the manner as prescribed by the tax
25 commissioner.

26 (3) The operator shall account to the state for all fees
27 collected under this section and shall hold them in
28 trust for the state until they are remitted to the tax
29 commissioner.

30 (4) If any operator fails to collect the fee imposed by
31 this section, he or she shall be personally liable for
32 such amount as he or she failed to collect, plus
33 applicable additions to tax, penalties and interest
34 imposed by article ten, chapter eleven of this code.

35 (5) Whenever any operator fails to collect, truthfully
36 account for, remit the fee or file returns with the fee
37 as required in this section, the tax commissioner may
38 serve written notice requiring such operator to collect
39 the fees which become collectible after service of such
40 notice, to deposit such fees in a bank approved by the
41 tax commissioner, in a separate account, in trust for
42 and payable to the tax commissioner, and to keep the

43 amount of such fees in such account until remitted to
44 the tax commissioner. Such notice shall remain in
45 effect until a notice of cancellation is served on the
46 operator or owner by the tax commissioner.

47 (6) Whenever the owner of a solid waste disposal
48 facility leases the solid waste facility to an operator,
49 the operator shall be primarily liable for collection and
50 remittance of the fee imposed by this section and the
51 owner shall be secondarily liable for remittance of the
52 fee imposed by this section. However, if the operator
53 fails, in whole or in part, to discharge his obligations
54 under this section, the owner and the operator of the
55 solid waste facility shall be jointly and severally
56 responsible and liable for compliance with the provi-
57 sions of this section.

58 (7) If the operator or owner responsible for collect-
59 ing the fee imposed by this section is an association or
60 corporation, the officers thereof shall be liable, jointly
61 and severally, for any default on the part of the
62 association or corporation, and payment of the fee and
63 any additions to tax, penalties and interest imposed by
64 article ten, chapter eleven of this code may be
65 enforced against them and against the association or
66 corporation which they represent.

67 (8) Each person disposing of solid waste at a solid
68 waste disposal facility and each person required to
69 collect the fee imposed by this section shall keep
70 complete and accurate records in such form as the tax
71 commissioner may require in accordance with the
72 rules and regulations of the tax commissioner.

73 (c) *Regulated motor carriers.* — The fee imposed by
74 this section shall be considered a necessary and
75 reasonable cost for motor carriers of solid waste
76 subject to the jurisdiction of the public service com-
77 mission under chapter twenty-four-a of this code.
78 Notwithstanding any provision of law to the contrary,
79 upon the filing of a petition by an affected motor
80 carrier, the public service commission shall, within

81 fourteen days, reflect the cost of said fee in said motor
82 carrier's rates for solid waste removal service. In
83 calculating the amount of said fee to said motor
84 carrier, the commission shall use the national average
85 of pounds of waste generated per person per day as
86 determined by the United States Environmental
87 Protection Agency.

88 (d) *Definitions.* — For purposes of this section:

89 "Solid waste disposal facility" means any approved
90 solid waste facility or open dump in this state and
91 includes a transfer station when the solid waste
92 collected at the transfer station is not finally disposed
93 of at a solid waste facility within this state that collects
94 the fee imposed by this section.

95 Nothing herein shall be construed to authorize in
96 any way the creation or operation of or contribution to
97 an open dump.

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

100 (1) Disposal of solid waste at a solid waste facility by
101 the person who owns, operates or leases the solid
102 waste disposal facility if it is used exclusively to
103 dispose of waste originally produced by such person in
104 such person's regular business or personal activities or
105 by persons utilizing the facility on a cost-sharing or
106 nonprofit basis;

107 (2) Reuse or recycling of any solid waste; and

108 (3) Disposal of residential solid waste by an individ-
109 ual not in the business of hauling or disposing of solid
110 waste on such days and times as designated by the
111 director of the division of natural resources by regu-
112 lation as exempt from the fee imposed pursuant to
113 section five-a, article five-f of this chapter.

114 (f) *Procedure and administration.* — Notwithstand-
115 ing section three, article ten, chapter eleven of this
116 code, each and every provision of the "West Virginia
117 Tax Procedure and Administration Act" set forth in
118 article ten, chapter eleven of this code shall apply to

119 the fee imposed by this section with like effect as if
120 said act were applicable only to the fee imposed by
121 this section and were set forth in extenso herein.

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

129 (h) *Dedication of proceeds.* — The proceeds of the
130 fee collected pursuant to this section shall be deposited
131 by the tax commissioner, at least monthly, in a special
132 revenue account designated as the “Recycling Assis-
133 tance Fund” which is hereby created. The director of
134 the division of natural resources shall allocate the
135 proceeds of the said fund as follows:

136 (1) Fifty percent of the total proceeds shall be
137 provided in grants to assist municipalities, counties
138 and other interested parties in the planning and
139 implementation of recycling programs, public educa-
140 tion programs, and recycling market procurement
141 efforts, established pursuant to this article. The
142 director of the division of natural resources shall
143 promulgate rules, in accordance with chapter twenty-
144 nine-a of this code, containing application procedures,
145 guidelines for eligibility, reporting requirements and
146 other matters deemed appropriate;

147 (2) Twelve and one-half percent of the total proceeds
148 shall be expended for personal services and benefit
149 expenses of full-time salaried conservation officers;

150 (3) Twelve and one-half percent of the total proceeds
151 shall be transferred to the governor’s office of commu-
152 nity and industrial development, to be used in assist-
153 ing counties and municipalities in the design and
154 construction of wastewater treatment facilities;

155 (4) Twelve and one-half percent of the total proceeds
156 shall be transferred to the solid waste reclamation and
157 environmental response fund, established pursuant to

158 section five-a, article five-f of this chapter, to be
159 expended by the division of natural resources to assist
160 in the funding of the pollution prevention and open
161 dumps program (PPOD) which encourages recycling,
162 reuse, waste reduction and clean-up activities; and

163 (5) Twelve and one-half percent of the total proceeds
164 shall be deposited in the hazardous waste emergency
165 response fund established in article five-g of this
166 chapter.

167 (i) *Severability*. — If any provision of this section or
168 the application thereof shall for any reason be
169 adjudged by any court of competent jurisdiction to be
170 invalid, such judgment shall not affect, impair or
171 invalidate the remainder of this section, but shall be
172 confined in its operation to the provision thereof
173 directly involved in the controversy in which such
174 judgment shall have been rendered, and the applica-
175 bility of such provision to other persons or circumstan-
176 ces shall not be affected thereby.

177 (j) *Effective date*. — This section is effective on the
178 first day of January, one thousand nine hundred
179 ninety-two.

**§20-11-5b. Solid and hazardous waste supplemental assess-
ment fee.**

1 (a) *Imposition*. — Effective the first day of January,
2 one thousand nine hundred ninety-two, a solid and
3 hazardous waste supplemental assessment fee is
4 hereby levied and imposed upon the disposal of solid
5 or hazardous waste at all solid waste or hazardous
6 waste disposal facilities in this state, to be collected at
7 the rate of twenty-five cents per ton or part thereof of
8 solid or hazardous waste. The fee imposed by this
9 section shall be in addition to all other fees levied by
10 law.

11 (b) *Collection, return, payment and records*. — The
12 person disposing of solid or hazardous waste at the
13 solid or hazardous waste disposal facility shall pay the
14 fee imposed by this section, whether or not such
15 person owns the solid or hazardous waste, and the fee

16 shall be collected by the operator of the solid or
17 hazardous waste facility who shall remit it to the tax
18 commissioner.

19 (1) The fee imposed by this section accrues at the
20 time the solid or hazardous waste is delivered to the
21 solid or hazardous waste disposal facility.

22 (2) The operator shall remit the fee imposed by this
23 section to the tax commissioner on or before the
24 fifteenth day of the month next succeeding the month
25 in which the fee accrued. Upon remittance of the fee,
26 the operator shall be required to file returns on forms
27 and in the manner as prescribed by the tax
28 commissioner.

29 (3) The operator shall account to the state for all fees
30 collected under this section and shall hold them in
31 trust for the state until they are remitted to the tax
32 commissioner.

33 (4) If any operator fails to collect the fee imposed by
34 this section, he or she shall be personally liable for
35 such amount as he or she failed to collect, plus
36 applicable additions to tax, penalties and interest
37 imposed by article ten, chapter eleven of this code.

38 (5) Whenever any operator fails to collect, truthfully
39 account for, remit the fee, or file returns with the fee
40 as required in this section, the tax commissioner may
41 serve written notice requiring such operator to collect
42 the fees which become collectible after service of such
43 notice, to deposit such fees in a bank approved by the
44 tax commissioner, in a separate account, in trust for
45 and payable to the tax commissioner, and to keep the
46 amount of such fees in such account until remitted to
47 the tax commissioner. Such notice shall remain in
48 effect until a notice of cancellation is served on the
49 operator or owner by the tax commissioner.

50 (6) Whenever the owner of a solid or hazardous
51 waste disposal facility leases the solid or hazardous
52 waste facility to an operator, the operator shall be
53 primarily liable for collection and remittance of the
54 fee imposed by this section and the owner shall be

55 secondarily liable for remittance of the fee imposed by
56 this section. However, if the operator fails, in whole or
57 in part, to discharge his obligations under this section,
58 the owner and the operator of the solid or hazardous
59 waste disposal facility shall be jointly and severally
60 responsible and liable for compliance with the provi-
61 sions of this section.

62 (7) If the operator or owner responsible for collect-
63 ing the fee imposed by this section is an association or
64 corporation, the officers thereof shall be liable, jointly
65 and severally, for any default on the part of the
66 association or corporation, and payment of the fee and
67 any additions to tax, penalties and interest imposed by
68 article ten, chapter eleven of this code may be
69 enforced against them and against the association or
70 corporation which they represent.

71 (8) Each person disposing of solid or hazardous waste
72 at a solid or hazardous waste disposal facility and each
73 person required to collect the fee imposed by this
74 section shall keep complete and accurate records in
75 such form as the tax commissioner may require in
76 accordance with the rules and regulations of the tax
77 commissioner.

78 (c) *Regulated motor carriers.* — The fee imposed by
79 this section shall be considered a necessary and
80 reasonable cost for motor carriers of solid or hazardous
81 waste subject to the jurisdiction of the public service
82 commission under chapter twenty-four-a of this code.
83 Notwithstanding any provision of law to the contrary,
84 upon the filing of a petition by an affected motor
85 carrier, the public service commission shall, within
86 fourteen days, reflect the cost of said fee in said motor
87 carrier's rates for solid or hazardous waste removal
88 service. In calculating the amount of said fee to said
89 motor carrier, the commission shall use the national
90 average of pounds of waste generated per person per
91 day as determined by the United States Environmen-
92 tal Protection Agency.

93 (d) *Definitions.* — For purposes of this section:

94 (1) "Solid or hazardous waste disposal facility"

95 means any approved solid or hazardous waste facility
 96 or open dump in this state and includes a transfer
 97 station when the solid or hazardous waste collected at
 98 the transfer station is not finally disposed of at a solid
 99 or hazardous waste facility within this state that
 100 collects the fee imposed by this section;

101 (2) "Coal combustion by-product" means the residu-
 102 als, including fly ash, bottom ash, bed ash and boiler
 103 slag produced by coal-fired or coal/gas-fired electrical
 104 or steam generating units. For non-electrical steam
 105 generating units burning a combination of solid or
 106 hazardous waste and coal, a carbon monoxide level of
 107 less than or equal to one hundred parts per million on
 108 a twenty-four hour average basis is required for the
 109 by-products to meet this definition. The carbon mon-
 110 oxide level shall be calculated on a dry gas basis
 111 corrected to seven percent oxygen; and

112 (3) "Sludge" means any solid, semisolid, residue or
 113 precipitate, separated from or created by a municipal,
 114 commercial or industrial waste treatment plant, water
 115 supply treatment plant or air pollution control facility
 116 or any other such waste having similar origin.

117 Nothing herein shall be construed to authorize in
 118 any way the creation or operation of or contribution to
 119 an open dump.

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

122 (1) Disposal of solid waste in which the recycling
 123 assessment fee levied and imposed by section five-a of
 124 this article has been paid;

125 (2) Disposal of sludge or coal combustion by-
 126 products; and

127 (3) Reuse or recycling of any solid or hazardous
 128 waste.

129 (f) *Procedure and administration.* — Notwithstand-
 130 ing section three, article ten, chapter eleven of this
 131 code, each and every provision of the "West Virginia
 132 Tax Procedure and Administration Act" set forth in

133 article ten, chapter eleven of this code shall apply to
134 the fee imposed by this section with like effect as if
135 said act were applicable only to the fee imposed by
136 this section and were set forth in extenso herein.

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

144 (h) *Dedication of proceeds.* — The proceeds of the
145 fee collected pursuant to this section shall be deposited
146 by the tax commissioner, at least monthly, to the
147 hazardous waste emergency response fund established
148 in article five-g of this chapter.

149 (i) *Severability.* — If any provision of this section or
150 the application thereof shall for any reason be
151 adjudged by any court of competent jurisdiction to be
152 invalid, such judgment shall not affect, impair or
153 invalidate the remainder of this section, but shall be
154 confined in its operation to the provision thereof
155 directly involved in the controversy in which such
156 judgment shall have been rendered, and the applica-
157 bility of such provision to other persons or circumstan-
158 ces shall not be affected thereby.

159 (j) *Effective date.* — This section is effective on the
160 first day of January, one thousand nine hundred
161 ninety-two.

§20-11-6. Establishment of state recycling program for solid waste.

1 (a) In the absence of either a municipal or a compre-
2 hensive county recycling plan pursuant to section five
3 of this article, all agencies and instrumentalities of the
4 state, all primary and secondary schools, where
5 practicable, and private colleges and universities shall
6 implement programs to recycle solid waste. To carry
7 out the purposes of this section, any affected party
8 may be eligible to receive grants pursuant to subdivi-

9 sion (1), subsection (h), section five-a of this article.
 10 Such programs shall include, but not be limited to, the
 11 following:

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

14 (2) In the absence of either a municipal program or
 15 a comprehensive county recycling plan pursuant to
 16 section five of this article, collection and transportation
 17 of source separated recycled materials to an appropri-
 18 ate location.

19 (b) For purposes of this section, the division of
 20 natural resources shall be designated the lead agency
 21 to ensure proper compliance and coordination.

§20-11-7. Procurement of recycled products.

1 (a) It is the policy of the state of West Virginia that,
 2 to the maximum extent possible, all agencies and
 3 instrumentalities of the state purchase recycled pro-
 4 ducts. The goal of the state is to achieve a recycled
 5 product mix on future purchases of:

6 (1) Twenty percent by the thirty-first day of Decem-
 7 ber, one thousand nine hundred ninety-three; and

8 (2) Forty percent by the thirty-first day of Decem-
 9 ber, one thousand nine hundred ninety-five.

10 (b) In furtherance of the aforesaid goal, the secre-
 11 tary of the department of administration in consulta-
 12 tion with the director of the division of natural
 13 resources shall develop a comprehensive procurement
 14 program for recycled products. Such program shall
 15 include, but not be limited to:

16 (1) A review, and subsequent revision, of existing
 17 procurement procedures and bid specifications to
 18 remove language that discriminates against recycled
 19 products;

20 (2) A review, and subsequent revision, of existing
 21 procurement procedures and bid specifications to
 22 ensure that, to the maximum extent possible, all
 23 agencies and instrumentalities of the state purchase

24 recycled products: *Provided*, That recycled paper
25 products shall be given a price preference of ten
26 percent: *Provided, however*, That priority shall be
27 given to paper products with the highest post-
28 consumer content;

29 (3) A plan to eliminate, to the maximum extent
30 possible, the use of disposable and single-use products;
31 and

32 (4) A requirement that all agencies and instrumen-
33 talities of the state use compost in all land mainte-
34 nance and landscaping activities.

35 (c) The secretary shall prepare and submit an
36 annual report on the thirty-first day of January of
37 each year following the effective date of this section,
38 summarizing the program's accomplishments, pros-
39 pects for the future, and any recommendations. Said
40 report shall be submitted to the governor, speaker of
41 the House of Delegates and president of the Senate.

**§20-11-8. Prohibition on the disposal of certain items; plans
for the proper handling of said items
required; rules required; report to be pre-
pared and submitted.**

1 (a) Effective the first day of June, one thousand nine
2 hundred ninety-three, it shall be unlawful to deposit
3 yard waste, including grass clippings and leaves, lead-
4 acid batteries, and tires in a solid waste facility in West
5 Virginia: *Provided*, That such prohibition does not
6 apply to a facility designed specifically to compost such
7 yard waste, or otherwise recycle or reuse such items:
8 *Provided, however*, That reasonable and necessary
9 exceptions to such prohibition may be included as part
10 of the rules and regulations promulgated pursuant to
11 subsection (c) of this section.

12 (b) No later than the first day of May, one thousand
13 nine hundred ninety-two, the solid waste management
14 board, in consultation with the division of natural
15 resources, shall design a comprehensive program to
16 provide for the proper handling of the items menti-
17 oned in subsection (a) of this section.

18 (c) No later than the first day of September, one
19 thousand nine hundred ninety-two, the solid waste
20 management board shall promulgate rules and regula-
21 tions, in accordance with chapter twenty-nine-a of this
22 code, as amended, to implement the program designed
23 pursuant to subsection (b) of this section.

24 (d) By the first day of December, one thousand nine
25 hundred ninety-one, the waste management board
26 shall prepare and submit a report summarizing the
27 board's action pursuant to this section and making
28 recommendations, if any, concerning additional items
29 that should be excluded from certain solid waste
30 facilities. Said report shall be submitted to the gover-
31 nor, president of the Senate and the speaker of the
32 House of Delegates.

§20-11-9. Recycled oil advisory committee.

1 (a) The division of natural resources recycled oil
2 advisory committee is hereby created. The recycled oil
3 advisory committee shall consist of nine members
4 appointed by the governor, for terms of two years,
5 who shall serve without compensation. One member
6 of the committee shall have significant experience in
7 the oil refining industry, one member shall have
8 significant experience in the jobbing or distributing of
9 motor oil, one member shall be a representative of
10 retail gasoline dealers, one member shall be a repre-
11 sentative of retail merchants, one member shall be a
12 representative of the insurance industry, one member
13 shall be a member of a county or regional solid waste
14 authority, one member shall be a member of the
15 general public, one member shall be a member of the
16 House of Delegates recommended by the speaker of
17 the House of Delegates, and one member shall be a
18 member of the Senate recommended by the president
19 of the Senate. The director of the division of natural
20 resources or his or her designated representative shall
21 be an ex officio member of the committee and shall
22 serve as chairman of the committee. The recycled oil
23 advisory committee shall meet at least monthly, or
24 upon the call of four members, to discuss all aspects of
25 the collection, handling, transportation, storage, dis-

26 posal and recycling of used motor oil.

27 (b) The functions of the committee shall include, but
28 not be limited to, the following:

29 (1) Making recommendations to the division of
30 natural resources and the Legislature concerning the
31 adoption of management standards with respect to
32 collection, handling, transportation, storage, disposal
33 and recycling of used motor oil. The committee shall
34 make the first report of its recommendations on or
35 before the fifteenth day of January, one thousand nine
36 hundred ninety-two, and other such reports may be
37 made at such times as the committee deems
38 appropriate.

39 (2) Carrying out education and promotional activities
40 regarding the use of recycled oil.

41 (3) Identifying areas in the public and private sectors
42 where recycled oil could be utilized.

43 (4) Entertaining proposals from citizens, corporations
44 and businesses related to all aspects of used motor oil.

45 (5) Identifying administrative requirements at both
46 the state and local levels to ascertain resources and
47 needs relating to used motor oil.

48 (6) Examining federal law and regulations, both
49 existing and proposed, to assure that West Virginia
50 businesses and individuals who generate used motor
51 oil may participate in a program of handling and
52 disposing used motor oil that complies with federal
53 statutes and regulatory requirements.

**§20-11-10. Recycled newsprint encouraged; findings; goals;
recycled newsprint advisory committee
formed; annual report required.**

1 (a) The purpose of this section is to encourage
2 newspapers published and distributed in the state of
3 West Virginia to use recycled newsprint.

4 (b) The Legislature finds that:

5 (1) It is the public policy of the state of West Virginia
6 to preserve natural resources, extend the useful life of

7 solid waste facilities, stimulate the demand for
8 recycled products and ensure a more efficient alloca-
9 tion of resources;

10 (2) The publication of newspapers consumes large
11 quantities of virgin paper;

12 (3) Discarded newspapers present significant solid
13 waste management problems; and

14 (4) Encouraging newspaper publishers to use
15 recycled newsprint will help attain the aforementi-
16 oned public policy.

17 (c) In furtherance of the public policy set forth in
18 subsection (b) of this section, it is the goal of this state
19 that for the year ending the thirty-first day of Decem-
20 ber, one thousand nine hundred ninety-six, eighty
21 percent of the newsprint used by newspapers pub-
22 lished and distributed in this state shall contain the
23 highest post-consumer recycled paper content
24 practicable.

25 (d) The division of natural resources recycled news-
26 print advisory committee is hereby created. The
27 recycled newsprint advisory committee shall consist of
28 seven members appointed by the governor, for terms
29 of two years, who shall serve without compensation.
30 One member of the committee shall be the publisher,
31 or his or her designated representative, of a daily
32 newspaper with a general circulation in excess of
33 twenty-five thousand newspapers per day, one mem-
34 ber of the committee shall be the publisher, or his or
35 her designated representative, of a daily newspaper
36 with a general circulation of less than or equal to
37 twenty-five thousand newspapers per day, one mem-
38 ber of the committee shall be the publisher, or his or
39 her designated representative, of a weekly newspaper,
40 one member of the committee shall be a member of
41 the general public representing environmental inter-
42 ests, one member of the committee shall be a member
43 of a county or regional solid waste authority, one
44 member of the committee shall be a member of the
45 House of Delegates recommended by the speaker of
46 the House of Delegates, and one member of the

47 committee shall be a member of the Senate recom-
48 mended by the president of the Senate. The director
49 of the division of natural resources, or his or her
50 designated representative, shall serve as an ex officio
51 member of the committee and shall serve as chair of
52 the committee. The director of the solid waste man-
53 agement board, or his or her representative, shall
54 serve as an ex officio member of the committee. The
55 recycling newspaper advisory committee shall meet at
56 least quarterly, or upon the call of three members, to
57 discuss all aspects of encouraging the use of recycled
58 newsprint and meeting the goals set forth in this
59 section.

60 (e) On or before the thirty-first day of January, one
61 thousand nine hundred ninety-three, the recycled
62 newsprint advisory committee shall prepare and
63 submit a report to the governor, the speaker of the
64 House of Delegates and the president of the Senate,
65 summarizing the activities of the committee, its
66 progress in achieving the recycled newsprint goal and
67 any recommendations for legislative action.

§20-11-11. Feasibility study of recycling industries.

1 The director in consultation with the governor's
2 office of community and industrial development shall
3 develop a plan for presentation to the governor, the
4 president of the Senate and the speaker of the House
5 of Delegates no later than the fifteenth day of Janu-
6 ary, one thousand nine hundred ninety-two, which
7 plan shall contain recommendations relating to the
8 feasibility of establishing glass preparation plants, de-
9 inking plants and re-refining used motor oil plants.

10 The plan may include provisions to carry out each of
11 the following:

12 (1) Encouragement, to the maximum extent feasible
13 and consistent with the protection of the public health
14 and the environment, of the use of re-refined motor
15 oil, de-inked pulp and prepared glass in all appropriate
16 areas of state and local government;

17 (2) Encouragement of persons contracting with the
18 state to use re-refined motor oil, de-inked pulp and
19 prepared glass to the maximum extent feasible,
20 consistent with protection of the public health and the
21 environment;

22 (3) Informing the public of uses of re-refined motor
23 oil, de-inked pulp and prepared glass; and

24 (4) Establishment and implementation of a program,
25 including any necessary licensing of persons and
26 including the use, where appropriate, of manifests to
27 assure the used re-refined motor oil, de-inked pulp
28 and prepared glass is collected, transported, treated,
29 stored, reused and disposed of, in a manner which
30 does not present a hazard to the public health or the
31 environment.

§20-11-12. Recycling facilities exemption.

1 Facilities which only accept, buy or transfer source
2 separated material or recycled material for use, resale
3 or transfer for further processing shall be exempt
4 from the provisions of articles five-f and nine of this
5 chapter and sections one-c and one-f, article two,
6 chapter twenty-four of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as
3 provided by this chapter, chapter twenty-four-a and
4 chapter twenty-four-b of this code. In addition, after
5 having conducted a performance audit through its
6 joint committee on government operations, pursuant
7 to section nine, article ten, chapter four of this code,
8 the Legislature hereby finds and declares that the
9 public service commission should be continued and
10 reestablished. Accordingly, notwithstanding the provi-
11 sions of section four, article ten, chapter four of this
12 code, the public service commission shall continue to

13 exist until the first day of July, one thousand nine
14 hundred ninety-two. The public service commission
15 may sue and be sued by that name. Such public
16 service commission shall consist of three members
17 who shall be appointed by the governor with the
18 advice and consent of the Senate. The commissioners
19 shall be citizens and residents of this state and at least
20 one of them shall be duly licensed to practice law in
21 West Virginia, of not less than ten years' actual
22 experience at the bar. No more than two of said
23 commissioners shall be members of the same political
24 party. Each commissioner shall, before entering upon
25 the duties of his office, take and subscribe to the oath
26 provided by section five, article four of the constitu-
27 tion, which oath shall be filed in the office of the
28 secretary of state. The governor shall designate one of
29 the commissioners to serve as chairman at the gover-
30 nor's will and pleasure. The chairman shall be the
31 chief administrative officer of the commission. The
32 governor may remove any commissioner only for
33 incompetency, neglect of duty, gross immorality,
34 malfeasance in office or violation of subsection (c) of
35 this section.

36 (b) The unexpired term of members of the public
37 service commission at the time this subsection
38 becomes effective are continued through the thirtieth
39 day of June, one thousand nine hundred seventy-nine.
40 In accordance with the provisions of subsection (a) of
41 this section, the governor shall appoint three commis-
42 sioners, one for a term of two years, one for a term of
43 four years and one for a term of six years, all the
44 terms beginning on the first day of July, one thousand
45 nine hundred seventy-nine. All future appointments
46 are for terms of six years, except that an appointment
47 to fill a vacancy is for the unexpired term only. The
48 commissioners whose terms are terminated by the
49 provisions of this subsection are eligible for
50 reappointment.

51 (c) No person while in the employ of, or holding any
52 official relation to, any public utility subject to the
53 provisions of this chapter, or holding any stocks or

54 bonds thereof, or who is pecuniarily interested there-
55 in, may serve as a member of the commission or as an
56 employee thereof. Nor may any such commissioner be
57 a candidate for or hold public office, or be a member
58 of any political committee, while acting as such
59 commissioner; nor may any commissioner or
60 employee of said commission receive any pass, free
61 transportation or other thing of value, either directly
62 or indirectly, from any public utility or motor carrier
63 subject to the provisions of this chapter. In case any of
64 the commissioners becomes a candidate for any public
65 office or a member of any political committee, the
66 governor shall remove him from office and shall
67 appoint a new commissioner to fill the vacancy
68 created.

69 (d) Effective the first day of July, one thousand nine
70 hundred eighty-four, and in light of the assignment of
71 new, substantial additional duties embracing new
72 areas and fields of activity under certain legislative
73 enactments, each commissioner shall receive a salary
74 of thirty-nine thousand two hundred forty dollars a
75 year to be paid in monthly installments from the
76 special funds in such amounts as follows:

77 (1) From the public service commission fund col-
78 lected under the provisions of section six, article three
79 of this chapter, thirty thousand two hundred ten
80 dollars;

81 (2) From the public service commission motor
82 carrier fund collected under the provisions of section
83 six, article six, chapter twenty-four-a of this code,
84 seven thousand five hundred twenty-five dollars; and

85 (3) From the public service commission gas pipeline
86 safety fund collected under the provisions of section
87 three, article five, chapter twenty-four-b of this code,
88 one thousand five hundred five dollars.

89 In addition to this salary provided for all commis-
90 sioners, the chairman of the commission shall receive
91 three thousand five hundred dollars a year to be paid
92 in monthly installments from the public service
93 commission fund collected under the provisions of

94 section six, article three of this chapter, on and after
95 the first day of July, one thousand nine hundred
96 eighty-four.

97 (e) Effective the first day of July, one thousand nine
98 hundred eighty-five, and in light of the assignment of
99 new, substantial additional duties embracing new
100 areas and fields of activity under certain legislative
101 enactments, each commissioner shall receive a salary
102 of forty-one thousand dollars a year to be paid in
103 monthly installments from the special funds in such
104 amounts as follows:

105 (1) From the public service commission fund col-
106 lected under the provisions of section six, article three
107 of this chapter, thirty-one thousand six hundred
108 dollars;

109 (2) From the public service commission motor
110 carrier fund collected under the provisions of section
111 six, article six, chapter twenty-four-a of this code,
112 seven thousand nine hundred dollars; and

113 (3) From the public service commission gas pipeline
114 safety fund collected under the provisions of section
115 three, article five, chapter twenty-four-b of this code,
116 one thousand five hundred dollars.

117 In addition to this salary provided for all commis-
118 sioners, the chairman of the commission shall receive
119 three thousand six hundred seventy-five dollars a year
120 to be paid in monthly installments from the public
121 service commission fund collected under the provi-
122 sions of section six, article three of this chapter, on and
123 after the first day of July, one thousand nine hundred
124 eighty-five.

125 (f) Effective the first day of July, one thousand nine
126 hundred eighty-eight, and in light of the assignment of
127 new, substantial additional duties embracing new
128 areas and fields of activity under certain legislative
129 enactments, each commissioner shall receive a salary
130 of forty-four thousand dollars a year to be paid in
131 monthly installments from the special funds in such
132 amounts as follows:

133 (1) From the public service commission fund col-
 134 lected under the provisions of section six, article three
 135 of this chapter, thirty-three thousand nine hundred
 136 dollars;

137 (2) From the public service commission motor
 138 carrier fund collected under the provisions of section
 139 six, article six, chapter twenty-four-a of this code,
 140 eight thousand five hundred dollars; and

141 (3) From the public service commission gas pipeline
 142 safety fund collected under the provisions of section
 143 three, article five, chapter twenty-four-b of this code,
 144 one thousand six hundred dollars.

145 In addition to this salary provided for all commis-
 146 sioners, the chairman of the commission shall receive
 147 three thousand six hundred seventy-five dollars a year
 148 to be paid in monthly installments from the public
 149 service commission fund collected under the provi-
 150 sions of section six, article three of this chapter, on and
 151 after the first day of July, one thousand nine hundred
 152 eighty-eight.

153 (g) Effective the first day of January, one thousand
 154 nine hundred ninety, each commissioner shall receive
 155 the salary set forth in section two-a, article seven,
 156 chapter six of this code to be paid in monthly install-
 157 ments from the special funds in such amounts as
 158 follows:

159 (1) From the public service commission fund col-
 160 lected under the provisions of section six, article three
 161 of this chapter, thirty-five thousand five hundred
 162 ninety-five dollars;

163 (2) From the public service commission motor
 164 carrier fund collected under the provisions of section
 165 six, article six, chapter twenty-four-a of this code,
 166 eight thousand nine hundred twenty-five dollars; and

167 (3) From the public service commission gas pipeline
 168 safety fund collected under the provisions of section
 169 three, article five, chapter twenty-four-b of this code,
 170 one thousand six hundred eighty dollars.

171 In addition to this salary provided for all commis-
172 sioners, the chairman of the commission shall receive
173 three thousand eight hundred dollars a year to be paid
174 in monthly installments from the public service
175 commission fund collected under the provisions of
176 section six, article three of this chapter, on and after
177 the first day of January, one thousand nine hundred
178 ninety.

179 (h) Effective the first day of November, one thou-
180 sand nine hundred ninety-one, and in light of the
181 assignment of new, substantial additional duties
182 embracing new areas and fields of activity under
183 certain legislative enactments, each commissioner
184 shall receive an annual salary of sixty thousand dollars
185 to be paid in monthly installments from the special
186 funds in such amounts as follows:

187 (1) From the public service commission fund col-
188 lected under the provisions of section six, article three
189 of this chapter, forty-eight thousand dollars;

190 (2) From the public service commission motor
191 carrier fund collected under the provisions of section
192 six, article six, chapter twenty-four-a of this code, ten
193 thousand dollars; and

194 (3) From the public service commission gas pipeline
195 safety fund collected under the provision of section
196 three, article five, chapter twenty-four-a of this code,
197 two thousand dollars.

198 In addition to this salary provided for all commis-
199 sioners, the chairman of the commission shall receive
200 five thousand dollars per annum to be paid in monthly
201 installments from the public service commission fund
202 collected under the provisions of section six, article
203 three of this chapter, on and after the first day of
204 January, one thousand nine hundred ninety-two.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 The jurisdiction of the commission shall extend to
2 all public utilities in this state, and shall include any

3 utility engaged in any of the following public services:

4 Common carriage of passengers or goods, whether
5 by air, railroad, street railroad, motor or otherwise, by
6 express or otherwise, by land, water or air, whether
7 wholly or partly by land, water or air; transportation
8 of oil, gas or water by pipeline; transportation of coal
9 and its derivatives and all mixtures and combinations
10 thereof with other substances by pipeline; sleeping car
11 or parlor car services; transmission of messages by
12 telephone, telegraph or radio; generation and trans-
13 mission of electrical energy by hydroelectric or other
14 utilities for service to the public, whether directly or
15 through a distributing utility; supplying water, gas or
16 electricity, by municipalities or others; sewer systems
17 servicing twenty-five or more persons or firms other
18 than the owner of the sewer systems; any public
19 service district created under the provisions of article
20 thirteen-a, chapter sixteen of this code; toll bridges,
21 wharves, ferries; solid waste facilities; and any other
22 public service: *Provided*, That natural gas producers
23 who provide natural gas service to not more than
24 twenty-five residential customers are exempt from the
25 jurisdiction of the commission with regard to the
26 provisions of such residential service: *Provided, how-*
27 *ever*, That upon request of any of the customers of
28 such natural gas producers, the commission may, upon
29 good cause being shown, exercise such authority as the
30 commission may deem appropriate over the operation,
31 rates and charges of such producer and for such length
32 of time as the commission may consider to be proper:
33 *Provided further*, That the jurisdiction the commission
34 may exercise over the rates and charges of municipi-
35 pally operated public utilities is limited to that author-
36 ity granted the commission in section four-b of this
37 article: *And provided further*, That the decision-
38 making authority granted to the commission in sec-
39 tions four and four-a of this article shall, in respect to
40 an application filed by a public service district, be
41 delegated to a single hearing examiner appointed from
42 the commission staff, which hearing examiner shall be
43 authorized to carry out all decision-making duties
44 assigned to the commission by said sections, and to

45 issue orders having the full force and effect of orders
46 of the commission.

47 The commission may, upon application, waive its
48 jurisdiction and allow a utility operating in an adjoining
49 state to provide service in West Virginia when:

50 (1) An area of West Virginia cannot be practicably
51 and economically served by a utility licensed to
52 operate within the state of West Virginia;

53 (2) Said area can be provided with utility service by
54 a utility which operates in a state adjoining West
55 Virginia;

56 (3) The utility operating in the adjoining state is
57 regulated by a regulatory agency or commission of the
58 adjoining state; and

59 (4) The number of customers to be served is not
60 substantial.

61 The rates the out-of-state utility charges West
62 Virginia customers shall be the same as the rate the
63 utility is duly authorized to charge in the adjoining
64 jurisdiction.

65 The commission, in the case of any such utility, may
66 revoke its waiver of jurisdiction for good cause.

§24-2-1b. Additional jurisdiction of commission.

1 Effective the first day of July, one thousand nine
2 hundred eighty-eight, in addition to all other powers
3 and duties of the commission as defined in this article,
4 the commission shall establish, prescribe and enforce
5 rates and fees charged by commercial solid waste
6 facilities, as defined in section two, article five-f,
7 chapter twenty of this code, that are owned or under
8 the direct control of persons or entities who are
9 regulated under section five, article two, chapter
10 twenty-four-a of this code. The commission shall
11 establish, prescribe and enforce rules and regulations
12 providing for the safe transportation of solid waste in
13 the state.

14 The public service commission shall study the

15 feasibility of incorporating and adopting guidelines for
 16 solid waste collection fees that are based upon the
 17 volume of solid waste generated by any person. This
 18 report shall be submitted to the governor and the
 19 members of the Legislature on or before the first day
 20 of January, one thousand nine hundred ninety-three.

§24-2-1c. Certificate of need required for solid waste facilities; priority of disposal.

1 (a) Any person who holds a valid permit, compliance
 2 order or administrative order allowing continued
 3 operation of a commercial solid waste facility in this
 4 state on the first day of September, one thousand nine
 5 hundred ninety-one, shall submit an application for a
 6 certificate of need with the public service commission,
 7 on forms prescribed by the commission, prior to the
 8 first day of March, one thousand nine hundred ninety-
 9 two. The commission shall grant such application
 10 within sixty days after submission of a complete
 11 application.

12 (b) Any person applying for a permit to construct,
 13 operate or expand a commercial solid waste facility as
 14 defined in section two, article five-f, chapter twenty of
 15 this code, or any person seeking a major permit
 16 modification from the division of natural resources
 17 first shall obtain a certificate of need from the public
 18 service commission. Application for such certificate
 19 shall be submitted on forms prescribed by the commis-
 20 sion. The commission shall grant or deny a certificate
 21 of need, in accordance with provisions set forth in this
 22 chapter. If the commission grants a certificate of need,
 23 the commission may include conditions not inconsis-
 24 tent with the criteria set forth in this section.

25 (c) For purposes of subsections (a) and (b) of this
 26 section, a complete application shall consist of the
 27 following and notwithstanding any other provision of
 28 this chapter to the contrary, such information con-
 29 tained in the application provided by the applicant
 30 shall not be confidential and shall be disclosable
 31 pursuant to the provisions of chapter twenty-nine-b of
 32 this code:

33 (1) The names of the owners or operators of the
34 facility including any officer, director, manager,
35 person owning five percent or more interest or other
36 person conducting or managing the affairs of the
37 applicant or of the proposed facility;

38 (2) The proposed or existing location of the facility;

39 (3) A description of the geographic area to be served
40 by the facility;

41 (4) The anticipated total number of citizens to be
42 served by the facility;

43 (5) The average monthly tonnage of solid waste to be
44 disposed of by the facility;

45 (6) The total monthly tonnage of solid waste for
46 which the facility is seeking a permit from the division
47 of natural resources;

48 (7) The anticipated lifespan and closure date of the
49 facility; and

50 (8) Any other information requested on the forms
51 prescribed by the public service commission.

52 (d) In considering whether to grant a certificate of
53 need the commission shall consider, but shall not be
54 limited to considering, the following factors:

55 (1) The total tonnage of solid waste generated within
56 the county;

57 (2) The total tonnage of solid waste generated within
58 the wasteshed;

59 (3) The current capacity and lifespan of other solid
60 waste facilities located within the county, if any;

61 (4) The current capacity and lifespan of other solid
62 waste facilities located within the wasteshed, if any;

63 (5) The current capacity and lifespan of other solid
64 waste facilities located within this state;

65 (6) The lifespan of the proposed or existing facility;

66 (7) The cost of transporting solid waste from the
67 points of generation within the county or wasteshed
68 and the disposal facility;

69 (8) The impact of the proposed or existing facility on
70 needs and criteria contained in the statewide solid
71 waste management plan; and

72 (9) Any other criteria which the commission regu-
73 larly utilizes in making such determinations.

74 (e) The public service commission shall deny a
75 certificate of need upon one or more of the following
76 findings:

77 (1) The proposed capacity is unreasonable in light of
78 demonstrated needs;

79 (2) The location of the facility is inconsistent with
80 the statewide solid waste management plan;

81 (3) The location of the facility is inconsistent with
82 any applicable county or regional solid waste manage-
83 ment plan;

84 (4) The proposed capacity is not reasonably cost
85 effective in light of alternative disposal sites;

86 (5) The proposal, taken as a whole, is inconsistent
87 with the needs and criteria contained in the statewide
88 solid waste management plan; or

89 (6) The proposal, taken as a whole, is inconsistent
90 with the public convenience and necessity.

91 (f) Any certificates of need granted pursuant to this
92 section shall be conditioned on acceptance of:

93 (1) Solid waste generated within the county in which
94 the facility is or is to be located; and

95 (2) Solid waste generated within the wasteshed in
96 which the facility is or is to be located.

97 (g) An application for a certificate of need shall be
98 submitted prior to submitting an application for
99 certificate of site approval in accordance with section
100 twelve-a, article nine, chapter twenty of this code.
101 Upon the decision of the commission to grant or deny

102 a certificate of need, the commission shall immediately
103 notify the solid waste management board and the
104 division of natural resources.

105 (h) Any party aggrieved by a decision of the com-
106 mission granting or denying a certificate of need may
107 obtain judicial review thereof in the same manner
108 provided in section one, article five of this chapter.

109 (i) No person may sell, lease or transfer a certificate
110 of need without first obtaining the consent and
111 approval of the commission pursuant to the provisions
112 of section twelve, article two of this chapter.

**§24-2-1h. Additional powers and duties of commission to
control flow of solid waste.**

1 (a) Upon the petition of any county or regional solid
2 waste authority, motor carrier or solid waste facility,
3 or upon the commission's own motion, the commission
4 may issue an order that solid waste generated in the
5 surrounding geographical area of a solid waste facility
6 and transported for processing or disposal by solid
7 waste collectors and haulers who are "motor carriers",
8 as defined in chapter twenty-four-a of this code, be
9 processed or disposed of at a designated solid waste
10 facility or facilities: *Provided*, That such order shall
11 not include:

12 (1) Disposal of solid waste at a solid waste facility by
13 the person who owns, operates or leases the solid
14 waste disposal facility if it is used exclusively to
15 dispose of waste originally produced by such person in
16 such person's regular business or personal activities or
17 by persons utilizing the facility on a cost-sharing or
18 nonprofit basis;

19 (2) Reuse or recycling of any solid waste; or

20 (3) Disposal of residential solid waste by an individ-
21 ual not in the business of hauling or disposing of solid
22 waste on such days and times as designated by the
23 director of the division of natural resources pursuant
24 to the provisions of section four-b, article five-f,
25 chapter twenty of this code.

26 (b) In determining whether to issue an order estab-
 27 lishing flow control to a solid waste facility, the
 28 commission shall consider, but shall not be limited to
 29 considering, the nature and composition of the solid
 30 waste, the environmental impact of controlling the
 31 flow of solid waste, the efficient disposal of solid waste,
 32 financial feasibility of proposed or existing solid waste
 33 facilities, the county or region solid waste control plan,
 34 the statewide solid waste control plan and the public
 35 convenience and necessity.

36 (c) The public service commission shall promulgate
 37 rules providing standards and criteria to effectuate the
 38 purposes of this section.

39 (d) Notwithstanding any provision of this code to the
 40 contrary, excepting rules of the public service commis-
 41 sion from legislative rule-making review, the public
 42 service commission shall propose a legislative rule in
 43 accordance with the provisions of article three, chap-
 44 ter twenty-nine-a of this code, which shall mandate
 45 that motor carriers transport source-separated recycla-
 46 ble materials to a recycling facility. Such legislative
 47 rule shall provide, at a minimum, for a separate rate
 48 for the transportation of such materials or that such
 49 motor carriers may contract with a customer to waive
 50 the charge for transporting such materials in exchange
 51 for the value of such materials.

52 (e) Notwithstanding any provision of this code to the
 53 contrary, the public service commission is hereby
 54 authorized to employ ten persons, in addition to any
 55 personnel positions otherwise authorized or allocated
 56 to the commission as of the effective date of this
 57 section to facilitate enforcement of duties imposed
 58 upon the commission in the regulation of solid waste
 59 disposal during the second extraordinary session of the
 60 Legislature, one thousand nine hundred ninety-one.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specif-

2 ically otherwise provided, shall not apply to:

3 (1) Motor vehicles operated exclusively in the
4 transportation of United States mail or in the trans-
5 portation of newspapers: *Provided*, That such vehicles
6 and their operators shall be subject to the safety rules
7 promulgated by the commission;

8 (2) Motor vehicles owned and operated by the
9 United States of America, the state of West Virginia,
10 or any county, municipality or county board of educa-
11 tion, urban mass transportation authority established
12 and maintained pursuant to article twenty-seven,
13 chapter eight of this code, or by any department
14 thereof, and any motor vehicles operated under a
15 contract with a county board of education exclusively
16 for the transportation of children to and from school
17 or such other legitimate transportation for the schools
18 as the commission may specifically authorize;

19 (3) Motor vehicles used exclusively in the transpor-
20 tation of agricultural or horticultural products, lives-
21 tock, poultry and dairy products from the farm or
22 orchard on which they are raised or produced to
23 markets, processing plants, packing houses, canneries,
24 railway shipping points and cold storage plants, and in
25 the transportation of agricultural or horticultural
26 supplies to such farms or orchards to be used thereon;

27 (4) Motor vehicles used exclusively in the transpor-
28 tation of human or animal excreta;

29 (5) Motor vehicles used exclusively in ambulance
30 service, or duly chartered rescue squad service;

31 (6) Motor vehicles used exclusively for volunteer fire
32 department service;

33 (7) Motor vehicles used exclusively in the transpor-
34 tation of coal from mining operations to loading
35 facilities for further shipment by rail or water carri-
36 ers: *Provided*, That such vehicles and their operators
37 shall be subject to the safety rules promulgated by the
38 commission;

39 (8) Motor vehicles used by petroleum commission

40 agents and oil distributors solely for the transportation
41 of petroleum products and related automotive pro-
42 ducts when such transportation is incidental to the
43 business of selling said products: *Provided*, That such
44 vehicles and their operators shall be subject to the
45 safety rules promulgated by the commission; and

46 (9) Motor vehicles owned, leased by or to, or con-
47 tracted with a recycling facility and used exclusively
48 for the transportation of source-separated recyclable
49 materials for transport to a facility for recycling:
50 *Provided*, That such vehicles and their operators shall
51 be subject to the safety rules promulgated by the
52 commission.

Enr. Com. Sub. for Com. Sub. for S. B. No. 18] 160

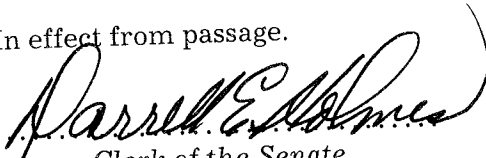
The Joint Committee on Enrolled Bills hereby
certifies that the foregoing bill is correctly enrolled.

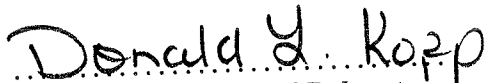

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Chairman Senate Committee


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Chairman House Committee

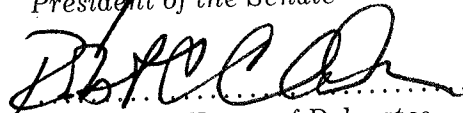
Originated in the Senate.

In effect from passage.

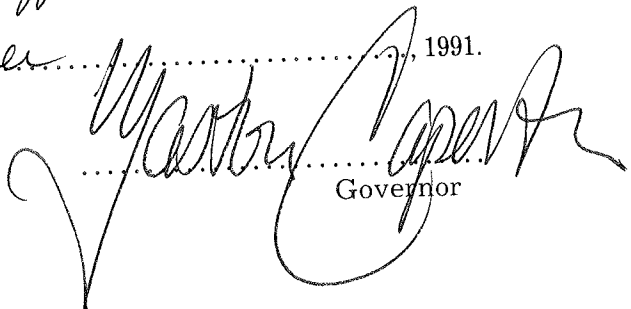

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this the 30th
day of October 1991.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 10/28/91

Time 3:51 pm