WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1991

ENROLLED
Committee Substitute for Committee Substitute for
SENATE BILL NO. 18

(By Senators, Annigett, Mr. President and)
Baley, 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-a, six, seven, 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-b; 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 requires a different meaning:

2 (1) “Board” means the solid waste management board created in section four of this article, heretofore known as the West Virginia state solid waste authority, the duties, powers, responsibilities and functions of which are specified in this article. All references in this code to the West Virginia resource recovery — solid waste disposal authority shall be construed as references to the solid waste management board.

3 (2) “Bond” or “solid waste disposal revenue bond” means a revenue bond or note issued by the solid waste management board, heretofore known as the
West Virginia resource recovery — solid waste disposal authority, to effect the intents and purposes of this article.

(3) “Construction” includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

(4) “Cost” means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this article by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and
other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the provisions of this article.

(5) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(6) "Industrial waste" means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

(7) "Owner" includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(8) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity whatever.

(9) "Pollution" means the discharge, release, escape
or deposit, directly or indirectly, of solid waste of
whatever kind or character, on lands or in waters in
the state in an uncontrolled, unregulated or unap-
proved manner.

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

(11) "Solid waste" means any garbage, paper, litter,
refuse, cans, bottles, waste processed for the express
purpose of incineration, sludge from a waste treatment
plant, water supply treatment plant or air pollution
control facility, other discarded material, including
offensive or unsightly matter, solid, liquid, semisolid
or contained liquid or gaseous material resulting from
industrial, commercial, mining or community activi-
ties but does not include solid or dissolved material in
sewage, or solid or dissolved materials in irrigation
return flows or industrial discharges which are point
sources and have permits under article five-a, chapter
twenty of this code, or source, special nuclear or by-
product material as defined by the Atomic Energy Act
of 1954, as amended, including any nuclear or by-
product material considered by federal standards to be
below regulatory concern, or a hazardous waste either
identified or listed under article five-e, chapter twenty
of this code, or refuse, slurry, overburden or other
waste or material resulting from coal-fired electric
power or steam generation, the exploration, develop-
ment, production, storage and recovery of coal, oil and
gas, and other mineral resources placed or disposed of
at a facility which is regulated under chapter twenty-
two, twenty-two-a or twenty-two-b of this code, so
(12) "Solid waste facility" means any system, facility, land, contiguous land, improvements on land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

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

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

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

The board shall be composed of seven members. The secretary of the department of health and human resources and the director of the division of natural resources, or their designees, shall be members ex officio of the board. The other five members of the board shall be appointed by the governor, on the effective date of this section, by and with the advice and consent of the Senate, for terms of one, two, three, four and five years, respectively. Two appointees shall be persons having at least three years of professional experience in solid waste management, civil engineering or regional planning and three appointees shall be representatives of the general public. The successor of each such appointed member shall be appointed for a term of five years in the same manner the original appointments were made and so that the representation on the board as set forth in this section is preserved, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor.

No more than three of the appointed board members may at any one time be from the same congressional district or belong to the same political party. No appointed board member may be an officer or employee of the United States or this state. Appointed board members may be reappointed to serve addi-
tional terms. All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars. Appointed members may be removed from the board only for the same causes as elective state officers may be removed.

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

The ex officio members of the board shall not receive any compensation for serving as a board member. Each of the five appointed members of the board shall receive compensation of fifty dollars for each day actually spent in attending meetings of the board or in the discharge of his duties as a member of the board, but not to exceed two thousand five hundred dollars in any fiscal year. Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board. All such compensation and expenses incurred by board members shall be payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriation.
The board shall meet at least four times annually and at any time upon the call of its chairman or upon the request in writing to the chairman of four board members.

The board shall appoint a director as its chief executive officer. The director shall have successfully completed an undergraduate education and, in addition, shall have two years of professional experience in solid waste management, civil engineering, public 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.

To accomplish the public policy and purpose and to meet the responsibility of the state as set forth in this article, the solid waste management board shall designate and establish solid waste disposal sheds and it may initiate, acquire, construct, maintain, repair and operate solid waste disposal projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects by such persons and governmental agencies; and may issue solid waste disposal revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to governmental agencies, such projects. A solid waste disposal project shall not be undertaken unless the board determines that the project is consistent with federal law, with its solid waste disposal shed plan, with the standards set by the state water resources board and the section of water resources of the division of natural resources for any waters of the state which may be affected thereby, with the air quality standards set by the West Virginia air pollution control commission and with health standards set by the division of health. Any resolution of the board providing for acquiring or constructing such projects or for making a loan or grant for such
projects shall include a finding by the board that such
determinations have been made. A loan agreement
shall be entered into between the board and each
governmental agency to which a loan is made for the
acquisition or construction of a solid waste disposal
project, which loan agreement shall include without
limitation the following provisions:

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

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

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

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

The board shall comply with all of the provisions of
federal law and of article one of this chapter and any
rules and regulations promulgated thereunder which
pertain to solid waste collection and disposal.
§16-26-6. Powers, duties and responsibilities of board generally.

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

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

(2) Adopt an official seal.

(3) Maintain a principal office which shall be in Kanawha County, and, if necessary, regional suboffices at locations properly designated or provided.

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

(5) Make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects and adopt rules and procedures for making such loans and grants.

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

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

(8) Issue solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds of the state, payable solely from revenues as
provided in section ten of this article, unless the bonds
are refunded by refunding bond, for the purpose of
paying all or any part of the cost of acquiring, con-
structing, reconstructing, enlarging, improving, fur-
nishing, equipping, or repairing solid waste disposal
projects, or making loans to persons or to governmen-
tal agencies for the acquisition, design or construction
of solid waste disposal projects or parts thereof.

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

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

(11) Make and enter into all contracts and agree-
ments and execute all instruments necessary or
incidental to the performance of its duties and the
execution of its powers. When the cost under any such
contract or agreement, other than compensation for
personal services, involves an expenditure of more
than two thousand dollars, the board shall make a
written contract with the lowest responsible bidder
after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. A contract or lease for the operation of a solid waste disposal project constructed and owned by the board or an agreement for cooperation in the acquisition or construction of a solid waste disposal project pursuant to section sixteen of this article is not subject to the foregoing requirements and the board may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The board may reject any and all bids. A bond with good and sufficient surety, approved by the board, shall be required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents, engineers, accountants, auditors and other employees, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of solid waste disposal revenue bonds or notes issued by the board, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any solid waste disposal
Project or for research and development with respect to solid waste disposal projects and solid waste disposal sheds and receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

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

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

(16) Charge, alter and collect rentals and other charges for the use or services of any solid waste disposal project as provided in this article, and charge and collect reasonable interest, fees and other charges in connection with the making and servicing of loans to governmental agencies in furtherance of the purposes of this article.

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

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

(b) The solid waste management board may not expend an amount of money greater than one thousand dollars on any one purchase nor disburse grant moneys without first obtaining the written approval of the secretary of commerce, labor and environmental resources.
§16-26-6a. Development of state solid waste management plan.

1 On or before the first day of January, one thousand nine hundred ninety-three, the solid waste management board shall prepare an overall state plan for the proper management of solid waste: Provided, That such plan shall be consistent with the findings and purposes of articles five-f, nine and eleven of chapter twenty of this code: Provided, however, That such plan shall incorporate the county or regional plans developed pursuant to sections seven and twelve-a of article nine of chapter twenty of this code, as amended: Provided further, That such plan shall be updated every two years following its initial 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 to time, solid waste disposal revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance in whole or in part by loans to governmental agencies, one or more solid waste development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of one hundred million dollars: Provided, That up to twenty-five million dollars may be issued for projects located or to be located in areas which lack adequate sewer or water service and the area is in need of such services to comply with federal requirements.

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

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

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

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

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

(a) Before issuing any revenue bonds in accordance with the provisions of this article, the board shall consult with and be advised by the West Virginia water development authority as to the feasibility and necessity of the proposed issuance of revenue bonds. Such consultation shall include, but not be limited to, the following subjects:
(1) The relationship of the proposed issuance of revenue bonds to the statutory debt limitation provided for in section ten of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 All moneys, properties and assets acquired by the board, whether as proceeds from the sale of solid waste disposal revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of solid waste disposal revenue bonds or except when invested pursuant to section fifteen of this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds of any issue shall provide that any officer to whom such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and 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 of June, one thousand nine hundred ninety-two, and every second fiscal year thereafter, the Legislature shall cause to be performed a post audit and a performance audit for the intervening two year period of the recipients of any grant or loan provided by the solid
waste management board. The audit shall cover the
disbursement of such loans or grants provided pursu-
ant to section thirteen, article nine, chapter twenty of
this code, the use of such loans or grants by the
recipient as well as all other appropriate subject
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.

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

The board may charge, alter and collect rentals, fees,
service charges or other charges for the use or services
of any solid waste disposal project, and contract in the
manner provided by this section with one or more
persons, one or more governmental agencies, or any
combination thereof, desiring the use or services
thereof, and fix the terms, conditions, rentals, fees,
service charges or other charges for such use or
services. Such rentals, fees, service charges or other
charges shall not be subject to supervision or regula-
tion by any other authority, department, commission,
board, bureau or agency of the state, and such contract
may provide for acquisition by such person or govern-
mental agency of all or any part of such solid waste
disposal project for such consideration payable over
the period of the contract or otherwise as the board in
its sole discretion determines to be appropriate, but
subject to the provisions of any resolution authorizing
the issuance of solid waste disposal revenue bonds or
notes or solid waste disposal revenue refunding bonds
of the board. Any governmental agency which has
power to construct, operate and maintain solid waste
disposal facilities may enter into a contract or lease
with the board whereby the use or services of any
solid waste disposal project of the board will be made
available to such governmental agency and pay for
such use or services such rentals, fees, service charges
or other charges as may be agreed to by such govern-
mental agency and the board.

Any governmental agency or agencies or combina-
tion thereof may cooperate with the board in the
acquisition or construction of a solid waste disposal
project and shall enter into such agreements with the
board as are necessary, with a view to effective
cooperative action and safeguarding of the respective
interests of the parties thereto, which agreements
shall provide for such contributions by the parties
thereto in such proportion as may be agreed upon and
such other terms as may be mutually satisfactory to
the parties, including, without limitation, the authori-
zation of the construction of the project by one of the
parties acting as agent for all of the parties and the
ownership and control of the project by the board to
the extent necessary or appropriate for purposes of the
issuance of solid waste disposal revenue bonds by the
board. Any governmental agency may provide such
contribution as is required under such agreements by
the appropriation of money or, if authorized by a
favorable vote of the electors to issue bonds or notes
or levy taxes or assessments and issue notes or bonds
in anticipation of the collection thereof, by the issu-
ance of bonds or notes or by the levying of taxes or
assessments and the issuance of bonds or notes in
anticipation of the collection thereof, and by the
payment of such appropriated money or the proceeds
of such bonds or notes to the board pursuant to such
agreements.

Any governmental agency, pursuant to a favorable
vote of the electors in an election held before or after
the effective date of this section for the purpose of
issuing bonds to provide funds to acquire, construct or
equip, or provide real estate and interests in real
estate for a solid waste disposal project, whether or not
the governmental agency at the time of such election
had the board to pay the proceeds from such bonds or
notes issued in anticipation thereof to the board as
provided in this section, may issue such bonds or notes
in anticipation of the issuance thereof and pay the
proceeds thereof to the board in accordance with an
agreement between such governmental agency and
the board: Provided, That the legislative board of the
governmental agency finds and determines that the
solid waste disposal project to be acquired or con-
structed by the board in cooperation with such govern-
mental agency will serve the same public purpose and
meet substantially the same public need as the project
otherwise proposed to be acquired or constructed by
the governmental agency with the proceeds of such
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.


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

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

(5) "Generation" means the act or process of producing hazardous waste materials;


(7) "Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may: (A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

(8) "Hazardous waste fuel" means fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article, or produced from any hazardous waste identified or listed pursuant to section six;

(9) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

(10) "Land disposal" means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;

(11) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and
destination of hazardous waste during its transporta-
tion from the point of generation to the point of
disposal, treatment or storage;

(12) “Person” means any individual, trust, firm,
joint stock company, public, private or government
corporation, partnership, association, state or federal
agency, the United States government, this state or
any other state, municipality, county commission or
any other political subdivision of a state or any
interstate body;

(13) “Resource Conservation and Recovery Act”
means the federal Resource Conservation and Recov-
er Act of 1976, 90 Stat. 2806, as amended;

(14) “Section” means the section of waste manage-
ment of the division of natural resources;

(15) “Site work zones” means an exclusion zone, a
decontamination zone, or a clean zone established at a
hazardous waste site before clean-up work begins to
prevent or reduce the movement of contaminants
from the site to uncontaminated areas and to control
public, employee and equipment exposure to hazard-
ous substances:

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

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

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

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

(17) “Subtitle C” means Subtitle C of the Resource
Conservation and Recovery Act;
(18) “Treatment” means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

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

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

(a) The director has overall responsibility for the promulgation of rules and regulations under this article. The director shall promulgate the following rules and regulations, in consultation with the department of health and human resources, the air pollution control commission, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the division of highways, the department of agriculture, the water resources board and the division of energy, offices of mines and minerals and oil and gas. In promulgating and revising such rules and regulations the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection
(b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

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

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

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

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

(ii) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other
wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes listed in paragraph (A) of this subdivision may be required by the director of the division of natural resources through regulation prescribed under authority of this section:

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

(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record;

(3) Rules and regulations establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting: (A) Record-keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to public health or the environment and the disposition of such wastes; (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste; (C) use of appropriate containers for such hazardous waste; (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting, treating, storing or disposing of such wastes; (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on
the premises where the waste is generated) with respect to which permits have been issued which are required: (i) By this article or any rule and regulation required by this article to be promulgated; (ii) by Subtitle C of the Resource Conservation and Recovery Act; (iii) by the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the Resource Conservation and Recovery Act; or (iv) by Title I of the federal Marine Protection, Research and Sanctuaries Act; and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules and regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such rules and regulations and shall include, but need not be limited to, requirements respecting:

(A) Maintaining records of all hazardous wastes identified or listed under this article which are treated, stored or disposed of, as the case may be, and the manner in which such wastes were treated, stored or disposed of; (B) satisfactory reporting, monitoring and inspection and compliance with the manifest system referred to in subdivision (3) of subsection (a) of this section; (C) treatment, storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the director; (D) the location, design and construction of such hazardous waste treatment, disposal or storage facilities; (E) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any such...
hazardous waste; (F) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however, no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste; and (G) compliance with the requirements of section eight of this article respecting permits for treatment, storage or disposal;

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

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

(7) Rules and regulations establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites: Provided, That with respect to clean-up operations at any site work zone at a hazardous waste site not having a valid treatment, storage or disposal permit pursuant to section eight of this article, such rules and regulations shall provide that:

(A) Workers engaged in hazardous waste operation within the exclusion zone and the decontamination zone shall first have received a minimum of eighty hours of instruction off the site, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.
(B) Equipment operators and transport vehicle operators engaged in hazardous waste operation within the exclusion zone and the decontamination zone shall first have received a minimum of forty hours of training, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(C) Supervisors engaged in hazardous waste operation within the exclusion zone and the decontamination zone shall first have received as a minimum the same number of hours of instruction as the workers for whom the supervisor is directly responsible, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor;

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

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

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

(11) Rules and regulations establishing a schedule of fees to recover the costs of processing permit applications and permit renewals;

(12) Rules and regulations, including exemptions and variances, as appropriate: (A) Establishing standards and prohibitions relating to the management of hazardous waste by land disposal methods; (B) establishing standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids 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.


1 By the first day of September, one thousand nine hundred ninety-two, the director of the division of
natural resources shall prepare and submit a report concerning the proper handling and disposal of household hazardous waste. The report shall include:

1. A proposed definition of what constitutes household hazardous waste;
2. An overview of current disposal methods;
3. An analysis of programs in other states designed to address the subject of household hazardous wastes;
4. Recommendations for the establishment of a comprehensive state program to ensure the proper handling and disposal of household hazardous waste;
5. A projection of the potential costs of the program;
6. A recommendation concerning potential funding sources for the program; and
7. Any other matters deemed appropriate and relevant.

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

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

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

(a) The purpose of this article is to transfer jurisdiction over the management of solid waste under section nine, article one, chapter sixteen of this code from the division of health to the division of natural resources and to establish a comprehensive program of controlling solid waste disposal.

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

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

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

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

§20-5F-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms:
3
4 (a) "Approved solid waste facility" means a solid
waste facility or practice which has a valid permit under this article.

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

(c) “Chief” means the chief of the section of waste management of the division of natural resources.

(d) “Municipal solid waste incineration” means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

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

(f) “Division” means the division of natural resources.

(g) “Director” means the director of the division of natural resources.

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

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

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

(k) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a, chapter twenty of this code, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to such chapters. "Solid waste" shall not include materials which are recycled by being used or reused in an industrial process to make a
product, as effective substitute for commercial products, or are returned to the original process as a substitute for raw material feed stock.

(1) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

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

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

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

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

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

(r) "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation, or any other method by which solid waste is incinerated.

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

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

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

In addition to all other powers, duties, responsibilities and authority granted and assigned to the director and chief in this code and elsewhere described by law, they are hereby empowered as follows:

(a) The director shall adopt rules and regulations in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and regulations and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules and regulations the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, origin or characteristics of the solid waste,
potential for contamination of public water supply, 
requirements for public roadway standards and design 
for access to the facilities with approval by the 
commissioner of the department of highways, public 
sentiment, the financial capability of the applicant, soil 
and geological considerations and other natural 
resource considerations. All existing rules and regula-
tions of the department of health relating to solid 
wa...
(2) Has misrepresented a material fact in applying to
the director for a permit;

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

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

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

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

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

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

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

h) The director or chief shall require and set the
amount of performance bonds for persons engaged in
the practice of solid waste disposal in this state, pursuant to section five-b of this article.

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

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

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

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

(A) The permit applicant;

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

(C) Parties related to the applicant by blood, marriage or business association, including the relationship to the applicant.

(2) The names and addresses of the owners of record
of surface and subsurface areas within, and contiguous
to, the proposed permit area.

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

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

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

(B) For corporations, the principal shareholders:

(C) For corporations, the names, principal places of
businesses and internal revenue service tax identifica-
tion numbers of United States parent corporations of
the applicant, including ultimate parent corporations
and United States subsidiary corporations of the
applicant and the applicant’s parent corporations; and

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

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

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

(B) The nature of the relationship or participation
with the corporation or other person or municipality.
(6) An application shall list permits or licenses, issued by the division or other environmental regulatory agency to each person or municipality identified in paragraph (1) and to other related parties to the applicant, that are currently in effect or have been in effect in at least part of the previous ten years. This list shall include the type of permit or license, number, location, issuance date and when applicable, the expiration date.

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

(i) Compliance information. — An application shall contain the following information for the ten-year period prior to the date on which the application is filed:

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

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the division, and civil penalty actions adjudicated by the state, against the applicant or a related party concerning any environmental law, regulation, or order of the division, or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions.
(3) A description of a summary, misdemeanor or felony conviction, a plea of guilty or plea of no contest that has been obtained in this state against the applicant or a related party under any environmental law or regulation concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions.

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

(5) A description of a consent order, consent adjudication, consent decree or settlement agreement involving the applicant or a related party concerning any environmental law or regulation in which the division, other governmental agencies, the United States Environmental Protection Agency, or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, a decree or agreement.

(6) For facilities and activities identified under paragraph (1) of this subdivision, a statement of whether the facility or activity was the subject of an administrative order, consent agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the division has denied a permit application filed by the applicant or a related party, based on compliance status.
(7) When the applicant is a corporation, a list of the principal shareholders that have also been principal shareholders of other corporations which have committed violations or any environmental law or regulation. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationship between the principal shareholder and both the applicant and the other corporation.

(8) A description of a misdemeanor or felony conviction, a plea of guilty and a plea of no contest, by the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the convictions or pleas, and the date, location and nature of the offense.

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

(m) All of the information provided by the applicant pursuant to this section shall not be confidential and shall be disclosable pursuant to the provisions of 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-five dollars payable upon the filing of the application therefor with the county, county solid waste authority or regional solid waste authority, as the case may be.

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

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

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

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

(b) Except as provided in section four-d of this
article, the maximum quantity of solid waste which
may lawfully be handled at any commercial solid
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.

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

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

(2) Entered into a contract with a county commission
regarding the construction and operation of a solid
waste facility, which contract contains rates for the
disposal of solid waste originating within the county;
(3) Obtained, pursuant to section one-f, article two, chapter twenty-four of this code, following a public hearing, an order from the public service commission approving the rates established in the contract with the county commission; and

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

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

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

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

"Shall a commercial solid waste facility, permitted to
handle up to, but no more than fifty thousand tons of solid waste per month be located within ______ County, West Virginia?

☐ For the facility

☐ Against the facility

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

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

(c) If a person submits to a referendum in accordance with this section, all approvals, certificates, and permits granted and all actions undertaken by a regional or county solid waste authority or county commission with regard to the person's commercial solid waste facility within the county under previously enacted sections of articles five-f and nine of this chapter shall be deemed valid, complete and in full compliance with all the requirements of law and any defects contained in such approvals, certificates, permits or actions shall be deemed cured and such defects may not be invoked to invalidate any such approval, certificate, permit or action.

(d) Notwithstanding any provision of this code the contrary, any person described in subsection (a) of this section who complies with the referendum requirement of this section and complies with the permitting requirements of the division of natural resources provided in section five, article five-f of this chapter, shall not be required to comply with the requirements of section twelve-b, twelve-c, twelve-d or twelve-e,
Provided, That such person shall be entitled to receive a certificate of need pursuant to the provisions of subsection (a), section one-c, article two, chapter twenty-four of this code to handle the tonnage level authorized pursuant to subsection (a) of this section.

(e) The purpose of this section is to allow any person who satisfies the four criteria contained in subsection (a), notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of such criteria, to submit the question of siting a facility that accepts up to fifty thousand tons within the county to a referendum in order to obtain a decision at the county or regional level regarding the siting of the facility and that submission of this question at the county level shall be the only approval, permit or action required at the county or regional level to establish and site the proposed facility.

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

(a) Open dumps are prohibited and it shall be unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on his property unless that open dump is under a compliance schedule approved by the chief. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm shall not be deemed to constitute a violation of this section if such open dump did not constitute a violation of law on the first day of January, one thousand nine hundred eighty-eight, and unauthorized dumps which were created by unknown persons shall not constitute a violation of this section: Provided, That no person shall contribute additional solid waste to any such dump after the first day of April, one thousand nine hundred eighty-eight, except that the owners of
the land on which unauthorized dumps have been or are being made shall not be liable for such unauthorized dumping unless such landowners refuse to cooperate with the division of natural resources in stopping such unauthorized dumping.

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

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

(d) All existing permits of the division of health for solid waste facilities under section nine, article one, chapter sixteen of this code shall continue in full force and effect until a permit is issued for that approved solid waste facility under this article: Provided, That all such existing permits of the division of health shall expire within five years of the tenth day of June, one thousand nine hundred eighty-eight. Within four years of the the tenth day of June, one thousand nine hundred eighty-eight, all persons holding such division of health permits shall apply to the chief for a permit
Provided, however, That the chief division permits to reapply under this section prior to four years from the tenth day of June, one thousand nine hundred eighty-eight, if persistent violations of this article, any permit term or condition, orders or rules promulgated under this article, exist at that facility. Notwithstanding any other provision contained in this subsection, the division of natural resources may enter an extension order for a period of two years while an application for a permit pursuant to this article is pending.

(e) No person may dispose in the state of any solid waste, whether such waste originates in state or out of state, in a manner which endangers the environment or the public health, safety or welfare as determined by the director of the division of natural resources: Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director of the division of natural resources, the director of the division of health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

(f) To the extent permissible by law, a commercial solid waste facility shall first ensure that the disposal needs of the county, or if applicable the region, in which it is located are met. If the county solid waste authority, or regional solid waste authority if applicable, in which the facility is located determines that the present or future disposal needs of the county, or if applicable the region, are not being, or will not be, met by the commercial solid waste facility, such authority may apply to the director of the division of natural resources to modify the applicable permit in order to reduce the total monthly tonnage of out of county waste, or if applicable, out of region waste, the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage generated by the county, or if applicable the region, in which the facility is located.
(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, not otherwise allowed by an existing permit, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division of natural resources in accordance with the provisions of this article.

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

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

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

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

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

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

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

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

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

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provi-
(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof shall be liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

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

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

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

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

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

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

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources is exempt from the solid waste assessment fee.

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

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

(h) Dedication of proceeds. — The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited, at least monthly in an account designated by the director of the division of natural resources. The director shall allocate twenty-five cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is
collected and shall deposit the total amount so allocated into the “Solid Waste Reclamation and Environmental Response Fund” to be expended for the purposes hereinafter specified. The first one million dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Solid Waste Enforcement Fund” and expended for the purposes hereinafter specified. The next two hundred fifty thousand dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Resource Recovery – Solid Waste Disposal Authority Reserve Fund” which shall be renamed and hereinafter referred to as the “Solid Waste Management Board Reserve Fund”, and expended for the purposes hereinafter specified: Provided, That in any year in which the water development authority determines that the solid waste management board reserve fund is adequate to defer any contingent liability of the fund, the water development authority shall so certify to the director of the division of natural resources and the director shall then cause no less than fifty thousand dollars nor more than two hundred fifty thousand dollars to be deposited to the fund: Provided, however, That in any year in which the water development authority determines that the solid waste management board reserve fund is inadequate to defer any contingent liability of the fund, the water development authority shall so certify to the director of the division of natural resources and the director shall then cause not less than two hundred fifty thousand dollars nor more than five hundred thousand dollars to be deposited in the fund: Provided further, That if a facility owned or operated by the state of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes in whole or in part to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the solid waste management board, then in that event the solid waste management board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall
deposit such withheld funds in the appropriate reserve fund. The director of the division of natural resources shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the state treasury:

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

2. The "Solid Waste Management Board Reserve Fund", which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to article twenty-six, chapter sixteen of this code;

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

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

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

2. The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

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

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

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

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

1. Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

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

3. Institute a civil action in accordance with subsection (e) of this section; or

4. Request the attorney general, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this
(b) Any person who willfully or negligently violates the provisions of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to the same criminal penalties as set forth in section nineteen, article five-a of this chapter.

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

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

(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.

(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.
(e) The director or chief may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule, regulation or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director or chief to post bond nor to allege or prove at any state of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

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

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

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

1. Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;
2. Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage, or disposal of solid waste, or of any rule or regulation adopted pursuant thereto;
3. Coercing a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee; or
4. Preventing, without authorization of the division, any permittee from disposing of solid waste at a
§20-5F-8. Limited extension of solid waste facility closure deadline.

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

(b) No later than the first day of November, one thousand nine hundred ninety-one, any facility seeking an extension of its closure deadline must submit to the division of natural resources an application sufficient to support the requirements of subsection (a) of this section.

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

(d) Any party who is aggrieved by an order of the director regarding the grant or denial of an extension of the closure deadline for a solid waste facility pursuant to this section, may obtain judicial review thereof in the same manner as provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in said section, in the circuit court of Kana-
wha County: Provided, That the court shall not in any manner permit the continued acceptance of solid waste at the facility pending review of the decision of the director.

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

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


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

(b) In the case where a permittee has entered into a repayment arrangement with the director in order to obtain a permit under this article, the repayment of the funds shall be considered by the public service commission a reasonable cost of operating the newly permitted landfill in determining rates to be charged at the landfill.
§20-5F-10. Municipal solid waste incineration and backhauling prohibited; exceptions.

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

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


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

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

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

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

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

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

(5) Discussion of the impact on the environment of state ownership and control of solid waste disposal
(6) Discussion of the public health, welfare and convenience issues raised by state ownership.

c) The director and the chairman shall utilize as much as practicable the resources, human and otherwise, of the department of natural resources, the public service commission, the solid waste management board and the county and regional solid waste management authorities.

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

Notwithstanding any provision of this code to the contrary, the county commission of any county containing a Class A facility may, in addition to any fee otherwise imposed by law, impose a fee, not to exceed five dollars per ton of solid waste received from outside the wasteshed in which the facility is located and not to exceed two dollars per ton for solid waste received from within said wasteshed for solid waste disposed in said facility: Provided, That any moneys received by a county commission pursuant to this section shall be expended exclusively for capital improvements to the infrastructure within the county, including, but not limited to, water supply treatment, waste treatment, sewage systems and road maintenance, as well as the expenses associated therewith.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

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

The Legislature finds that:

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

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

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

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

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

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

§20-5N-2. Definitions.

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

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

(2) “Director” means the director of the division of natural resources of the department of commerce, labor and environmental resources, or his or her authorized representative;

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

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

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

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

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

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

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

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

(2) Construction of all closure-related structures necessary to provide sufficient leachate management, sediment and erosion control, gas management, groundwater monitoring and final cover and cap, all to meet the closure-related requirements of article five-f of this chapter and rules promulgated pursuant
thereto; and
(3) All surface water and groundwater monitoring activities required pursuant to articles five-a and five-f of this chapter and applicable rules promulgated thereunder.

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

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

(a) Imposition. — A solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of four dollars per ton or like ratio on any part thereof of solid waste, except as provided in subsections (e) and (i) of this section: Provided, That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that such facility is required by the public service commission to set aside for the purpose of closure of that portion of the facility required by the solid waste management regulations to close by the thirtieth day of November, one thousand nine hundred ninety-one or ninety-two, including any extensions authorized pursuant to section eight, article five-f of this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.
(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

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

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

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

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

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provi-
(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof shall be liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

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

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

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

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

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

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

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources as exempt from the solid waste assessment fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§20-5N-5. Limitation on assistance.

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

(1) The permittee of a landfill that does not have a liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-one, except for those landfills granted a limited extension pursuant to the provisions of section eight, article five-f of this chapter and ceases accepting solid waste on or before the extension deadline as determined by the director; or the permittee of a landfill that has only a single liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-two;

(2) The permittee of the landfill must demonstrate to the satisfaction of the director that it does not have the financial resources on hand or the ability to generate the amounts needed to comply, in a timely manner, with the closure requirements provided in article five-f of this chapter and any rules promulgated pursuant thereto; and
§20-5N-6. Application for closure assistance.

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

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

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

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

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

(a) The “Closure Cost Assistance Fund” is hereby created as a special revenue account in the state treasury. The fund shall operate as a special fund whereby all deposits and payments thereto shall not expire to the general revenue fund, but shall remain in such account and be available for expenditure in the succeeding fiscal year. Separate sub-accounts may be established within the special account for the
purpose of identification of various revenue resources and payment of specific obligations.

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

(c) The fund consists of the following:

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

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

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

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

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


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

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

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

§20-5N-16. 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 to this article determines action, not set forth in subsection (b), section three of this article, is necessary to prevent or remediate any adverse effects of the landfill he or she shall notify the permittee and make and enter an order directing the permittee to take corrective or remedial action. The order shall contain findings of fact upon which the director based his or her determination to make and enter such order. The director shall fix a time limit for the completion of such action.

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

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

4 The costs reasonably incurred in any remedial action taken by the director as provided in this article may be paid for initially by amounts available to the director in the fund created in subdivision (3), subsection (h), section five-a, article five-f of this chapter or, to the extent funds are available, from the fund created in section seven of this article, and such sums so expended, if not promptly repaid by the permittee upon request of the director, may be recovered from the permittee by appropriate civil action to be initiated by the attorney general upon request of the director.

5 All funds so recovered shall be deposited in the fund from which said funds were expended.

§20-5N-11. Right of entry.

1 The director or his or her duly authorized represen-
tatives have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of a landfill, to determine the feasibility of the remediation or prevention of such adverse effects and to perform the activities set forth in sections three and ten of this article. Such entry is as an exercise of the police power of the state for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon.

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

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


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

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

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

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

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

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

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

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

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

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

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Conservation Officer-In-Training (first year) .... $18,617
Conservation Officer (second year) .............. $20,806
Conservation Officer (third year) ............... $21,078
Conservation Officer (fourth year) .............. $21,290
Conservation Officer (after fifth year) .......... $22,868
Conservation Officer (after tenth year) ......... $24,446
Conservation Officer (after fifteenth year) .............. $25,846
Sergeant ................................................. $29,469
Lieutenant .............................................. $32,289
Captain .................................................... $36,675
Major ....................................................... $38,958
Lieutenant Colonel ........................................ $41,000
Colonel....................................................... 

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

(c) This section shall not apply to special or emergency conservation officers appointed under the authority of section one of this article.

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

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

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

The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state’s environmental quality including both surface and groundwaters which provide essential and irreplaceable sources of domestic and industrial water supplies; (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper
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
It is further the purpose of the Legislature to reduce
our solid waste management problems and to meet the
purposes of this article by requiring county and
regional solid waste authorities to establish programs
and plans based on an integrated waste management
hierarchy. In order of preference, the hierarchy is as
follows:

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

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

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

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

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

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


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
facility and shall not include an approved solid waste
facility owned and operated by a person for the sole
purpose of disposing of solid wastes created by that
person or that person and another person on a cost-
sharing or nonprofit basis and shall not include the
legitimate reuse and recycling of materials for struc-
tural fill, road base, mine reclamation, and similar
applications.

18 (c) “Class A facility” means a commercial solid
19 waste facility which handles an aggregate of between
ten and thirty thousand tons of solid waste per month.
“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
an average daily quantity of mixed solid waste equal
to or exceeding one hundred tons each working day, or
serves or is expected to serve a population equal to or
exceeding forty thousand persons, but which does not
receive solid waste exceeding an aggregate of ten
thousand tons per month. Class B facilities do not
include construction/demolition facilities: Provided,
That the definition of Class B facility may include
such reasonable subdivisions or subclassifications as
the director may establish by legislative rule proposed
in accordance with the provisions of chapter twenty-
nine-a of this code.

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

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

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

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

(i) "Solid waste" means any garbage, paper, litter,
refuse, cans, bottles, waste processed for the express
purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" shall also not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

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

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

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

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

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

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

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

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

(a) Each and every county solid waste authority
authorized and created by the county commission of
any county pursuant to former article sixteen, chapter
seven of this code is hereby abolished on and after the
first day of January, one thousand nine hundred
eighty-nine. On and after the first day of January, one
thousand nine hundred eighty-nine, a new county
solid waste authority is hereby created and established
as a public agency in every county of the state and shall be the successor to each county solid waste authority which may have been created by the county commission: Provided. That such county solid waste authorities shall not be established or shall cease to exist, as the case may be, in those counties which establish a regional solid waste authority pursuant to section four of this article. The solid waste management board may require a county solid waste authority to cooperate and participate in programs with other authorities if the need arises.

(b) The authority board of directors shall be comprised of five members who shall be appointed as follows: One by the director of the division of natural resources, two by the county commission, one by the board of supervisors for the soil conservation district in which the county is situated and one by the chairman of the public service commission. The members of the board shall be appointed for terms of four years for which the initial terms shall start on the first day of July, one thousand nine hundred eighty-eight: Provided, That the first two members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and for terms of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which shall 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 directors; vacancies.

(a) On and after the first day of January, one
thousand nine hundred eighty-nine, any two or more counties within the same solid waste shed and with the approval of the solid waste management board, may establish a regional solid waste authority. Such a regional solid waste authority shall be a public agency and shall be the successor to any county solid waste authority existing on the date of said approval by the solid waste management board. The solid waste management board may require a county authority to cooperate and participate in programs with other county and regional authorities if the need arises.

(b) The board of directors of the regional solid waste authority shall be comprised and appointed as follows: One by the director of the division of natural resources, two by the county commission of each county participating therein, one appointed by the board of supervisors for each soil conservation district in which a county of the region is situated, one by the chairman of the public service commission and two municipal representatives from each county having one or more participating municipality to be selected by the mayors of the participating municipality from each such county. The members of the board shall be appointed for terms of four years for which the initial terms shall start on the first day of July, one thousand nine hundred eighty-eight: Provided, That the members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and to terms of four years after the expiration of each such initial term. The members of the board shall receive no compensation for their service thereon but shall be reimbursed their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which shall 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 county commission which, on the first day of July, one thousand nine hundred eighty-eight, held a valid permit or compliance order for a commercial solid waste transfer station issued pursuant to article five-f of this chapter, may elect to assume all the duties, powers, obligations, rights, title and interests vested in the county solid waste authority by this chapter. A county commission may, prior to the first day of October, one thousand nine hundred eighty-nine, exercise this right of election by entering an order declaring such election and serving a certified copy thereof upon the solid waste management board. Thirty days after entry of said order by the county commission the county solid waste authority shall cease to exist and the county commission shall assume all the duties, powers, obligations, rights, title and interest vested in the former authority pursuant to this chapter.


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

2. (b) The expenses of any county solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, in the development of the litter and solid waste control plan under section seven of this article and to provide solid waste collection and disposal services under section nine of this article shall be paid by the county commission from the general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds received by the authority from other sources. The county commission shall have the authority to determine the amount to be allocated annually to the authority.
(c) The expenses of any regional solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, or for the development of the litter and solid waste control plan under section seven of this article, or to provide solid waste collection and disposal services under section eight of this article shall be paid by the county commissions of each participating county from general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds from other sources received by the authority. Each county participating in the regional solid waste authority shall pay a pro rata share of such expenses based upon the population of said county in the most recent decennial census conducted by the United States Census Bureau. Prior to any county becoming liable for any expenses of the authority under this subsection, the authority’s annual budget must first be approved by the solid waste management board.

(d) An organizational meeting of each board of directors shall be held as soon as practicable at which time a chairman and vice chairman shall be elected from among the members of the board to serve a term of one year after which such officers shall be elected annually. The board of directors shall also appoint a secretary-treasurer, who need not be a member of the board of directors, and who shall give bond in a sum determined adequate to protect the interests of the authority by the director of the division of natural resources. The board shall meet at such times and places as it or the chairman may determine. It shall be the duty of the chairman to call a meeting of the board upon the written request of a majority of the members thereof. The board shall maintain an accurate record and minutes of all its proceedings and shall be subject to the provisions of the freedom of information act and the open governmental proceedings. A majority of the board shall constitute a quorum for the 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.

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

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

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

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

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

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

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

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

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

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

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

(10) Innovative incentives to promote recycling efforts;

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

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

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

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

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

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

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

§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.

(a) The division of natural resources, the solid waste
management board, and the bureau of health shall
provide technical assistance to each county and
regional solid waste authority as reasonable and
practicable for the purposes of this article within the
existing resources and appropriations of each agency
available for such purposes. The attorney general shall
provide legal counsel and representation to each
county and regional solid waste authority for the
purposes of this article within the existing resources
and appropriations available for such purposes, or with
the written approval of the attorney general, said
authority may employ counsel to represent it.

(b) The solid waste management board shall provide assistance to the county or regional solid waste authorities, municipalities and other interested parties in 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.

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

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

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

(b) The solid waste management board in consultation and collaboration with the public service commission shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: Provided, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall be submitted to the governor, the president of the Senate and the speaker of the House of Delegates.

(c) The public service commission in consultation and collaboration with the division of human services shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a 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
5 (1) Sue and be sued, plead and be impleaded and
6 have and use a common seal.
(2) To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.

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

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

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

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

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

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

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

(10) Make and enter all contracts, leases and agreements and to execute all instruments necessary or
(11) Employ managers, engineers, accountants, attorneys, planners and such other professional and support personnel as are necessary in its judgment to carry out the provisions of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Effective upon approval of the siting plan by the solid waste management board, it shall be unlawful for any person to establish, construct, install or operate a
provided, That an existing commercial solid waste facility which, on the eighth day of April, one thousand nine hundred eighty-nine, held a valid solid waste permit or compliance order issued by the division of natural resources pursuant to article five-f of this chapter may continue to operate but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order, and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

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

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

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

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

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

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

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment in this code, and facilities which were otherwise exempted from local site approval under any prior enactment in this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twelve-c, twelve-d and twelve-e of this article.

(b) In considering whether to issue or deny the
ertificate of site approval as specified in sections twelve-c, twelve-d and twelve-e of this article, the county or regional solid waste authority or county commission shall base its determination upon the following criteria: The efficient disposal of solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

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

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

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

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

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a
(3) File an application for approval of operation as a Class A facility with, and obtain approval from, the county commission for each county in which the facility would be located. Each county commission shall act on such application and either grant or deny it within thirty days after the application is determined by the county commission to be filed in a completed manner. The county commission shall hold at least one public hearing and shall solicit public comment prior to acting on the application. The county commission shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.

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

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

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

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

☐ For the facility
☐ Against the facility
(Place a cross mark in the square opposite your choice.)"

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

(c) After the effective date of this section, the public referendum established in this section shall be mandatory for every new Class A facility applicant which will accept between ten and thirty thousand tons of solid waste per month. A new Class A facility applicant means any applicant for a state solid waste permit for a Class A facility who had not, prior to the effective date of this subsection, obtained a certificate of site approval for a Class A facility from the county or regional solid waste authority to establish, construct or operate a Class A facility, and also means any applicant for a state solid waste permit for a Class A facility if a legal challenge to the issuance of a certificate of site approval by the county or regional solid waste authority or the county commission approval for the proposed Class A facility was pending in any state or federal court as of the first day of September, one thousand nine hundred ninety-one.

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

(a) From and after the effective date of this article,
in order to obtain approval to operate as a Class A facility at a site previously permitted to operate as a Class B facility, an applicant shall:

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

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located or proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner; and

(3) File an application for approval of operation as a Class A facility with, and obtain approval from, the county commission for each county in which the facility is or would be located. Each county commission shall act on such application and either grant or deny it within thirty days after the application is determined by the county commission to be filed in a completed manner. The county commission shall hold at least one public hearing and shall solicit public comment prior to acting on the application. The county commission shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.

(b) If applications are approved pursuant to subdivisions (1), (2) and (3), subsection (a) of this section, the county or regional solid waste authority shall publish a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the solid waste facility is located.
Upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary, general or other countywide election.

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

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

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

□ For the facility

□ Against the facility

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

(3) If a majority of the legal votes cast upon the question be against the facility, then the county
§ 20-9-12e. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

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

(1) File an application for approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located. Such application shall be a modification of the Class A facility’s certificate of site approval. The county or regional solid waste authority shall act upon such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner;

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

(3) File an application for a major permit modification with the division of natural resources.
(b) If applications are approved pursuant to subdivisions (1) and (2), subsection (a) of this section and an application has been filed pursuant to subdivision (3), subsection (a) of this section, the county or regional solid waste authority shall publish a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the solid waste facility is located. Upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary, general or other countywide election.

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

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

"Shall the ________ solid waste facility located within ________ County, West Virginia, be allowed to
handle a maximum of ______ solid waste per
month?

☐ For the increase in maximum allowable tonnage

☐ Against the increase in maximum allowable

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

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

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

(a) Any party aggrieved by a decision of the county
or: regional solid waste authority or county commission
granting or denying a certificate of site approval may
obtain judicial review thereof in the same manner
provided in section four, article five, chapter twenty-
nine-a of this code, which provisions shall govern such
review with like effect as if the provisions of said
section were set forth in extenso in this section, except
that the petition shall be filed, within the time
specified in said section, in the circuit court of Kana-
wha County.

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

§20-9-13. Solid waste assessment interim fee; regulated
motor carriers; dedication of proceeds; crimi-
nal penalties.

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

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

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

(2) The operator shall remit the fee imposed by this
section to the tax commissioner on or before the
fifteenth day of the month next succeeding the month
in which the fee accrued. Upon remittance of the fee,
the operator shall be required to file returns on forms
and in the manner as prescribed by the tax
(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

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

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

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

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

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

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

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

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

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in
such person's regular business or personal activities or
by persons utilizing the facility on a cost-sharing or
nonprofit basis;
(2) Reuse or recycling of any solid waste; and
(3) Disposal of residential solid waste by an individ-
ual not in the business of hauling or disposing of solid
waste on such days and times as designated by the
director of the division of natural resources as exempt
from the fee imposed pursuant to section five-a, article
five-f chapter twenty of this code.
(f) Procedure and administration. — Notwithstand-
ing section three, article ten, chapter eleven of this
code, each and every provision of the “West Virginia
Tax Procedure and Administration Act” set forth in
article ten, chapter eleven of this code shall apply to
the fee imposed by this section with like effect as if
said act were applicable only to the fee imposed by
this section and were set forth in extenso herein.
(g) Criminal penalties. — Notwithstanding section
two, article nine, chapter eleven of this code, sections
three through seventeen, article nine, chapter eleven
of this code shall apply to the fee imposed by this
section with like effect as if said sections were the only
fee imposed by this section and were set forth in
extenso herein.
(h) Dedication of proceeds. — The net proceeds of
the fee collected by the tax commissioner pursuant to
this section shall be deposited, at least monthly, in a
special revenue account known as the “Solid Waste
Planning Fund” which is hereby created. The solid
waste management board shall allocate the proceeds of
the said fund as follows:
(1) Fifty percent of the total proceeds shall be
divided equally among, and paid over to, each county
solid waste authority to be expended for the purposes
of this article: Provided, That where a regional solid
waste authority exists, such funds shall be paid over to
the regional solid waste authority to be expended for
the purposes of this article in an amount equal to the
total share of all counties within the jurisdiction of said regional solid waste authority; and

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

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

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

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

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

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-1. Short title.

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

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

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

The Legislature further finds that the identification and creation of local, regional, state and national markets for recyclable materials are necessary for the
The Legislature further finds that recycling programs can most successfully be established by encouraging, and in certain instances requiring, the source separation of solid waste and the subsequent curbside collection of recyclables.

Therefore, it is the purpose of the Legislature to establish goals for the recycling of solid waste; to require certain municipalities to implement recycling programs; to authorize each county commission, or the citizens of a county by referendum, to adopt a comprehensive recycling program for solid waste; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.


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

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

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

(a) Within twelve months following the effective date of this section, each municipality described in
subsection (b) of this section shall submit a proposal to
the solid waste management board, consistent with the
provisions of this section, describing the establishment
and implementation of the mandatory recycling pro-
gram. The solid waste management board shall review
the submitted plans for consistency with the criteria
provided in this section, the county or regional solid
waste management plan and the statewide manage-
ment plan. The solid waste management board may
make suggested changes to the plan and shall provide
technical assistance to the municipalities in the
development of the plans.

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

(1) An ordinance adopted by the governing body of
the municipality requiring that each person, part-
nership, corporation or other entity in the municipality
shall separate at least three recyclable materials, as
deemed appropriate by the municipality, from other
solid waste: Provided, That the list of recyclables to be
separated may be adjusted according to whether the
generator is residential, commercial or other type of
establishment.

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

(3) A system that collects recyclable materials from
the curbside, or similar location, at least once per
month: Provided, That to encourage full participation,
the program shall, to the maximum extent possible,
provide for the collection of recyclables at the same
rate of frequency, and simultaneous with, the regular
(4) Provisions to ensure compliance with the ordinance, including incentives and penalties.

(5) A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality, and incentives and penalties.

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

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

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

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

(3) That the provisions of the recycling plan prepared pursuant to section four of this article shall, to
the extent practicable, be incorporated in said county's comprehensive recycling program.

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

(e) A comprehensive recycling program for solid waste may be established in any county of this state by: (1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election or in conjunction with any other countywide election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than seventy days before the election, order that the issue be placed on the ballot and referendum held at the next primary, general or special election to determine whether it is the will of the voters of said county that a policy of comprehensive recycling of solid waste be established in the county: Provided, That the petition bearing the neces-
sary signatures has been filed with the county commission at least one hundred days prior to the election.

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

"Shall the County Commission be required to establish a comprehensive recycling program for solid waste in _____________ County, West Virginia?

☐ For Recycling

☐ Against Recycling

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

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within one hundred eighty days of said certification, establishing a comprehensive recycling program for solid waste in the county: Provided, That such program shall be implemented and operational no later than twelve months following said certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, said policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

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

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

"Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in ______________ County,
West Virginia?

☐ Continue Recycling

☐ End Recycling

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

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, said ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than forty thousand persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: Provided, That such materials recovery facility shall be subject to approval by both the public service commission and the solid waste management board upon a finding by both the public service commission and the solid waste management board that the establishment of such materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

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

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

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

1. The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

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

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

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

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

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

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

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

(c) Regulated motor carriers. — The fee imposed by this section shall be considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within
fourteen days, reflect the cost of said fee in said motor
carrier’s rates for solid waste removal service. In
calculating the amount of said fee to said motor
carrier, the commission shall use the national average
of pounds of waste generated per person per day as
determined by the United States Environmental
Protection Agency.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Twelve and one-half percent of the total proceeds shall be transferred to the governor’s office of community and industrial development, to be used in assisting counties and municipalities in the design and construction of wastewater treatment facilities;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the solid waste reclamation and environmental response fund, established pursuant to
section five-a, article five-f of this chapter, to be expended by the division of natural resources to assist in the funding of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse, waste reduction and clean-up activities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c) Regulated motor carriers. — The fee imposed by
this section shall be considered a necessary and
reasonable cost for motor carriers of solid or hazardous
waste subject to the jurisdiction of the public service
commission under chapter twenty-four-a of this code.
Notwithstanding any provision of law to the contrary,
upon the filing of a petition by an affected motor
carrier, the public service commission shall, within
fourteen days, reflect the cost of said fee in said motor
carrier’s rates for solid or hazardous waste removal
service. In calculating the amount of said fee to said
motor carrier, the commission shall use the national
average of pounds of waste generated per person per
day as determined by the United States Environment-
al Protection Agency.

d) Definitions. — For purposes of this section:

(1) “Solid or hazardous waste disposal facility”
means any approved solid or hazardous waste facility or open dump in this state and includes a transfer station when the solid or hazardous waste collected at the transfer station is not finally disposed of at a solid or hazardous waste facility within this state that collects the fee imposed by this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In the absence of either a municipal or a comprehensive county recycling plan pursuant to section five of this article, all agencies and instrumentalities of the state, all primary and secondary schools, where practicable, and private colleges and universities shall implement programs to recycle solid waste. To carry out the purposes of this section, any affected party may be eligible to receive grants pursuant to subdivi-
sion (1), subsection (h), section five-a of this article. Such programs shall include, but not be limited to, the following:

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

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

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


(a) It is the policy of the state of West Virginia that, to the maximum extent possible, all agencies and instrumentalities of the state purchase recycled products. The goal of the state is to achieve a recycled product mix on future purchases of:

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

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

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

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

(2) A review, and subsequent revision, of existing procurement procedures and bid specifications to ensure that, to the maximum extent possible, all agencies and instrumentalities of the state purchase
recycled products: *Provided,* That recycled paper
products shall be given a price preference of ten
percent: *Provided, however,* That priority shall be
given to paper products with the highest post-
consumer content;

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

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

(c) The secretary shall prepare and submit an
annual report on the thirty-first day of January of
each year following the effective date of this section,
summarizing the program’s accomplishments, pros-
pects for the future, and any recommendations. Said
report shall be submitted to the governor, speaker of
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.

(a) Effective the first day of June, one thousand nine
hundred ninety-three, it shall be unlawful to deposit
yard waste, including grass clippings and leaves, lead-
acid batteries, and tires in a solid waste facility in West
Virginia: *Provided,* That such prohibition does not
apply to a facility designed specifically to compost such
yard waste, or otherwise recycle or reuse such items:
*Provided, however,* That reasonable and necessary
exceptions to such prohibition may be included as part
of the rules and regulations promulgated pursuant to
subsection (c) of this section

(b) No later than the first day of May, one thousand
nine hundred ninety-two, the solid waste management
board, in consultation with the division of natural
resources, shall design a comprehensive program to
provide for the proper handling of the items men-
tioned in subsection (a) of this section.
(c) No later than the first day of September, one thousand nine hundred ninety-two, the solid waste management board shall promulgate rules and regulations, in accordance with chapter twenty-nine-a of this code, as amended, to implement the program designed pursuant to subsection (b) of this section.

(d) By the first day of December, one thousand nine hundred ninety-one, the waste management board shall prepare and submit a report summarizing the board’s action pursuant to this section and making recommendations, if any, concerning additional items that should be excluded from certain solid waste facilities. Said report shall be submitted to the governor, president of the Senate and the speaker of the House of Delegates.

§20-11-9. Recycled oil advisory committee.

(a) The division of natural resources recycled oil advisory committee is hereby created. The recycled oil advisory committee shall consist of nine members appointed by the governor, for terms of two years, who shall serve without compensation. One member of the committee shall have significant experience in the oil refining industry, one member shall have significant experience in the jobbing or distributing of motor oil, one member shall be a representative of retail gasoline dealers, one member shall be a representative of retail merchants, one member shall be a representative of the insurance industry, one member shall be a member of a county or regional solid waste authority, one member shall be a member of the general public, one member shall be a member of the House of Delegates recommended by the speaker of the House of Delegates, and one member shall be a member of the Senate recommended by the president of the Senate. The director of the division of natural resources or his or her designated representative shall be an ex officio member of the committee and shall serve as chairman of the committee. The recycled oil advisory committee shall meet at least monthly, or upon the call of four members, to discuss all aspects of the collection, handling, transportation, storage, dis-
posal and recycling of used motor oil.

(b) The functions of the committee shall include, but not be limited to, the following:

1. Making recommendations to the division of natural resources and the Legislature concerning the adoption of management standards with respect to collection, handling, transportation, storage, disposal and recycling of used motor oil. The committee shall make the first report of its recommendations on or before the fifteenth day of January, one thousand nine hundred ninety-two, and other such reports may be made at such times as the committee deems appropriate.

2. Carrying out education and promotional activities regarding the use of recycled oil.

3. Identifying areas in the public and private sectors where recycled oil could be utilized.

4. Entertaining proposals from citizens, corporations and businesses related to all aspects of used motor oil.

5. Identifying administrative requirements at both the state and local levels to ascertain resources and needs relating to used motor oil.

6. Examining federal law and regulations, both existing and proposed, to assure that West Virginia businesses and individuals who generate used motor oil may participate in a program of handling and disposing used motor oil that complies with federal statutes and regulatory requirements.

§20-11-10. Recycled newsprint encouraged; findings; goals; recycled newsprint advisory committee formed; annual report required.

(a) The purpose of this section is to encourage newspapers published and distributed in the state of West Virginia to use recycled newsprint.

(b) The Legislature finds that:

1. It is the public policy of the state of West Virginia to preserve natural resources, extend the useful life of
solid waste facilities, stimulate the demand for recycled products and ensure a more efficient allocation of resources;

(2) The publication of newspapers consumes large quantities of virgin paper;

(3) Discarded newspapers present significant solid waste management problems; and

(4) Encouraging newspaper publishers to use recycled newsprint will help attain the aforementioned public policy.

(c) In furtherance of the public policy set forth in subsection (b) of this section, it is the goal of this state that for the year ending the thirty-first day of December, one thousand nine hundred ninety-six, eighty percent of the newsprint used by newspapers published and distributed in this state shall contain the highest post-consumer recycled paper content practicable.

(d) The division of natural resources recycled newsprint advisory committee is hereby created. The recycled newsprint advisory committee shall consist of seven members appointed by the governor, for terms of two years, who shall serve without compensation. One member of the committee shall be the publisher, or his or her designated representative, of a daily newspaper with a general circulation in excess of twenty-five thousand newspapers per day, one member of the committee shall be the publisher, or his or her designated representative, of a daily newspaper with a general circulation of less than or equal to twenty-five thousand newspapers per day, one member of the committee shall be the publisher, or his or her designated representative, of a weekly newspaper, one member of the committee shall be a member of the general public representing environmental interests, one member of the committee shall be a member of a county or regional solid waste authority, one member of the committee shall be a member of the House of Delegates recommended by the speaker of the House of Delegates, and one member of the
committee shall be a member of the Senate recommended by the president of the Senate. The director of the division of natural resources, or his or her designated representative, shall serve as an ex officio member of the committee and shall serve as chair of the committee. The director of the solid waste management board, or his or her representative, shall serve as an ex officio member of the committee. The recycling newspaper advisory committee shall meet at least quarterly, or upon the call of three members, to discuss all aspects of encouraging the use of recycled newsprint and meeting the goals set forth in this section.

(e) On or before the thirty-first day of January, one thousand nine hundred ninety-three, the recycled newsprint advisory committee shall prepare and submit a report to the governor, the speaker of the House of Delegates and the president of the Senate, summarizing the activities of the committee, its progress in achieving the recycled newsprint goal and any recommendations for legislative action.


The director in consultation with the governor’s office of community and industrial development shall develop a plan for presentation to the governor, the president of the Senate and the speaker of the House of Delegates no later than the fifteenth day of January, one thousand nine hundred ninety-two, which plan shall contain recommendations relating to the feasibility of establishing glass preparation plants, de-inking plants and re-refining used motor oil plants.

The plan may include provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of re-refined motor oil, de-inked pulp and prepared glass in all appropriate areas of state and local government;
(2) Encouragement of persons contracting with the state to use re-refined motor oil, de-inked pulp and prepared glass to the maximum extent feasible, consistent with protection of the public health and the environment;

(3) Informing the public of uses of re-refined motor oil, de-inked pulp and prepared glass; and

(4) Establishment and implementation of a program, including any necessary licensing of persons and including the use, where appropriate, of manifests to assure the used re-refined motor oil, de-inked pulp and prepared glass is collected, transported, treated, stored, reused and disposed of, in a manner which does not present a hazard to the public health or the environment.

§20-11-12. Recycling facilities exemption.

Facilities which only accept, buy or transfer source separated material or recycled material for use, resale or transfer for further processing shall be exempt from the provisions of articles five-f and nine of this chapter and sections one-c and one-f, article two, chapter twenty-four of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b of this code. In addition, after having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the public service commission shall continue to
exist until the first day of July, one thousand nine
hundred ninety-two. The public service commission
may sue and be sued by that name. Such public
service commission shall consist of three members
who shall be appointed by the governor with the
advice and consent of the Senate. The commissioners
shall be citizens and residents of this state and at least
one of them shall be duly licensed to practice law in
West Virginia, of not less than ten years’ actual
experience at the bar. No more than two of said
commissioners shall be members of the same political
party. Each commissioner shall, before entering upon
the duties of his office, take and subscribe to the oath
provided by section five, article four of the constitu-
tion, which oath shall be filed in the office of the
secretary of state. The governor shall designate one of
the commissioners to serve as chairman at the gover-
nor’s will and pleasure. The chairman shall be the
chief administrative officer of the commission. The
governor may remove any commissioner only for
incompetency, neglect of duty, gross immorality,
malfeasance in office or violation of subsection (c) of
this section.

(b) The unexpired term of members of the public
service commission at the time this subsection
becomes effective are continued through the thirtieth
day of June, one thousand nine hundred seventy-nine.
In accordance with the provisions of subsection (a) of
this section, the governor shall appoint three commis-
ioners, one for a term of two years, one for a term of
four years and one for a term of six years, all the
terms beginning on the first day of July, one thousand
nine hundred seventy-nine. All future appointments
are for terms of six years, except that an appointment
to fill a vacancy is for the unexpired term only. The
commissioners whose terms are terminated by the
provisions of this subsection are eligible for
reappointment.

(c) No person while in the employ of, or holding any
official relation to, any public utility subject to the
provisions of this chapter, or holding any stocks or
bonds thereof, or who is pecuniarily interested there-
in, may serve as a member of the commission or as an
employee thereof. Nor may any such commissioner be
a candidate for or hold public office, or be a member
of any political committee, while acting as such
commissioner; nor may any commissioner or
employee of said commission receive any pass, free
transportation or other thing of value, either directly
or indirectly, from any public utility or motor carrier
subject to the provisions of this chapter. In case any of
the commissioners becomes a candidate for any public
office or a member of any political committee, the
governor shall remove him from office and shall
appoint a new commissioner to fill the vacancy
created.

(d) Effective the first day of July, one thousand nine
hundred eighty-four, and in light of the assignment of
new, substantial additional duties embracing new
areas and fields of activity under certain legislative
enactments, each commissioner shall receive a salary
of thirty-nine thousand two hundred forty dollars a
year to be paid in monthly installments from the
special funds in such amounts as follows:

(1) From the public service commission fund col-
lected under the provisions of section six, article three
of this chapter, thirty thousand two hundred ten
dollars;

(2) From the public service commission motor
carrier fund collected under the provisions of section
six, article six, chapter twenty-four-a of this code,
seven thousand five hundred twenty-five dollars; and

(3) From the public service commission gas pipeline
safety fund collected under the provisions of section
three, article five, chapter twenty-four-b of this code,
one thousand five hundred five dollars.

In addition to this salary provided for all commis-
sioners, the chairman of the commission shall receive
three thousand five hundred dollars a year to be paid
in monthly installments from the public service
commission fund collected under the provisions of
section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-four.

(e) Effective the first day of July, one thousand nine hundred eighty-five, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of forty-one thousand dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty-one thousand six hundred dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand nine hundred dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand five hundred dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand six hundred seventy-five dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-five.

(f) Effective the first day of July, one thousand nine hundred eighty-eight, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of forty-four thousand dollars a year to be paid in monthly installments from the special funds in such amounts as follows:
133 (1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty-three thousand nine hundred dollars;

137 (2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, eight thousand five hundred dollars; and

141 (3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand six hundred dollars.

145 In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand six hundred seventy-five dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-eight.

153 (g) Effective the first day of January, one thousand nine hundred ninety, each commissioner shall receive the salary set forth in section two-a, article seven, chapter six of this code to be paid in monthly installments from the special funds in such amounts as follows:

159 (1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty-five thousand five hundred ninety-five dollars;

163 (2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, eight thousand nine hundred twenty-five dollars; and

167 (3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand six hundred eighty dollars.
In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand eight hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of January, one thousand nine hundred ninety.

(h) Effective the first day of November, one thousand nine hundred ninety-one, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive an annual salary of sixty thousand dollars to be paid in monthly installments from the special funds in such amounts as follows:

1. From the public service commission fund collected under the provisions of section six, article three of this chapter, forty-eight thousand dollars;
2. From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, ten thousand dollars; and
3. From the public service commission gas pipeline safety fund collected under the provision of section three, article five, chapter twenty-four-a of this code, two thousand dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of 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.

The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any
utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: Provided, however, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: Provided further, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: And provided further, That the decision-making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision-making duties assigned to the commission by said sections, and to
issue orders having the full force and effect of orders of the commission.

The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practically and economically served by a utility licensed to operate within the state of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial.

The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction.

The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

§24-2-lb. Additional jurisdiction of commission.

Effective the first day of July, one thousand nine hundred eighty-eight, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in section two, article five-f, chapter twenty of this code, that are owned or under the direct control of persons or entities who are regulated under section five, article two, chapter twenty-four-a of this code. The commission shall establish, prescribe and enforce rules and regulations providing for the safe transportation of solid waste in the state.

The public service commission shall study the
feasibility of incorporating and adopting guidelines for solid waste collection fees that are based upon the volume of solid waste generated by any person. This report shall be submitted to the governor and the members of the Legislature on or before the first day of January, one thousand nine hundred ninety-three.

§24-2-1c. Certificate of need required for solid waste facilities; priority of disposal.

(a) Any person who holds a valid permit, compliance order or administrative order allowing continued operation of a commercial solid waste facility in this state on the first day of September, one thousand nine hundred ninety-one, shall submit an application for a certificate of need with the public service commission, on forms prescribed by the commission, prior to the first day of March, one thousand nine hundred ninety-two. The commission shall grant such application within sixty days after submission of a complete application.

(b) Any person applying for a permit to construct, operate or expand a commercial solid waste facility as defined in section two, article five-f, chapter twenty of this code, or any person seeking a major permit modification from the division of natural resources first shall obtain a certificate of need from the public service commission. Application for such certificate shall be submitted on forms prescribed by the commission. The commission shall grant or deny a certificate of need, in accordance with provisions set forth in this chapter. If the commission grants a certificate of need, the commission may include conditions not inconsistent with the criteria set forth in this section.

(c) For purposes of subsections (a) and (b) of this section, a complete application shall consist of the following and notwithstanding any other provision of this chapter to the contrary, such information contained in the application provided by the applicant shall not be confidential and shall be disclosable pursuant to the provisions of chapter twenty-nine-b of this code:
(1) The names of the owners or operators of the facility including any officer, director, manager, person owning five percent or more interest or other person conducting or managing the affairs of the applicant or of the proposed facility;

(2) The proposed or existing location of the facility;

(3) A description of the geographic area to be served by the facility;

(4) The anticipated total number of citizens to be served by the facility;

(5) The average monthly tonnage of solid waste to be disposed of by the facility;

(6) The total monthly tonnage of solid waste for which the facility is seeking a permit from the division of natural resources;

(7) The anticipated lifespan and closure date of the facility; and

(8) Any other information requested on the forms prescribed by the public service commission.

(d) In considering whether to grant a certificate of need the commission shall consider, but shall not be limited to considering, the following factors:

(1) The total tonnage of solid waste generated within the county;

(2) The total tonnage of solid waste generated within the wasteshed;

(3) The current capacity and lifespan of other solid waste facilities located within the county, if any;

(4) The current capacity and lifespan of other solid waste facilities located within the wasteshed, if any;

(5) The current capacity and lifespan of other solid waste facilities located within this state;

(6) The lifespan of the proposed or existing facility;
(7) The cost of transporting solid waste from the points of generation within the county or watershed and the disposal facility;

(8) The impact of the proposed or existing facility on needs and criteria contained in the statewide solid waste management plan; and

(9) Any other criteria which the commission regularly utilizes in making such determinations.

(e) The public service commission shall deny a certificate of need upon one or more of the following findings:

(1) The proposed capacity is unreasonable in light of demonstrated needs;

(2) The location of the facility is inconsistent with the statewide solid waste management plan;

(3) The location of the facility is inconsistent with any applicable county or regional solid waste management plan;

(4) The proposed capacity is not reasonably cost effective in light of alternative disposal sites;

(5) The proposal, taken as a whole, is inconsistent with the needs and criteria contained in the statewide solid waste management plan; or

(6) The proposal, taken as a whole, is inconsistent with the public convenience and necessity.

(f) Any certificates of need granted pursuant to this section shall be conditioned on acceptance of:

(1) Solid waste generated within the county in which the facility is or is to be located; and

(2) Solid waste generated within the watershed in which the facility is or is to be located.

(g) An application for a certificate of need shall be submitted prior to submitting an application for certificate of site approval in accordance with section twelve-a, article nine, chapter twenty of this code.

Upon the decision of the commission to grant or deny
a certificate of need, the commission shall immediately notify the solid waste management board and the division of natural resources.

(h) Any party aggrieved by a decision of the commission granting or denying a certificate of need may obtain judicial review thereof in the same manner provided in section one, article five of this chapter.

(i) No person may sell, lease or transfer a certificate of need without first obtaining the consent and approval of the commission, pursuant to the provisions of section twelve, article two of this chapter.

§24-2-1h. Additional powers and duties of commission to control flow of solid waste.

(a) Upon the petition of any county or regional solid waste authority, motor carrier or solid waste facility, or upon the commission's own motion, the commission may issue an order that solid waste generated in the surrounding geographical area of a solid waste facility and transported for processing or disposal by solid waste collectors and haulers who are "motor carriers", as defined in chapter twenty-four-a of this code, be processed or disposed of at a designated solid waste facility or facilities. Provided, That such order shall not include:

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

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

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources pursuant to the provisions of section four-b, article five-f, chapter twenty of this code.
(b) In determining whether to issue an order establishing flow control to a solid waste facility, the commission shall consider, but shall not be limited to considering, the nature and composition of the solid waste, the environmental impact of controlling the flow of solid waste, the efficient disposal of solid waste, financial feasibility of proposed or existing solid waste facilities, the county or region solid waste control plan, the statewide solid waste control plan and the public convenience and necessity.

(c) The public service commission shall promulgate rules providing standards and criteria to effectuate the purposes of this section.

(d) Notwithstanding any provision of this code to the contrary, excepting rules of the public service commission from legislative rule-making review, the public service commission shall propose a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall mandate that motor carriers transport source-separated recyclable materials to a recycling facility. Such legislative rule shall provide, at a minimum, for a separate rate for the transportation of such materials or that such motor carriers may contract with a customer to waive the charge for transporting such materials in exchange for the value of such materials.

(e) Notwithstanding any provision of this code to the contrary, the public service commission is hereby authorized to employ ten persons, in addition to any personnel positions otherwise authorized or allocated to the commission as of the effective date of this section to facilitate enforcement of duties imposed upon the commission in the regulation of solid waste disposal during the second extraordinary session of the 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-
(1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(2) Motor vehicles owned and operated by the United States of America, the state of West Virginia, or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or such other legitimate transportation for the schools as the commission may specifically authorize;

(3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to such farms or orchards to be used thereon;

(4) Motor vehicles used exclusively in the transportation of human or animal excreta;

(5) Motor vehicles used exclusively in ambulance service, or duly chartered rescue squad service;

(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(8) Motor vehicles used by petroleum commission
agents and oil distributors solely for the transportation
of petroleum products and related automotive pro-
ducts when such transportation is incidental to the
business of selling said products: Provided, That such
vehicles and their operators shall be subject to the
safety rules promulgated by the commission; and

(9) Motor vehicles owned, leased by or to, or con-
tracted with a recycling facility and used exclusively
for the transportation of source-separated recyclable
materials for transport to a facility for recycling:
Provided, That such vehicles and their operators shall
be subject to the safety rules promulgated by the
commission.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 30th day of October, 1991.

Governor