WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

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ENTROLED

HOUSE BILL No. 4149

(By Delegates ___________ )

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Passed ...................... Feb. 29, .......................... 1992

In Effect .......................... Passage
ENROLLED

H. B. 4149

(By Delegates Douglas and Grubb)

[Passed February 20, 1992; in effect from passage.]

AN ACT to amend and reenact section five, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and six, article five-n of said chapter; to amend and reenact sections four, five and five-b, article eleven of said chapter; and to amend and reenact section one-h, article two, chapter twenty-four, relating to solid waste management; amending the date of expiration of division of health issued permits; revising the imposition of a fee; extending the deadline for closure assistance for single liner facilities; extending the application deadline for closure assistance for single liner facilities, decreasing the population requirement for municipalities to draft by ordinance a materials recovery facility; redefining “coal combustion byproduct”; allowing the public service commission to add additional classified exempt employees for solid waste program purposes and making other technical corrections.

Be it enacted by the Legislature of West Virginia:

That section five, article five-f, chapter twenty of the code of West Virginia; one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five and six, article five-n of said chapter be amended and reenacted; that sections four, five and five-b, article eleven of said chapter be amended and reenacted; and that section one-h, article two,
chapter twenty-four be amended and reenacted, all to read as follows:

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§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-three. Within four years of the tenth day of June, one thousand nine hundred eighty-three, all persons holding such division of health permits shall apply to the chief for a permit under this article: Provided, however, That the chief may require persons holding such existing health division permits to reapply under this section prior to four years from the tenth day of June, one thousand nine hundred eighty-three, 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.
ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§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 allowed to accept solid waste 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 September, one thousand nine hundred ninety-three;

(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

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

§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 allowed to accept solid waste 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
eleven months following the date of closure of the
landfill.

(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.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-4. Recycling plans.

(a) Each county or regional solid waste authority, as
part of the comprehensive litter and solid waste control
plan required pursuant to the provisions of section
seven, article nine of this chapter, shall prepare and
adopt a comprehensive recycling plan to assist in the
implementation of the recycling goals in section three
of this article.

(b) Each recycling plan required by this section shall
include, but not be limited to:

(1) Designation of the recyclable materials that can be
most effectively source separated in the region or
county, which shall include at least three recyclable
materials; and

(2) Designation of potential strategies for the collec-
tion, marketing and disposition of designated source
separated recyclable materials in each region or county.

§20-11-5. Establishment of county recycling programs
for solid waste; petition for referendum;
ballet 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 program.
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 management
plan. The solid waste management board may make
suggested changes to the plan and shall provide
technical assistance to the municipalities in the devel-
opment of the plans.

(b) Within twenty-four months following the effective
date of this section, each municipality with a population
of ten thousand or more people, as determined by the
most recent decennial census by the Bureau of the
Census of the United States Department of Commerce,
shall establish and commence implementation of a
source separation and curbside collection 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, partnership,
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
collection of solid waste.

(4) Provisions to ensure compliance with the ordi-
(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 necessary 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 compre-
hensive 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 res-
cinded 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 termi-
nate 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 thirty 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.

§20-11-5b. 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 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 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 Environmental 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 byproduct" 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 nonelectrical steam gener-
at ing units burning a combination of solid 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 byproducts to meet this
definition. The carbon monoxide level shall be calcu-
lated 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 byproducts;

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

or

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

(f) Procedure and administration. — 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.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§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, who shall be in the classified exempt service, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 1st day of Mar., 1992.

Governor
PRESENTED TO THE
GOVERNOR
Date 2/26/92
Time 3:40 pm