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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992



ENROLLED

SENATE BILL NO. 105

(By Senator Blatnik)



PASSED March 7, 1992

In Effect 90 days from Passage

ENROLLED

Senate Bill No. 105

(BY SENATOR BLATNIK)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and five-a, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and four, article five-n of said chapter; and to amend and reenact sections two and thirteen, article nine of said chapter, relating to solid waste assessment fees exemptions; defining terms; imposing fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; including by reference tax administration and procedure; providing for exemptions from fees; dedicating proceeds; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two and five-a, 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 two and four, article five-n of said chapter be amended and reenacted; and that sections two and thirteen, article nine of said chapter be amended and reenacted to read as follows:

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2. Definitions.

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

3 (a) "Approved solid waste facility" means a solid
4 waste facility or practice which has a valid permit
5 under this article.

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

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

14 (d) "Commercial Recycler" means any person,
15 corporation or business entity whose operation
16 involves the mechanical separation of materials for the
17 purpose of reselling or recycling at least seventy
18 percent by weight of the materials coming into the
19 commercial recycling facility.

20 (e) "Municipal solid waste incineration" means the
21 burning of any solid waste collected by any municipal
22 or residential solid waste disposal company.

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

34 (g) "Division" means the division of natural
35 resources.

36 (h) "Director" means the director of the division of
37 natural resources.

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

43 (j) "Person", "persons" or "applicant" mean any
44 industrial user, public or private corporation, institu-
45 tion, association, firm or company organized or exist-
46 ing under the laws of this or any other state or
47 country; state of West Virginia; governmental agency,
48 including federal facilities; political subdivision; county
49 commission; municipal corporation; industry; sanitary
50 district; public service district; drainage district; soil
51 conservation district; watershed improvement district;
52 partnership; trust; estate; person or individual; group
53 of persons or individuals acting individually or as a
54 group; or any legal entity whatever.

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

60 (l) "Solid waste" means any garbage, paper, litter,
61 refuse, cans, bottles, waste processed for the express
62 purpose of incineration, sludge from a waste treatment
63 plant, water supply treatment plant or air pollution
64 control facility, other discarded material, including
65 offensive or unsightly matter, solid, liquid, semisolid
66 or contained liquid or gaseous material resulting from
67 industrial, commercial, mining or community activi-
68 ties but does not include solid or dissolved material in
69 sewage, or solid or dissolved materials in irrigation
70 return flows or industrial discharges which are point
71 sources and have permits under article five-a of this
72 chapter, or source, special nuclear or by-product
73 material as defined by the Atomic Energy Act of 1954,
74 as amended, including any nuclear or by-product
75 material considered by federal standards to be below

76 regulatory concern, or a hazardous waste either
77 identified or listed under article five-e of this chapter
78 or refuse, slurry, overburden or other wastes or
79 material resulting from coal-fired electric power or
80 steam generation, the exploration, development,
81 production, storage and recovery of coal, oil and gas,
82 and other mineral resources placed or disposed of at a
83 facility which is regulated under chapter twenty-two,
84 twenty-two-a or twenty-two-b of this code, so long as
85 such placement or disposal is in conformance with a
86 permit issued pursuant to such chapters. "Solid waste"
87 shall not include materials which are recycled by
88 being used or reused in an industrial process to make
89 a product, as an effective substitute for commercial
90 products, or are returned to the original process as a
91 substitute for raw material feedstock.

92 (m) "Solid waste disposal" means the practice of
93 disposing of solid waste including placing, depositing,
94 dumping or throwing or causing to be placed, depos-
95 ited, dumped or thrown any solid waste.

96 (n) "Solid waste disposal shed" means the geograph-
97 ical area which the solid waste management board
98 designates and files in the state register pursuant to
99 section eight, article twenty-six, chapter sixteen of this
100 code.

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

110 (p) "Class A facility" means a commercial solid
111 waste facility which handles an aggregate of between
112 ten thousand and thirty thousand tons of solid waste
113 per month. Class A facility shall include two or more
114 Class B solid waste landfills owned or operated by the
115 same person in the same county, if the aggregate tons

116 of solid waste handled per month by such landfills
117 exceeds nine thousand nine hundred ninety-nine tons
118 of solid waste per month.

119 (q) "Applicant" means the person applying for a
120 commercial solid waste facility permit or similar
121 renewal permit and any person related to such person
122 by virtue of common ownership, common manage-
123 ment or family relationships as the director of the
124 division of natural resources may specify, including
125 the following: Spouses, parents and children and
126 siblings.

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

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

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

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

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

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 to be collected and paid as follows: (1) One dollar and
5 twenty-five cents per ton or part thereof of solid

6 waste; and (2) one additional dollar per ton or part
7 thereof of solid waste for solid waste generated from
8 sources outside the solid waste disposal shed in which
9 the solid waste disposal facility is located. The fee
10 imposed by this section shall be in addition to all other
11 fees and taxes levied by law and shall be added to and
12 constitute part of any other fee charged by the
13 operator or owner of the solid waste disposal facility.

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

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

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

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

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

40 (5) Whenever any operator fails to collect, truthfully
41 account for, remit the fee or file returns with the fee
42 as required in this section, the tax commissioner may
43 serve written notice requiring such operator to collect
44 the fees which become collectible after service of such

45 notice, to deposit such fees in a bank approved by the
46 tax commissioner, in a separate account, in trust for
47 and payable to the tax commissioner, and to keep the
48 amount of such fees in such account until remitted to
49 the tax commissioner. Such notice shall remain in
50 effect until a notice of cancellation is served on the
51 operator or owner by the tax commissioner.

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

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

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

78 (c) *Regulated motor carriers.* — The fee imposed by
79 this section and section twenty-two, article five,
80 chapter seven of this code shall be considered a
81 necessary and reasonable cost for motor carriers of
82 solid waste subject to the jurisdiction of the public
83 service commission under chapter twenty-four-a of
84 this code. Notwithstanding any provision of law to the

85 contrary, upon the filing of a petition by an affected
86 motor carrier, the public service commission shall,
87 within fourteen days, reflect the cost of said fee in said
88 motor carrier's rates for solid waste removal service.
89 In calculating the amount of said fee to said motor
90 carrier, the commission shall use the national average
91 of pounds of waste generated per person per day as
92 determined by the United States Environmental
93 Protection Agency.

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

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

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

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

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

119 (4) Disposal of solid waste at a solid waste disposal
120 facility by a commercial recycler which disposes of
121 thirty percent or less of the total waste it processes for
122 recycling. In order to qualify for this exemption each
123 commercial recycler must keep accurate records of

124 incoming and outgoing waste by weight. Such records
125 must be made available to the appropriate inspectors
126 from the division of natural resources of solid waste
127 authority, upon request.

128 (f) *Procedure and administration.* — Notwithstand-
129 ing section three, article ten, chapter eleven of this
130 code, each and every provision of the “West Virginia
131 Tax Procedure and Administration Act” set forth in
132 article ten, chapter eleven of this code shall apply to
133 the fee imposed by this section with like effect as if
134 said act were applicable only to the fee imposed by
135 this section and were set forth in extenso herein.

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

143 (h) *Dedication of proceeds.* — The net proceeds of
144 the fee collected by the tax commissioner pursuant to
145 this section shall be deposited at least monthly in an
146 account designated by the director of the division of
147 natural resources. The director shall allocate twenty-
148 five cents for each ton of solid waste disposed of in this
149 state upon which the fee imposed by this section is
150 collected and shall deposit the total amount so allo-
151 cated into the “Solid Waste Reclamation and Environ-
152 mental Response Fund” to be expended for the
153 purposes hereinafter specified. The first one million
154 dollars of the net proceeds of the fee imposed by this
155 section collected in each fiscal year shall be deposited
156 in the “Solid Waste Enforcement Fund” and expended
157 for the purposes hereinafter specified. The next two
158 hundred fifty thousand dollars of the net proceeds of
159 the fee imposed by this section collected in each fiscal
160 year shall be deposited in the “Resource Recovery —
161 Solid Waste Disposal Authority Reserve Fund” which
162 shall be renamed and hereinafter referred to as the
163 “Solid Waste Management Board Reserve Fund”, and
164 expended for the purposes hereinafter specified:

165 *Provided*, That in any year in which the water
166 development authority determines that the solid waste
167 management board reserve fund is adequate to defer
168 any contingent liability of the fund, the water devel-
169 opment authority shall so certify to the director of the
170 division of natural resources and the director shall
171 then cause no less than fifty thousand dollars nor
172 more than two hundred fifty thousand dollars to be
173 deposited to the fund: *Provided, however*, That in any
174 year in which the water development authority
175 determines that the solid waste management board
176 reserve fund is inadequate to defer any contingent
177 liability of the fund, the water development authority
178 shall so certify to the director of the division of natural
179 resources and the director shall then cause not less
180 than two hundred fifty thousand dollars nor more
181 than five hundred thousand dollars to be deposited in
182 the fund: *Provided further*, That if a facility owned or
183 operated by the state of West Virginia is denied site
184 approval by a county or regional solid waste authority,
185 and if such denial contributes, in whole or in part, to
186 a default, or drawing upon a reserve fund, on any
187 indebtedness issued or approved by the solid waste
188 management board, then in that event the solid waste
189 management board or its fiscal agent may withhold all
190 or any part of any funds which would otherwise be
191 directed to such county or regional authority and shall
192 deposit such withheld funds in the appropriate reserve
193 fund. The director of the division of natural resources
194 shall allocate the remainder, if any, of said net
195 proceeds among the following three special revenue
196 accounts for the purpose of maintaining a reasonable
197 balance in each special revenue account, which are
198 hereby continued in the state treasury:

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

204 (2) The "Solid Waste Management Board Reserve
205 Fund" which shall be exclusively dedicated to provid-

206 ing a reserve fund for the issuance and security of
207 solid waste disposal revenue bonds issued by the solid
208 waste management board pursuant to article twenty-
209 six, chapter sixteen of this code;

210 (3) The "Solid Waste Reclamation and Environmen-
211 tal Response Fund" which may be expended by the
212 director of the division of natural resources for the
213 purposes of reclamation, cleanup and remedial actions
214 intended to minimize or mitigate damage to the
215 environment, natural resources, public water supplies,
216 water resources and the public health, safety and
217 welfare which may result from open dumps or solid
218 waste not disposed of in a proper or lawful manner.

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

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

226 (2) The costs of maintaining and policing the streets
227 and highways of the state and its communities are
228 increased by long distance transportation of large
229 volumes of solid waste; and

230 (3) Local approved solid waste facilities are being
231 prematurely depleted by solid waste originating from
232 other locations.

233 (j) *Severability*. — If any provision of this section or
234 the application thereof shall for any reason be
235 adjudged by any court of competent jurisdiction to be
236 invalid, such judgment shall not affect, impair or
237 invalidate the remainder of this section, but shall be
238 confined in its operation to the provision thereof
239 directly involved in the controversy in which such
240 judgment shall have been rendered, and the applica-
241 bility of such provision to other persons or circumstan-
242 ces shall not be affected thereby.

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

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-2. Definitions.

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

3 (1) "Commercial Recycler" means any person,
4 corporation or business entity whose operation
5 involves the mechanical separation of materials for the
6 purpose of reselling or recycling at least seventy
7 percent by weight of the materials coming into the
8 commercial recycling facility;

9 (2) "Cost of project" includes the cost of the services
10 authorized in sections three and ten of this article,
11 property, material and labor which are essential
12 thereto, financing charges, interest during construc-
13 tion and all other expenses, including legal fees,
14 trustees', engineers' and architects' fees which are
15 necessarily or properly incidental to the program;

16 (3) "Director" means the director of the division of
17 natural resources of the department of commerce,
18 labor and environmental resources, or his or her
19 authorized representative;

20 (4) "Landfill" means any solid waste facility for the
21 disposal of solid waste on land, and also means any
22 system, facility, land, contiguous land, improvements
23 on the land, structures or other appurtenances or
24 methods used for processing, recycling or disposing of
25 solid waste, including landfills, transfer stations,
26 resource recovery facilities and other such facilities
27 not herein specified. Such facility shall be deemed to
28 be situated, for purposes of this article, in the county
29 where the majority of the spatial area of such facility
30 is located;

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

34 (6) "Project" means the providing of closure assis-
35 tance to one or more landfills under this article.

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

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

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

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

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

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

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

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

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

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

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

77 corporation which they represent.

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

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

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

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

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

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

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

122 (4) Disposal of solid waste at a solid waste disposal
123 facility by a commercial recycler which disposes of
124 thirty percent or less of the total waste it processes for
125 recycling. In order to qualify for this exemption each
126 commercial recycler must keep accurate records of
127 incoming and outgoing waste by weight. Such records
128 must be made available to the appropriate inspectors
129 from the division of natural resources of solid waste
130 authority, upon request.

131 (f) *Procedure and administration.* — Notwithstand-
132 ing section three, article ten, chapter eleven of this
133 code, each and every provision of the “West Virginia
134 Tax Procedure and Administration Act” set forth in
135 article ten, chapter eleven of this code applies to the
136 fee imposed by this section with like effect as if said
137 act were applicable only to the fee imposed by this
138 section and were set forth in extenso herein.

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

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

156 established pursuant to section seven of this article.

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

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

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-2. Definitions.

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

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

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

18 (c) “Commercial Recycler” means any person,
 19 corporation or business entity whose operation
 20 involves the mechanical separation of materials for the
 21 purpose of reselling or recycling at least seventy
 22 percent by weight of the materials coming into the
 23 commercial recycling facility.

24 (d) “Class A facility” means a commercial solid

25 waste facility which handles an aggregate of between
26 ten and thirty thousand tons of solid waste per month.
27 Class A facility shall include two or more Class B solid
28 waste landfills owned or operated by the same person
29 in the same county, if the aggregate tons of solid waste
30 handled per month by such landfills exceeds nine
31 thousand nine hundred ninety-nine tons of solid waste
32 per month.

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

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

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

56 (h) "Person" means any industrial user, public or
57 private corporation, institution, association, firm or
58 company organized or existing under the laws of this
59 or any other state or country; the state of West
60 Virginia; governmental agency, including federal
61 facilities; political subdivision; county commission;
62 municipal corporation; industry; sanitary district;
63 public service district; drainage district; soil conserva-
64 tion district; watershed improvement district; partner-

65 ship; trust; estate; person or individual; group of
66 persons or individuals acting individually or as a
67 group; or any legal entity whatever.

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

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

105 (k) "Solid waste disposal" means the practice of

106 disposing of solid waste including placing, depositing,
107 dumping or throwing or causing to be placed, depos-
108 ited, dumped or thrown any solid waste.

109 (l) "Solid waste disposal shed" means the geograph-
110 ical area which the solid waste management board
111 designates and files in the state register pursuant to
112 section eight, article twenty-six, chapter sixteen of this
113 code.

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

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

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

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

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

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

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

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

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

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

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

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

35 (5) Whenever any operator fails to collect, truthfully
36 account for, remit the fee or file returns with the fee

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

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

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

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

73 (c) *Regulated motor carriers.* — The fee imposed by
74 this section and section twenty-two, article five,
75 chapter seven of this code shall be considered a
76 necessary and reasonable cost for motor carriers of

77 solid waste subject to the jurisdiction of the public
78 service commission under chapter twenty-four-a of
79 this code. Notwithstanding any provision of law to the
80 contrary, upon the filing of a petition by an affected
81 motor carrier, the public service commission shall,
82 within fourteen days, reflect the cost of said fee in said
83 motor carrier's rates for solid waste removal service.
84 In calculating the amount of said fee to said motor
85 carrier, the commission shall use the national average
86 of pounds of waste generated per person per day as
87 determined by the United States Environmental
88 Protection Agency.

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

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

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

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

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

115 (4) Disposal of solid waste at a solid waste disposal

116 facility by a commercial recycler which disposes of
117 thirty percent or less of the total waste it processes for
118 recycling. In order to qualify for this exemption each
119 commercial recycler must keep accurate records of
120 incoming and outgoing waste by weight. Such records
121 must be made available to the appropriate inspectors
122 from the division of natural resources of solid waste
123 authority, upon request.

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

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

139 (h) *Dedication of proceeds.* — The net proceeds of
140 the fee collected by the tax commissioner pursuant to
141 this section shall be deposited, at least monthly, in a
142 special revenue account known as the “Solid Waste
143 Planning Fund” which is hereby created. The solid
144 waste management board shall allocate the proceeds of
145 the said fund as follows:

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

155 (2) Fifty percent of the total proceeds shall be

156 expended by the solid waste management board for:

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

159 (B) Administration, technical assistance or other
160 costs of the solid waste management board necessary
161 to implement the purposes of this article and article
162 twenty-six, chapter sixteen of this code.

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

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

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

James Secc
.....
Chairman Senate Committee

Ernest Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Harold R. Adams
.....
Clerk of the Senate

Donald G. Koep
.....
Clerk of the House of Delegates

Scott Sandette
.....
President of the Senate

Bob Zell
.....
Speaker House of Delegates

The within is approved this the *1st*
day of *April*, 1992.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/92

Time 9:40 am