WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED

SENATE BILL NO. 105

(By Senator Blatnik)

PASSED March 7, 1992
In Effect 90 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 re-enacted; 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 meaning, as used in this article the terms:

(a) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article.

(b) “Backhauling” means the practice of using the same container to transport solid waste and 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) “Commercial Recycler” means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

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

(f) “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.

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

(i) "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.

(j) "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.

(k) "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.

(l) "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 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 an effective substitute for commercial 
products, or are returned to the original process as a 
substitute for raw material feedstock.

(m) “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.

(n) “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.

(o) “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.

(p) “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.

(q) "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.

(r) "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.

(s) "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.

(t) "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.

(u) "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-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 for 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.
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 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;

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 is exempt
   from the solid waste assessment fee; and

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

(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 provid-
ing 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, cleanup 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 prematurely depleted by solid waste originating from other locations.

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

§20-5N-2. Definitions.

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

2 (1) “Commercial Recycler” means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility;

3 (2) “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;

4 (3) “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;

5 (4) “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;

6 (5) “Permittee” means a person who has or should obtain a permit for a commercial solid waste facility that is a landfill;

7 (6) “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-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 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 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;

(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; and

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

(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
(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.

**ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.**


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

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

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

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

(d) "Class A facility" means a commercial solid
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 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.

(e) "Class B facility" means a commercial solid
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-
ine-a of this code.

(f) "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.

(g) "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.

(h) "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.

(i) "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.

(j) "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 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.

(k) "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.

(l) “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.

(m) “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.

(n) “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.

(o) “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.

(p) “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.

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

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

(b) Collection, return, payment and record. — The 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 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;

(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 fee imposed pursuant to section five-a, article five-f of this chapter; and

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

(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 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 this code.

(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.
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 ninety days 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 1st day of April, 1992.

Governor