WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

ENROLLED
Committee Substitute for
HOUSE BILL No. 2445

(By-Delegate Mr. Speaker, Mr. Chamber, et al.)

Passed April 19, 1993

In Effect Ninety days from Passage
AN ACT to repeal section twelve, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, five-a, five-b and ten of said article; and to amend and reenact section four, article five-n of said chapter, all relating to the management and disposal of solid waste; adding legislative findings which provide that solid waste incineration presents potentially significant health and environmental problems; that efforts should continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible; solid waste assessment fees; penalties; performance bonds; amount and method of bonding; bonding requirements; period of bonding liability; prohibiting new municipal and commercial solid waste facilities utilizing incineration technologies for the purpose of solid waste incineration; county assessment for Class A facilities; amount of county assessment fees and purposes for which they may be expended; solid waste disposal facility assessment fees; and penalties.

Be it enacted by the Legislature of West Virginia:

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of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, five-a, five-b and ten of said article be amended and reenacted; and that section four, article five-n of said chapter be amended and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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

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

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

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

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

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

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

(f) The Legislature further finds that incineration technologies present potentially significant health and environmental problems.

(g) The Legislature further finds that there is a need for efforts to continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible.

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

(a) Imposition. — A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of one dollar and seventy-five cents per ton or part thereof of solid waste. 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
is 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 is 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 remains 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 is primarily liable for collection and remittance
of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by
this section. However, if the operator fails, in whole or
in part, to discharge his or her obligations under this
section, the owner and the operator of the solid waste
facility are 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 are 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 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 is 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 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 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 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. 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 "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 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 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 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 for administration, inspection, enforcement and permitting activities established pursuant to this article;

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

(3) The "Solid Waste Reclamation and Environmental Response Fund" which may be expended by the director 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
§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.

(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, rules promulgated hereunder and the permit: Provided, That the director has the discretion to waive the requirement of a bond from the operator of a commercial solid waste facility, other than a Class A facility, which is operating under a compliance order. The amount of the bond required is one thousand dollars per acre and may include an additional amount determined by the director based upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include, but are not limited to, satisfactory monitoring, post-closure care and remedial measures: Provided, however, That the amount of the bond shall not exceed eight thousand dollars per acre. All permits shall be bonded for at least ten thousand dollars. The bond shall cover either (1) the entire area to be used for the disposal of solid waste, or (2) that increment of land within the permit area upon which the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant to chapter twenty-nine-a of this code. If the operator chooses to use incremental bonding, as succeeding increments of commercial solid waste facility operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance
with this section: Provided further, That once the operator has chosen to proceed with bonding either the entire area to be used for the disposal of solid waste or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit and for a period of up to thirty full years after final closure of the permit site: Provided, That any further time period necessary to achieve compliance with the requirements in the closure plan of the permit is considered an additional liability period.

(c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods.

If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners’ loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certifi-
cates so deposited, upon depositing with the treasurer
in lieu thereof, cash or other securities or certificates of
the classes herein specified having value equal to or
greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the
thirty-year period following final closure, the division
will conduct a final inspection of the facility. The
purpose of the inspection is to determine compliance
with this article, the division's rules, the terms and
conditions of the permit, orders of the division and the
terms and conditions of the bond. Based upon this
determination, the division will either forfeit the bond
prior to the expiration of the thirty-year period follow-
ing final closure, or release the bond at the expiration
of the thirty-year period following final closure. Bond
release requirements shall be provided in rules promul-
gated by the director.

(e) If the operator of a commercial solid waste facility
abandons the operation of a solid waste disposal facility
for which a permit is required by this article or if the
permittee fails or refuses to comply with the require-
ments of this article in any respect for which liability
has been charged on the bond, the director shall declare
the bond forfeited and shall certify the same to the
attorney general who shall proceed to enforce and collect
the amount of liability forfeited thereon, and where the
operation has deposited cash or securities as collateral
in lieu of corporate surety, the secretary shall declare
said collateral forfeited and shall direct the state
treasurer to pay said funds into a waste management
fund to be used by the director to effect proper closure
and to defray the cost of administering this article.
Should any corporate surety fail to promptly pay in full,
forfeited bond, it is disqualified from writing any
further surety bonds under this article.

§20-5F-10. Municipal and commercial solid waste incin-
eration and backhauling prohibited; exceptions.

(a) Notwithstanding any other provision of this code
to the contrary, it shall be unlawful to install, establish
or construct a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration: Provided, That such prohibition shall not include the development of pilot projects which may include tire or tire material incineration, designed to analyze the efficiency and environmental impacts of incineration technologies: Provided, however, That any pilot project proposing to incinerate solid waste must comply with regulatory requirements for solid waste facilities established in this chapter and shall demonstrate with particularity to the division that it has the financial and technical ability to comply with all regulations applicable to solid waste facilities utilizing incineration technologies. The division shall require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of potential future environmental harm at the site.

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

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§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 three dollars and fifty cents per ton or like ratio on any part thereof of solid waste, except as provided in subsection (e) 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 to close by article fifteen 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 is 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 is primarily liable for collection and remittance of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are 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 are 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 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 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 or 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 nine, article fifteen of this chapter shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to section twelve of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 22nd day of April 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/19/98
Time 3:00 pm