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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

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## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 288

(By Senators *Burdette, Mr. President, and*  
*Buluy, By Request of the Executive.*)

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PASSED *April 10,* 1993

In Effect *from* Passage

**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 288**

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,  
BY REQUEST OF THE EXECUTIVE)

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[Passed April 10, 1993; in effect from passage.]

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AN ACT to amend and reenact section two, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section two-b; to amend and reenact section twelve-b, article nine of said chapter; and to amend and reenact section twelve, article eleven of said chapter, all relating to definitions; sewage sludge management; siting approval for solid waste facilities; effect on facilities with prior approval; and recycling facilities exemption.

*Be it enacted by the Legislature of West Virginia:*

That section two, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-b; that section twelve-b, article nine of said chapter be amended and reenacted; and that section twelve, article eleven of said chapter be amended and reenacted, all 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 office of waste  
13 management of the division of environmental  
14 protection.

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

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

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

35 (g) "Division" means the division of environmental  
36 protection.

37 (h) "Director" means the director of the division of  
38 environmental protection.

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

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

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

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

77 regulatory concern, or a hazardous waste either  
78 identified or listed under article five-e of this chapter  
79 or refuse, slurry, overburden or other wastes or  
80 material resulting from coal-fired electric power or  
81 steam generation, the exploration, development,  
82 production, storage and recovery of coal, oil and gas  
83 and other mineral resources placed or disposed of at a  
84 facility which is regulated under chapter twenty-two,  
85 twenty-two-a or twenty-two-b of this code, so long as  
86 such placement or disposal is in conformance with a  
87 permit issued pursuant to such chapters.

88 (m) "Solid waste disposal" means the practice of  
89 disposing of solid waste including placing, depositing,  
90 dumping or throwing or causing to be placed, deposit-  
91 ed, dumped or thrown any solid waste.

92 (n) "Solid waste disposal shed" means the geogra-  
93 phical area which the solid waste management board  
94 designates and files in the state register pursuant to  
95 section eight, article twenty-six, chapter sixteen of this  
96 code.

97 (o) "Solid waste facility" means any system, facility,  
98 land, contiguous land, improvements on the land,  
99 structures or other appurtenances or methods used for  
100 processing, recycling or disposing of solid waste,  
101 including landfills, transfer stations, materials recov-  
102 ery facilities, mixed waste processing facilities, sewage  
103 sludge processing facilities, composting facilities and  
104 other such facilities not herein specified, but not  
105 including land upon which sewage sludge is applied in  
106 accordance with subsection (b), section two-b of this  
107 article. Such facility shall be deemed to be situated, for  
108 purposes of this article, in the county where the  
109 majority of the spatial area of such facility is located:  
110 *Provided*, That a salvage yard, licensed and regulated  
111 pursuant to the terms of article twenty-three, chapter  
112 seventeen of this code, is not a solid waste facility.

113 (p) "Class A facility" means a commercial solid  
114 waste facility which handles an aggregate of between  
115 ten thousand and thirty thousand tons of solid waste  
116 per month. Class A facility shall include two or more

117 Class B solid waste landfills owned or operated by the  
118 same person in the same county, if the aggregate tons  
119 of solid waste handled per month by such landfills  
120 exceeds nine thousand nine hundred ninety-nine tons  
121 of solid waste per month.

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

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

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

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

147 (u) "Materials recovery facility" means any solid  
148 waste facility at which source-separated materials or  
149 materials recovered through a mixed waste processing  
150 facility are manually or mechanically shredded or  
151 separated for purposes of reuse and recycling, but does  
152 not include a composting facility.

153 (v) "Source-separated materials" means materials  
154 separated from general solid waste at the point of  
155 origin for the purpose of reuse and recycling but does

156 not mean sewage sludge.

157 (w) "Mixed waste processing facility" means any  
158 solid waste facility at which materials are recovered  
159 from mixed solid waste through manual or mechanical  
160 means for purposes of reuse, recycling or composting.

161 (x) "Mixed solid waste" means solid waste from  
162 which materials sought to be reused or recycled have  
163 not been source-separated from general solid waste.

164 (y) "Composting facility" means any solid waste  
165 facility processing solid waste by composting, including  
166 sludge composting, organic waste or yard waste com-  
167 posting, but does not include a facility for composting  
168 solid waste that is located at the site where the waste  
169 was generated.

170 (z) "Recycling facility" means any solid waste  
171 facility for the purpose of recycling at which neither  
172 land disposal nor biological, chemical or thermal  
173 transformation of solid waste occurs: *Provided*, That  
174 mixed waste recovery facilities, sludge processing  
175 facilities and composting facilities are not considered  
176 recycling facilities nor considered to be reusing or  
177 recycling solid waste within the meaning of this article  
178 and articles nine and eleven of this chapter.

179 (aa) "Landfill" means any solid waste facility for the  
180 disposal of solid waste on land. Such facility is situated,  
181 for purposes of this article, in the county where the  
182 majority of the spatial area of such facility is located.

183 (bb) "Sewage sludge processing facility" is a solid  
184 waste facility that processes sewage sludge for land  
185 application, incineration or disposal at an approved  
186 landfill. Such processes include, but are not limited to,  
187 composting, lime stabilization, thermophilic digestion  
188 and anaerobic digestion.

189 (cc) "Bulking agent" means any material mixed and  
190 composted with sewage sludge.

191 (dd) "Sewage sludge" means solid, semisolid or  
192 liquid residue generated during the treatment of  
193 domestic sewage in a treatment works. Sewage sludge

194 includes, but is not limited to, domestic septage, scum  
195 or solids removed in primary, secondary or advanced  
196 wastewater treatment processes and a material  
197 derived from sewage sludge. "Sewage sludge" does not  
198 include ash generated during the firing of sewage  
199 sludge in a sewage sludge incinerator.

200 (ee) "Composting" means the aerobic, thermophilic  
201 decomposition of natural constituents of solid waste to  
202 produce a stable, humus-like material.

203 (ff) "Agronomic rate" means the whole sewage  
204 sludge application rate, by dry weight, designed:

205 (1) To provide the amount of nitrogen needed by the  
206 food crop, feed crop, fiber crop, cover crop or vegeta-  
207 tion on the land; and

208 (2) To minimize the amount of nitrogen in the  
209 sewage sludge that passes below the root zone of the  
210 crop or vegetation grown on the land to the ground  
211 water.

**§20-5F-2b. Sewage sludge management.**

1 (a) The division shall develop and implement a  
2 comprehensive program for the regulation and man-  
3 agement of sewage sludge. The division is authorized  
4 to require permits for all facilities and activities which  
5 generate, process or dispose of sewage sludge by  
6 whatever means, including, but not limited to, land  
7 application, composting, mixed waste composting,  
8 incineration or any other method of handling sewage  
9 sludge within the state.

10 (b) The director shall promulgate rules necessary for  
11 the efficient and orderly regulation of sewage sludge  
12 no later than ninety days after the effective date of  
13 this article. The Legislature finds and declares that  
14 conditions warranting a rule to be promulgated as an  
15 emergency rule do exist and that the promulgation of  
16 the initial rule required by this section should be  
17 accorded emergency status. All rules, whether emer-  
18 gency or not, promulgated pursuant to this section  
19 shall assure, at a minimum, the following:



20 (1) That entities either producing sewage sludge  
21 within the state or importing sewage sludge into the  
22 state are required to report to the division the  
23 following:

24 (i) The specific source of the sewage sludge;

25 (ii) The amount of sewage sludge actually generated  
26 or imported;

27 (iii) The content of heavy metals, pathogens, toxins  
28 or vectors present in the sewage sludge; and

29 (iv) Each location that the sewage sludge is stored,  
30 land applied or otherwise disposed of; the amount so  
31 stored, land applied or otherwise disposed of; and the  
32 capacity of that location to accept sewage sludge.

33 (2) That the division engage in reasonable and  
34 periodic monitoring of all sewage sludge related  
35 activities and to monitor data supplied by sewage  
36 sludge producers or importers to ensure compliance  
37 with state and federal regulations;

38 (3) That representatives of the division have the  
39 ability to enter onto any land application site for the  
40 purposes of inspecting and analyzing the effects of  
41 sewage sludge application on that site;

42 (4) That no permit for the processing or disposal of  
43 sewage sludge will be issued until there is an accurate  
44 finding that it has been adequately tested and shown  
45 not to contain heavy metals, pathogens, toxins or  
46 vectors in excess of regulatory standards;

47 (5) That the director may require a surety bond,  
48 deposit or similar instrument in an amount sufficient  
49 to cover the costs of future environmental remediation  
50 from producers and importers of sewage sludge;

51 (6) That no person or entity be allowed to apply  
52 sewage sludge to land in a manner that will result in  
53 exceeding the maximum soil concentration for all  
54 pollutants, including, but not limited to, arsenic,  
55 cadmium, chromium, copper, lead, mercury, molybde-  
56 num, nickel, selenium and zinc;

57 (7) That no land, except a solid waste facility, be  
58 allowed to accept or store so much sewage sludge as to  
59 exceed the agronomic rate or a rate of fifteen dry tons  
60 per acre per year, whichever is less: *Provided*, That up  
61 to twenty-five dry tons per acre per year may be  
62 applied in the reclamation of surface mine land;

63 (8) That information relating to the disposal of  
64 sewage sludge is available to affected communities;

65 (9) That all sewage sludge processing facilities  
66 contain sufficient design specifications to protect  
67 ground and surface waters;

68 (10) That regulation of composting facilities varies  
69 according to types and quantities of materials handled;

70 (11) That only living or dead plant tissues are used  
71 as bulking agents in sewage sludge processing facili-  
72 ties; and

73 (12) That a fee, to be paid by the producer or  
74 importer, be levied and imposed on the land applica-  
75 tion of sewage sludge, to be collected at a per ton rate,  
76 sufficient to cover the costs of the sewage sludge  
77 management program. Fees collected pursuant to the  
78 terms of this subsection shall be deposited in the  
79 special revenue fund designated the "water quality  
80 management fund" established under the provisions  
81 of section six-a, article five-a of this chapter. The fee  
82 schedule shall vary according to the volume of mate-  
83 rials handled and the contaminant level of the sewage  
84 sludge and shall be subject to the provisions of article  
85 three, chapter twenty-nine-a of this code.

86 (c) For those publicly owned treatment works  
87 (POTW) which produce sewage sludge and are regulat-  
88 ed by the division pursuant to an NPDES permit  
89 required under article five-a of this chapter, a sewage  
90 sludge processing permit shall be a part of the existing  
91 water pollution control permit and shall include a  
92 sewage sludge management plan approved by the  
93 chief.

94 (d) On and after the effective date of this section,  
95 any facility seeking to land apply, compost, incinerate

96 or recycle sewage sludge shall first apply for and  
97 obtain a permit from the division. No such permit may  
98 be issued until the regulation provided for in subsec-  
99 tion (b) of this section is effective.

100 (e) All sewage sludge placed in, or upon, or used by  
101 a solid waste facility or processed or handled, pursuant  
102 to a permit issued by the division of environmental  
103 protection, shall be subject to the same tipping and  
104 other fees levied by this chapter on the disposal of  
105 solid waste and shall be included in said facility's total  
106 tonnage, subject to the limitations established in this  
107 article and the provisions of article nine of this  
108 chapter: *Provided*, That no land within a solid waste  
109 facility, but outside a landfill disposal cell, be allowed  
110 to accept the permanent application of so much  
111 sewage sludge as to exceed the agronomic rate or a  
112 rate of fifteen dry tons per acre per year, whichever  
113 is less: *Provided however*, That no such fees, excepting  
114 assessment fees provided for in subdivision (12),  
115 subsection (b) of this section shall be levied upon the  
116 application of sewage sludge to land outside a solid  
117 waste facility in accordance with this section.

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

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

1 (a) It is the intent of the Legislature that all com-  
2 mercial solid waste facilities operating in this state  
3 must receive site approval at the local level, except for  
4 recycling facilities, as defined in section two, article  
5 five-f of this chapter, that are specifically exempted by  
6 section twelve, article eleven of this chapter. Notwith-  
7 standing said intent, facilities which obtained such  
8 approval from either a county or regional solid waste  
9 authority, or from a county commission, under any  
10 prior enactment in this code, and facilities which were  
11 otherwise exempted from local site approval under  
12 any prior enactment in this code, shall be deemed to  
13 have satisfied such requirement. All other facilities,  
14 including facilities which received such local approval  
15 but which seek to expand spatial area or to convert

16 from a Class B facility to a Class A facility, shall obtain  
17 such approval only in the manner specified in sections  
18 twelve-c, twelve-d and twelve-e of this article.

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

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

38 ~~(d) The siting approval requirements for composting~~  
39 ~~facilities, materials recovery facilities and mixed waste~~  
40 ~~processing facilities shall be the same as those for~~  
41 ~~other solid waste facilities.~~

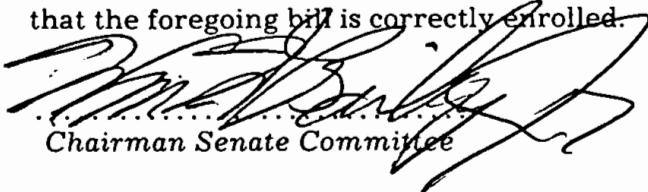
#### ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

##### §20-11-12. Recycling facilities exemption.

1 Recycling facilities, as defined in section two, article  
2 five-f of this chapter, whose only function is to accept  
3 free-of-charge, buy or transfer source separated  
4 material or recycled material for resale or transfer for  
5 further processing shall be exempt from the provisions  
6 of said article and article nine of this chapter and  
7 sections one-c and one-f, article two, chapter twenty-  
8 four of this code.

Enr. Com. Sub. for S. B. No. 288] 12

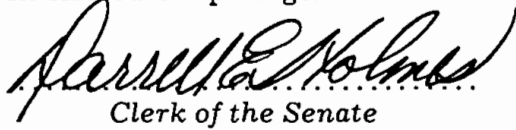
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

Ernest C. Moore  
.....  
Chairman House Committee

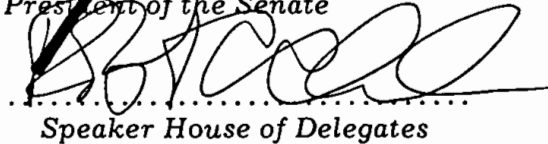
Originated in the Senate.

In effect from passage.

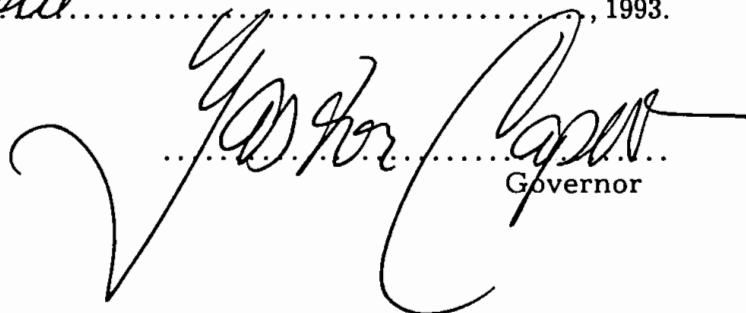
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved.....this the 19<sup>th</sup>.....  
day of April....., 1993.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/16/23

Time 9:27am