WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Committee Substitute for
SENATE BILL NO. 288

(By Senator Burdette, Mr. President, and Babby, By Request of the Executive)

PASSED April 10, 1993

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 288

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

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

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 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 office of waste management of the division of environmental protection.

(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 land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(g) “Division” means the division of environmental protection.
(h) "Director" means the director of the division of environmental protection.

(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" or "persons" 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; and other discarded materials, 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 byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct 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.

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

(n) "Solid waste disposal shed" means the geogra-
phical 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 recov-
ery facilities, mixed waste processing facilities, sewage
sludge processing facilities, composting facilities and
other such facilities not herein specified, but not
including land upon which sewage sludge is applied in
accordance with subsection (b), section two-b of this
article. 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:
Provided, That a salvage yard, licensed and regulated
pursuant to the terms of article twenty-three, chapter
seventeen of this code, is not a solid waste facility.

(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 environmental protection 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 source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

(v) "Source-separated materials" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does
not mean sewage sludge.

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

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

(y) “Composting facility” means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

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

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

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

(cc) “Bulking agent” means any material mixed and composted with sewage sludge.

(dd) “Sewage sludge” means solid, semisolid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge
includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

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

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

(1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and

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

§20-5F-2b. Sewage sludge management.

(a) The division shall develop and implement a comprehensive program for the regulation and management of sewage sludge. The division is authorized to require permits for all facilities and activities which generate, process or dispose of sewage sludge by whatever means, including, but not limited to, land application, composting, mixed waste composting, incineration or any other method of handling sewage sludge within the state.

(b) The director shall promulgate rules necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. The Legislature finds and declares that conditions warranting a rule to be promulgated as an emergency rule do exist and that the promulgation of the initial rule required by this section should be accorded emergency status. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:
(1) That entities either producing sewage sludge within the state or importing sewage sludge into the state are required to report to the division the following:

(i) The specific source of the sewage sludge;

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

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

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

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

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

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

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

(6) That no person or entity be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc;
(7) That no land, except a solid waste facility, be allowed to accept or store so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land;

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

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

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

(11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and

(12) That a fee, to be paid by the producer or importer, be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the “water quality management fund” established under the provisions of section six-a, article five-a of this chapter. The fee schedule shall vary according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.

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

(d) On and after the effective date of this section, any facility seeking to land apply, compost, incinerate
or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the regulation provided for in subsection (b) of this section is effective.

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

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section two, article five-f of this chapter, that are specifically exempted by section twelve, article eleven of this chapter. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment in this code, and facilities which were otherwise exempted from local site approval under any prior enactment in this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert
from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twelve-c, twelve-d and twelve-e of this article.

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

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

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

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-12. Recycling facilities exemption.

Recycling facilities, as defined in section two, article five-f of this chapter, whose only function is to accept free-of-charge, buy or transfer source separated material or recycled material for resale or transfer for further processing shall be exempt from the provisions of said article and article nine of this chapter and sections one-c and one-f, article two, chapter twenty-four of this code.
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 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 10th day of April, 1993.

Governor