WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 289

(By Senator Brackenridge, et al.)

PASSED March 31, 1993

In Effect from Passage
ENROLLED

Senate Bill No. 289

(By Senators Brackenrich, Dalton, Chafin, Blatnik, Humphreys, Walker, Craigo, Dittmar, Helmick, Plymale, Manchin, Jones, Ross, Chernenko, Wiedebusch, Burdette, Mr. President, Bailey, Tomblin, Wagner, Whitlow, Boley, Macnaughtan, Felton, Sharpe, Wehrle, Claypole and Yoder)

[Passed March 31, 1993; in effect from passage.]

AN ACT to amend and reenact sections five and eight, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two, chapter twenty-four of said code by adding thereto a new section, designated section one-i, all relating to solid waste facilities generally, providing for local solid waste to apply to director of the division of environmental protection for modification of permits, providing for extensions of the solid waste facility closure deadline, providing that appeal from decision of director of the division of environmental protection shall be made to circuit court of the county in which the solid waste facility is located, and providing for issuance of emergency certificate of need by public service commission to increase maximum monthly solid waste disposal tonnage.

Be it enacted by the Legislature of West Virginia:
That sections five and eight, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two, chapter twenty-four of said code be amended by adding thereto a new section, designated section one-i, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-5. Prohibitions; permits required; priority of disposal.

(a) Open dumps are prohibited and it shall be unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on his property unless that open dump is under a compliance schedule approved by the chief. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm shall not be deemed to constitute a violation of this section if such open dump did not constitute a violation of law on the first day of January, one thousand nine hundred eighty-eight, and unauthorized dumps which were created by unknown persons shall not constitute a violation of this section: Provided, That no person shall contribute additional solid waste to any such dump after the first day of April, one thousand nine hundred eighty-eight, except that the owners of the land on which unauthorized dumps have been or are being made shall not be liable for such unauthorized dumping unless such landowners refuse to cooperate with the division of natural resources in stopping such unauthorized dumping.

(b) It shall be unlawful for any person, unless he holds a valid permit from the division to install, establish, construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified,
operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.

(c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article five-a and the rules promulgated thereunder, so that only a single permit shall be required of a solid waste facility under these two articles. Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That the chief may administratively extend a permit beyond its five-year term if the approved solid waste facility is in compliance with this article, its rules and article five-a of this chapter and the rules promulgated thereunder: Provided, however, That such administrative extension may not be for more than one year. Upon expiration of a permit, renewal permits may be issued in compliance with rules and regulations promulgated by the director of the division of natural resources.

(d) All existing permits of the division of health for solid waste facilities under section nine, article one, chapter sixteen of this code shall continue in full force and effect until a permit is issued for that approved solid waste facility under this article: Provided, That all such existing permits of the division of health shall expire within five years of the tenth day of June, one thousand nine hundred eighty-three. Within four years of the tenth day of June, one thousand nine hundred eighty-three, all persons holding such division of health permits shall apply to the chief for a permit under this article: Provided, however, That the chief may require persons holding such existing health division permits to reapply under this section prior to four years from the tenth day of June, one thousand nine hundred eighty-three, if persistent violations of this article, any permit term or condition, orders or rules promulgated under this article, exist at that facility. Notwithstanding any other provision contained in this subsection, the division of natural resources may enter an extension order for a period of
two years while an application for a permit pursuant to this article is pending.

(e) No person may dispose in the state of any solid waste, whether such waste originates in state or out of state, in a manner which endangers the environment or the public health, safety or welfare as determined by the director of the division of natural resources. Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director of the division of natural resources, the director of the division of health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

(f) A commercial solid waste facility shall first ensure that the disposal needs of the wasteshed in which it is located are met. If one or more local solid waste authorities in the wasteshed in which the facility is located determine that the present or future disposal needs of the wasteshed are not being, or will not be, met by the commercial solid waste facility, such authorities may apply to the director of the division of environmental protection to modify the applicable permit. The director of the division of environmental protection, in consultation with the solid waste management board, may then modify the applicable permit in order to reduce the total monthly tonnage of out of wasteshed waste the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage necessary to ensure the disposal needs of the wasteshed in which the facility is located.

(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, not otherwise allowed by an existing permit, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification,
the certificate of need shall become a part of the
permit and all conditions contained in the certificate of
need shall be conditions of the permit and may be
enforced by the division of natural resources in
accordance with the provisions of this article.

(h) The director of the division of natural resources
shall promulgate legislative rules pursuant to chapter
twenty-nine-a of this code which reflect the purposes
as set forth in this article.

§20-5F-8. Limited extension of solid waste facility closure
deadline.

(a) The director of the division of environmental
protection shall grant an extension of the closure
deadline up to the thirtieth day of June, one thousand
nine hundred ninety-three, to a solid waste facility,
required by solid waste management regulations to
close by the thirty-first day of March, one thousand
nine hundred ninety-three, requesting such extension
pursuant to the terms of subsection (b) of this section.
The director may also grant an extension of the
closure deadline up to the thirtieth day of September,
one thousand nine hundred ninety-four, to a solid
waste facility required under the terms of an exten-
sion granted pursuant to this subsection to close by the
thirtieth day of June, one thousand nine hundred
ninety-three, or required by solid waste management
regulations to close by the thirtieth day of September,
one thousand nine hundred ninety-three, provided
that the solid waste facility:

(1) Has a solid waste facility permit, or by the first
day of March, one thousand nine hundred ninety-
three, had an application to obtain a permit pending
before the division of environmental protection for the
construction of a landfill in accordance with title forty-
seven, series thirty-eight, solid waste management
regulations; and

(2) Has a certificate of need or had an application
pending therefor, from the public service commission;
and
(3) Has been determined by the director to pose no significant hazard to public health, safety or the environment; and

(4) Has entered into a compliance schedule with the division of environmental protection to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with title forty-seven, series thirty-eight, solid waste management regulations or to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with preclosure provisions of title forty-seven, series thirty-eight, solid waste management regulations: Provided, That no such extension of closure deadline shall extend beyond the thirty-first day of March, one thousand nine hundred ninety-four, for any landfill in a county in which there is also located a commercial solid waste landfill which has installed a composite liner system in accordance with the requirements of the solid waste management regulations.

(b) Any commercial solid waste facility seeking to extend its closure deadline until the thirtieth day of June, one thousand nine hundred ninety-three, shall submit a request for an extension with the director, postmarked no later than the tenth day after this section becomes law. Any solid waste facility seeking to extend its closure deadline until the thirtieth day of September, one thousand nine hundred ninety-four, shall submit to the director, no later than the thirtieth day of April, one thousand nine hundred ninety-three, an application sufficient to demonstrate compliance with the requirements of subsection (a) of this section. The director shall grant or deny any application within thirty days of receipt thereof: Provided, That as a condition precedent for granting such closure extension, a solid waste facility must enter into an agreement with the director that the solid waste facility shall, no later than the thirtieth day of September, one thousand nine hundred ninety-three, complete and submit to the director an analysis of the facility specific requirements and cost to comply with the
applicable design criteria, groundwater monitoring provisions of title forty-seven, series thirty-eight, solid waste management regulations and the corrective action, financial assurance and closure and post-closure care provisions of Subtitle (d) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6941-6949.

(c) Any party who is aggrieved by an order of the director regarding the grant or denial of an extension of the closure deadline for a solid waste facility pursuant to this section, may obtain judicial review thereof in the same manner as provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in said section, in the circuit court of the county where such facility exists: Provided, That the court shall not in any manner permit the continued acceptance of solid waste at the facility pending review of the decision of the director of the division.

(d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(e) The director of the division of natural resources shall grant an extension of the closure deadline not to exceed the thirtieth day of September, one thousand nine hundred ninety-three, to a solid waste facility required by solid waste management regulations to close by the thirtieth day of November, one thousand nine hundred ninety-two.

(f) Notwithstanding any other provision of this article, the director, upon receipt of a request for an
extension, shall grant an extension of the closure
deadline up to the thirtieth day of September, one
thousand nine hundred ninety-four, to any solid waste
facility required to close on the thirty-first day of
March, one thousand nine hundred ninety-three, or
the thirtieth day of September, one thousand nine
hundred ninety-three, which is owned by a solid waste
authority or owned by a municipality and which
accepts at least thirty percent of its waste from within
the county in which it is located and which has not
been determined by the director to pose a significant
risk to human health and safety or cause substantial
harm to the environment and which could not be
granted an extension up to the thirtieth day of
September, one thousand nine hundred ninety-four,
pursuant to the terms of subsections (a) and (b) of this
section if:

(1) The cost of transporting the waste is prohibitive;
or

(2) The cost of disposing of waste in other solid waste
facilities within the wasteshed would increase.

(g) Notwithstanding any other provision of this
article, the director shall grant an extension of the
closure deadline up to the thirtieth day of September,
one thousand nine hundred ninety-four, to any solid
waste landfill which, on or before the first day of
March, one thousand nine hundred ninety-three, has
entered into a compliance schedule with the director
for the construction of a transfer station or to any solid
waste landfill which on the first day of March, one
thousand nine hundred ninety-three, is already in the
process of constructing a solid waste transfer station
and applies by the first day of April, one thousand
nine hundred ninety-three, to enter into with the
director, a compliance schedule for the completion of
the transfer station: Provided, That upon the comple-
tion of the transfer station and commencement of
operations of the transfer station, such landfill shall
cease accepting solid waste for disposal.
CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

1. (a) Notwithstanding any provision of this article, or any provision of article five-f or nine, chapter twenty, or any other provision of this code, upon the application of any commercial solid waste facility, the commission may grant to a commercial solid waste facility an emergency certificate of need to increase the maximum monthly solid waste disposal tonnage, for a period not to exceed one year, to the extent deemed necessary to prevent any disruption of solid waste disposal services in any county or wasteshed of the state resulting from the closure of an existing landfill in said county or wasteshed. The authority granted to the commission under this section shall expire after the thirtieth day of September, one thousand nine hundred ninety-three. No temporary certificate issued pursuant to this section shall extend beyond the thirtieth day of September, one thousand nine hundred ninety-four. The director of the division of environmental protection shall modify any commercial solid waste facility permit, issued under article five-f, chapter twenty of this code, to conform with the maximum monthly solid waste disposal tonnage and any other terms and conditions set forth in a temporary certificate issued under this section.

2. (b) If the net tonnage increase under a temporary certificate application made pursuant to subsection (a) of this section would cause the gross monthly solid waste disposal tonnage of such facility to exceed ten thousand tons, a temporary certificate shall be issued only if solid waste facility has: (1) Obtained from the county or regional solid waste authority for the county or counties in which the facility is located a certificate
of site approval or approval for conversion from a
Class B facility to a Class A facility; and (2) obtained
from the county or regional solid waste authority for
the county or counties in which the facility is located
approval to increase the maximum monthly tonnage
disposed at the facility; and (3) obtained from the
county commission for the county or counties in which
the landfill is located approval to operate as a Class A
facility; and (4) has a certificate of need application
pending before the public service commission; and (5)
has installed a composite liner system in compliance
with the requirements set forth in the solid waste
management regulations promulgated by the division
of environmental protection or its predecessor. Such
emergency certificate shall not authorize an increase
in the maximum monthly solid waste disposal tonnage
in an amount greater than that approved by the
county or regional solid waste authority for the county
or counties in which the landfill is located.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Martha J. Wachen
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect from passage.

W. J. Kepp
Clerk of the Senate

President of the Senate

Speaker House of Delegates

The within is approved this the 31st day of

Governor

May, 1993.