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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

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## ENROLLED

SENATE BILL NO. 289

(By Senator Brackenrich, et al)

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PASSED March 31, 1993  
In Effect from Passage

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

**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)

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

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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.

1 (a) Open dumps are prohibited and it shall be  
2 unlawful for any person to create, contribute to or  
3 operate an open dump or for any landowner to allow  
4 an open dump to exist on his property unless that  
5 open dump is under a compliance schedule approved  
6 by the chief. Such compliance schedule shall contain  
7 an enforceable sequence of actions leading to com-  
8 pliance and shall not exceed two years. Open dumps  
9 operated prior to the first day of April, one thousand  
10 nine hundred eighty-eight, by a landowner or tenant  
11 for the disposal of solid waste generated by the  
12 landowner or tenant at his or her residence or farm  
13 shall not be deemed to constitute a violation of this  
14 section if such open dump did not constitute a viola-  
15 tion of law on the first day of January, one thousand  
16 nine hundred eighty-eight, and unauthorized dumps  
17 which were created by unknown persons shall not  
18 constitute a violation of this section: *Provided*, That no  
19 person shall contribute additional solid waste to any  
20 such dump after the first day of April, one thousand  
21 nine hundred eighty-eight, except that the owners of  
22 the land on which unauthorized dumps have been or  
23 are being made shall not be liable for such unautho-  
24 rized dumping unless such landowners refuse to  
25 cooperate with the division of natural resources in  
26 stopping such unauthorized dumping.

27 (b) It shall be unlawful for any person, unless he  
28 holds a valid permit from the division to install,  
29 establish, construct, modify, operate or abandon any  
30 solid waste facility. All approved solid waste facilities  
31 shall be installed, established, constructed, modified,

32 operated or abandoned in accordance with this article,  
33 plans, specifications, orders, instructions and rules in  
34 effect.

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

52 (d) All existing permits of the division of health for  
53 solid waste facilities under section nine, article one,  
54 chapter sixteen of this code shall continue in full force  
55 and effect until a permit is issued for that approved  
56 solid waste facility under this article: *Provided*, That  
57 all such existing permits of the division of health shall  
58 expire within five years of the tenth day of June, one  
59 thousand nine hundred eighty-three. Within four  
60 years of the tenth day of June, one thousand nine  
61 hundred eighty-three, all persons holding such div-  
62 ision of health permits shall apply to the chief for a  
63 permit under this article: *Provided, however*, That the  
64 chief may require persons holding such existing health  
65 division permits to reapply under this section prior to  
66 four years from the tenth day of June, one thousand  
67 nine hundred eighty-three, if persistent violations of  
68 this article, any permit term or condition, orders or  
69 rules promulgated under this article, exist at that  
70 facility. Notwithstanding any other provision con-  
71 tained in this subsection, the division of natural  
72 resources may enter an extension order for a period of

73 two years while an application for a permit pursuant  
74 to this article is pending.

75 (e) No person may dispose in the state of any solid  
76 waste, whether such waste originates in state or out of  
77 state, in a manner which endangers the environment  
78 or the public health, safety or welfare as determined  
79 by the director of the division of natural resources:  
80 *Provided*, That the carcasses of dead animals may be  
81 disposed of in any solid waste facility or in any other  
82 manner as provided for in this code. Upon request by  
83 the director of the division of natural resources, the  
84 director of the division of health shall provide techni-  
85 cal advice concerning the disposal of solid waste or  
86 carcasses of dead animals within the state.

87 (f) A commercial solid waste facility shall first  
88 ensure that the disposal needs of the wasteshed in  
89 which it is located are met. If one or more local solid  
90 waste authorities in the wasteshed in which the  
91 facility is located determine that the present or future  
92 disposal needs of the wasteshed are not being, or will  
93 not be, met by the commercial solid waste facility,  
94 such authorities may apply to the director of the  
95 division of environmental protection to modify the  
96 applicable permit. The director of the division of  
97 environmental protection, in consultation with the  
98 solid waste management board, may then modify the  
99 applicable permit in order to reduce the total monthly  
100 tonnage of out of wasteshed waste the facility is  
101 permitted to accept by an amount that shall not  
102 exceed the total monthly tonnage necessary to ensure  
103 the disposal needs of the wasteshed in which the  
104 facility is located.

105 (g) In addition to all the requirements of this article  
106 and the rules promulgated hereunder, a permit to  
107 construct a new commercial solid waste facility or to  
108 expand the spatial area of an existing facility, not  
109 otherwise allowed by an existing permit, may not be  
110 issued unless the public service commission has  
111 granted a certificate of need, as provided in section  
112 one-c, article two, chapter twenty-four of this code. If  
113 the director approves a permit or permit modification,

114 the certificate of need shall become a part of the  
115 permit and all conditions contained in the certificate of  
116 need shall be conditions of the permit and may be  
117 enforced by the division of natural resources in  
118 accordance with the provisions of this article.

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

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

1 (a) The director of the division of environmental  
2 protection shall grant an extension of the closure  
3 deadline up to the thirtieth day of June, one thousand  
4 nine hundred ninety-three, to a solid waste facility,  
5 required by solid waste management regulations to  
6 close by the thirty-first day of March, one thousand  
7 nine hundred ninety-three, requesting such extension  
8 pursuant to the terms of subsection (b) of this section.  
9 The director may also grant an extension of the  
10 closure deadline up to the thirtieth day of September,  
11 one thousand nine hundred ninety-four, to a solid  
12 waste facility required under the terms of an exten-  
13 sion granted pursuant to this subsection to close by the  
14 thirtieth day of June, one thousand nine hundred  
15 ninety-three, or required by solid waste management  
16 regulations to close by the thirtieth day of September,  
17 one thousand nine hundred ninety-three, provided  
18 that the solid waste facility:

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

26 (2) Has a certificate of need or had an application  
27 pending therefor, from the public service commission;  
28 and

29 (3) Has been determined by the director to pose no  
30 significant hazard to public health, safety or the  
31 environment; and

32 (4) Has entered into a compliance schedule with the  
33 division of environmental protection to be in full  
34 compliance, no later than the thirtieth day of Sep-  
35 tember, one thousand nine hundred ninety-four, with  
36 title forty-seven, series thirty-eight, solid waste man-  
37 agement regulations or to be in full compliance, no  
38 later than the thirtieth day of September, one thou-  
39 sand nine hundred ninety-four, with preclosure provi-  
40 sions of title forty-seven, series thirty-eight, solid  
41 waste management regulations: *Provided*, That no  
42 such extension of closure deadline shall extend beyond  
43 the thirty-first day of March, one thousand nine  
44 hundred ninety-four, for any landfill in a county in  
45 which there is also located a commercial solid waste  
46 landfill which has installed a composite liner system in  
47 accordance with the requirements of the solid waste  
48 management regulations.

49 (b) Any commercial solid waste facility seeking to  
50 extend its closure deadline until the thirtieth day of  
51 June, one thousand nine hundred ninety-three, shall  
52 submit a request for an extension with the director,  
53 postmarked no later than the tenth day after this  
54 section becomes law. Any solid waste facility seeking  
55 to extend its closure deadline until the thirtieth day of  
56 September, one thousand nine hundred ninety-four,  
57 shall submit to the director, no later than the thirtieth  
58 day of April, one thousand nine hundred ninety-three,  
59 an application sufficient to demonstrate compliance  
60 with the requirements of subsection (a) of this section.  
61 The director shall grant or deny any application  
62 within thirty days of receipt thereof: *Provided*, That as  
63 a condition precedent for granting such closure exten-  
64 sion, a solid waste facility must enter into an agree-  
65 ment with the director that the solid waste facility  
66 shall, no later than the thirtieth day of September, one  
67 thousand nine hundred ninety-three, complete and  
68 submit to the director an analysis of the facility  
69 specific requirements and cost to comply with the

70 applicable design criteria, groundwater monitoring  
71 provisions of title forty-seven, series thirty-eight, solid  
72 waste management regulations and the corrective  
73 action, financial assurance and closure and post-  
74 closure care provisions of Subtitle (d) of the federal  
75 Resource Conservation and Recovery Act, 42 U.S.C.  
76 6941-6949.

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

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

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

108 (f) Notwithstanding any other provision of this  
109 article, the director, upon receipt of a request for an



110 extension, shall grant an extension of the closure  
111 deadline up to the thirtieth day of September, one  
112 thousand nine hundred ninety-four, to any solid waste  
113 facility required to close on the thirty-first day of  
114 March, one thousand nine hundred ninety-three, or  
115 the thirtieth day of September, one thousand nine  
116 hundred ninety-three, which is owned by a solid waste  
117 authority or owned by a municipality and which  
118 accepts at least thirty percent of its waste from within  
119 the county in which it is located and which has not  
120 been determined by the director to pose a significant  
121 risk to human health and safety or cause substantial  
122 harm to the environment and which could not be  
123 granted an extension up to the thirtieth day of  
124 September, one thousand nine hundred ninety-four,  
125 pursuant to the terms of subsections (a) and (b) of this  
126 section if:

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

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

131 (g) Notwithstanding any other provision of this  
132 article, the director shall grant an extension of the  
133 closure deadline up to the thirtieth day of September,  
134 one thousand nine hundred ninety-four, to any solid  
135 waste landfill which, on or before the first day of  
136 March, one thousand nine hundred ninety-three, has  
137 entered into a compliance schedule with the director  
138 for the construction of a transfer station or to any solid  
139 waste landfill which on the first day of March, one  
140 thousand nine hundred ninety-three, is already in the  
141 process of constructing a solid waste transfer station  
142 and applies by the first day of April, one thousand  
143 nine hundred ninety-three, to enter into with the  
144 director, a compliance schedule for the completion of  
145 the transfer station: *Provided*, That upon the comple-  
146 tion of the transfer station and commencement of  
147 operations of the transfer station, such landfill shall  
148 cease accepting solid waste for disposal.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.****ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.****§24-2-1i. 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  
2 any provision of article five-f or nine, chapter twenty,  
3 or any other provision of this code, upon the applica-  
4 tion of any commercial solid waste facility, the com-  
5 mission may grant to a commercial solid waste facility  
6 an emergency certificate of need to increase the  
7 maximum monthly solid waste disposal tonnage, for a  
8 period not to exceed one year, to the extent deemed  
9 necessary to prevent any disruption of solid waste  
10 disposal services in any county or wasteshed of the  
11 state resulting from the closure of an existing landfill  
12 in said county or wasteshed. The authority granted to  
13 the commission under this section shall expire after  
14 the thirtieth day of September, one thousand nine  
15 hundred ninety-three. No temporary certificate issued  
16 pursuant to this section shall extend beyond the  
17 thirtieth day of September, one thousand nine  
18 hundred ninety-four. The director of the division of  
19 environmental protection shall modify any commer-  
20 cial solid waste facility permit, issued under article  
21 five-f, chapter twenty of this code, to conform with the  
22 maximum monthly solid waste disposal tonnage and  
23 any other terms and conditions set forth in a tempor-  
24 ary certificate issued under this section.

25 (b) If the net tonnage increase under a temporary  
26 certificate application made pursuant to subsection (a)  
27 of this section would cause the gross monthly solid  
28 waste disposal tonnage of such facility to exceed ten  
29 thousand tons, a temporary certificate shall be issued  
30 only if solid waste facility has: (1) Obtained from the  
31 county or regional solid waste authority for the county  
32 or counties in which the facility is located a certificate

33 of site approval or approval for conversion from a  
34 Class B facility to a Class A facility; and (2) obtained  
35 from the county or regional solid waste authority for  
36 the county or counties in which the facility is located  
37 approval to increase the maximum monthly tonnage  
38 disposed at the facility; and (3) obtained from the  
39 county commission for the county or counties in which  
40 the landfill is located approval to operate as a Class A  
41 facility; and (4) has a certificate of need application  
42 pending before the public service commission; and (5)  
43 has installed a composite liner system in compliance  
44 with the requirements set forth in the solid waste  
45 management regulations promulgated by the division  
46 of environmental protection or its predecessor. Such  
47 emergency certificate shall not authorize an increase  
48 in the maximum monthly solid waste disposal tonnage  
49 in an amount greater than that approved by the  
50 county or regional solid waste authority for the county  
51 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. Walker*  
.....  
Chairman Senate Committee

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

Originated in the Senate.

In effect from passage.

*Harold E. Adams*  
.....  
Clerk of the Senate

*Donald L. Hoop*  
.....  
Clerk of the House of Delegates

*Paul B. Smith*  
.....  
President of the Senate

*Bob Cole*  
.....  
Speaker House of Delegates

The within is approved ..... this the *31<sup>st</sup>* .....  
day of *March* ....., 1993.

*Winston G. ...*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/93

Time 7:55 pm