WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1994

ENROLLED

SENATE BILL NO. 1021

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

PASSED March 18, 1994
In Effect from Passage
ENROLLED

Senate Bill No. 1021

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

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AN ACT to amend and reenact section three, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and eight, article five-f, chapter twenty of said code; to further amend said article by adding thereto a new section, designated section twelve; to amend and reenact sections five and seven, article five-n of said chapter; to amend and reenact sections five and eight, article eleven of said chapter; and to amend and reenact section one-i, article two, chapter twenty-four of said code, all relating to solid waste; adding definitions; authorizing a special extension of the landfill closure deadline up to the thirty-first day of December, one thousand nine hundred ninety-four; allowing certain permittees who satisfy certain requirements to satisfy repayment obligation of the solid waste assessment fee; authorizing the solid waste management board to pledge revenues paid to the closure cost assistance fund to meet the requirements of certain bond issues; authorizing the director of the division of environmental protection to assist certain solid waste facilities by allowing the pledge of certain funds to satisfy loan requirements; authorizing
an implementation date for certain recyclable materials of the first day of July, one thousand nine hundred ninety-five; extending the yard waste prohibition until the first day of January, one thousand nine hundred ninety-six; and exempting the public service commission from being required to make certain determinations regarding existing commercial solid waste disposal facilities.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and eight, article five-f, chapter twenty of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twelve; that sections five and seven, article five-n of said chapter be amended and reenacted; that sections five and eight, article eleven of said chapter be amended and reenacted; and that section one-i, article two, chapter twenty-four of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.

§16-26-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

3 (1) "Board" means the solid waste management board provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

5 (2) "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the solid waste management board, previously known as the West Virginia resource recovery — solid waste disposal authority, to effect the intents and purposes of this article.

7 (3) "Construction" includes reconstruction, enlarge-
ment, improvement and providing furnishings or equipment for a solid waste disposal project.

(4) "Cost" means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project are a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste
disposal revenue bonds as authorized by the provisions of this article.

(5) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(6) "Industrial waste" means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

(7) "Owner" includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(8) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity.

(9) "Pollution" means the discharge, release, escape or deposit, directly or indirectly, of solid waste of whatever kind or character, on lands or in waters in the state in an
uncontrolled, unregulated or unapproved manner.

(10) "Revenue" means any money or thing of value collected by, or paid to, the solid waste management board as rent, use fee, service charge or other charge for use of, or in connection with, any solid waste disposal project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the solid waste management board to governmental agencies to finance, in whole or in part, the acquisition or construction of any solid waste development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(11) "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, other discarded material, 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, chapter twenty of this code, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e, chapter twenty of this code, or refuse, slurry, overburden or other waste 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 said chapters. “Solid waste”
does not include materials which are recycled by being
used or reused in an industrial process to make a
product, as effective substitutes for commercial
products, or are returned to the original process as a
substitute for raw material feedstock.

(12) “Solid waste facility” means any system, facility,
land, contiguous land, improvements on land, structures
or other appurtenances or methods used for processing,
recycling or disposing of solid waste, including landfills,
transfer stations, materials recovery facilities and other
such facilities not herein specified. Such facility is
situated, for purposes of this article, in the county where
the majority of the spatial area of such facility is located.

(13) “Solid waste disposal project” or “project” means
any solid waste facility, wastewater treatment plants,
sewer treatment plants, water and sewer systems and
connecting pipelines the acquisition or construction of
which is authorized by the solid waste management
board or any acquisition or construction which is
financed, in whole or in part, from funds made available
by grant or loan by, or through, the board as provided in
this article, including all buildings and facilities which
the board deems necessary for the operation of the
project, together with all property, rights, easements and
interests which may be required for the operation of the
project.

(14) “Solid waste disposal shed” or “shed” means a
geographical area which the solid waste management
board designates as provided in section eight of this
article for solid waste management.

(15) “Solid waste facility operator” means any person
or persons possessing or exercising operational,
managerial or financial control over a commercial solid
waste facility, whether or not such person holds a
certificate of convenience and necessity or a permit for
such facility.
CHAPTER 20. NATURAL RESOURCES.
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:

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

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

4 (B) 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.

5 (2) "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 may specify, including the following: Spouses, parents and children and siblings.

6 (3) "Approved solid waste facility" means a solid waste facility or practice which has a valid permit under this article.

7 (4) "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.

8 (5) "Bulking agent" means any material mixed and composted with sewage sludge.

9 (6) "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 includes 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.

(7) "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.

(8) "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 does 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 does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

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

(10) "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.

(11) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to article one, chapter twenty-two of this code.

(12) "Division" means the division of environmental protection.
(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

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

(19) "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.

(20) "Municipal solid waste incineration" means the burning of any solid waste collected by any municipal or residential solid waste disposal company.
“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.

“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.

“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.

“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.

“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.

(26) "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.

(27) "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 by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product 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.

(28) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing any solid waste to be placed, deposited, dumped or thrown.
(29) "Solid waste disposal shed" means the geographical 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.

(30) "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 recovery 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.

(31) "Solid waste facility operator" means any person or persons possessing or exercising operational, managerial or financial control over a commercial solid waste facility, whether or not such person holds a certificate of convenience and necessity or a permit for such facility.

(32) "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.

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

(a) The director may 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 extension 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 rules 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 for the construction of a landfill in accordance with title forty-seven, series thirty-eight, solid waste management rules; 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 rules 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 rules: Provided, That no such extension of closure deadline shall extend beyond the thirty-first day of March, one thousand nine hundred ninety-four, or such date as any landfill installs a composite liner system, 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 rules.

(b) 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 require-
ments 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’s specific requirements and cost to comply with
the applicable design criteria, groundwater monitoring
provisions of title forty-seven, series thirty-eight, solid
waste management rules and the corrective action,
financial assurance and closure and post-closure care
provisions of Subtitle (d) of the federal Resource

(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 section four, article five,
chapter twenty-nine-a of this code, 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) 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.

(f) 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 completion of the transfer station and commencement of operations of the transfer station, such landfill shall cease accepting solid waste for disposal.

(g) Notwithstanding any other provision of this article, any commercial solid waste facility which has demonstrated and continues to be in compliance with the requirements of subsections (a) and (b) of the prior enactment of this section in chapter one hundred twenty-five, acts of the Legislature, regular session, one thousand nine hundred ninety-three, may make application by the first day of August, one thousand nine hundred ninety-four, to the director for a special extension of the closure deadline up to the thirty-first day of December, one thousand nine hundred ninety-four. Such application shall set forth all reasons why the applicant should receive a special extension. The director shall grant or deny an application within thirty days of receipt thereof. As a condition for being granted a special extension, the solid waste facility permittee must meet one of the following conditions:

(1) Have started construction of an approved composite liner system; or

(2) Have obtained financing for such construction; or

(3) Have demonstrated good faith efforts to obtain such financing and the director has made a finding, in writing, that such financing and construction is likely to occur within the extension period and that the facility is necessary to the waste management plan of the wasteshed or the geographic area served.

§20-5F-12. Effect of reenactment; manner of codification.

It is the intent of the Legislature that the provisions of Enrolled Senate Bill No. 1021, enacted during the first extraordinary session of the Legislature in the year one thousand nine hundred ninety-four, shall be deemed to amend and reenact the provisions of Enrolled House Bill No. 4065, enacted during the regular session of the
Legislature in the year one thousand nine hundred ninety-four, as follows: Section three, article three of chapter twenty-two-c; sections two and seventeen, article fifteen, sections ten and twelve, article sixteen of chapter twenty-two; and section one-i, article two of chapter twenty-four, are intended to be amended and reenacted by the provisions of the following sections, respectively, of Enrolled Senate Bill No. 1021: Section three, article twenty-six of chapter sixteen; sections two and eight, article five-f, sections five and seven, article five-n; and section one-i, article two, chapter twenty-four. Further, the provisions of Enrolled House Bill No. 4065 shall be codified as though the provisions of Enrolled Senate Bill No. 1021, including sections five and eight, article eleven, chapter twenty, were set forth in extenso in Enrolled House Bill No. 4065, and appropriate chapter, article or section numbers and headings shall be inserted by the clerk of the House of Delegates in editing, compiling and publishing the acts of the Legislature. The clerk is further directed to correct any citations or references in the text of Enrolled Senate Bill No. 1021 as may be required by its codification as a part of Enrolled House Bill No. 4065. The provisions of Enrolled Senate Bill No. 1021 set forth above, and the provisions of this section, as printed and presented to the governor, shall not otherwise be codified.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

The director may provide closure assistance only to permittees who meet the following requirements:

(1) The permittee of a landfill that does not have a liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-one, except for those landfills allowed to accept solid waste pursuant to the provisions of section eight, article five-f of this chapter and ceases accepting solid waste on or before the extension deadline as determined
by the director; or the permittee of a landfill that has
only a single liner and ceases accepting solid waste on or
before the thirtieth day of September, one thousand nine
hundred ninety-three;

(2) The permittee of the landfill must demonstrate to
the satisfaction of the director that it does not have the
financial resources on hand or the ability to generate the
amounts needed to comply, in a timely manner, with the
closure requirements provided in article five-f of this
chapter and any rules promulgated pursuant thereto:
Provided, That any permittee which is a municipality,
county, county solid waste authority or regional solid
waste authority and which has been required to close a
landfill, or any portion thereof, due to the lack of an
approved composite liner system, shall be eligible for
closure assistance for any closure costs related to such
closure that exceed the amount that permittee has set
aside for closure expenses pursuant to section four,
subsection (a) of this article. If any such permittee
continues to accept solid waste after receiving such
closure assistance, the payment of the “solid waste
assessment fee” by that permittee as required in section
four of this article shall satisfy both the repayment of
any such closure assistance and the payment of said solid
waste assessment fee; and

(3) The permittee must maintain a permit for the
landfill pursuant to the provisions of section five, article
five-f of this chapter and maintain the full amount of the
bond required to be submitted pursuant to section five-b
of said article.

§20-5N-7. Solid waste facility closure cost assistance fund.

(a) The “Closure Cost Assistance Fund” is continued as
a special revenue account in the state treasury. The fund
shall operate as a special fund whereby all deposits and
payments thereto do not expire to the general revenue
fund, but shall remain in such account and be available
for expenditure in the succeeding fiscal year. Separate
sub-accounts may be established within the special
account for the purpose of identification of various
revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be
deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the state
treasury which are specifically designated by acts of the
Legislature for inclusion in the fund, including moneys
collected and deposited into the fund pursuant to section
four of this article;

(2) Contributions, grants and gifts from any source,
both public and private, which may be used by the
director for any project or projects;

(3) Amounts repaid by permittees pursuant to section
nine, article five-f of this chapter; and

(4) All interest earned on investments made by the
state from moneys deposited in this fund.

(d) The solid waste management board, upon written
approval of the director, has the authority to pledge all
or such part of the revenues paid into the closure cost
assistance fund as may be needed to meet the require-
ments of any revenue bond issue or issues of the solid
waste management board authorized by this article,
including the payment of principal of, interest and
redemption premium, if any, on such revenue bonds and
the establishing and maintaining of a reserve fund or
funds for the payment of the principal of, interest and
redemption premium, if any, on such revenue bond issue
or issues when other moneys pledged may be insufficient
therefor. Any pledge of moneys in the closure cost
assistance fund for revenue bonds shall be a prior and
superior charge on such fund over the use of any of the
moneys in such fund to pay for the cost of any project on
a cash basis. Expenditures from the fund, other than for
the retirement of revenue bonds, may only be made in
accordance with the provisions of this article.
(e) The amounts deposited in the fund may be expended only on the cost of projects as provided for in sections three and ten of this article, as provided in subsection (f) of this section and for payment of bonds and notes issued pursuant to section four-a of this article: Provided, That no more than one percent of the annual deposits to such fund may be used for administrative purposes.

(f) Notwithstanding any provision of this article, upon request of the solid waste management board, and with the approval of the projects by the director of the division of environmental protection, the director may pledge and place into escrow accounts up to an aggregate of two million dollars of the fund to satisfy two years debt service requirement that permittees of publicly owned landfills and transfer stations are required to meet in order to obtain loans. Pledges shall be made on a project by project basis, may not exceed five hundred thousand dollars for a project and shall be made available after loan commitments are received. The director may pledge funds for a loan only when the following conditions are met:

1. The proceeds of the loan are used only to perform construction of a transfer station or a composite liner system that is required to meet the provisions of title forty-seven, series thirty-eight, solid waste management rules;
2. The permittee dedicates all yearly debt service revenue, as determined by the public service commission, to meet the repayment schedule of the loan, before it uses available revenue for any other purpose; and
3. That any funds pledged may only be paid to the lender if the permittee is in default on the loan.

ARTICLE 11. WEST VIRGINIA RECYCLING PLAN.

§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot
contents; election procedure; effect of such election.

(a) On or before the eighteenth day of October, one thousand nine hundred ninety-two, each municipality described in subsection (b) of this section shall submit a proposal to the solid waste management board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The solid waste management board shall review the submitted plans for consistency with the criteria provided in this section, the county or regional solid waste management plan and the statewide management plan. The solid waste management board may make suggested changes to the plan and shall provide technical assistance to the municipalities in the development of the plans.

(b) On or before the eighteenth day of October, one thousand nine hundred ninety-three, each municipality with a population of ten thousand or more people, as determined by the most recent decennial census by the bureau of the census of the United States department of commerce, shall establish and commence implementation of a source separation and curbside collection program for recyclable materials. Implementation shall be phased in by the first day of July, one thousand nine hundred ninety-five. Such program shall include, at a minimum, the following:

(1) An ordinance adopted by the governing body of the municipality requiring that each person, partnership, corporation or other entity in the municipality shall separate at least three recyclable materials, as deemed appropriate by the municipality, from other solid waste: Provided, That the list of recyclables to be separated may be adjusted according to whether the generator is residential, commercial or other type of establishment.

(2) A scheduled day, at least one per month, during which separated materials are to be placed at the curbside, or similar location, for collection.
(3) A system that collects recyclable materials from the curbside, or similar location, at least once per month: Provided, That to encourage full participation, the program shall, to the maximum extent possible, provide for the collection of recyclables at the same rate of frequency, and simultaneous with, the regular collection of solid waste.

(4) Provisions to ensure compliance with the ordinance, including incentives and penalties.

(5) A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality and incentives and penalties.

(6) Consultation with the county or regional solid waste authority in which the municipality is located to avoid duplication, ensure coordination of solid waste programs and maximize the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of this section, a comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) Each person engaged in the commercial collection, transportation, processing or disposal of solid waste
within the county shall accept only such solid waste from
which recyclable materials in accordance with said
county's comprehensive recycling program have been
segregated; and

(3) That the provisions of the recycling plan prepared
pursuant to section four of this article shall, to the extent
practicable, be incorporated in said county's comprehensive
recycling program.

(d) For the purposes of this article, recyclable materials
shall include, but not be limited to, steel and bi-metallic
cans, aluminum, glass, paper and such other solid waste
materials as may be specified by either the municipality
or county commission with the advice of the county or
regional solid waste authority.

(e) A comprehensive recycling program for solid waste
may be established in any county of this state by: (1) A
petition filed with the county commission bearing the
signatures of registered voters of the county equal to not
less than five percent of the number of votes cast within
the county for governor at the preceding gubernatorial
election; and (2) approval by a majority of the voters in
a subsequent referendum on the issue. A referendum to
determine whether it is the will of the voters of a county
that a comprehensive recycling program for solid waste
be established in the county may be held at any regular
primary or general election or in conjunction with any
other countywide election. Any election at which the
question of establishing a policy of comprehensive
recycling for solid waste is voted upon shall be held at
the voting precincts established for holding primary or
general elections. All of the provisions of the general
election laws, when not in conflict with the provisions of
this article, shall apply to voting and elections hereunder, insofar as practicable. The secretary of state shall
prescribe the form of the petition which shall include the
printed name, address and date of birth of each person
whose signature appears on the petition. Upon verifica-
tion of the required number of signatures on the petition,
the county commission shall, not less than seventy days before the election, order that the issue be placed on the ballot and referendum held at the next primary, general or special election to determine whether it is the will of the voters of said county that a policy of comprehensive recycling of solid waste be established in the county:

Provided, That the petition bearing the necessary signatures has been filed with the county commission at least one hundred days prior to the election.

The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to establish a comprehensive recycling program for solid waste in __________ County, West Virginia?

☐ For Recycling

☐ Against Recycling

(Place a cross mark in the square opposite your choice.)"

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within one hundred eighty days of said certification, establishing a comprehensive recycling program for solid waste in the county: Provided, That such program shall be implemented and operational no later than twelve months following said certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, said policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded
only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in ____________ County, West Virginia?

☐ Continue Recycling
☐ End Recycling

(Place a cross mark in the square opposite your choice.)"

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, said ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than thirty thousand persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: Provided, That such materials recovery facility shall be subject to approval by both the public service commission and the solid waste management board upon a finding by both the public service commission and the solid waste
management board that the establishment of such materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) Effective the first day of June, one thousand nine hundred ninety-four, it shall be unlawful to deposit lead-acid batteries in a solid waste facility in West Virginia; effective the first day of June, one thousand nine hundred ninety-five, it shall be unlawful to deposit tires in a solid waste facility in West Virginia; and effective the first day of January, one thousand nine hundred ninety-six, it shall be unlawful to deposit yard waste, including grass clippings and leaves, in a solid waste facility in West Virginia: Provided, That such prohibitions do not apply to a facility designed specifically to compost such yard waste or otherwise recycle or reuse such items: Provided, however, That reasonable and necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection (c) of this section.

(b) No later than the first day of May, one thousand nine hundred ninety-three, the solid waste management board shall design a comprehensive program to provide for the proper handling of yard waste and lead-acid batteries. No later than the first day of May, one thousand nine hundred ninety-four, a comprehensive plan shall be designed in the same manner to provide for the proper handling of tires.

(c) No later than the first day of August, one thousand nine hundred ninety-three, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (b) of this section. No later than the first day of August, one thousand nine hundred ninety-four, the division of environmental protection shall promulgate rules, in
accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (b) of this section.

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.

(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: Provided, That the commission is not required to make any determination of need, necessity or reasonableness when acting on any application filed pursuant to this article regarding an existing commercial solid waste disposal facility, which is owned or operated by a county government or by an agency, board or entity thereof, and which has previously been denied a certificate of need prior to the effective date of this section. 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.

(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 the 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 rules 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.
That 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 ___ day of _________________________, 1994.

Governor