WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED
Committee Substitute for
SENATE BILL NO. 130

(By Senators Miller and Withers)

PASSED March 12, 1994
In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 130

(SENATORS MILLER AND WITHERS, original sponsors)

[Passed March 12, 1994; in effect from passage.]

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, five-a, and eight, article five-f; sections five and seven, article five-n; sections five and eight, article eleven, all of chapter twenty of said code; 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 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 June, one thousand nine
hundred ninety-six; exempting certain recycling facilities from the necessity of obtaining certificates of need and public service commission jurisdiction; 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, five-a and eight, article five-f, chapter twenty be amended and reenacted; that section 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:

2 (1) “Board” means the solid waste management board created in section four of this article, heretofore known as the West Virginia state solid waste authority, the duties, powers, responsibilities and functions of which are specified in this article. All references in this code to the West Virginia resource recovery — solid waste disposal authority shall be construed as references to the solid waste management board.

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

4 (3) “Construction” includes reconstruction, enlargement, improvement and providing furnishings or
(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, furnishing 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 after the effective date of this article 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 shall be regarded as 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 whatever.

(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 govern-
mental agencies to finance in whole or in part the
acquisition or construction of any solid waste develop-
ment 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 activi-
ties 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, develop-
ment, 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" shall also 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 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.

(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:

3 (a) “Approved solid waste facility” means a solid
(b) "Backhauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

(c) "Chief" means the chief of the office of waste management of the division of environmental protection.

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

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

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

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

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

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

(j) "Person" or "persons" mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

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

(l) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or 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.

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

(n) "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.

(o) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials 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.

(p) "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.

(q) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten thousand and thirty thousand tons of solid waste per month. Class A facility shall include two or more
Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

"Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director of the division of environmental protection may specify, including the following: Spouses, parents and children and siblings.

"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.

"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.

"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.

"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.

"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.
(x) “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.

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

(z) “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.

(aa) “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.

(bb) “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.

(cc) “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.

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

(ee) “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.

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

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

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

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

§20-5F-5a. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of one dollar and seventy-five cents per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the
fifteenth day of the month next succeeding the month
in which the fee accrued. Upon remittance of the fee,
the operator is required to file returns on forms and
in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees
collected under this section and shall hold them in
trust for the state until remitted to the tax
commissioner.

(4) If any operator fails to collect the fee imposed by
this section, he or she is personally liable for such
amount as he or she failed to collect, plus applicable
additions to tax, penalties and interest imposed by
article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully
account for, remit the fee or file returns with the fee
as required in this section, the tax commissioner may
serve written notice requiring such operator to collect
the fees which become collectible after service of such
notice, to deposit such fees in a bank approved by the
tax commissioner, in a separate account, in trust for
and payable to the tax commissioner, and to keep the
amount of such fees in such account until remitted to
the tax commissioner. Such notice remains in effect
until a notice of cancellation is served on the operator
or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal
facility leases the solid waste facility to an operator,
the operator is primarily liable for collection and
remittance of the fee imposed by this section and the
owner is secondarily liable for remittance of the fee
imposed by this section. However, if the operator fails,
in whole or in part, to discharge his or her obligations
under this section, the owner and the operator of the
solid waste facility are jointly and severally responsi-
ble and liable for compliance with the provisions of
this section.

(7) If the operator or owner responsible for collect-
ing the fee imposed by this section is an association or
corporation, the officers thereof are liable, jointly and
severally, for any default on the part of the association
or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section and section twenty-two, article five, chapter seven of this code is considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States environmental protection agency.

(d) Definition of solid waste disposal facility. — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste disposal facility within this state that collects the fee imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal
facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director is exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division of environmental protection, upon request.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in said article shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen of said article shall apply to the fee imposed by this section with like effect as if said sections were applicable only to the fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited at least monthly in an account designated by the director. The director shall
allocate twenty-five cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected and shall deposit the total amount so allocated into the “Solid Waste Reclamation and Environmental Response Fund” to be expended for the purposes hereinafter specified. The first one million dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Solid Waste Enforcement Fund” and expended for the purposes hereinafter specified. The next two hundred fifty thousand dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Solid Waste Management Board Reserve Fund”, and expended for the purposes hereinafter specified: Provided, That in any year in which the water development authority determines that the solid waste management board reserve fund is adequate to defer any contingent liability of the fund, the water development authority shall so certify to the director and the director shall then cause no less than fifty thousand dollars nor more than two hundred fifty thousand dollars to be deposited to the fund: Provided, however, That in any year in which the water development authority determines that the solid waste management board reserve fund is inadequate to defer any contingent liability of the fund, the water development authority shall so certify to the director and the director shall then cause not less than two hundred fifty thousand dollars nor more than five hundred thousand dollars to be deposited in the fund: Provided further, That if a facility owned or operated by the state of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the solid waste management board, then in that event the solid waste management board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The director shall allocate
the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the state treasury:

(1) The "Solid Waste Enforcement Fund" which shall be expended by the director for administration, inspection, enforcement and permitting activities established pursuant to this article;

(2) The "Solid Waste Management Board Reserve Fund" which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to article twenty-six, chapter sixteen of this code; and

(3) The "Solid Waste Reclamation and Environmental Response Fund" which may be expended by the director for the purposes of reclamation, cleanup and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

(i) Findings. — In addition to the purposes and legislative findings set forth in section one of this article, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting such solid waste;

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.
§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 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
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 Septem-
ber, one thousand nine hundred ninety-four, with title
forty-seven, series thirty-eight, solid waste manage-
ment 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 man-
age 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 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'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 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 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
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80 unless reversed, vacated or modified on appeal to the
81 supreme court of appeals, in accordance with the
82 provisions of section one, article six, chapter twenty-
83 nine-a of this code, except that notwithstanding the
84 provisions of said section, the petition seeking such
85 review must be filed with said supreme court of
86 appeals within thirty days from the date of entry of
87 the judgment of the circuit court.

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

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

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

111 (f) Notwithstanding any other provision of this
112 article, the director shall grant an extension of the
113 closure deadline up to the thirtieth day of September,
114 one thousand nine hundred ninety-four, to any solid
115 waste landfill which, on or before the first day of
116 March, one thousand nine hundred ninety-three, has
117 entered into a compliance schedule with the director
118 for the construction of a transfer station or to any solid
119 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.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

1 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 hereby
created as a special revenue account in the state
treasury. The fund shall operate as a special fund
whereby all deposits and payments thereto shall not
expire to the general revenue fund, but shall remain
in such account and be available for expenditure in
the succeeding fiscal year. Separate subaccounts 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;

(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 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 and as provided
in subsections (e) and (f) of this section: Provided, That
no more than one percent of the annual deposits to
such fund may be used for administrative purposes.

(e) 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 per-
mittees 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 PROGRAM.

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

(a) Within twelve months following the effective date of this section, 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) Within twenty-four months following the effective date of this section, 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 imple-
mentation of a source separation and curbside collect-
tion 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, partner-
ship, 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 ordi-
nance, including incentives and penalties.

(5) A comprehensive public information and educa-
tion program covering the importance and benefits of
recycling, as well as the specific features and require-
ments of the recycling program. As part of the educa-
tion 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 verification 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 yard waste, including grass clippings and leaves, and 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 manage-
ment 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 comprehen-
sive 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-
ine-a of said code, as amended, to implement and
enforce the program for tires designed pursuant to
subsection (b) of this section.

§20-11-12. Recycling facilities exemption.

Recycling facilities, as defined in section two, article
five-f of this chapter, whose only function is to accept
without charge, buy or transfer source-separated
material or recycled material for resale or transfer for
further processing shall be exempt from the provisions
of sections one-c and one-f, article two, chapter
twenty-four of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE
COMMISSION.

§24-2-1i. Commission authorized to issue emergency certif-
icate 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
of this code, 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 
trash 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 determi-
nation 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 commer-
cial 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 tempo-
rary 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 
trash 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was approved the 30th day of , 1994.

Governor
PRESENTED TO THE

GOVERNOR

Date 3/30/94

Time 1:01 PM