

SB 1021

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SECRETARY OF STATE

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

E N R O L L E D

Senate Bill No. 1021

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

[Passed March 18, 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 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
2 requires a different meaning:

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

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

13 (3) "Construction" includes reconstruction, enlarge-

14 ment, improvement and providing furnishings or
15 equipment for a solid waste disposal project.

16 (4) "Cost" means, as applied to solid waste disposal
17 projects, the cost of their acquisition and construction;
18 the cost of acquisition of all land, rights-of-way,
19 property, rights, easements, franchise rights and
20 interests required by the board for such acquisition and
21 construction; the cost of demolishing or removing any
22 buildings or structures on land so acquired, including
23 the cost of acquiring any land to which such buildings or
24 structures may be moved; the cost of diverting highways,
25 interchange of highways and access roads to private
26 property, including the cost of land or easements
27 therefor; the cost of all machinery, furnishings and
28 equipment; all financing charges and interest prior to
29 and during construction and for no more than eighteen
30 months after completion of construction; the cost of all
31 engineering services and all expenses of research and
32 development with respect to solid waste facilities; the
33 cost of all legal services and expenses; the cost of all
34 plans, specifications, surveys and estimates of cost and
35 revenues; all working capital and other expenses
36 necessary or incident to determining the feasibility or
37 practicability of acquiring or constructing any such
38 project; all administrative expenses and such other
39 expenses as may be necessary or incident to the
40 acquisition or construction of the project; the financing
41 of such acquisition or construction, including the amount
42 authorized in the resolution of the board providing for
43 the issuance of solid waste disposal revenue bonds to be
44 paid into any special funds from the proceeds of such
45 bonds; and the financing of the placing of any such
46 project in operation. Any obligation or expenses incurred
47 by any governmental agency, with the approval of the
48 board, for surveys, borings, preparation of plans and
49 specifications and other engineering services in
50 connection with the acquisition or construction of a
51 project are a part of the cost of such project and shall be
52 reimbursed out of the proceeds of loans or solid waste

53 disposal revenue bonds as authorized by the provisions
54 of this article.

55 (5) "Governmental agency" means the state govern-
56 ment or any agency, department, division or unit thereof;
57 counties; municipalities; watershed improvement
58 districts; soil conservation districts; sanitary districts;
59 public service districts; drainage districts; regional
60 governmental authorities and any other governmental
61 agency, entity, political subdivision, public corporation
62 or agency having the authority to acquire, construct or
63 operate solid waste facilities; the United States
64 government or any agency, department, division or unit
65 thereof; and any agency, commission or authority
66 established pursuant to an interstate compact or
67 agreement.

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

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

77 (8) "Person" means any public or private corporation,
78 institution, association, firm or company organized or
79 existing under the laws of this or any other state or
80 country; the United States or the state of West Virginia;
81 governmental agency; political subdivision; county
82 commission; municipality; industry; sanitary district;
83 public service district; drainage district; soil conserva-
84 tion district; solid waste disposal shed district; partner-
85 ship; trust; estate; individual; group of individuals acting
86 individually or as a group; or any other legal entity.

87 (9) "Pollution" means the discharge, release, escape or
88 deposit, directly or indirectly, of solid waste of whatever
89 kind or character, on lands or in waters in the state in an

90 uncontrolled, unregulated or unapproved manner.

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

103 (11) "Solid waste" means any garbage, paper, litter,
104 refuse, cans, bottles, waste processed for the express
105 purpose of incineration, sludge from a waste treatment
106 plant, water supply treatment plant or air pollution
107 control facility, other discarded material, including
108 offensive or unsightly matter, solid, liquid, semisolid or
109 contained liquid or gaseous material resulting from
110 industrial, commercial, mining or community activities
111 but does not include solid or dissolved material in
112 sewage, or solid or dissolved materials in irrigation
113 return flows or industrial discharges which are point
114 sources and have permits under article five-a, chapter
115 twenty of this code, or source, special nuclear or by-
116 product material as defined by the Atomic Energy Act of
117 1954, as amended, including any nuclear or by-product
118 material considered by federal standards to be below
119 regulatory concern, or a hazardous waste either
120 identified or listed under article five-e, chapter twenty
121 of this code, or refuse, slurry, overburden or other waste
122 or material resulting from coal-fired electric power or
123 steam generation, the exploration, development,
124 production, storage and recovery of coal, oil and gas, and
125 other mineral resources placed or disposed of at a
126 facility which is regulated under chapter twenty-two,
127 twenty-two-a or twenty-two-b of this code, so long as
128 such placement or disposal is in conformance with a

129 permit issued pursuant to said chapters. "Solid waste"
130 does not include materials which are recycled by being
131 used or reused in an industrial process to make a
132 product, as effective substitutes for commercial
133 products, or are returned to the original process as a
134 substitute for raw material feedstock.

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

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

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

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

CHAPTER 20. NATURAL RESOURCES.**ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.****§20-5F-2. Definitions.**

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms:

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

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

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

11 (2) "Applicant" means the person applying for a
12 commercial solid waste facility permit or similar renewal
13 permit and any person related to such person by virtue
14 of common ownership, common management or family
15 relationships as the director may specify, including the
16 following: Spouses, parents and children and siblings.

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

20 (4) "Backhauling" means the practice of using the same
21 container to transport solid waste and to transport any
22 substance or material used as food by humans, animals
23 raised for human consumption or reusable item which
24 may be refilled with any substance or material used as
25 food by humans.

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

28 (6) "Class A facility" means a commercial solid waste
29 facility which handles an aggregate of between ten
30 thousand and thirty thousand tons of solid waste per
31 month. Class A facility includes two or more Class B
32 solid waste landfills owned or operated by the same

33 person in the same county, if the aggregate tons of solid
34 waste handled per month by such landfills exceeds nine
35 thousand nine hundred ninety-nine tons of solid waste
36 per month.

37 (7) "Commercial recycler" means any person, corpora-
38 tion or business entity whose operation involves the
39 mechanical separation of materials for the purpose of
40 reselling or recycling at least seventy percent by weight
41 of the materials coming into the commercial recycling
42 facility.

43 (8) "Commercial solid waste facility" means any solid
44 waste facility which accepts solid waste generated by
45 sources other than the owner or operator of the facility
46 and does not include an approved solid waste facility
47 owned and operated by a person for the sole purpose of
48 disposing of solid wastes created by that person or such
49 person and other persons on a cost-sharing or nonprofit
50 basis and does not include land upon which reused or
51 recycled materials are legitimately applied for structural
52 fill, road base, mine reclamation and similar applica-
53 tions.

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

57 (10) "Composting facility" means any solid waste
58 facility processing solid waste by composting, including
59 sludge composting, organic waste or yard waste
60 composting, but does not include a facility for com-
61 posting solid waste that is located at the site where the
62 waste was generated.

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

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

69 (13) "Energy recovery incinerator" means any solid
70 waste facility at which solid wastes are incinerated with
71 the intention of using the resulting energy for the
72 generation of steam, electricity or any other use not
73 specified herein.

74 (14) "Incineration technologies" means any technology
75 that uses controlled flame combustion to thermally
76 break down solid waste, including refuse-derived fuel, to
77 an ash residue that contains little or no combustible
78 materials, regardless of whether the purpose is process-
79 ing, disposal, electric or steam generation or any other
80 method by which solid waste is incinerated.

81 (15) "Incinerator" means an enclosed device using
82 controlled flame combustion to thermally break down
83 solid waste, including refuse-derived fuel, to an ash
84 residue that contains little or no combustible materials.

85 (16) "Landfill" means any solid waste facility for the
86 disposal of solid waste on land. Such facility is situated,
87 for purposes of this article, in the county where the
88 majority of the spatial area of such facility is located.

89 (17) "Materials recovery facility" means any solid
90 waste facility at which source-separated materials or
91 materials recovered through a mixed waste processing
92 facility are manually or mechanically shredded or
93 separated for purposes of reuse and recycling, but does
94 not include a composting facility.

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

98 (19) "Mixed waste processing facility" means any solid
99 waste facility at which materials are recovered from
100 mixed solid waste through manual or mechanical means
101 for purposes of reuse, recycling or composting.

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

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

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

121 (23) "Recycling facility" means any solid waste facility
122 for the purpose of recycling at which neither land
123 disposal nor biological, chemical or thermal transforma-
124 tion of solid waste occurs: *Provided*, That mixed waste
125 recovery facilities, sludge processing facilities and
126 composting facilities are not considered recycling
127 facilities nor considered to be reusing or recycling solid
128 waste within the meaning of this article, and articles
129 nine and eleven of this chapter.

130 (24) "Sewage sludge" means solid, semisolid or liquid
131 residue generated during the treatment of domestic
132 sewage in a treatment works. Sewage sludge includes,
133 but is not limited to, domestic septage, scum or solids
134 removed in primary, secondary or advanced wastewater
135 treatment processes and a material derived from sewage
136 sludge. "Sewage sludge" does not include ash generated
137 during the firing of sewage sludge in a sewage sludge
138 incinerator.

139 (25) "Sewage sludge processing facility" is a solid
140 waste facility that processes sewage sludge for land
141 application, incineration or disposal at an approved
142 landfill. Such processes include, but are not limited to,

143 composting, lime stabilization, thermophilic digestion
144 and anaerobic digestion.

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

150 (27) "Solid waste" means any garbage, paper, litter,
151 refuse, cans, bottles, waste processed for the express
152 purpose of incineration; sludge from a waste treatment
153 plant; water supply treatment plant or air pollution
154 control facility; and other discarded materials, including
155 offensive or unsightly matter, solid, liquid, semisolid or
156 contained liquid or gaseous material resulting from
157 industrial, commercial, mining or community activities
158 but does not include solid or dissolved material in
159 sewage or solid or dissolved materials in irrigation
160 return flows or industrial discharges which are point
161 sources and have permits under article five-a of this
162 chapter, or source, special nuclear or by-product
163 material as defined by the Atomic Energy Act of 1954, as
164 amended, including any nuclear or by-product material
165 considered by federal standards to be below regulatory
166 concern, or a hazardous waste either identified or listed
167 under article five-e of this chapter or refuse, slurry,
168 overburden or other wastes or material resulting from
169 coal-fired electric power or steam generation, the
170 exploration, development, production, storage and re-
171 covery of coal, oil and gas and other mineral resources
172 placed or disposed of at a facility which is regulated
173 under chapter twenty-two, twenty-two-a or twenty-two-
174 b of this code, so long as such placement or disposal is in
175 conformance with a permit issued pursuant to such
176 chapters.

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

181 (29) "Solid waste disposal shed" means the geograph-
182 ical area which the solid waste management board
183 designates and files in the state register pursuant to
184 section eight, article twenty-six, chapter sixteen of this
185 code.

186 (30) "Solid waste facility" means any system, facility,
187 land, contiguous land, improvements on the land,
188 structures or other appurtenances or methods used for
189 processing, recycling or disposing of solid waste,
190 including landfills, transfer stations, materials recovery
191 facilities, mixed waste processing facilities, sewage
192 sludge processing facilities, composting facilities and
193 other such facilities not herein specified, but not
194 including land upon which sewage sludge is applied in
195 accordance with subsection (b), section two-b of this
196 article. Such facility shall be deemed to be situated, for
197 purposes of this article, in the county where the majority
198 of the spatial area of such facility is located: *Provided,*
199 That a salvage yard, licensed and regulated pursuant to
200 the terms of article twenty-three, chapter seventeen of
201 this code, is not a solid waste facility.

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

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

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

1 (a) The director may grant an extension of the closure
2 deadline up to the thirtieth day of September, one
3 thousand nine hundred ninety-four, to a solid waste
4 facility required under the terms of an extension granted

5 pursuant to this subsection to close by the thirtieth day
6 of June, one thousand nine hundred ninety-three, or
7 required by solid waste management rules to close by the
8 thirtieth day of September, one thousand nine hundred
9 ninety-three, provided that the solid waste facility:

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

16 (2) Has a certificate of need or had an application
17 pending therefor, from the public service commission;
18 and

19 (3) Has been determined by the director to pose no
20 significant hazard to public health, safety or the
21 environment; and

22 (4) Has entered into a compliance schedule with the
23 division of environmental protection to be in full
24 compliance, no later than the thirtieth day of September,
25 one thousand nine hundred ninety-four, with title forty-
26 seven, series thirty-eight, solid waste management rules
27 or to be in full compliance, no later than the thirtieth day
28 of September, one thousand nine hundred ninety-four,
29 with preclosure provisions of title forty-seven, series
30 thirty-eight, solid waste management rules: *Provided,*
31 That no such extension of closure deadline shall extend
32 beyond the thirty-first day of March, one thousand nine
33 hundred ninety-four, or such date as any landfill installs
34 a composite liner system, for any landfill in a county in
35 which there is also located a commercial solid waste
36 landfill which has installed a composite liner system in
37 accordance with the requirements of the solid waste
38 management rules.

39 (b) Any solid waste facility seeking to extend its
40 closure deadline until the thirtieth day of September,
41 one thousand nine hundred ninety-four, shall submit to

42 the director, no later than the thirtieth day of April, one
43 thousand nine hundred ninety-three, an application
44 sufficient to demonstrate compliance with the require-
45 ments of subsection (a) of this section. The director shall
46 grant or deny any application within thirty days of
47 receipt thereof: *Provided*, That as a condition precedent
48 for granting such closure extension, a solid waste facility
49 must enter into an agreement with the director that the
50 solid waste facility shall, no later than the thirtieth day
51 of September, one thousand nine hundred ninety-three,
52 complete and submit to the director an analysis of the
53 facility's specific requirements and cost to comply with
54 the applicable design criteria, groundwater monitoring
55 provisions of title forty-seven, series thirty-eight, solid
56 waste management rules and the corrective action,
57 financial assurance and closure and post-closure care
58 provisions of Subtitle (d) of the federal Resource
59 Conservation and Recovery Act, 42 U.S.C. 6941-6949.

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

75 (d) The judgment of the circuit court shall be final
76 unless reversed, vacated or modified on appeal to the
77 supreme court of appeals, in accordance with the
78 provisions of section one, article six, chapter twenty-
79 nine-a of this code, except that notwithstanding the
80 provisions of said section, the petition seeking such

81 review must be filed with said supreme court of appeals
82 within thirty days from the date of entry of the judgment
83 of the circuit court.

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

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

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

105 (f) Notwithstanding any other provision of this article,
106 the director shall grant an extension of the closure
107 deadline up to the thirtieth day of September, one
108 thousand nine hundred ninety-four, to any solid waste
109 landfill which, on or before the first day of March, one
110 thousand nine hundred ninety-three, has entered into a
111 compliance schedule with the director for the construc-
112 tion of a transfer station or to any solid waste landfill
113 which on the first day of March, one thousand nine
114 hundred ninety-three, is already in the process of
115 constructing a solid waste transfer station and applies by
116 the first day of April, one thousand nine hundred ninety-
117 three, to enter into with the director, a compliance
118 schedule for the completion of the transfer station:

119 *Provided*, That upon the completion of the transfer
120 station and commencement of operations of the transfer
121 station, such landfill shall cease accepting solid waste
122 for disposal.

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

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

142 (2) Have obtained financing for such construction; or

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

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

1 It is the intent of the Legislature that the provisions of
2 Enrolled Senate Bill No. 1021, enacted during the first
3 extraordinary session of the Legislature in the year one
4 thousand nine hundred ninety-four, shall be deemed to
5 amend and reenact the provisions of Enrolled House Bill
6 No. 4065, enacted during the regular session of the

7 Legislature in the year one thousand nine hundred
8 ninety-four, as follows: Section three, article three of
9 chapter twenty-two-c; sections two and seventeen,
10 article fifteen, sections ten and twelve, article sixteen of
11 chapter twenty-two; and section one-i, article two of
12 chapter twenty-four, are intended to be amended and
13 reenacted by the provisions of the following sections,
14 respectively, of Enrolled Senate Bill No. 1021: Section
15 three, article twenty-six of chapter sixteen; sections two
16 and eight, article five-f, sections five and seven, article
17 five-n; and section one-i, article two, chapter twenty-
18 four. Further, the provisions of Enrolled House Bill No.
19 4065 shall be codified as though the provisions of
20 Enrolled Senate Bill No. 1021, including sections five
21 and eight, article eleven, chapter twenty, were set forth
22 in extenso in Enrolled House Bill No. 4065, and
23 appropriate chapter, article or section numbers and
24 headings shall be inserted by the clerk of the House of
25 Delegates in editing, compiling and publishing the acts
26 of the Legislature. The clerk is further directed to
27 correct any citations or references in the text of Enrolled
28 Senate Bill No. 1021 as may be required by its codifica-
29 tion as a part of Enrolled House Bill No. 4065. The
30 provisions of Enrolled Senate Bill No. 1021 set forth
31 above, and the provisions of this section, as printed and
32 presented to the governor, shall not otherwise be
33 codified.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

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

3 (1) The permittee of a landfill that does not have a liner
4 and ceases accepting solid waste on or before the
5 thirtieth day of November, one thousand nine hundred
6 ninety-one, except for those landfills allowed to accept
7 solid waste pursuant to the provisions of section eight,
8 article five-f of this chapter and ceases accepting solid
9 waste on or before the extension deadline as determined

10 by the director; or the permittee of a landfill that has
11 only a single liner and ceases accepting solid waste on or
12 before the thirtieth day of September, one thousand nine
13 hundred ninety-three;

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

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

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

1 (a) The "Closure Cost Assistance Fund" is continued as
2 a special revenue account in the state treasury. The fund
3 shall operate as a special fund whereby all deposits and
4 payments thereto do not expire to the general revenue
5 fund, but shall remain in such account and be available
6 for expenditure in the succeeding fiscal year. Separate
7 sub-accounts may be established within the special

8 account for the purpose of identification of various
9 revenue resources and payment of specific obligations.

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

12 (c) The fund consists of the following:

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

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

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

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

25 (d) The solid waste management board, upon written
26 approval of the director, has the authority to pledge all
27 or such part of the revenues paid into the closure cost
28 assistance fund as may be needed to meet the require-
29 ments of any revenue bond issue or issues of the solid
30 waste management board authorized by this article,
31 including the payment of principal of, interest and
32 redemption premium, if any, on such revenue bonds and
33 the establishing and maintaining of a reserve fund or
34 funds for the payment of the principal of, interest and
35 redemption premium, if any, on such revenue bond issue
36 or issues when other moneys pledged may be insufficient
37 therefor. Any pledge of moneys in the closure cost
38 assistance fund for revenue bonds shall be a prior and
39 superior charge on such fund over the use of any of the
40 moneys in such fund to pay for the cost of any project on
41 a cash basis. Expenditures from the fund, other than for
42 the retirement of revenue bonds, may only be made in
43 accordance with the provisions of this article.

44 (e) The amounts deposited in the fund may be
45 expended only on the cost of projects as provided for in
46 sections three and ten of this article, as provided in
47 subsection (f) of this section and for payment of bonds
48 and notes issued pursuant to section four-a of this
49 article: *Provided*, That no more than one percent of the
50 annual deposits to such fund may be used for adminis-
51 trative purposes.

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

66 (1) The proceeds of the loan are used only to perform
67 construction of a transfer station or a composite liner
68 system that is required to meet the provisions of title
69 forty-seven, series thirty-eight, solid waste management
70 rules;

71 (2) The permittee dedicates all yearly debt service
72 revenue, as determined by the public service commission,
73 to meet the repayment schedule of the loan, before it
74 uses available revenue for any other purpose; and

75 (3) That any funds pledged may only be paid to the
76 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.

1 (a) On or before the eighteenth day of October, one
2 thousand nine hundred ninety-two, each municipality
3 described in subsection (b) of this section shall submit a
4 proposal to the solid waste management board, consis-
5 tent with the provisions of this section, describing the
6 establishment and implementation of the mandatory
7 recycling program. The solid waste management board
8 shall review the submitted plans for consistency with the
9 criteria provided in this section, the county or regional
10 solid waste management plan and the statewide
11 management plan. The solid waste management board
12 may make suggested changes to the plan and shall
13 provide technical assistance to the municipalities in the
14 development of the plans.

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

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

34 (2) A scheduled day, at least one per month, during
35 which separated materials are to be placed at the
36 curbside, or similar location, for collection.

37 (3) A system that collects recyclable materials from the
38 curbside, or similar location, at least once per month:
39 *Provided*, That to encourage full participation, the
40 program shall, to the maximum extent possible, provide
41 for the collection of recyclables at the same rate of
42 frequency, and simultaneous with, the regular collection
43 of solid waste.

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

46 (5) A comprehensive public information and education
47 program covering the importance and benefits of
48 recycling, as well as the specific features and require-
49 ments of the recycling program. As part of the education
50 program, each municipality shall, at a minimum, notify
51 all persons occupying residential, commercial, institu-
52 tional or other premises within its boundaries of the
53 requirements of the program, including how the system
54 will operate, the dates of collection, the responsibilities
55 of persons within the municipality and incentives and
56 penalties.

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

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

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

72 (2) Each person engaged in the commercial collection,
73 transportation, processing or disposal of solid waste

74 within the county shall accept only such solid waste from
75 which recyclable materials in accordance with said
76 county's comprehensive recycling program have been
77 segregated; and

78 (3) That the provisions of the recycling plan prepared
79 pursuant to section four of this article shall, to the extent
80 practicable, be incorporated in said county's comprehen-
81 sive recycling program.

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

88 (e) A comprehensive recycling program for solid waste
89 may be established in any county of this state by: (1) A
90 petition filed with the county commission bearing the
91 signatures of registered voters of the county equal to not
92 less than five percent of the number of votes cast within
93 the county for governor at the preceding gubernatorial
94 election; and (2) approval by a majority of the voters in
95 a subsequent referendum on the issue. A referendum to
96 determine whether it is the will of the voters of a county
97 that a comprehensive recycling program for solid waste
98 be established in the county may be held at any regular
99 primary or general election or in conjunction with any
100 other countywide election. Any election at which the
101 question of establishing a policy of comprehensive
102 recycling for solid waste is voted upon shall be held at
103 the voting precincts established for holding primary or
104 general elections. All of the provisions of the general
105 election laws, when not in conflict with the provisions of
106 this article, shall apply to voting and elections hereun-
107 der, insofar as practicable. The secretary of state shall
108 prescribe the form of the petition which shall include the
109 printed name, address and date of birth of each person
110 whose signature appears on the petition. Upon verifica-
111 tion of the required number of signatures on the petition,

112 the county commission shall, not less than seventy days
113 before the election, order that the issue be placed on the
114 ballot and referendum held at the next primary, general
115 or special election to determine whether it is the will of
116 the voters of said county that a policy of comprehensive
117 recycling of solid waste be established in the county:
118 *Provided*, That the petition bearing the necessary
119 signatures has been filed with the county commission at
120 least one hundred days prior to the election.

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

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

127 For Recycling

128 Against Recycling

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

131 If a majority of legal votes cast upon the question be
132 for the establishment of a policy of comprehensive
133 recycling of solid waste, the county commission shall,
134 after the certification of the results of the referendum,
135 thereafter adopt an ordinance, within one hundred
136 eighty days of said certification, establishing a
137 comprehensive recycling program for solid waste in the
138 county: *Provided*, That such program shall be imple-
139 mented and operational no later than twelve months
140 following said certification. If a majority of the legal
141 votes cast upon the question be against the establish-
142 ment of a policy of comprehensive recycling of solid
143 waste, said policy shall not take effect, but the question
144 may again be submitted to a vote at any subsequent
145 election in the manner herein provided.

146 (f) A comprehensive recycling program for solid waste
147 established by petition and referendum may be rescinded

148 only pursuant to the procedures set out herein to
149 establish the program.

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

153 “Shall the County Commission be required to termi-
154 nate the comprehensive recycling program for solid
155 waste in _____ County, West Virginia?

156 Continue Recycling

157 End Recycling

158 (Place a cross mark in the square opposite your
159 choice.)”

160 (g) If a majority of legal votes cast upon the question be
161 for the termination of a policy of comprehensive
162 recycling of solid waste previously established in the
163 county, the county commission shall, after the certifica-
164 tion of the results of the referendum, thereafter rescind
165 by ordinance the comprehensive recycling program for
166 solid waste in the county within ninety days of said
167 certification. If a majority of the legal votes cast upon
168 the question be for the continuation of the policy of
169 comprehensive recycling of solid waste, said ordinance
170 shall not be rescinded, but the question may again be
171 submitted to a vote at any subsequent election in the
172 manner herein provided.

173 (h) In the case of any municipality having a population
174 greater than thirty thousand persons, as indicated by the
175 most recent decennial census conducted by the United
176 States, the governing body of such municipality may by
177 ordinance establish a materials recovery facility in lieu
178 of or in addition to the mandatory recycling program
179 required under the provisions of this section: *Provided,*
180 That such materials recovery facility shall be subject to
181 approval by both the public service commission and the
182 solid waste management board upon a finding by both
183 the public service commission and the solid waste

184 management board that the establishment of such
185 materials recovery facility will not hinder, and will be
186 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.**

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

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

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

34 accordance with chapter twenty-nine-a of said code, as
 35 amended, to implement and enforce the program for tires
 36 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.

1 (a) Notwithstanding any provision of this article, or
 2 any provision of article five-f or nine, chapter twenty, or
 3 any other provision of this code, upon the application of
 4 any commercial solid waste facility, the commission may
 5 grant to a commercial solid waste facility an emergency
 6 certificate of need to increase the maximum monthly
 7 solid waste disposal tonnage for a period not to exceed
 8 one year, to the extent deemed necessary to prevent any
 9 disruption of solid waste disposal services in any county
 10 or wasteshed of the state resulting from the closure of an
 11 existing landfill in said county or wasteshed: *Provided,*
 12 That the commission is not required to make any
 13 determination of need, necessity or reasonableness when
 14 acting on any application filed pursuant to this article
 15 regarding an existing commercial solid waste disposal
 16 facility, which is owned or operated by a county
 17 government or by an agency, board or entity thereof, and
 18 which has previously been denied a certificate of need
 19 prior to the effective date of this section. The authority
 20 granted to the commission under this section shall expire
 21 after the thirtieth day of September, one thousand nine
 22 hundred ninety-three. No temporary certificate issued
 23 pursuant to this section shall extend beyond the thirtieth
 24 day of September, one thousand nine hundred ninety-
 25 four. The director of the division of environmental
 26 protection shall modify any commercial solid waste
 27 facility permit, issued under article five-f, chapter
 28 twenty of this code, to conform with the maximum

29 monthly solid waste disposal tonnage and any other
30 terms and conditions set forth in a temporary certificate
31 issued under this section.

32 (b) If the net tonnage increase under a temporary
33 certificate application made pursuant to subsection (a)
34 of this section would cause the gross monthly solid waste
35 disposal tonnage of such facility to exceed ten thousand
36 tons, a temporary certificate shall be issued only if the
37 solid waste facility has: (1) Obtained from the county or
38 regional solid waste authority for the county or counties
39 in which the facility is located a certificate of site
40 approval or approval for conversion from a Class B
41 facility to a Class A facility; and (2) obtained from the
42 county or regional solid waste authority for the county or
43 counties in which the facility is located approval to
44 increase the maximum monthly tonnage disposed at the
45 facility; and (3) obtained from the county commission for
46 the county or counties in which the landfill is located
47 approval to operate as a Class A facility; and (4) has a
48 certificate of need application pending before the public
49 service commission; and (5) has installed a composite
50 liner system in compliance with the requirements set
51 forth in the solid waste management rules promulgated
52 by the division of environmental protection or its
53 predecessor. Such emergency certificate shall not
54 authorize an increase in the maximum monthly solid
55 waste disposal tonnage in an amount greater than that
56 approved by the county or regional solid waste authority
57 for the county or counties in which the landfill is
58 located.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten signature]
.....
Chairman Senate Committee

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

Originated in the Senate.

In effect from passage.

Quell E. Adams
.....
Clerk of the Senate

Donald L. Hoff
.....
Clerk of the House of Delegates

Keth Bunette
.....
President of the Senate

[Handwritten signature]
.....
Speaker House of Delegates

The within *is approved* this the *6th*
April day of, 1994.

Gaston Capreol
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/5/94

Time 1:38 pm