WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 178

(By Senator Oliverio, et al.)

PASSED February 17, 1998
In Effect From Passage
ENROLLED

Senate Bill No. 178

(BY SENATORS OLIVERIO, BOWMAN, HUNTER, ROSS, SNYDER, DEEM, SCOTT, KESSLER, WHITE, DITTMAR, ANDERSON, MCKENZIE, BALL, PREZIOSO AND SHARPE)

[Passed February 17, 1998; in effect from passage.]

AN ACT to amend and reenact sections one, two, five, seven, eight, nine, ten, twelve, fifteen and twenty, article fifteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, eight, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of said code; to further amend said chapter by adding thereto a new article, designated article four-a; and to amend and reenact section one-c, article two, chapter twenty-four of said code, all relating generally to solid waste management; stating purpose and legislative findings; providing definitions; establishing powers and duties of the director; providing for rulemaking; modifying provisions relating to free day; limiting the size
of solid waste facilities; removing discriminatory language; requiring the director to consider certain things in determining facility size; prohibiting discrimination by a commercial solid waste facility based on origin of waste; providing for performance bonds; establishing bond requirements; establishing period of bond liability; providing for sewage sludge management; requiring tipping fees for sewage sludge disposed of in a landfill cell; prohibiting use of sewage sludge as daily cover; establishing maximum limits for receipt of sewage sludge at new and existing commercial solid waste facilities and sewage sludge processing facilities; prohibiting transportation of sludge in violation of this act; requiring balanced output of sludge to intake of sludge; requiring recordkeeping; requiring odor monitoring and testing; providing for orders, inspections and enforcement; providing civil and criminal penalties; providing for minor modifications of permits; providing legislative findings and purposes relating to county and regional solid waste authorities; providing definitions; authorizing development and continuation of litter and solid waste control plans; providing for approval by solid waste management board; developing of plan by director; providing for advisory rules; providing for commercial solid waste facility siting plan; providing for facilities subject to plan; establishing site approval criteria; providing for approval by solid waste management board; providing for public hearings; providing for rules; providing for approval of new Class A facilities, conversion from Class B to Class A and increasing maximum allowable monthly tonnage of Class A facilities by solid waste authorities; explaining legislative findings and purpose for local participation; providing for local participation by referendum; mandating referendum for new Class A facilities; allowing petition for referendum for conversion of Class B facility to a Class A facility; requiring the receipt of a certificate of need prior to referendum; allowing petition for referendum when seeking to increase the maximum allowable monthly tonnage of Class A facilities; requiring permits; establishing powers and
duties of public service commission; requiring certificate of need for solid waste facilities; and requiring public service commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-1. Purpose and legislative findings.

(a) The purpose of this article is to establish a comprehensive program of controlling all phases of solid waste management.

(b) The Legislature finds that solid waste disposal is a universal problem for all of the United States and that West Virginia is committed to participating in the waste stream market and not interfering with the free flow of solid waste into or out of this state. However, the Legislature also recognizes that solid waste disposal has inherent long-term environmental, health and infrastructure impacts on local communities where the solid waste facilities are located. It is the Legislature’s intent to establish reasonable uniform requirements on all waste disposed of in this state regardless of origin. Because of the importance and impact associated with the location and operation of solid waste facilities, this article establishes a thorough and balanced application and regulatory process which provides an efficient and reasonable
permitting process while affording the state and its citizens full and fair participation in decisions associated with the location, operation and oversight of the solid waste collection and disposal process.

(c) The Legislature further finds that solid waste disposal has inherent risks and negative impact on local communities and specifically finds the following: (1) Uncontrolled, inadequately controlled and improper collection, transportation, processing and disposal of solid waste is a public nuisance and a clear and present danger to people; (2) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste; (6) that resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste is for the general welfare of the citizens of this state.

(d) The Legislature further finds that Class A landfills often create special environmental problems that require statewide coordination of the management of such landfills.

(e) The Legislature further finds based upon engineering, environmental concerns, land-use planning, transportation system networks, public health, safety and welfare, that the amount of solid waste disposed of by solid waste facilities must be limited in order to protect this state's environment and the public in general against adverse impact.

(f) The Legislature further finds that incineration
technologies present potentially significant health and environmental problems.

(g) The Legislature further finds that there is a need for efforts to continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible.

(h) The Legislature further finds that composting large quantities of sewage sludge at a single location can seriously impact the local community where the facility is located. The potential adverse impact of noxious odors and environmental and health hazards requires assurances that local communities are not adversely impacted by the location of sewage sludge composting facilities. Further, the newness of the technology and processes for managing sewage sludge processing require careful and evolving regulatory oversight mechanisms, assuring that sewage sludge processing and composting are properly conducted. Therefore, limitations and qualifications for location and management of sewage sludge processing facilities are a necessary and integral part of the management of solid waste in West Virginia.


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

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

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

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

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

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

(4) "Back hauling" 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.

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

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

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

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

(9) "Compost" means a humus like material resulting from aerobic, microbial, thermophilic decomposition of organic materials.

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

(11) "Commercial 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 composting facility owned and operated by a person for the sole purpose of composting waste created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

(12) "Cured compost" or "finished compost" means compost which has a very low microbial or decomposition rate which will not reheat or cause odors when put into storage and that has been put through a separate aerated curing cycle stage of thirty to sixty days after an initial composting cycle or compost which meets all regulatory requirements after the initial composting cycle.

(13) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to article one of this chapter.

(14) "Division" means the division of environmental protection.
(15) “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.

(16) “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.

(17) “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.

(18) “Landfill” means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(19) “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.

(20) “Mature compost” means compost which has been produced in an aerobic, microbial, thermophylic manner and does not exhibit phytotoxic effects.

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

(22) “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.

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

(24) "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.

(25) "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.

(26) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw domestic, industrial or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort or property of any of the inhabitants of this state, before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.

(27) "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, article four, chapter twenty-two-c and article eleven, chapter twenty of this code.

(28) "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.

(29) "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic microbial and anaerobic digestion.

(30) "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.

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

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

(33) “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.

(34) “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, commercial composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with section twenty 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.

(35) "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.

(36) "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.


In addition to all other powers, duties, responsibilities and authority granted and assigned to the director in this code and elsewhere described by law, the director is empowered as follows:

(a) The director shall promulgate rules in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, source or characteristics of the solid waste, potential for contamination of ground, surface and potable waters, requirements for public roadway standards and design for access to the facilities with approval by the commissioner of the division of highways, the financial capability of the applicant, soil and geological considerations, environmental and other natural resource considerations.
(b) The director, after public notice and opportunity for public hearing near the affected community, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or closure of a solid waste facility: Provided, That the director may deny the issuance of a permit on the basis of information in the application or from other sources including public comment, if the solid waste facility is likely to cause adverse impacts on the environment. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above cited factor and may delete such geographical area from consideration for that type and size solid waste facility.

(c) The director may refuse to grant any permit if he or she has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or person owning a five percent or more interest, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

(1) Has demonstrated, either by his or her police record or by his or her record as a permittee under articles eleven through nineteen of this chapter or chapter twenty of this code, a lack of respect for law and order, generally, or for the laws and rules governing the disposal of solid wastes;

(2) Has misrepresented a material fact in applying to the director for a permit;

(3) Has been convicted of a felony or other crime involving moral turpitude;

(4) Has exhibited a pattern of violating environmental laws in any state or the United States or combination thereof; or

(5) Has had any permit revoked under the environmental
laws of any state or the United States.

(d) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter onto any approved solid waste facility, open dump or property where solid waste is present for the purpose of making an inspection or investigation of solid waste disposal.

(e) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter any approved solid waste facility, open dump or property where solid waste is present and take samples of the waste, soils, air or water or may, upon issuance of an order, require any person to take and analyze samples of such waste, soil, air or water.

(f) The director may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated thereunder.

(g) The director or his or her authorized representative, employee or agent shall make periodic inspections at every approved solid waste facility to effectively implement and enforce the requirements of this article or its rules and may, in coordination with the commissioner of the division of highways, conduct at weigh stations or any other adequate site or facility inspections of solid waste in transit.

(h) The director shall require and set the amount of performance bonds for persons engaged in the practice of solid waste disposal in this state, pursuant to section twelve of this article.

(i) The director shall require: (1) That persons disposing of solid waste at commercial solid waste facilities within the state file with the operator of the commercial solid waste facility records concerning the type, amount and origin of solid waste disposed of by them; and (2) that
operators of commercial solid waste facilities within the state maintain records and file them with the director concerning the type, amount and origin of solid waste accepted by them.

(j) Identification of interests. — The director shall require an applicant for a solid waste facility permit to provide the following information:

1. The names, addresses and telephone numbers of:
   a. The permit applicant;
   b. Any other person conducting or managing the affairs of the applicant or of the proposed permitted premises, including any contractor for gas or energy recovery from the proposed operation, if the contractor is a person other than the applicant; and
   c. Parties related to the applicant by blood, marriage or business association, including the relationship to the applicant;

2. The names and addresses of the owners of record of surface and subsurface areas within, and contiguous to, the proposed permit area;

3. The names and addresses of the holders of record to a leasehold interest in surface or subsurface areas within, and contiguous to, the proposed permit area;

4. A statement of whether the applicant is an individual, corporation, partnership, limited partnership, government agency, proprietorship, municipality, syndicate, joint venture or other entity. For applicants other than sole proprietorships, the application shall contain the following information, if applicable:
   a. Names and addresses of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant;
   b. For corporations, the principal shareholders;
(C) For corporations, the names, principal places of businesses and internal revenue service tax identification numbers of United States parent corporations of the applicant, including ultimate parent corporations and United States subsidiary corporations of the applicant and the applicant's parent corporations; and

(D) Names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the division, including, but not limited to, associates and agents;

(5) If the applicant or an officer, principal shareholder, general or limited partner or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(A) The name, address and tax identification number or employer identification number of the corporation or other person or municipality; and

(B) The nature of the relationship or participation with the corporation or other person or municipality;

(6) An application shall list permits or licenses, issued by the division or other environmental regulatory agency to each person or municipality identified in paragraph (1) of this subdivision and to other related parties to the applicant, that are currently in effect or have been in effect in at least part of the previous ten years. This list shall include the type of permit or license, number, location, issuance date and when applicable, the expiration date;

(7) An application shall identify the solid waste facilities in the state which the applicant or a person or municipality identified in paragraph (1) of this subdivision and other related parties to the applicant currently owns or operates, or owned or operated in the previous ten years.
For each facility, the applicant shall identify the location, type of operation and state or federal permits under which they operate or have operated. Facilities which are no longer permitted or which were never under permit shall also be listed.

(k) Compliance information. — An application shall contain the following information for the ten-year period prior to the date on which the application is filed:

(1) A description of notices of violation, including the date, location, nature and disposition of the violation, that were sent by the division to the applicant or a related party, concerning any environmental law, rule, or order of the division, or a condition of a permit or license. In lieu of a description the applicant may provide a copy of notices of violation;

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the division, and civil penalty actions adjudicated by the state, against the applicant or a related party concerning any environmental law, rule, or order of the division, or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions;

(3) A description of a summary, misdemeanor or felony conviction, a plea of guilty or plea of no contest that has been obtained in this state against the applicant or a related party under any environmental law or rule concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions;

(4) A description of a court proceeding concerning any environmental law or rule that was not described under paragraph (3) of this subdivision in which the applicant or
a related party has been party. The description shall include the date, location, nature and disposition of the proceedings;

(5) A description of a consent order, consent adjudication, consent decree or settlement agreement involving the applicant or a related party concerning any environmental law or rule in which the division, other governmental agencies, the United States environmental protection agency, or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, a decree or agreement;

(6) For facilities and activities identified under paragraph (1) of this subdivision, a statement of whether the facility or activity was the subject of an administrative order, consent agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the division has denied a permit application filed by the applicant or a related party, based on compliance status;

(7) When the applicant is a corporation, a list of the principal shareholders that have also been principal shareholders of other corporations which have committed violations of any environmental law or rule. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationship between the principal shareholder and both the applicant and the other
corporation;

(8) A description of a misdemeanor or felony conviction, a plea of guilty and a plea of no contest, by the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the convictions or pleas, and the date, location and nature of the offense;

(9) A description of final administrative orders, court orders, court decrees, consent decrees or adjudications, consent orders, final civil penalty adjudications, final bond forfeiture actions or settlement agreements involving the applicant or a related party for violations outside of this state of any environmental protection laws or regulations. The description shall include the date of the action and the location and nature of the underlying violation. In lieu of a description, the applicant may provide a copy of the appropriate document.

(1) All of the information provided by the applicant pursuant to this section is not confidential and may be disclosed pursuant to the provisions of chapter twenty-nine-b of this code.

§22-15-7. Special provision for residential solid waste disposal.

1 All commercial and public landfills shall establish and publish a yearly schedule providing for one day per month on which a person not in the business of hauling or disposing of solid waste may dispose of, in a landfill, an amount of residential solid waste, up to one pick-up truckload or its equivalent, free of all charges and fees: Provided, That the provisions of this section shall not take effect until the first day of July, one thousand nine hundred ninety-eight. Any person who is not a resident of West Virginia may only participate in the monthly free disposal day upon proof that his or her state of residence would likewise allow West Virginia residents to dispose of residential solid waste in the same or substantially similar

(a) On and after the first day of October, one thousand nine hundred ninety-one, it is unlawful to operate any commercial solid waste facility that handles between ten thousand and thirty thousand tons of solid waste per month, except as provided in section nine of this article and sections twenty-six, twenty-seven and twenty-eight, articles four and four-a, chapter twenty-two-c of this code.

(b) Except as provided in section nine of this article, the maximum quantity of solid waste which may lawfully be received or disposed of at any commercial solid waste facility is thirty thousand tons per month.

(c) The director shall, within the limits contained in this article, place a limit on the amount of solid waste received or disposed of per month in commercial solid waste facilities. The director shall consider at a minimum the following criteria in determining a commercial solid waste facility’s monthly tonnage limit:

(1) The proximity and potential impact of the solid waste facility upon groundwater, surface water and potable water;

(2) The projected life and design capacity of the solid waste facility;

(3) The available air space, lined acreage, equipment type and size, adequate personnel and wastewater treatment capabilities; and

(4) Other factors related to the environmentally safe and efficient disposal of solid waste.

(d) Within the limits established in this article, the director shall determine the amount of sewage sludge
which may be safely treated, stored, processed, composted, dumped or placed in a solid waste facility.

(e) The director shall promulgate emergency rules, and propose for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, to effectuate the requirements of this section. When developing the rules the director shall consider at a minimum the potential impact of the treatment, storage, processing, composting, dumping or placing sewage sludge at a solid waste facility:

1. On the groundwater, surface waters and potable waters in the area;
2. On the air quality in the area;
3. On the projected life and design capacity of the solid waste facility;
4. On the available air space, lined acreage, equipment type and size, personnel and wastewater treatment capabilities;
5. The facilities ability to adequately develop markets and market the product which results from the proper treatment of sewage sludge; and
6. Other factors related to the environmentally safe and efficient treatment, storage, processing, composting, dumping or placing of sewage sludge at a solid waste facility.

(f) Sewage sludge disposed of at a landfill must contain at least twenty percent solid by weight. This requirement may be met by adding or blending sand, sawdust, lime, leaves, soil or other materials that have been approved by the director prior to disposal. Alternative sewage sludge disposal methods can be utilized upon obtaining written approval from the director. No facility may accept for land filling in any month sewage sludge in excess of twenty-five percent of the total tons of solid waste ac-
cepted at the facility for land filling in the proceeding month.


(a) Notwithstanding any provision in this article, article four, chapter twenty-two-c, article two, chapter twenty-four of this code, any other section of this code, or any prior enactment of the code to the contrary, and notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of the following criteria, any person who on the first day of October, one thousand nine hundred ninety-one, has:

(1) Obtained site approval for a commercial solid waste facility from a county or regional solid waste authority or county commission pursuant to a prior enactment of this code, or has otherwise satisfied the requirements of subsection (a), section twenty-five, article four, chapter twenty-two-c of this code;

(2) Entered into a contract with a county commission regarding the construction and operation of a solid waste facility, which contract contains rates for the disposal of solid waste anticipated to be disposed of at the facility;

(3) Obtained, pursuant to section one-f, article two, chapter twenty-four of this code, following a public hearing, an order from the public service commission approving the rates established in the contract with the county commission; and

(4) An application for a permit for a commercial solid waste facility pending with the division of environmental protection, or is operating under a permit or compliance order, is permitted to handle in excess of the limitation established in section eight of this article up to fifty thousand tons of solid waste per month at a commercial solid waste facility so long as the person complies with the
provisions of this section.

(b) Any person desiring to operate a commercial solid waste facility which handles an amount of solid waste per month in excess of the limitation established in section eight of this article, but not exceeding the tonnage limitation described in subsection (a) of this section may file a notice with the county commission of the county in which the facility is or is to be located requesting a countywide referendum. Upon receipt of such notice, the county commission shall order a referendum be placed upon the ballot, not less than fifty-six days before the next primary or general election:

1) Such referendum will be to determine whether it is the will of the voters of the county that a commercial solid waste facility be permitted to handle more than the limitation established in section eight of this article not to exceed fifty thousand tons per month. Any such election 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, apply to voting and elections hereunder, insofar as practicable;

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

"Shall a commercial solid waste facility, permitted to handle up to, but no more than fifty thousand tons of solid waste per month be located within __________ County, West Virginia?"

☐ For the facility

☐ Against the facility

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

If a majority of the legal votes cast upon the question is against the facility handling an amount of solid waste of
up to fifty thousand tons per month then the division shall not proceed any further with the application. If a majority of the legal votes cast upon the question is in favor of permitting the facility within the county, then the application process as set forth in this article may proceed: Provided, That such vote is not binding on or require the division to issue a permit.

(c) If a person submits to a referendum in accordance with this section, all approvals, certificates and permits granted and all actions undertaken by a regional or county solid waste authority or county commission with regard to the person’s commercial solid waste facility within the county under this article or article four, chapter twenty-two-c of this code, or previously enacted sections of articles five-f and nine, chapter twenty of this code are valid, complete and in full compliance with all the requirements of law and any defects contained in such approvals, certificates, permits or actions are cured and such defects may not be invoked to invalidate any such approval, certificate, permit or action.

(d) Notwithstanding any provision of this code to the contrary, any person described in subsection (a) of this section who complies with the referendum requirement of this section and complies with the permitting requirements of the division provided in section ten of this article, shall not be required to comply with the requirements of sections twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code: Provided, That such person is entitled to receive a certificate of need pursuant to the provisions of subsection (a), section one-c, article two, chapter twenty-four of this code to handle the tonnage level authorized pursuant to subsection (a) of this section.

(e) The purpose of this section is to allow any person who satisfies the four criteria contained in subsection (a) of this section, notwithstanding any defects in or chal-
lenses to any actions which were or are required to be performed in satisfaction of such criteria, to submit the question of siting a facility that accepts up to fifty thousand tons within the county to a referendum in order to obtain a decision at the county or regional level regarding the siting of the facility and that submission of this question at the county level is the only approval, permit or action required at the county or regional level to establish and site the proposed facility.


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

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

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

(d) For existing solid waste facilities which formerly
held division of health permits which expired by law and
for which complete permit applications for new permits
pursuant to this article were submitted as required by law,
the division may enter an administrative order to govern
solid waste activities at such facilities, which may include
a compliance schedule, consistent with the requirements
of the division's solid waste management rules, to be
effective until final action is taken to issue or deny a
permit for such facility pursuant to this article, or until
further order of the division.

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

(f) A commercial solid waste facility shall not discriminate in favor of or against the receipt of any waste otherwise eligible for disposal at the facility based on its geographic origin.

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

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


(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a
permit has been issued, each operator of a commercial
solid waste facility shall furnish bond, on a form to be
prescribed and furnished by the director, payable to the
state of West Virginia and conditioned upon the operator
faithfully performing all of the requirements of this
article, rules promulgated hereunder and the permit. The
amount of the bond required shall be determined by the
director based upon the total estimated cost to the state of
completing final closure according to the permit granted
to such facility and such measures as are necessary to
prevent adverse effects upon the environment; such
measures include, but are not limited to, satisfactory
monitoring, post-closure care, leachate treatment and
remedial measures: Provided, That the amount of the bond
shall be sufficient to conform to and be consistent with the
financial assurance requirements set forth under Subtitle
D of the federal Resource Conservation and Recovery Act,
42 U.S.C. §§6901 et seq. and the regulations promulgated
thereunder. All bonds required to be posted shall be
consistent, whether the facility is publicly or privately
owned or operated. All permits shall be bonded for at
least ten thousand dollars. The bond shall cover either: (1)
The entire area to be used for the disposal of solid waste;
or (2) that increment of land within the permit area upon
which the operator will initiate and conduct commercial
solid waste facility operations within the initial term of
the permit pursuant to legislative rules promulgated by
the director pursuant to chapter twenty-nine-a of this
code. If the operator chooses to use incremental bonding,
as succeeding increments of commercial solid waste
facility operations are to be initiated and conducted
within the permit area, the operator shall file with the
director an additional bond or bonds to cover such incre-
ments in accordance with this section: Provided, however,
That once the operator has chosen to proceed with bond-
ing either the entire area to be used for the disposal of
solid waste or with incremental bonding, the operator
shall continue bonding in that manner for the term of the
permit.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit and for a period of up to thirty full years after final closure of the permit site: Provided, That any further time period necessary to achieve compliance with the requirements in the closure plan of the permit is considered an additional liability period.

c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods.

If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certifi-
(d) Within twelve months prior to the expiration of the thirty-year period following final closure, the division will conduct a final inspection of the facility. The purpose of the inspection is to determine compliance with this article, the division's rules, the terms and conditions of the permit, orders of the division and the terms and conditions of the bond. Based upon this determination, the division will either forfeit the bond prior to the expiration of the thirty-year period following final closure, or release the bond at the expiration of the thirty-year period following final closure. Bond release requirements shall be provided in rules promulgated by the director.

(e) If the operator of a commercial solid waste facility abandons the operation of a solid waste disposal facility for which a permit is required by this article or if the permittee fails or refuses to comply with the requirements of this article in any respect for which liability has been charged on the bond, the director shall declare the bond forfeited and shall certify the same to the attorney general who shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operation has deposited cash or securities as collateral in lieu of corporate surety, the director shall declare said collateral forfeited and shall direct the state treasurer to pay said funds into a waste management fund to be used by the director to effect proper closure and to defray the cost of administering this article. Should any corporate surety fail to promptly pay, in full, forfeited bond, it is disqualified from writing any further surety bonds under this article.

(a) If the director, upon inspection or investigation by duly authorized representatives or through other means observes, discovers or learns of a violation of this article, its rules, article eleven of this chapter or its rules, or any permit or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the attorney general, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this section.

(b) Any person who willfully or negligently violates the provisions of this article, any permit or any rule or order issued pursuant to this article is subject to the same criminal penalties as set forth in section twenty-four, article eleven of this chapter.

(c) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars:

(1) In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements...
as well as any other appropriate factors as may be established by the director by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing. The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director's decision, the alleged violator may request a formal hearing before the environmental quality board in accordance with the provisions of section sixteen of this article. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed twenty-five thousand dollars for each day of such violation:
Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a), section five of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the solid waste reclamation and environmental response fund established in subdivision (3), subsection (h), section eleven of this article;

(2) No assessment levied pursuant to subdivision (1), subsection (c) above becomes due and payable until the procedures for review of such assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.
(f) Upon request of the director, the attorney general or the prosecuting attorney of the county in which the violation occurs shall assist the director in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

(h) In addition to all other grounds for revocation, the director shall revoke a permit for any of the following reasons:

(1) Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;

(2) Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage or disposal of solid waste, or of any rule adopted pursuant thereto;

(3) Coercing a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee; or

(4) Preventing, without authorization of the division, any permittee from disposing of solid waste at a licensed treatment, storage or disposal facility.

(i) Within thirty days of the effective date of this subsection, the director shall issue minor permit modifications for all permits or permit modifications issued on or after the twenty-eighth day of September, one thousand nine hundred ninety-five, to reflect the tonnage authorization set forth in the certificate of need for that solid waste facility. All such facilities may continue to receive such tonnage until the modification is received.

(a) Within the limits imposed by article fifteen, section eight of this chapter, the division shall develop and implement a comprehensive program for the regulation and management of sewage sludge. The division is authorized to require permits for all facilities and activities which generate, process or dispose of sewage sludge by whatever means, including, but not limited to, land application, composting, mixed waste composting, incineration or any other method of handling sewage sludge within the state.

(b) The director shall promulgate emergency rules and propose legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:

(1) That entities which generate, process, dispose or otherwise manage sewage sludge in the state are required to report to the division the following:

(i) The specific source of the sewage sludge;

(ii) The amount of sewage sludge actually generated, treated, stored, processed, composted, disposed or placed;

(iii) The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge; and

(iv) Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so stored, land applied or otherwise disposed of; and the capacity of that location to accept sewage sludge;

(2) That the division engage in reasonable and periodic monitoring of all sewage sludge related activities and to monitor data supplied by sewage sludge producers, processors or transporters to ensure compliance with state
and federal regulations;

(3) That representatives of the division have the ability to enter onto any land application site for the purposes of inspecting and analyzing the effects of sewage sludge application on that site;

(4) That no permit for the processing or disposal of sewage sludge will be issued until there is an accurate finding that it has been adequately tested and shown not to contain heavy metals, pathogens, toxins or vectors in excess of regulatory standards;

(5) That the director may require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of future environmental remediation from producers and importers of sewage sludge;

(6) That no person or entity be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for all pollutants, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc;

(7) That no person be allowed to land apply so much sewage sludge as to exceed the agronomic rate for that land or a rate of fifteen dry tons per acre per year, whichever is less: Provided, That up to twenty-five dry tons per acre per year may be applied in the reclamation of surface mine land;

(8) That information relating to the disposal, treatment, storage, processing, composting, dumping, placing or land applying of sewage sludge is available to affected communities and other persons who may request the information in conformity with article one, chapter twenty-nine-b of this code;

(9) That all sewage sludge processing facilities contain sufficient design specifications to protect ground, surface
and potable waters, air quality, existing and potential land-use planning and public health and safety;

(10) That regulation of composting facilities varies according to types and quantities of materials handled;

(11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and

(12) That a fee, to be paid by the producer, processor or transporter be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the “water quality management fund” established under the provisions of section ten, article eleven of this chapter. The fee schedule shall vary according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.

(c) For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the division pursuant to a water pollution control permit, including a West Virginia national pollutant discharge elimination system (WV/NPDES) permit required under article eleven of this chapter, a sewage sludge processing permit shall be a part of the permit and shall include a sewage sludge management plan approved by the director. Upon approval by the director, POTWs may accept sewage sludge from other POTWs on a cost-sharing or nonprofit basis under its NPDES permit without being considered a commercial solid waste facility.

(d) On and after the tenth day of April, one thousand nine hundred ninety-three, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the rule provided for in
subsection (b) of this section is effective.

(e) All sewage sludge placed in, or used in a landfill
disposal cell by a solid waste facility shall be subject to
the same tipping and other fees levied by this chapter on
the disposal of solid waste and shall be included in said
facility's total tonnage, subject to the limitations estab-
lished in this article and the provisions of article four,
chapter twenty-two-c of this code: Provided, That no land
within a solid waste facility but outside a landfill disposal
cell, shall accept the permanent application of so much
sewage sludge as to exceed the agronomic rate or a rate of
fifteen dry tons per acre per year, whichever is less.

(f) Sewage sludge shall not be used as daily cover by a
landfill.

(g) Any solid waste facility currently operating under a
permit from the director as a Class A solid waste facility
and sewage sludge processing facility may receive, for the
purpose of composting, up to a maximum of twelve
thousand five hundred tons of sewage sludge per month,
as weighed at the time of receipt at the facility. No Class
A facility operating a sewage sludge processing facility
under this chapter shall, on an annual basis, temporarily
or permanently store, retain or stockpile more than one
hundred twenty-five thousand cubic yards of sewage
sludge or any intermediate or final material or product
derived wholly or partially from sewage sludge.

(h) Any solid waste facility currently operating under a
permit from the director as a Class B solid waste facility
and sewage sludge processing facility may receive, for the
purpose of composting, up to a maximum of five thousand
tons of sewage sludge per month, as weighed at the time
of receipt at the facility. No Class B facility operating a
sewage sludge processing facility under this chapter shall,
on an annual basis, temporarily or permanently store,
retain or stockpile more than fifty thousand cubic yards of
sewage sludge or any intermediate or final material or
(i) Any POTW currently operating or holding a WV/NPDES permit to operate a sewage sludge processing facility for the purpose of composting sewage sludge may receive, for the purpose of composting, up to a maximum of five thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No POTW operating a sewage sludge processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than fifty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(j) No person seeking to operate a sewage sludge processing facility, commercial composting facility or non-commercial composting facility may receive, for the purpose of composting, up to a maximum of two thousand tons of sewage sludge per month, as weighed at the time of receipt at the facility. No person operating a sewage processing facility under this chapter shall, on an annual basis, temporarily or permanently store, retain or stockpile more than twenty thousand cubic yards of sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge.

(k) No sewage sludge processing facility may be located within a forty mile radius of another sewage sludge processing facility.

(l) Any facility under a consent agreement with the director or chief of the office of water resources as of the effective date of this act, regarding sewage sludge stored, retained or stockpiled at that facility, shall dispose of all accumulated sewage sludge in accordance with the consent agreement. Such sewage sludge is not subject to the limitations on storage, retention and stockpiling set forth above unless the facility violates the terms and conditions of its consent agreement.
(m) No person shall knowingly transport or deliver sewage sludge, or any intermediate or final material or product derived wholly or partially from sewage sludge in violation of this section.

(n) Any solid waste facility which composts sewage sludge shall have an annual output of finished or mature compost removed from the facility balanced to the annual input of sewage sludge relative to the nature of the sewage sludge taken in.

(o) A person or facility that temporarily or permanently, stores, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, shall maintain accurate operational records on site that are sufficiently detailed to clearly and convincingly demonstrate to the director that sewage sludge is being stored consistent with the provisions of this section. The records shall be made available to the director upon request.

(p) The director shall presume that a person or facility which temporarily or permanently, stores, treats, handles, processes, retains or stockpiles sewage sludge or any intermediate or final material or product derived wholly or partially from sewage sludge, contrary to the provisions of this section is subject to all penalties available to the director under this chapter.

(q) All persons operating a sewage sludge processing facility shall provide off-site odor monitoring or testing mechanisms approved by the director. The director shall promulgate emergency rules and propose legislative rules for legislative promulgation, rules specifying the nature and type of odor monitoring or testing which will be approved or how to obtain approval for proposed odor monitoring or testing; the areas where the monitoring or testing should occur; the frequency of monitoring or testing which shall be no less than semiannually or as otherwise ordered by the director and any other con-
CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies; (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

2 The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.
The Legislature further finds that the process of developing rational and sound solid waste plans at the county or regional level is impeded by the proliferation of siting proposals for new solid waste facilities.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans.

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

1. **Source reduction.** — This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste and similar activities.

2. **Recycling, reuse and materials recovery.** — This involves separating and recovering valuable materials from the waste stream, composting food and yard waste and marketing of recyclables.

3. **Landfilling.** — To the maximum extent possible, this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.

The Legislature further finds that the potential impacts of proposed commercial solid waste facilities may have a deleterious and debilitating impact upon the transporta-
tion network, property values, economic growth, environmental quality, other land uses and the public health and welfare in affected communities. The Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land-use conflicts engendered by these proposed facilities. The Legislature also finds that such local land-use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decisionmaking process and the land-use planning values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.

§22C-4-2. Definitions.

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

(a) “Approved solid waste facility” means a commercial solid waste facility or practice which has a valid permit or compliance order under article fifteen, chapter twenty-two of this code.

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

(c) “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.

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

(e) “Class B facility” means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand persons, but which does not receive solid waste exceeding an aggregate of ten thousand tons per month. Class B facilities do not include construction/demolition facilities: Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of chapter twenty-nine-a of this code.

(f) “Compliance order” means an administrative order issued pursuant to section ten, article fifteen, chapter twenty-two of this code authorizing a solid waste facility to operate without a solid waste permit.

(g) “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.

(h) "Person" means 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; the 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.

(i) "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.

(j) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article eleven, chapter twenty-two of this code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article eighteen,
chapter twenty-two of this code, or refuse, slurry, over-
burden or other waste or material resulting from coal-
fi red 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 article two, three,
four, six, seven, eight, nine or ten, chapter twenty-two or
chapter twenty-two-a of this code, so long as such place-
ment or disposal is in conformance with a permit issued
pursuant to said chapters. “Solid waste” does not include
materials which are recycled by being used or reused in an
industrial process to make a product, as effective substi-
tutes for commercial products, or are returned to the
original process as a substitute for raw material feedstock.

(k) “Solid waste disposal” means the practice of dispos-
ing of solid waste including placing, depositing, dumping
or throwing or causing to be placed, deposited, dumped or
thrown any solid waste.

(l) “Solid waste disposal shed” means the geographical
area which the solid waste management board designates
and files in the state register pursuant to section nine,
article three of this chapter.

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

(n) “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.

(o) “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.

(p) "Incinerator" means an enclosed device using con-
trolled flame combustion to thermally break down solid
waste, including refuse-derived fuel, to an ash residue that
contains little or no combustible materials.

(q) "Materials recovery facility" means any solid waste
facility at which solid wastes are manually or mechani-
cally shredded or separated so that materials are recov-
ered from the general waste stream for purposes of reuse
and recycling.

§22C-4-8. Authority to develop litter and solid waste control
plan; approval by solid waste management
board; development of plan by director; advisory
rules.

(a) Each county and regional solid waste authority is
required to develop a comprehensive litter and solid waste
control plan for its geographic area and to submit said
plan to the solid waste management board on or before the
first day of July, one thousand nine hundred ninety-one.
Each authority shall submit a draft litter and solid waste
control plan to the solid waste management board by the
thirty-first day of March, one thousand nine hundred
ninety-one. The comments received by the county or
regional solid waste authority at public hearings, two of
which are required, shall be considered in developing the
final plan.

(b) Each litter and solid waste control plan shall include
provisions for:

(1) An assessment of litter and solid waste problems in
the county;
(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the public service commission;

(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either: (i) Payment of garbage collection fee; or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;

(5) A recommendation for the siting of one or more properly permitted public or private solid waste facilities, whether existing or proposed, to serve the solid waste needs of the county or the region, as the case may be, consistent with the comprehensive county plan prepared by the county planning commission and the anticipated volumes of solid waste originating within or without the county or region which are likely to be disposed of within the county or region;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps;

(8) The coordination of the plan with the related solid waste collection and disposal services of municipalities.
and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling efforts;

(11) A program to identify the anticipated quantities of solid wastes which are disposed of, but are not generated by sources situated, within the boundaries of the county or the region established pursuant to this section;

(12) Coordination with the division of highways and other local, state and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps;

(13) Establishment of a program to encourage and utilize those individuals incarcerated in the regional jail and those adults and juveniles sentenced to probation for the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all refuse from commercial and industrial sources within the county or region, as the case may be, including refuse from commercial and industrial sources, but excluding refuse from sources owned or operated by the state or federal governments.

(c) The solid waste management board shall establish advisory rules to guide and assist the counties in the development of the plans required by this section.

(d) Each plan prepared under this section is subject to approval by the solid waste management board. Any plan rejected by the solid waste management board shall be returned to the regional or county solid waste authority with a statement of the insufficiencies in such plan. The authority shall revise the plan to eliminate the insufficiencies and submit it to the director within ninety days.
(e) The solid waste management board shall develop a litter and solid waste control plan for any county or regional solid waste authority which fails to submit such a plan on or before the first day of July, one thousand nine hundred ninety-two: Provided, That in preparing such plans the director may determine whether to prepare a regional or county based plan for those counties which fail to complete such a plan.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste facilities which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.
(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The initial plan shall be developed based upon information readily available. Due to the limited funds and time available the initial plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings and encourage and solicit other public participation in the preparation of the siting plan as required by the rules promulgated by the solid waste management board for this purpose. Upon completion of the siting plan, the county or regional solid
(d) The siting plan takes effect upon approval by the solid waste management board pursuant to the rules promulgated for this purpose. Upon approval of said plan, the solid waste management board shall transmit a copy thereof to the director of the division of environmental protection and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

(e) Effective upon approval of the siting plan by the solid waste management board, it is unlawful for any person to establish, construct, install or operate a commercial solid waste facility at a site not authorized by the siting plan: Provided, That an existing commercial solid waste facility which, on the eighth day of April, one thousand nine hundred eighty-nine, held a valid solid waste permit or compliance order issued by the division of natural resources pursuant to the former provisions of article five-f, chapter twenty of this code may continue to operate but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order, and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules promulgated by the solid waste management board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a pre-siting notice pursuant to section thirteen, article
fifteen, chapter twenty-two of this code, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on the criteria set forth in subsection (b) of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The solid waste management board shall provide, within available resources, technical support to a county or regional solid waste authority, or county commission as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

(h) The solid waste management board shall prepare and adopt a siting plan for any county or regional solid waste authority which does not complete and file with the said state authority such a siting plan in compliance with the provisions of this section and the rules promulgated thereunder. Any siting plan adopted by the solid waste management board pursuant to this subsection shall comply with the provisions of this section, and the rules promulgated thereunder, and has the same effect as a siting plan prepared by a county or regional solid waste authority and approved by the solid waste management board.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the solid waste management board pursuant to section eight of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste facility capacity.

(j) The solid waste management board is authorized and
directed to promulgate rules specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

(k) To the extent that current solid waste plans approved by the board are approved as provided for in this section, and in place on the effective date of this article, provisions which limit approval for new or expanded solid waste facilities based solely on local solid waste disposal needs without consideration for national waste disposal needs are disallowed as being in conflict with the public policy of this article: Provided, That all other portions of the solid waste management plans as established in the litter and solid waste control plan as provided for in this section and the comprehensive recycling plan as provided for in section four, article eleven, chapter twenty of the code, are continued in full force and effect to the extent that those provisions do not conflict with the provisions of this article.

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section two, article fifteen, chapter twenty-two of this code, that are specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment of this code, and facilities which were otherwise exempted from local site approval under any prior enactment of this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the
manner specified in sections twenty-six, twenty-seven and twenty-eight of this article.

(b) In considering whether to issue or deny the certificate of site approval as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority shall base its determination upon the following criteria: The efficient disposal of solid waste anticipated to be received or processed at the facility, including solid waste generated within the county or region, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) hereof which support its decision to issue or deny a certificate of site approval.

(d) The siting approval requirements for composting facilities, materials recovery facilities and mixed waste processing facilities shall be the same as those for other solid waste facilities.

§22C-4-26. Approval of new Class A facilities by solid waste authorities.

Except as provided below with respect to Class B facilities, from and after the tenth day of March, one thousand nine hundred ninety, in order to obtain approval to operate a new Class A facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four of this code and in section thirteen, article
(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

§22C-4-27. Approval of conversion from Class B facility to Class A facility.

From and after the eighteenth day of October, one thousand nine hundred ninety-one, in order to obtain approval to operate as a Class A facility at a site previously permitted to operate as a Class B facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four of this code, and in section thirteen, article fifteen, chapter twenty-two of this code; and

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located or proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.
From and after the eighteenth day of October, one thousand nine hundred ninety-one, in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility's permit tonnage limitation within a two-year period, the permittee shall:

(1) File an application for approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located. Such application shall be a modification of the Class A facility's certificate of site approval. The county or regional solid waste authority shall act upon such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner; and

(2) File an application for approval with, and obtain approval from, the public service commission to modify the certificate of need in the manner set forth in section one-c, article two, chapter twenty-four of this code.

ARTICLE 4A. LOCAL PARTICIPATION; REFERENDUM.

§22C-4A-1. Local participation, legislative findings and purposes; referendum.

(a) The Legislature finds that the potential impacts of commercial solid waste disposal facilities have a deleterious and debilitating effect upon the transportation network, property values, economic growth, environmental quality, other land uses, and the public health and welfare. These impacts are borne predominantly by the local residents in the communities where the facilities are located. The Legislature also recognizes that economic benefits exist for having a solid waste facility, including new jobs in the local community and increased tax and fee revenues for the state. The largest of facilities authorized to operate in West Virginia, Class A facilities, receive up to thirty thousand tons of solid waste per month. Class A
facilities inevitably cause the most severe impacts to the local area. The Legislature further finds that Class A facilities cause significant impact on the local community above and beyond those of smaller landfills, that this impact requires the local community be afforded the opportunity to participate in the decision of locating a landfill of this size in their community. Further, local citizens need governmental entities to assure and verify that the Class A facility will be developed and operated in a manner that complies with all laws, rules and regulations which regulate landfills, and that the local infrastructure and environment are appropriately suited for a Class A facility. As a result, the Legislature finds that a mechanism must be in place to allow for the local community to be a significant participant in the Class A facility siting and expansion decisionmaking process.

(b) Therefore, it is the purpose of the Legislature to allow the local decision for location of new Class A landfills by county referendum, and further that a petition process be established to allow demand for a county referendum for expansion of an existing Class A landfill or redesignation of a Class B landfill to Class A.

§22C-4A-2. Approval of new Class A facility.

(a) The purpose of the mandatory referendum for approval of new Class A facilities is to verify for the local community that the local infrastructure and environment are appropriate for a new Class A facility and to assure that the local community accepts the associated benefits and detriment of having a new Class A facility located in their county.

(b) Following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste approval as required in section twenty-six, article four of this chapter, for a new Class A facility, the county commission shall cause a referendum to be placed
on the ballot not less than fifty-six days before the next primary, general or other county wide election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a new Class A facility be constructed. Any election at which such question of locating a solid waste facility 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, apply to voting and elections hereunder, insofar as practicable.

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

"The West Virginia Legislature has found that the location of a Class A solid waste facility has impact upon the county in which it will be located, and further that local citizens should be given the opportunity to participate in the decision of locating a new Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month.

The ________ county commission finds the following:

I. The ________________ (name of applicant) has obtained site approval for a Class A commercial facility from the ________________ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills in areas of a county where a commercial landfill can be appropriately located.

II. The West Virginia public service commission has issued a certificate of need, and has approved the opera-
tion of the Class A landfill. The public service commission has determined that the landfill complies with the state solid waste management plan and based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the _______ commercial solid waste facility located within _____ County, be permitted to handle between ten and thirty thousand tons of solid waste per month?"

☐ For the facility

☐ Against the facility

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

(3) If a majority of the legal votes cast upon the question is against the facility, the division of environmental protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the division of environmental protection to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

§22C-4A-3. Referendum for approval of conversion of a Class B facility to a Class A facility.

(a) The purpose of the petition and referendum for approval of conversions of Class B facilities to Class A facilities is to allow the local community an opportunity
to participate in the decision of whether the local infrastructure and environment are appropriate for expansion of a Class B facility to a Class A facility, and to assure that the local community accepts the associated benefits and detriments of having a Class A facility located in their county.

(b) Within twenty-one days following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste authority approval as required in section twenty-six, article four, chapter twenty-two-c of this code, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next primary, general or other countywide election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the secretary of state, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than sixty days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary, general or other countywide election is scheduled not more than one hundred twenty days and not less than one hundred days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of
the signatures within thirty days and shall report the
number of valid signatures to the county commission. In
all other cases, the clerk of the county commission shall
complete verification in a timely manner. Upon verifica-
tion of the signatures of registered voters residing in the
county equal to not less than fifteen percent of the number
of votes cast within the county for governor at the preced-
ing gubernatorial election, and not less than seventy days
before the election, the county commission shall order a
referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the
will of the voters of the county that the Class B facility be
converted to a Class A facility. Any election at which such
question of locating a solid waste facility 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, 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. Should the
petition fail to meet the requirements set forth above, the
application process as set forth in this article and article
fifteen, chapter twenty-two of this code, may proceed.

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

"The West Virginia Legislature finds that expansion of
a Class B solid waste facility to a Class A solid waste
facility has impact to the county in which it will be
located, and further that local citizens should be afforded
the opportunity to participate in the decision of locating
a Class A facility in their community. A Class A facility
is authorized to receive between ten and thirty thousand
tons of solid waste per month. Fifteen percent of the
registered voters in ____________ county have signed
a petition to cause a referendum to determine the follow-
ing question:

The ______ county commission finds the following:

I. The ____________(name of applicant) has ob-
tained site approval for a Class A commercial facility from
the ____________(Name of the county or regional
solid waste authority). The Authority has determined that
the proposed landfill meets all local siting plan require-
ments. The local siting plan evaluates local environmental
conditions and other factors and authorizes commercial
landfills where a commercial landfill can be appropriately
located.

II. The West Virginia public service commission has
issued a certificate of need, and has approved the opera-
tion of the Class A landfill. The public service commission
has determined that the landfill complies with the state
solid waste management plan and that based on the
anticipated volume of garbage expected to be received at
the landfill, that the proposal is consistent with public
convenience and necessity.

Please vote whether to approve construction of the
facility by responding to the following question:

Shall the ________________ solid waste
facility, located within ________________ County,
West Virginia, be permitted to handle between ten and
thirty thousand tons of solid waste per month?

☐ For conversion of the facility
☐ Against conversion of the facility

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

(3) If a majority of the legal votes cast upon the question
is against the facility, then the division of environmental
protection shall not proceed any further with the applica-
If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the division of environmental protection to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

§22C-4A-4. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

(a) The purpose of the petition and referendum for approval of modification of Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriately suited for expansion of the Class A facility, and to assure that the local community accepts the associated benefits and deterrents of having a Class A facility located in their county.

(b) The referendum provisions contained herein must be met in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility’s permit tonnage limitation within a two-year period.

(c) Within twenty-one days following receipt of a certificate of need from the public service commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste approval as required in section twenty-six, article four of this chapter, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters
residing in the county may petition the county commission to place the issue of whether a Class A facility be permitted to increase the maximum tonnage allowed to be received at the facility be placed on the ballot at the next primary, general or other countywide election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the secretary of state, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than sixty days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary, general or other countywide election is scheduled not more than one hundred twenty days and not less than one hundred days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within thirty days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, and not less than seventy days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class A facility applicant be permitted to increase the maximum tonnage allowed to be received at the facility not to exceed thirty thousand tons per month. Any election at which such
question 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, 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. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and article fifteen, chapter twenty-two of this code, may proceed.

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

"The West Virginia Legislature finds that expansion of a Class A solid waste facility has significant impact to the community in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. The _______ facility is currently authorized to receive _______ thousand tons of solid waste per month. The _______ facility is proposing to be authorized to receive _______ thousand tons of solid waste per month. Fifteen percent of the registered voters in _______ county have signed a petition to cause a referendum to determine the following question:

The _______ county commission finds the following:

I. The _______ (name of applicant) has obtained site approval to expand a Class A commercial facility from the _______ (Name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes
II. The West Virginia public service commission has issued a certificate of need, and has approved the expansion of the Class A landfill. The public service commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the _________ solid waste facility located within _________ County, West Virginia, be allowed to handle a maximum of _________ solid waste per month?

☐ For the increase in maximum allowable tonnage

☐ Against the increase in maximum allowable tonnage

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

(3) If a majority of the legal votes cast upon the question is against allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at the facility, then the division of environmental protection shall not proceed to modify the Class A facility permit to increase the maximum allowable tonnage. If a majority of the legal votes cast upon the question is for allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at such facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the county or regional solid waste authority or the division
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of environmental protection to approve an application
to modify the permit. If the majority of the legal votes
cast is against the question, that does not prevent the
question from again being submitted to a vote at any
subsequent election in the manner provided for in this
section: Provided, however, That an applicant may not
resubmit the question for a vote prior to a period of two
years from the date of the previous referendum herein
described.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1c. Certificates of need required for solid waste facilities.

(a) Any person applying for a permit to construct,
operate or expand a commercial solid waste facility as
defined in section two, article fifteen, chapter
twenty-two of this code, or any person seeking a major
permit modification for a commercial solid waste
facility from the division of environmental protection
first shall obtain a certificate of need from the public
service commission. Application for such certificate
shall be submitted on forms prescribed by the commis-
sion. The commission shall grant or deny a certificate of
need, in accordance with provisions set forth in this
chapter. If the commission grants a certificate of need,
the commission may include conditions not inconsistent
with the criteria set forth in this section.

(b) For purposes of subsection (a) of this section, a
complete application consists of the following and
notwithstanding any other provision of this chapter to
the contrary, such information contained in the applica-
tion provided by the applicant is not confidential and
may be disclosed pursuant to the provisions of chapter
twenty-nine-b of this code:

(1) The names of the owners or operators of the facility
including any officer, director, manager, person owning
five percent or more interest or other person conducting or managing the affairs of the applicant as to the proposed facility;

(2) The location of the facility;

(3) A description of the geographic area to be served by the facility;

(4) The anticipated total number of citizens to be served by the facility;

(5) The average monthly tonnage of solid waste anticipated to be disposed of by the facility;

(6) The total monthly tonnage of solid waste for which the facility is seeking a permit from the division of environmental protection;

(7) The anticipated life span and closure date of the facility; and

(8) Any other information requested on the forms prescribed by the commission.

(c) In considering whether to grant a certificate of need the commission shall consider, but is not limited to considering, the following factors:

(1) The total tonnage of solid waste, regardless of geographic origin, that is likely to be delivered each month to the facility if the certificate is granted;

(2) The current capacity and life-span of other solid waste facilities that are likely to compete with the applicant's facility;

(3) The life span of the proposed or existing facility;

(4) The cost of transporting solid waste from the points of generation to the disposal facility;

(5) The impact of the proposed or existing facility on needs and criteria contained in the statewide solid waste
management plan; and

(6) Any other criteria which the commission regularly utilizes in making such determinations.

(d) The public service commission shall deny a certificate of need upon one or more of the following findings:

(1) The proposed capacity is unreasonable in light of the total tonnage of solid waste that is likely to be delivered each month to the facility if the certificate is granted;

(2) The location of the facility is inconsistent with the statewide solid waste management plan;

(3) The location of the facility is inconsistent with any applicable county or regional solid waste management plan;

(4) The proposed facility is not reasonably cost effective in light of alternative disposal sites;

(5) The proposal, taken as a whole, is inconsistent with the needs and criteria contained in the statewide solid waste management plan; or

(6) The proposal, taken as a whole, is inconsistent with the public convenience and necessity.

(e) An application for a certificate of need shall be submitted prior to submitting an application for certificate of site approval in accordance with section twenty-four, article four, chapter twenty-two-c of this code. Upon the decision of the commission to grant or deny a certificate of need, the commission shall immediately notify the solid waste management board and the division of environmental protection.

(f) Any party aggrieved by a decision of the commission granting or denying a certificate of need may obtain judicial review thereof in the same manner provided in section one, article five of this chapter.
(g) No person may sell, lease or transfer a certificate of need without first obtaining the consent and approval of the commission pursuant to the provisions of section twelve, article two of this chapter.

(h) The commission shall promulgate rules relating to the types of commercial solid waste facility modification or construction that require certificates of need.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy S. Luebbers  
Chairman Senate Committee

Nick Fantuzzo  
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 ....... approved ........... this the .......... day of .......... , 1993.  

Governor