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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 178

(By Senator OLIVERIO, ET AL)



PASSED FEBRUARY 17, 1998

In Effect FROM Passage

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FEBRUARY 17 1998
SENATE CLERK

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.

1 (a) The purpose of this article is to establish a compre-
2 hensive program of controlling all phases of solid waste
3 management.

4 (b) The Legislature finds that solid waste disposal is a
5 universal problem for all of the United States and that
6 West Virginia is committed to participating in the waste
7 stream market and not interfering with the free flow of
8 solid waste into or out of this state. However, the Legisla-
9 ture also recognizes that solid waste disposal has inherent
10 long-term environmental, health and infrastructure
11 impacts on local communities where the solid waste
12 facilities are located. It is the Legislature's intent to
13 establish reasonable uniform requirements on all waste
14 disposed of in this state regardless of origin. Because of
15 the importance and impact associated with the location
16 and operation of solid waste facilities, this article estab-
17 lishes a thorough and balanced application and regulatory
18 process which provides an efficient and reasonable

19 permitting process while affording the state and its
20 citizens full and fair participation in decisions associated
21 with the location, operation and oversight of the solid
22 waste collection and disposal process.

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

43 (d) The Legislature further finds that Class A landfills
44 often create special environmental problems that require
45 statewide coordination of the management of such land-
46 fills.

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

54 (f) The Legislature further finds that incineration

55 technologies present potentially significant health and
56 environmental problems.

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

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

§22-15-2. Definitions.

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

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

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

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

11 (2) "Applicant" means the person applying for a com-
12 mercial solid waste facility permit or similar renewal

13 permit and any person related to such person by virtue of
14 common ownership, common management or family
15 relationships as the director may specify, including the
16 following: Spouses, parents and children and siblings.

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

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

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

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

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

43 (8) "Commercial solid waste facility" means any solid
44 waste facility which accepts solid waste generated by
45 sources other than the owner or operator of the facility
46 and does not include an approved solid waste facility
47 owned and operated by a person for the sole purpose of

48 the disposal, processing or composting of solid wastes
49 created by that person or such person and other persons
50 on a cost-sharing or nonprofit basis and does not include
51 land upon which reused or recycled materials are legiti-
52 mately applied for structural fill, road base, mine recla-
53 mation and similar applications.

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

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

60 (11) "Commercial composting facility" means any solid
61 waste facility processing solid waste by composting,
62 including sludge composting, organic waste or yard waste
63 composting, but does not include a composting facility
64 owned and operated by a person for the sole purpose of
65 composting waste created by that person or such person
66 and other persons on a cost-sharing or nonprofit basis and
67 shall not include land upon which finished or matured
68 compost is applied for use as a soil amendment or condi-
69 tioner.

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

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

81 (14) "Division" means the division of environmental
82 protection.

83 (15) "Energy recovery incinerator" means any solid
84 waste facility at which solid wastes are incinerated with
85 the intention of using the resulting energy for the genera-
86 tion of steam, electricity or any other use not specified
87 herein.

88 (16) "Incineration technologies" means any technology
89 that uses controlled flame combustion to thermally break
90 down solid waste, including refuse-derived fuel, to an ash
91 residue that contains little or no combustible materials,
92 regardless of whether the purpose is processing, disposal,
93 electric or steam generation or any other method by which
94 solid waste is incinerated.

95 (17) "Incinerator" means an enclosed device using
96 controlled flame combustion to thermally break down
97 solid waste, including refuse-derived fuel, to an ash
98 residue that contains little or no combustible materials.

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

104 (19) "Materials recovery facility" means any solid waste
105 facility at which source-separated materials or materials
106 recovered through a mixed waste processing facility are
107 manually or mechanically shredded or separated for
108 purposes of reuse and recycling, but does not include a
109 composting facility.

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

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

116 (22) "Mixed waste processing facility" means any solid

117 waste facility at which materials are recovered from
118 mixed solid waste through manual or mechanical means
119 for purposes of reuse, recycling or composting.

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

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

127 (25) "Person" or "persons" mean any industrial user,
128 public or private corporation, institution, association, firm
129 or company organized or existing under the laws of this or
130 any other state or country; state of West Virginia; govern-
131 mental agency, including federal facilities; political
132 subdivision; county commission; municipal corporation;
133 industry; sanitary district; public service district; drainage
134 district; soil conservation district; watershed improvement
135 district; partnership; trust; estate; person or individual;
136 group of persons or individuals acting individually or as
137 a group; or any legal entity whatever.

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

148 (27) "Recycling facility" means any solid waste facility
149 for the purpose of recycling at which neither land disposal
150 nor biological, chemical or thermal transformation of
151 solid waste occurs: *Provided*, That mixed waste recovery

152 facilities, sludge processing facilities and composting
153 facilities are not considered recycling facilities nor
154 considered to be reusing or recycling solid waste within
155 the meaning of this article, article four, chapter twenty-
156 two-c and article eleven, chapter twenty of this code.

157 (28) "Sewage sludge" means solid, semisolid or liquid
158 residue generated during the treatment of domestic
159 sewage in a treatment works. Sewage sludge includes, but
160 is not limited to, domestic septage, scum or solids removed
161 in primary, secondary or advanced wastewater treatment
162 processes and a material derived from sewage sludge.
163 "Sewage sludge" does not include ash generated during the
164 firing of sewage sludge in a sewage sludge incinerator.

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

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

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

188 special nuclear or byproduct material as defined by the
189 Atomic Energy Act of 1954, as amended, including any
190 nuclear or byproduct material considered by federal
191 standards to be below regulatory concern, or a hazardous
192 waste either identified or listed under article five-e of this
193 chapter or refuse, slurry, overburden or other wastes or
194 material resulting from coal-fired electric power or steam
195 generation, the exploration, development, production,
196 storage and recovery of coal, oil and gas and other mineral
197 resources placed or disposed of at a facility which is
198 regulated under chapter twenty-two, twenty-two-a or
199 twenty-two-b of this code, so long as such placement or
200 disposal is in conformance with a permit issued pursuant
201 to such chapters.

202 (32) "Solid waste disposal" means the practice of dispos-
203 ing of solid waste including placing, depositing, dumping
204 or throwing or causing any solid waste to be placed,
205 deposited, dumped or thrown.

206 (33) "Solid waste disposal shed" means the geographical
207 area which the solid waste management board designates
208 and files in the state register pursuant to section eight,
209 article twenty-six, chapter sixteen of this code.

210 (34) "Solid waste facility" means any system, facility,
211 land, contiguous land, improvements on the land, struc-
212 tures or other appurtenances or methods used for process-
213 ing, recycling or disposing of solid waste, including
214 landfills, transfer stations, materials recovery facilities,
215 mixed waste processing facilities, sewage sludge process-
216 ing facilities, commercial composting facilities and other
217 such facilities not herein specified, but not including land
218 upon which sewage sludge is applied in accordance with
219 section twenty of this article. Such facility shall be
220 deemed to be situated, for purposes of this article, in the
221 county where the majority of the spatial area of such
222 facility is located: *Provided*, That a salvage yard, licensed
223 and regulated pursuant to the terms of article twenty-

224 three, chapter seventeen of this code, is not a solid waste
225 facility.

226 (35) "Solid waste facility operator" means any person or
227 persons possessing or exercising operational, managerial
228 or financial control over a commercial solid waste facility,
229 whether or not such person holds a certificate of convenience and necessity or a permit for such facility.
230

231 (36) "Source-separated materials" means materials
232 separated from general solid waste at the point of origin
233 for the purpose of reuse and recycling but does not mean
234 sewage sludge.

§22-15-5. Powers and duties; rules and rulemaking.

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

5 (a) The director shall promulgate rules in compliance
6 with the West Virginia administrative procedures act to
7 carry out the provisions of this article including modifying
8 any existing rules and establishing permit application fees
9 up to an amount sufficient to defray the costs of permit
10 review. In promulgating rules the director shall consider
11 and establish requirements based on the quantity of solid
12 waste to be handled, including different requirements for
13 solid waste facilities or approved solid waste facilities
14 which handle more than one hundred tons of solid waste
15 per day, the environmental impact of solid waste disposal,
16 the nature, source or characteristics of the solid waste,
17 potential for contamination of ground, surface and
18 potable waters, requirements for public roadway standards and design for access to the facilities with approval
19 by the commissioner of the division of highways, the
20 financial capability of the applicant, soil and geological
21 considerations, environmental and other natural resource
22 considerations,
23

24 (b) The director, after public notice and opportunity for
25 public hearing near the affected community, may issue a
26 permit with reasonable terms and conditions for installa-
27 tion, establishment, modification, operation or closure of
28 a solid waste facility: *Provided*, That the director may
29 deny the issuance of a permit on the basis of information
30 in the application or from other sources including public
31 comment, if the solid waste facility is likely to cause
32 adverse impacts on the environment. The director may
33 also prohibit the installation or establishment of specific
34 types and sizes of solid waste facilities in a specified
35 geographical area of the state based on the above cited
36 factor and may delete such geographical area from
37 consideration for that type and size solid waste facility.

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

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

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

53 (3) Has been convicted of a felony or other crime involv-
54 ing moral turpitude;

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

58 (5) Has had any permit revoked under the environmental

59 laws of any state or the United States.

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

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

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

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

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

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

94 operators of commercial solid waste facilities within the
95 state maintain records and file them with the director
96 concerning the type, amount and origin of solid waste
97 accepted by them.

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

101 (1) The names, addresses and telephone numbers of:

102 (A) The permit applicant;

103 (B) Any other person conducting or managing the affairs
104 of the applicant or of the proposed permitted premises,
105 including any contractor for gas or energy recovery from
106 the proposed operation, if the contractor is a person other
107 than the applicant; and

108 (C) Parties related to the applicant by blood, marriage or
109 business association, including the relationship to the
110 applicant;

111 (2) The names and addresses of the owners of record of
112 surface and subsurface areas within, and contiguous to,
113 the proposed permit area;

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

117 (4) A statement of whether the applicant is an individ-
118 ual, corporation, partnership, limited partnership, govern-
119 ment agency, proprietorship, municipality, syndicate, joint
120 venture or other entity. For applicants other than sole
121 proprietorships, the application shall contain the follow-
122 ing information, if applicable:

123 (A) Names and addresses of every officer, general and
124 limited partner, director and other persons performing a
125 function similar to a director of the applicant;

126 (B) For corporations, the principal shareholders;

127 (C) For corporations, the names, principal places of
128 businesses and internal revenue service tax identification
129 numbers of United States parent corporations of the
130 applicant, including ultimate parent corporations and
131 United States subsidiary corporations of the applicant and
132 the applicant's parent corporations; and

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

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

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

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

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

157 (7) An application shall identify the solid waste facilities
158 in the state which the applicant or a person or municipal-
159 ity identified in paragraph (1) of this subdivision and
160 other related parties to the applicant currently owns or
161 operates, or owned or operated in the previous ten years.

162 For each facility, the applicant shall identify the location,
163 type of operation and state or federal permits under which
164 they operate or have operated. Facilities which are no
165 longer permitted or which were never under permit shall
166 also be listed.

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

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

177 (2) A description of administrative orders, civil penalty
178 assessments and bond forfeiture actions by the division,
179 and civil penalty actions adjudicated by the state, against
180 the applicant or a related party concerning any environ-
181 mental law, rule, or order of the division, or a condition of
182 a permit or license. The description shall include the date,
183 location, nature and disposition of the actions. In lieu of
184 a description, the applicant may provide a copy of the
185 orders, assessments and actions;

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

194 (4) A description of a court proceeding concerning any
195 environmental law or rule that was not described under
196 paragraph (3) of this subdivision in which the applicant or

197 a related party has been party. The description shall
198 include the date, location, nature and disposition of the
199 proceedings;

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

210 (6) For facilities and activities identified under para-
211 graph (1) of this subdivision, a statement of whether the
212 facility or activity was the subject of an administrative
213 order, consent agreement, consent adjudication, consent
214 order, settlement agreement, court order, civil penalty,
215 bond forfeiture proceeding, criminal conviction, guilty or
216 no contest plea to a criminal charge or permit or license
217 suspension or revocation under the act or the environmen-
218 tal protection acts. If the facilities or activities were
219 subject to these actions, the applicant shall state the date,
220 location, nature and disposition of the violation. In lieu of
221 a description, the applicant may provide a copy of the
222 appropriate document. The application shall also state
223 whether the division has denied a permit application filed
224 by the applicant or a related party, based on compliance
225 status;

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

233 corporation;

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

240 (9) A description of final administrative orders, court
241 orders, court decrees, consent decrees or adjudications,
242 consent orders, final civil penalty adjudications, final
243 bond forfeiture actions or settlement agreements involving
244 the applicant or a related party for violations outside of
245 this state of any environmental protection laws or regula-
246 tions. The description shall include the date of the action
247 and the location and nature of the underlying violation.
248 In lieu of a description, the applicant may provide a copy
249 of the appropriate document.

250 (l) All of the information provided by the applicant
251 pursuant to this section is not confidential and may be
252 disclosed pursuant to the provisions of chapter
253 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
2 publish a yearly schedule providing for one day per month
3 on which a person not in the business of hauling or
4 disposing of solid waste may dispose of, in a landfill, an
5 amount of residential solid waste, up to one pick-up
6 truckload or its equivalent, free of all charges and fees:
7 *Provided*, That the provisions of this section shall not take
8 effect until the first day of July, one thousand nine
9 hundred ninety-eight. Any person who is not a resident of
10 West Virginia may only participate in the monthly free
11 disposal day upon proof that his or her state of residence
12 would likewise allow West Virginia residents to dispose of
13 residential solid waste in the same or substantially similar

14 manner.

**§22-15-8. Limit on the size of solid waste facilities;
rulemaking.**

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

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

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

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

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

24 (3) The available air space, lined acreage, equipment
25 type and size, adequate personnel and wastewater treat-
26 ment capabilities; and

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

29 (d) Within the limits established in this article, the
30 director shall determine the amount of sewage sludge

31 which may be safely treated, stored, processed, composted,
32 dumped or placed in a solid waste facility.

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

41 (1) On the groundwater, surface waters and potable
42 waters in the area;

43 (2) On the air quality in the area;

44 (3) On the projected life and design capacity of the solid
45 waste facility;

46 (4) On the available air space, lined acreage, equipment
47 type and size, personnel and wastewater treatment
48 capabilities;

49 (5) The facilities ability to adequately develop markets
50 and market the product which results from the proper
51 treatment of sewage sludge; and

52 (6) Other factors related to the environmentally safe and
53 efficient treatment, storage, processing, composting,
54 dumping or placing of sewage sludge at a solid waste
55 facility.

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

65 cepted at the facility for land filling in the proceeding
66 month.

**§22-15-9. Exemption for solid waste facility handling in excess
of thirty thousand tons per month.**

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

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

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

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

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

32 provisions of this section.

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

44 (1) Such referendum will be to determine whether it is
 45 the will of the voters of the county that a commercial solid
 46 waste facility be permitted to handle more than the
 47 limitation established in section eight of this article not to
 48 exceed fifty thousand tons per month. Any such election
 49 shall be held at the voting precincts established for
 50 holding primary or general elections. All of the provisions
 51 of the general election laws, when not in conflict with the
 52 provisions of this article, apply to voting and elections
 53 hereunder, insofar as practicable;

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

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

61 For the facility

62 Against the facility

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

64 If a majority of the legal votes cast upon the question is
 65 against the facility handling an amount of solid waste of

66 up to fifty thousand tons per month then the division shall
67 not proceed any further with the application. If a major-
68 ity of the legal votes cast upon the question is in favor of
69 permitting the facility within the county, then the applica-
70 tion process as set forth in this article may proceed:
71 *Provided*, That such vote is not binding on or require the
72 division to issue a permit.

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

86 (d) Notwithstanding any provision of this code to the
87 contrary, any person described in subsection (a) of this
88 section who complies with the referendum requirement of
89 this section and complies with the permitting require-
90 ments of the division provided in section ten of this
91 article, shall not be required to comply with the require-
92 ments of sections twenty-five, twenty-six, twenty-seven
93 and twenty-eight, article four, chapter twenty-two-c of
94 this code: *Provided*, That such person is entitled to receive
95 a certificate of need pursuant to the provisions of subsec-
96 tion (a), section one-c, article two, chapter twenty-four of
97 this code to handle the tonnage level authorized pursuant
98 to subsection (a) of this section.

99 (e) The purpose of this section is to allow any person
100 who satisfies the four criteria contained in subsection (a)
101 of this section, notwithstanding any defects in or chal-

102 lenges to any actions which were or are required to be
103 performed in satisfaction of such criteria, to submit the
104 question of siting a facility that accepts up to fifty thou-
105 sand tons within the county to a referendum in order to
106 obtain a decision at the county or regional level regarding
107 the siting of the facility and that submission of this
108 question at the county level is the only approval, permit or
109 action required at the county or regional level to establish
110 and site the proposed facility.

§22-15-10. Prohibitions; permits required.

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

25 (b) It is unlawful for any person, unless the person holds
26 a valid permit from the division to install, establish,

27 construct, modify, operate or abandon any solid waste
28 facility. All approved solid waste facilities shall be
29 installed, established, constructed, modified, operated or
30 abandoned in accordance with this article, plans, specifi-
31 cations, orders, instructions and rules in effect.

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

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

58 (e) No person may dispose in the state of any solid waste
59 in a manner which endangers the environment or the
60 public health, safety or welfare as determined by the
61 director: *Provided*, That the carcasses of dead animals
62 may be disposed of in any solid waste facility or in any

63 other manner as provided for in this code. Upon request
64 by the director, the commissioner of the bureau of public
65 health shall provide technical advice concerning the
66 disposal of solid waste or carcasses of dead animals within
67 the state.

68 (f) A commercial solid waste facility shall not discrimi-
69 nate in favor of or against the receipt of any waste other-
70 wise eligible for disposal at the facility based on its
71 geographic origin.

72 (g) In addition to all the requirements of this article and
73 the rules promulgated hereunder, a permit to construct a
74 new commercial solid waste facility or to expand the
75 spatial area of an existing facility, may not be issued
76 unless the public service commission has granted a
77 certificate of need, as provided in section one-c, article
78 two, chapter twenty-four of this code. If the director
79 approves a permit or permit modification, the certificate
80 of need shall become a part of the permit and all condi-
81 tions contained in the certificate of need shall be condi-
82 tions of the permit and may be enforced by the division in
83 accordance with the provisions of this article. If the
84 director approves a permit or permit modification, the
85 certificate of need shall become a part of the permit and
86 all conditions contained in the certificate of need shall be
87 conditions of the permit and may be enforced by the
88 division in accordance with the provisions of this article.

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

**§22-15-12. Performance bonds; amount and method of bond-
ing; bonding requirements; period of bond
liability.**

1 (a) After a solid waste permit application has been
2 approved pursuant to this article, or once operations have
3 commenced pursuant to a compliance order, but before a

4 permit has been issued, each operator of a commercial
5 solid waste facility shall furnish bond, on a form to be
6 prescribed and furnished by the director, payable to the
7 state of West Virginia and conditioned upon the operator
8 faithfully performing all of the requirements of this
9 article, rules promulgated hereunder and the permit. The
10 amount of the bond required shall be determined by the
11 director based upon the total estimated cost to the state of
12 completing final closure according to the permit granted
13 to such facility and such measures as are necessary to
14 prevent adverse effects upon the environment; such
15 measures include, but are not limited to, satisfactory
16 monitoring, post-closure care, leachate treatment and
17 remedial measures: *Provided*, That the amount of the bond
18 shall be sufficient to conform to and be consistent with the
19 financial assurance requirements set forth under Subtitle
20 D of the federal Resource Conservation and Recovery Act,
21 42 U.S.C. §§6901 et seq. and the regulations promulgated
22 thereunder. All bonds required to be posted shall be
23 consistent, whether the facility is publicly or privately
24 owned or operated. All permits shall be bonded for at
25 least ten thousand dollars. The bond shall cover either: (1)
26 The entire area to be used for the disposal of solid waste;
27 or (2) that increment of land within the permit area upon
28 which the operator will initiate and conduct commercial
29 solid waste facility operations within the initial term of
30 the permit pursuant to legislative rules promulgated by
31 the director pursuant to chapter twenty-nine-a of this
32 code. If the operator chooses to use incremental bonding,
33 as succeeding increments of commercial solid waste
34 facility operations are to be initiated and conducted
35 within the permit area, the operator shall file with the
36 director an additional bond or bonds to cover such incre-
37 ments in accordance with this section: *Provided, however*,
38 That once the operator has chosen to proceed with bond-
39 ing either the entire area to be used for the disposal of
40 solid waste or with incremental bonding, the operator
41 shall continue bonding in that manner for the term of the

42 permit.

43 (b) The period of liability for performance bond cover-
44 age shall commence with issuance of a permit and con-
45 tinue for the full term of the permit and for a period of up
46 to thirty full years after final closure of the permit site:
47 *Provided*, That any further time period necessary to
48 achieve compliance with the requirements in the closure
49 plan of the permit is considered an additional liability
50 period.

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

58 If collateral bonding is used, the operator may elect to
59 deposit cash, or collateral securities or certificates as
60 follows: Bonds of the United States or its possessions, of
61 the federal land bank, or of the homeowners' loan corpo-
62 ration; full faith and credit general obligation bonds of the
63 state of West Virginia, or other states, and of any county,
64 district or municipality of the state of West Virginia or
65 other states; or certificates of deposit in a bank in this
66 state, which certificates shall be in favor of the division.
67 The cash deposit or market value of such securities or
68 certificates shall be equal to or greater than the sum of the
69 bond. The director shall, upon receipt of any such deposit
70 of cash, securities or certificates, promptly place the same
71 with the treasurer of the state of West Virginia whose duty
72 it is to receive and hold the same in the name of the state
73 in trust for the purpose for which the deposit is made
74 when the permit is issued. The operator making the
75 deposit is entitled from time to time to receive from the
76 state treasurer, upon the written approval of the director,
77 the whole or any portion of any cash, securities or certifi-

78 cates so deposited, upon depositing with the treasurer in
79 lieu thereof, cash or other securities or certificates of the
80 classes herein specified having value equal to or greater
81 than the sum of the bond.

82 (d) Within twelve months prior to the expiration of the
83 thirty-year period following final closure, the division will
84 conduct a final inspection of the facility. The purpose of
85 the inspection is to determine compliance with this article,
86 the division's rules, the terms and conditions of the
87 permit, orders of the division and the terms and conditions
88 of the bond. Based upon this determination, the division
89 will either forfeit the bond prior to the expiration of the
90 thirty-year period following final closure, or release the
91 bond at the expiration of the thirty-year period following
92 final closure. Bond release requirements shall be provided
93 in rules promulgated by the director.

94 (e) If the operator of a commercial solid waste facility
95 abandons the operation of a solid waste disposal facility
96 for which a permit is required by this article or if the
97 permittee fails or refuses to comply with the requirements
98 of this article in any respect for which liability has been
99 charged on the bond, the director shall declare the bond
100 forfeited and shall certify the same to the attorney general
101 who shall proceed to enforce and collect the amount of
102 liability forfeited thereon, and where the operation has
103 deposited cash or securities as collateral in lieu of corpo-
104 rate surety, the director shall declare said collateral
105 forfeited and shall direct the state treasurer to pay said
106 funds into a waste management fund to be used by the
107 director to effect proper closure and to defray the cost of
108 administering this article. Should any corporate surety
109 fail to promptly pay, in full, forfeited bond, it is disquali-
110 fied from writing any further surety bonds under this
111 article.

**§22-15-15. Orders, inspections and enforcement; civil and
criminal penalties.**

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

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

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

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

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

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

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

32 (1) In assessing any such penalty, the director shall take
33 into account the seriousness of the violation and any good
34 faith efforts to comply with the applicable requirements

35 as well as any other appropriate factors as may be estab-
36 lished by the director by rules promulgated pursuant to
37 this article and article three, chapter twenty-nine-a of this
38 code. No assessment shall be levied pursuant to this
39 subsection until after the alleged violator has been
40 notified by certified mail or personal service. The notice
41 shall include a reference to the section of the statute, rule,
42 order or statement of permit conditions that was allegedly
43 violated, a concise statement of the facts alleged to
44 constitute the violation, a statement of the amount of the
45 administrative penalty to be imposed and a statement of
46 the alleged violator's right to an informal hearing. The
47 alleged violator has twenty calendar days from receipt of
48 the notice within which to deliver to the director a written
49 request for an informal hearing. If no hearing is re-
50 quested, the notice becomes a final order after the expira-
51 tion of the twenty-day period. If a hearing is requested,
52 the director shall inform the alleged violator of the time
53 and place of the hearing. The director may appoint an
54 assessment officer to conduct the informal hearing and
55 then make a written recommendation to the director
56 concerning the assessment of a civil administrative
57 penalty. Within thirty days following the informal
58 hearing, the director shall issue and furnish to the alleged
59 violator a written decision, and the reasons therefor,
60 concerning the assessment of a civil administrative
61 penalty. Within thirty days after notification of the
62 director's decision, the alleged violator may request a
63 formal hearing before the environmental quality board in
64 accordance with the provisions of section sixteen of this
65 article. The authority to levy a civil administrative
66 penalty is in addition to all other enforcement provisions
67 of this article and the payment of any assessment does not
68 affect the availability of any other enforcement provision
69 in connection with the violation for which the assessment
70 is levied: *Provided*, That no combination of assessments
71 against a violator under this section shall exceed twenty-
72 five thousand dollars for each day of such violation:

73 *Provided, however,* That any violation for which the
74 violator has paid a civil administrative penalty assessed
75 under this section shall not be the subject of a separate
76 civil penalty action under this article to the extent of the
77 amount of the civil administrative penalty paid. All
78 administrative penalties shall be levied in accordance with
79 rules issued pursuant to subsection (a), section five of this
80 article. The net proceeds of assessments collected pursu-
81 ant to this subsection shall be deposited in the solid waste
82 reclamation and environmental response fund established
83 in subdivision (3), subsection (h), section eleven of this
84 article;

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

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

96 (e) The director may seek an injunction, or may institute
97 a civil action against any person in violation of any
98 provisions of this article or any permit, rule or order
99 issued pursuant to this article. In seeking an injunction,
100 it is not necessary for the director to post bond nor to
101 allege or prove at any stage of the proceeding that irrepa-
102 rable damage will occur if the injunction is not issued or
103 that the remedy at law is inadequate. An application for
104 injunctive relief or a civil penalty action under this section
105 may be filed and relief granted notwithstanding the fact
106 that all administrative remedies provided for in this
107 article have not been exhausted or invoked against the
108 person or persons against whom such relief is sought.

109 (f) Upon request of the director, the attorney general or
110 the prosecuting attorney of the county in which the
111 violation occurs shall assist the director in any civil action
112 under this section.

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

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

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

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

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

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

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

§22-15-20. Sewage sludge management.

1 (a) Within the limits imposed by article fifteen, section
2 eight of this chapter, the division shall develop and
3 implement a comprehensive program for the regulation
4 and management of sewage sludge. The division is
5 authorized to require permits for all facilities and activi-
6 ties which generate, process or dispose of sewage sludge
7 by whatever means, including, but not limited to, land
8 application, composting, mixed waste composting, incin-
9 eration or any other method of handling sewage sludge
10 within the state.

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

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

22 (i) The specific source of the sewage sludge;

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

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

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

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

35 and federal regulations;

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

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

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

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

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

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

67 (9) That all sewage sludge processing facilities contain
68 sufficient design specifications to protect ground, surface

69 and potable waters, air quality, existing and potential
70 land-use planning and public health and safety;

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

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

75 (12) That a fee, to be paid by the producer, processor or
76 transporter be levied and imposed on the land application
77 of sewage sludge, to be collected at a per ton rate, suffi-
78 cient to cover the costs of the sewage sludge management
79 program. Fees collected pursuant to the terms of this
80 subsection shall be deposited in the special revenue fund
81 designated the "water quality management fund" estab-
82 lished under the provisions of section ten, article eleven of
83 this chapter. The fee schedule shall vary according to the
84 volume of materials handled and the contaminant level of
85 the sewage sludge and shall be subject to the provisions of
86 article three, chapter twenty-nine-a of this code.

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

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

104 subsection (b) of this section is effective.

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

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

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

130 (h) Any solid waste facility currently operating under a
131 permit from the director as a Class B solid waste facility
132 and sewage sludge processing facility may receive, for the
133 purpose of composting, up to a maximum of five thousand
134 tons of sewage sludge per month, as weighed at the time
135 of receipt at the facility. No Class B facility operating a
136 sewage sludge processing facility under this chapter shall,
137 on an annual basis, temporarily or permanently store,
138 retain or stockpile more than fifty thousand cubic yards of
139 sewage sludge or any intermediate or final material or

140 product derived wholly or partially from sewage sludge.

141 (i) Any POTW currently operating or holding a
142 WV/NPDES permit to operate a sewage sludge processing
143 facility for the purpose of composting sewage sludge may
144 receive, for the purpose of composting, up to a maximum
145 of five thousand tons of sewage sludge per month, as
146 weighed at the time of receipt at the facility. No POTW
147 operating a sewage sludge processing facility under this
148 chapter shall, on an annual basis, temporarily or perma-
149 nently store, retain or stockpile more than fifty thousand
150 cubic yards of sewage sludge or any intermediate or final
151 material or product derived wholly or partially from
152 sewage sludge.

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

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

167 (l) Any facility under a consent agreement with the
168 director or chief of the office of water resources as of the
169 effective date of this act, regarding sewage sludge stored,
170 retained or stockpiled at that facility, shall dispose of all
171 accumulated sewage sludge in accordance with the
172 consent agreement. Such sewage sludge is not subject to
173 the limitations on storage, retention and stockpiling set
174 forth above unless the facility violates the terms and
175 conditions of its consent agreement.

176 (m) No person shall knowingly transport or deliver
177 sewage sludge, or any intermediate or final material or
178 product derived wholly or partially from sewage sludge in
179 violation of this section.

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

185 (o) A person or facility that temporarily or permanently,
186 stores, retains or stockpiles sewage sludge or any interme-
187 diate or final material or product derived wholly or
188 partially from sewage sludge, shall maintain accurate
189 operational records on site that are sufficiently detailed to
190 clearly and convincingly demonstrate to the director that
191 sewage sludge is being stored consistent with the provi-
192 sions of this section. The records shall be made available
193 to the director upon request.

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

201 (q) All persons operating a sewage sludge processing
202 facility shall provide off-site odor monitoring or testing
203 mechanisms approved by the director. The director shall
204 promulgate emergency rules and propose legislative rules
205 for legislative promulgation, rules specifying the nature
206 and type of odor monitoring or testing which will be
207 approved or how to obtain approval for proposed odor
208 monitoring or testing; the areas where the monitoring or
209 testing should occur; the frequency of monitoring or
210 testing which shall be no less than semiannually or as
211 otherwise ordered by the director and any other condi-

212 tions necessary to effectuate the purposes of this subsec-
213 tion.

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

21 The Legislature further finds that the proper collection,
22 transportation, processing, recycling and disposal of solid
23 waste is for the general welfare of the citizens of the state
24 and that the lack of proper and effective solid waste
25 collection services and disposal facilities demands that the
26 state of West Virginia and its political subdivisions act
27 promptly to secure such services and facilities in both the
28 public and private sectors.

29 The Legislature further finds that the process of devel-
30 oping rational and sound solid waste plans at the county
31 or regional level is impeded by the proliferation of siting
32 proposals for new solid waste facilities.

33 Therefore, it is the purpose of the Legislature to protect
34 the public health and welfare by providing for a compre-
35 hensive program of solid waste collection, processing,
36 recycling and disposal to be implemented by state and
37 local government in cooperation with the private sector.
38 The Legislature intends to accomplish this goal by estab-
39 lishing county and regional solid waste authorities
40 throughout the state to develop and implement litter and
41 solid waste control plans.

42 It is further the purpose of the Legislature to reduce our
43 solid waste management problems and to meet the pur-
44 poses of this article by requiring county and regional solid
45 waste authorities to establish programs and plans based
46 on an integrated waste management hierarchy. In order
47 of preference, the hierarchy is as follows:

48 (1) *Source reduction.* — This involves minimizing waste
49 production and generation through product design,
50 reduction of toxic constituents of solid waste and similar
51 activities.

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

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

61 The Legislature further finds that the potential impacts
62 of proposed commercial solid waste facilities may have a
63 deleterious and debilitating impact upon the transporta-

64 tion network, property values, economic growth, environ-
65 mental quality, other land uses and the public health and
66 welfare in affected communities. The Legislature also
67 finds that the siting of such facilities is not being ade-
68 quately addressed to protect these compelling interests of
69 counties and local communities.

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

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

§22C-4-2. Definitions.

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

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

7 (b) "Commercial solid waste facility" means any solid
8 waste facility which accepts solid waste generated by
9 sources other than the owner or operator of the facility
10 and does not include an approved solid waste facility
11 owned and operated by a person for the sole purpose of
12 disposing of solid wastes created by that person or that

13 person and another person on a cost-sharing or nonprofit
14 basis and does not include land upon which reused or
15 recycled materials are legitimately applied for structural
16 fill, road base, mine reclamation and similar applications.

17 (c) "Commercial recycler" means any person, corporation
18 or business entity whose operation involves the mechani-
19 cal separation of materials for the purpose of reselling or
20 recycling at least seventy percent by weight of the materi-
21 als coming into the commercial recycling facility.

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

30 (e) "Class B facility" means a commercial solid waste
31 facility which receives or is expected to receive an average
32 daily quantity of mixed solid waste equal to or exceeding
33 one hundred tons each working day, or serves or is ex-
34 pected to serve a population equal to or exceeding forty
35 thousand persons, but which does not receive solid waste
36 exceeding an aggregate of ten thousand tons per month.
37 Class B facilities do not include construction/demolition
38 facilities: *Provided*, That the definition of Class B facility
39 may include such reasonable subdivisions or subclassifica-
40 tions as the director may establish by legislative rule
41 proposed in accordance with the provisions of chapter
42 twenty-nine-a of this code.

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

47 (g) "Open dump" means any solid waste disposal which

48 does not have a permit under this article, or is in violation
49 of state law, or where solid waste is disposed in a manner
50 that does not protect the environment.

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

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

67 (j) "Solid waste" means any garbage, paper, litter, refuse,
68 cans, bottles, waste processed for the express purpose of
69 incineration, sludge from a waste treatment plant, water
70 supply treatment plant or air pollution control facility,
71 other discarded material, including offensive or unsightly
72 matter, solid, liquid, semisolid or contained liquid or
73 gaseous material resulting from industrial, commercial,
74 mining or community activities but does not include solid
75 or dissolved material in sewage, or solid or dissolved
76 materials in irrigation return flows or industrial dis-
77 charges which are point sources and have permits under
78 article eleven, chapter twenty-two of this code, or source,
79 special nuclear or byproduct material as defined by the
80 Atomic Energy Act of 1954, as amended, including any
81 nuclear or byproduct material considered by federal
82 standards to be below regulatory concern, or a hazardous
83 waste either identified or listed under article eighteen,

84 chapter twenty-two of this code, or refuse, slurry, over-
85 burden or other waste or material resulting from coal-
86 fired electric power or steam generation, the exploration,
87 development, production, storage and recovery of coal, oil
88 and gas, and other mineral resources placed or disposed of
89 at a facility which is regulated under article two, three,
90 four, six, seven, eight, nine or ten, chapter twenty-two or
91 chapter twenty-two-a of this code, so long as such place-
92 ment or disposal is in conformance with a permit issued
93 pursuant to said chapters. "Solid waste" does not include
94 materials which are recycled by being used or reused in an
95 industrial process to make a product, as effective substi-
96 tutes for commercial products, or are returned to the
97 original process as a substitute for raw material feedstock.

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

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

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

114 (n) "Energy recovery incinerator" means any solid waste
115 facility at which solid wastes are incinerated with the
116 intention of using the resulting energy for the generation
117 of steam, electricity or any other use not specified herein.

118 (o) "Incineration technologies" means any technology

119 that uses controlled flame combustion to thermally break
120 down solid waste, including refuse-derived fuel, to an ash
121 residue that contains little or no combustible materials,
122 regardless of whether the purpose is processing, disposal,
123 electric or steam generation or any other method by which
124 solid waste is incinerated.

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

129 (q) "Materials recovery facility" means any solid waste
130 facility at which solid wastes are manually or mechani-
131 cally shredded or separated so that materials are recov-
132 ered from the general waste stream for purposes of reuse
133 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.**

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

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

15 (1) An assessment of litter and solid waste problems in
16 the county;

17 (2) The establishment of solid waste collection and
18 disposal services for all county residents at their resi-
19 dences, where practicable, or the use of refuse collection
20 stations at disposal access points in areas where residen-
21 tial collection is not practicable. In developing such
22 collection services, primacy shall be given to private
23 collection services currently operating with a certificate of
24 convenience and necessity from the motor carrier division
25 of the public service commission;

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

32 (4) The establishment of an appropriate mandatory
33 garbage disposal program which shall include methods
34 whereby residents must prove either: (i) Payment of
35 garbage collection fee; or (ii) proper disposal at an ap-
36 proved solid waste facility or in an otherwise lawful
37 manner;

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

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

48 (7) A program for the cleanup, reclamation and stabili-
49 zation of any open and unpermitted dumps;

50 (8) The coordination of the plan with the related solid
51 waste collection and disposal services of municipalities

52 and, if applicable, other counties;

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

56 (10) Innovative incentives to promote recycling efforts;

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

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

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

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

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

78 (d) Each plan prepared under this section is subject to
79 approval by the solid waste management board. Any plan
80 rejected by the solid waste management board shall be
81 returned to the regional or county solid waste authority
82 with a statement of the insufficiencies in such plan. The
83 authority shall revise the plan to eliminate the insufficien-
84 cies and submit it to the director within ninety days.

85 (e) The solid waste management board shall develop a
86 litter and solid waste control plan for any county or
87 regional solid waste authority which fails to submit such
88 a plan on or before the first day of July, one thousand nine
89 hundred ninety-two: *Provided*, That in preparing such
90 plans the director may determine whether to prepare a
91 regional or county based plan for those counties which fail
92 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.

1 (a) On or before the first day of July, one thousand nine
2 hundred ninety-one, each county or regional solid waste
3 authority shall prepare and complete a commercial solid
4 waste facilities siting plan for the county or counties
5 within its jurisdiction: *Provided*, That the solid waste
6 management board may authorize any reasonable exten-
7 sion of up to one year for the completion of the said siting
8 plan by any county or regional solid waste authority. The
9 siting plan shall identify zones within each county where
10 siting of the following facilities is authorized or prohib-
11 ited:

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

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

18 (3) Commercial solid waste transfer stations or commer-
19 cial facilities for the processing or recycling of solid waste.

20 The siting plan shall include an explanation of the
21 rationale for the zones established therein based on the
22 criteria established in subsection (b) of this section.

23 (b) The county or regional solid waste authority shall
24 develop the siting plan authorized by this section based
25 upon the consideration of one or more of the following
26 criteria: The efficient disposal of solid waste, including,
27 but not limited to, all solid waste which is disposed of
28 within the county or region regardless of its origin,
29 economic development, transportation infrastructure,
30 property values, groundwater and surface waters, geologi-
31 cal and hydrological conditions, aesthetic and environ-
32 mental quality, historic and cultural resources, the present
33 or potential land uses for residential, commercial, recre-
34 ational, environmental conservation or industrial purposes
35 and the public health, welfare and convenience. The
36 initial plan shall be developed based upon information
37 readily available. Due to the limited funds and time
38 available the initial plan need not be an exhaustive and
39 technically detailed analysis of the criteria set forth above.
40 Unless the information readily available clearly estab-
41 lishes that an area is suitable for the location of a com-
42 mercial solid waste facility or not suitable for such a
43 facility, the area shall be designated as an area in which
44 the location of a commercial solid waste facility is tenta-
45 tively prohibited. Any person making an application for
46 the redesignation of a tentatively prohibited area shall
47 make whatever examination is necessary and submit
48 specific detailed information in order to meet the provi-
49 sion established in subsection (g) of this section.

50 (c) Prior to completion of the siting plan, the county or
51 regional solid waste authority shall complete a draft siting
52 plan and hold at least one public hearing in each county
53 encompassed in said draft siting plan for the purpose of
54 receiving public comment thereon. The authority shall
55 provide notice of such public hearings and encourage and
56 solicit other public participation in the preparation of the
57 siting plan as required by the rules promulgated by the
58 solid waste management board for this purpose. Upon
59 completion of the siting plan, the county or regional solid

60 waste authority shall file said plan with the solid waste
61 management board.

62 (d) The siting plan takes effect upon approval by the
63 solid waste management board pursuant to the rules
64 promulgated for this purpose. Upon approval of said
65 plan, the solid waste management board shall transmit a
66 copy thereof to the director of the division of environmen-
67 tal protection and to the clerk of the county commission of
68 the county encompassed by said plan which county clerk
69 shall file the plan in an appropriate manner and shall
70 make the plan available for inspection by the public.

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

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

93 (g) Notwithstanding any provision of this code to the
94 contrary, upon application from a person who has filed a
95 pre-siting notice pursuant to section thirteen, article

96 fifteen, chapter twenty-two of this code, the county or
97 regional solid waste authority or county commission, as
98 appropriate, may amend the siting plan by redesignating
99 a zone that has been designated as an area where a
100 commercial solid waste facility is tentatively prohibited to
101 an area where one is authorized. In such case, the person
102 seeking the change has the burden to affirmatively and
103 clearly demonstrate, based on the criteria set forth in
104 subsection (b) of this section, that a solid waste facility
105 could be appropriately operated in the public interest at
106 such location. The solid waste management board shall
107 provide, within available resources, technical support to
108 a county or regional solid waste authority, or county
109 commission as appropriate, when requested by such
110 authority or commission to assist it in reviewing an
111 application for any such amendment.

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

124 (i) The siting plan adopted pursuant to this section shall
125 incorporate the provisions of the litter and solid waste
126 control plan, as approved by the solid waste management
127 board pursuant to section eight of this article, regarding
128 collection and disposal of solid waste and the require-
129 ments, if any, for additional commercial solid waste
130 facility capacity.

131 (j) The solid waste management board is authorized and

132 directed to promulgate rules specifying the public partici-
133 pation process, content, format, amendment, review and
134 approval of siting plans for the purposes of this section.

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

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

1 (a) It is the intent of the Legislature that all commercial
2 solid waste facilities operating in this state must receive
3 site approval at the local level, except for recycling
4 facilities, as defined in section two, article fifteen, chapter
5 twenty-two of this code, that are specifically exempted by
6 section twelve, article eleven, chapter twenty of this code.
7 Notwithstanding said intent, facilities which obtained
8 such approval from either a county or regional solid waste
9 authority, or from a county commission, under any prior
10 enactment of this code, and facilities which were other-
11 wise exempted from local site approval under any prior
12 enactment of this code, shall be deemed to have satisfied
13 such requirement. All other facilities, including facilities
14 which received such local approval but which seek to
15 expand spatial area or to convert from a Class B facility to
16 a Class A facility, shall obtain such approval only in the

17 manner specified in sections twenty-six, twenty-seven and
18 twenty-eight of this article.

19 (b) In considering whether to issue or deny the certifi-
20 cate of site approval as specified in sections twenty-six,
21 twenty-seven and twenty-eight of this article, the county
22 or regional solid waste authority shall base its determina-
23 tion upon the following criteria: The efficient disposal of
24 solid waste anticipated to be received or processed at the
25 facility, including solid waste generated within the county
26 or region, economic development, transportation infra-
27 structure, property values, groundwater and surface
28 waters, geological and hydrological conditions, aesthetic
29 and environmental quality, historic or cultural resources,
30 the present or potential land uses for residential, commer-
31 cial, recreational, industrial or environmental conserva-
32 tion purposes and the public health, welfare and conve-
33 nience.

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

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

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

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

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

9 fifteen, chapter twenty-two of this code;

10 (2) File an application for a certificate of site approval
11 with, and obtain approval from, the county or regional
12 solid waste authority for the county or counties in which
13 the facility is proposed. Such application shall be submit-
14 ted on forms prescribed by the solid waste management
15 board. The county or regional solid waste authority shall
16 act on such application and either grant or deny it within
17 thirty days after the application is determined by the
18 county or regional solid waste authority to be filed in a
19 completed manner.

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

1 From and after the eighteenth day of October, one
2 thousand nine hundred ninety-one, in order to obtain
3 approval to operate as a Class A facility at a site previ-
4 ously permitted to operate as a Class B facility, an appli-
5 cant shall:

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

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

**§22C-4-28. Approval of increase in maximum allowable
monthly tonnage of Class A facilities.**

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

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

17 (2) File an application for approval with, and obtain
18 approval from, the public service commission to modify
19 the certificate of need in the manner set forth in section
20 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.

1 (a) The Legislature finds that the potential impacts of
2 commercial solid waste disposal facilities have a deleteri-
3 ous and debilitating effect upon the transportation
4 network, property values, economic growth, environmen-
5 tal quality, other land uses, and the public health and
6 welfare. These impacts are borne predominantly by the
7 local residents in the communities where the facilities are
8 located. The Legislature also recognizes that economic
9 benefits exist for having a solid waste facility, including
10 new jobs in the local community and increased tax and fee
11 revenues for the state. The largest of facilities authorized
12 to operate in West Virginia, Class A facilities, receive up
13 to thirty thousand tons of solid waste per month. Class A

14 facilities inevitably cause the most severe impacts to the
15 local area. The Legislature further finds that Class A
16 facilities cause significant impact on the local community
17 above and beyond those of smaller landfills, that this
18 impact requires the local community be afforded the
19 opportunity to participate in the decision of locating a
20 landfill of this size in their community. Further, local
21 citizens need governmental entities to assure and verify
22 that the Class A facility will be developed and operated in
23 a manner that complies with all laws, rules and regulations
24 which regulate landfills, and that the local infrastructure
25 and environment are appropriately suited for a Class A
26 facility. As a result, the Legislature finds that a mecha-
27 nism must be in place to allow for the local community to
28 be a significant participant in the Class A facility siting
29 and expansion decisionmaking process.

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

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

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

8 (b) Following receipt of a certificate of need from the
9 public service commission as required by section one-c,
10 article two, chapter twenty-four of this code, and local
11 solid waste approval as required in section twenty-six,
12 article four of this chapter, for a new Class A facility, the
13 county commission shall cause a referendum to be placed

14 on the ballot not less than fifty-six days before the next
15 primary, general or other county wide election:

16 (1) Such referendum is to determine whether it is the
17 will of the voters of the county that a new Class A facility
18 be constructed. Any election at which such question of
19 locating a solid waste facility is voted upon shall be held
20 at the voting precincts established for holding primary or
21 general elections. All of the provisions of the general
22 election laws, when not in conflict with the provisions of
23 this article, apply to voting and elections hereunder,
24 insofar as practicable.

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

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

36 The _____ county commission finds the following:

37 I. The _____(name of applicant)has
38 obtained site approval for a Class A commercial facility
39 from the _____(name of the county or regional
40 solid waste authority). The authority has determined that
41 the proposed landfill meets all local siting plan require-
42 ments. The local siting plan evaluates local environmental
43 conditions and other factors and authorizes commercial
44 landfills in areas of a county where a commercial landfill
45 can be appropriately located.

46 II. The West Virginia public service commission has
47 issued a certificate of need, and has approved the opera-

49 tion of the Class A landfill. The public service commission
 50 has determined that the landfill complies with the state
 51 solid waste management plan and based on the antici-
 52 pated volume of garbage expected to be received at the
 53 landfill, that the proposal is consistent with public
 54 convenience and necessity.

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

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

61 For the facility

62 Against the facility

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

64 (3) If a majority of the legal votes cast upon the question
 65 is against the facility, the division of environmental
 66 protection shall not proceed any further with the applica-
 67 tion. If a majority of the legal votes cast upon the ques-
 68 tion be for the facility, then the application process as set
 69 forth in this article and article fifteen, chapter twenty-two
 70 of this code may proceed: *Provided*, That such vote is not
 71 binding on nor does it require the division of environmen-
 72 tal protection to issue the permit. If the majority of the
 73 legal votes cast is against the question, the question may
 74 be submitted to a vote at any subsequent election in the
 75 manner herein specified: *Provided, however*, That the
 76 question may not be resubmitted to a vote until two years
 77 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.**

1 (a) The purpose of the petition and referendum for
 2 approval of conversions of Class B facilities to Class A
 3 facilities is to allow the local community an opportunity

4 to participate in the decision of whether the local infra-
5 structure and environment are appropriate for expansion
6 of a Class B facility to a Class A facility, and to assure
7 that the local community accepts the associated benefits
8 and detriments of having a Class A facility located in their
9 county.

10 (b) Within twenty-one days following receipt of a
11 certificate of need from the public service commission as
12 required by section one-c, article two, chapter twenty-four
13 of this code, and local solid waste authority approval as
14 required in section twenty-six, article four, chapter
15 twenty-two-c of this code, the county commission shall
16 complete publication of a Class II legal advertisement in
17 compliance with the provisions of article three, chapter
18 fifty-nine of this code, in the qualified newspaper of
19 general circulation in the county wherein the solid waste
20 facility is located. Registered voters residing in the county
21 may petition the county commission to place the issue of
22 whether a Class B facility be expanded to a Class A
23 facility be placed on the ballot at the next primary,
24 general or other countywide election held not less than
25 one hundred days after the deadline for filing the petition.
26 The petition shall be in writing, in the form prescribed by
27 the secretary of state, and shall include the printed name,
28 residence address and date of birth of each person whose
29 signature appears on the petition. The petition shall be
30 filed with the county commission not less than sixty days
31 after the last date of publication of the notice provided in
32 this section. Upon receipt of completed petition forms, the
33 county commission shall immediately forward those forms
34 to the clerk of the county commission for verification of
35 the signatures and the voter registration of the persons
36 named on the petition. If a primary, general or other
37 countywide election is scheduled not more than one
38 hundred twenty days and not less than one hundred days
39 following the deadline for filing the petitions, the clerk of
40 the county commission shall complete the verification of

41 the signatures within thirty days and shall report the
42 number of valid signatures to the county commission. In
43 all other cases, the clerk of the county commission shall
44 complete verification in a timely manner. Upon verifica-
45 tion of the signatures of registered voters residing in the
46 county equal to not less than fifteen percent of the number
47 of votes cast within the county for governor at the preced-
48 ing gubernatorial election, and not less than seventy days
49 before the election, the county commission shall order a
50 referendum be placed upon the ballot:

51 (1) Such referendum is to determine whether it is the
52 will of the voters of the county that the Class B facility be
53 converted to a Class A facility. Any election at which such
54 question of locating a solid waste facility is voted upon
55 shall be held at the voting precincts established for
56 holding primary or general elections. All of the provisions
57 of the general election laws, when not in conflict with the
58 provisions of this article, apply to voting and elections
59 hereunder, insofar as practicable. The secretary of state
60 shall prescribe the form of the petition which shall include
61 the printed name, address and date of birth of each person
62 whose signature appears on the petition. Should the
63 petition fail to meet the requirements set forth above, the
64 application process as set forth in this article and article
65 fifteen, chapter twenty-two of this code, may proceed.

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

69 "The West Virginia Legislature finds that expansion of
70 a Class B solid waste facility to a Class A solid waste
71 facility has impact to the county in which it will be
72 located, and further that local citizens should be afforded
73 the opportunity to participate in the decision of locating
74 a Class A facility in their community. A Class A facility
75 is authorized to receive between ten and thirty thousand
76 tons of solid waste per month. Fifteen percent of the

77 registered voters in _____ county have signed
 78 a petition to cause a referendum to determine the follow-
 79 ing question:

80 The _____ county commission finds the following:

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

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

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

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

104 For conversion of the facility

105 Against conversion of the facility

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

107 (3) If a majority of the legal votes cast upon the question
 108 is against the facility, then the division of environmental
 109 protection shall not proceed any further with the applica-

110 tion. If a majority of the legal votes cast upon the ques-
111 tion be for the facility, then the application process as set
112 forth in this article and article fifteen, chapter twenty-two
113 of this code may proceed: *Provided*, That such vote is not
114 binding on nor does it require the division of environmen-
115 tal protection to modify the permit. If the majority of the
116 legal votes cast is against the question, the question may
117 be submitted to a vote at any subsequent election in the
118 manner herein specified: *Provided, however*, That the
119 question may not be resubmitted to a vote until two years
120 after the date of the previous referendum.

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

1 (a) The purpose of the petition and referendum for
2 approval of modification of Class A facilities is to allow
3 the local community an opportunity to participate in the
4 decision of whether the local infrastructure and environ-
5 ment are appropriately suited for expansion of the Class
6 A facility, and to assure that the local community accepts
7 the associated benefits and deterrents of having a Class
8 A facility located in their county.

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

14 (c) Within twenty-one days following receipt of a
15 certificate of need from the public service commission as
16 required by section one-c, article two, chapter twenty-four
17 of this code, and local solid waste approval as required in
18 section twenty-six, article four of this chapter, the county
19 commission shall complete publication of a Class II legal
20 advertisement in compliance with the provisions of article
21 three, chapter fifty-nine of this code, in the qualified
22 newspaper of general circulation in the county wherein
23 the solid waste facility is located. Registered voters

24 residing in the county may petition the county commission
25 to place the issue of whether a Class A facility be permit-
26 ted to increase the maximum tonnage allowed to be
27 received at the facility be placed on the ballot at the next
28 primary, general or other countywide election held not
29 less than one hundred days after the deadline for filing the
30 petition. The petition shall be in writing, in the form
31 prescribed by the secretary of state, and shall include the
32 printed name, residence address and date of birth of each
33 person whose signature appears on the petition. The
34 petition shall be filed with the county commission not less
35 than sixty days after the last date of publication of the
36 notice provided in this section. Upon receipt of completed
37 petition forms, the county commission shall immediately
38 forward those forms to the clerk of the county commission
39 for verification of the signatures and the voter registration
40 of the persons named on the petition. If a primary,
41 general or other countywide election is scheduled not
42 more than one hundred twenty days and not less than one
43 hundred days following the deadline for filing the peti-
44 tions, the clerk of the county commission shall complete
45 the verification of the signatures within thirty days and
46 shall report the number of valid signatures to the county
47 commission. In all other cases, the clerk of the county
48 commission shall complete verification in a timely man-
49 ner. Upon verification of the signatures of registered
50 voters residing in the county equal to not less than fifteen
51 percent of the number of votes cast within the county for
52 governor at the preceding gubernatorial election, and not
53 less than seventy days before the election, the county
54 commission shall order a referendum be placed upon the
55 ballot:

56 (1) Such referendum is to determine whether it is the
57 will of the voters of the county that the Class A facility
58 applicant be permitted to increase the maximum tonnage
59 allowed to be received at the facility not to exceed thirty
60 thousand tons per month. Any election at which such

61 question is voted upon shall be held at the voting precincts
62 established for holding primary or general elections. All
63 of the provisions of the general election laws, when not in
64 conflict with the provisions of this article, apply to voting
65 and elections hereunder, insofar as practicable. The
66 secretary of state shall prescribe the form of the petition
67 which shall include the printed name, address and date of
68 birth of each person whose signature appears on the
69 petition. Should the petition fail to meet the requirements
70 set forth above, the application process as set forth in this
71 article and article fifteen, chapter twenty-two of this code,
72 may proceed.

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

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

88 The _____ county commission finds the follow-
89 ing:

90 I. The _____ (name of applicant) has ob-
91 tained site approval to expand a Class A commercial
92 facility from the _____ (Name of the county or
93 regional solid waste authority). The authority has deter-
94 mined that the proposed landfill meets all local siting plan
95 requirements. The local siting plan evaluates local envi-
96 ronmental conditions and other factors and authorizes

97 commercial landfills where a commercial landfill can be
98 appropriately located.

99 II. The West Virginia public service commission has
100 issued a certificate of need, and has approved the expan-
101 sion of the Class A landfill. The public service commission
102 has determined that the landfill complies with the state
103 solid waste management plan and that based on the
104 anticipated volume of garbage expected to be received at
105 the landfill, that the proposal is consistent with public
106 convenience and necessity.

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

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

112 For the increase in maximum allowable tonnage

113 Against the increase in maximum allowable
114 tonnage

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

117 (3) If a majority of the legal votes cast upon the
118 question is against allowing the Class A facility to
119 increase the maximum tonnage of solid waste allowed to
120 be received per month at the facility, then the division
121 of environmental protection shall not proceed to modify
122 the Class A facility permit to increase the maximum
123 allowable tonnage. If a majority of the legal votes cast
124 upon the question is for allowing the Class A facility to
125 increase the maximum tonnage of solid waste allowed to
126 be received per month at such facility, then the applica-
127 tion process as set forth in this article and article fifteen,
128 chapter twenty-two of this code may proceed: *Provided,*
129 That such vote is not binding on nor does it require the
130 county or regional solid waste authority or the division

131 of environmental protection to approve an application
132 to modify the permit. If the majority of the legal votes
133 cast is against the question, that does not prevent the
134 question from again being submitted to a vote at any
135 subsequent election in the manner provided for in this
136 section: *Provided, however,* That an applicant may not
137 resubmit the question for a vote prior to a period of two
138 years from the date of the previous referendum herein
139 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.

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

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

22 (1) The names of the owners or operators of the facility
23 including any officer, director, manager, person owning

24 five percent or more interest or other person conducting
25 or managing the affairs of the applicant as to the
26 proposed facility;

27 (2) The location of the facility;

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

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

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

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

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

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

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

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

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

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

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

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

55 management plan; and

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

58 (d) The public service commission shall deny a certifi-
59 cate of need upon one or more of the following findings:

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

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

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

69 (4) The proposed facility is not reasonably cost effec-
70 tive in light of alternative disposal sites;

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

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

76 (e) An application for a certificate of need shall be
77 submitted prior to submitting an application for certifi-
78 cate of site approval in accordance with section
79 twenty-four, article four, chapter twenty-two-c of this
80 code. Upon the decision of the commission to grant or
81 deny a certificate of need, the commission shall immedi-
82 ately notify the solid waste management board and the
83 division of environmental protection.

84 (f) Any party aggrieved by a decision of the commis-
85 sion granting or denying a certificate of need may obtain
86 judicial review thereof in the same manner provided in
87 section one, article five of this chapter.

88 (g) No person may sell, lease or transfer a certificate of
89 need without first obtaining the consent and approval of
90 the commission pursuant to the provisions of section
91 twelve, article two of this chapter.

92 (h) The commission shall promulgate rules relating to
93 the types of commercial solid waste facility modification
94 or construction that require certificates of need.

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

Randy Schomover
.....
Chairman Senate Committee

Nick Trentacosta
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Thomas
.....
Clerk of the Senate

Buzgay W. Buzgay
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Phil
.....
Speaker House of Delegates

The within *approved* this the *2nd*
March
day of, 1998

Jeff Guarnard
.....
Governor

SENT TO THE

GOVERNOR

Date 2/25/98

Time 8:58 am