

HB 107

FILED

2014 MAR 31 P 8:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014



**ENROLLED**

**House Bill No. 107**

(By Mr. Speaker, (Mr. Miley)  
and Delegate Armstead)  
(By Request of the Executive)



Passed March 14, 2014

In effect from passage.

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**E N R O L L E D**

**H. B. 107**

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(BY MR. SPEAKER, (MR. MILEY)  
AND DELEGATE ARMSTEAD)  
[By Request of the Executive]

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[Passed March 14, 2014; in effect from passage.]

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AN ACT to amend and reenact §22-15-8 and §22-15-11 of the Code of West Virginia, 1931, as amended, all relating to the disposal of drill cuttings and associated drilling waste generated from well sites at commercial solid waste facilities; allowing for the receipt of additional drilling waste at certain commercial solid waste facilities above the facility's existing tonnage limit if certain conditions are met; recognizing the facility's continuing obligation to receive municipal solid waste while exceeding its permitted tonnage caps; requiring radiation and leachate monitoring at all facilities receiving drill cuttings and drilling waste; establishing minimum requirements for the monitoring program; requiring the investigation and report by the department of environmental protection to the legislature on specified issues associated with the disposal of drill cuttings and drilling wastes at landfills; required

scope of study; establishing deadlines, effective dates; creating a special revenue fund in the state treasury; limiting use of funds for specified purposes; establishing an additional solid waste fee; and requiring the promulgation of emergency and legislative rules.

*Be it enacted by the Legislature of West Virginia:*

That §22-15-8 and §22-15-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

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

1 (a) On and after October 1, 1991, it is unlawful to operate  
2 any commercial solid waste facility that handles between ten  
3 thousand and thirty thousand tons of solid waste per month,  
4 except as provided in section nine of this article and sections  
5 twenty-six, twenty-seven and twenty-eight, articles four and  
6 four-a, chapter twenty-two-c of this code.

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

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

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

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

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

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

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

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

38 (1) On the groundwater, surface waters and potable waters  
39 in the area;

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

41 (3) On the projected life and design capacity of the solid  
42 waste facility;

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

45 (5) The facility's ability to adequately develop markets and  
46 market the product which results from the proper treatment of  
47 sewage sludge; and

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

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

60 (g) Notwithstanding any other provision of this code to the  
61 contrary, a commercial solid waste facility that is not located in  
62 a county that is, in whole or in part, within a karst region as  
63 determined by the West Virginia Geologic and Economic Survey  
64 may lawfully receive drill cuttings and drilling waste generated  
65 from horizontal well sites above the monthly tonnage limits of  
66 the commercial solid waste facility under the following  
67 conditions and limitations:

68 (1)(A) The drill cuttings and associated drilling waste are  
69 placed in a separate cell dedicated solely to the disposal of drill  
70 cuttings and drilling waste;

71 (B) The separate cell dedicated to drill cuttings and  
72 associated drilling waste is constructed and maintained pursuant  
73 to the standards set out in this article and legislative rules  
74 promulgated thereunder; and

75 (C) On or before March 8, 2014, the facility has either  
76 obtained a certificate of need, or amended certificate of need, or  
77 has a pending application for a certificate or amended certificate  
78 of need, authorizing such separate cell as may be required by the  
79 Public Service Commission in accordance with section one-c,  
80 article two, chapter twenty-four of this code.

81 (2) The secretary may only allow those solid waste facilities  
82 that applied by December 31, 2013 for a permit modification to  
83 construct a separate cell for drill cuttings and associated drilling

84 waste, to accept drill cuttings and associated drilling waste at its  
85 commercial solid waste facility without counting the deposited  
86 drill cuttings and associated drilling waste towards the landfill's  
87 permitted monthly tonnage limits.

88 (3) No solid waste facility may exclude or refuse to take  
89 municipal solid waste in the quantity up to and including its  
90 permitted tonnage limit while the facility is allowed to lawfully  
91 receive drill cuttings or drilling waste above its permitted  
92 tonnage limits.

93 (h) Any solid waste facility taking drill cuttings and drilling  
94 waste must install radiation monitors by January 1, 2015. The  
95 secretary shall promulgate emergency and legislative rules to  
96 establish limits for unique toxins associated with drill cuttings  
97 and drilling waste including, but not limited to heavy metals,  
98 petroleum-related chemicals, (benzene, toluene, xylene, barium,  
99 chlorides, radium and radon) and establish the procedures the  
100 facility must follow if that limit is exceeded: *Provided*, That said  
101 rules shall establish and set forth a procedure to provide that any  
102 detected radiation readings above any established radiation  
103 limits will require that the solid waste landfill immediately cease  
104 accepting all affected drill cuttings and drilling waste until the  
105 secretary has inspected said landfill and certified pursuant to  
106 established rules and regulations that radiation levels have  
107 returned to below the established radiation limits. Any truck load  
108 of drill cuttings or drilling waste which exceeds the radiation  
109 reading limits shall not be allowed to enter the landfill until  
110 inspected and approved by the Department of Environmental  
111 Protection.

112 (i) Except for facilities which meet the requirements of  
113 (g)(1) of this section, the total amount of waste received at a  
114 commercial solid waste landfill that continues to mix said waste  
115 with its municipal solid waste may not exceed the total volume  
116 of its permitted capacity for that facility in any month, and the  
117 quantities of drill cuttings and drilling waste received at that

118 facility shall be counted and applied toward the facility's  
119 established tonnage cap.

120 (j) On or before July 1, 2015, the secretary shall submit an  
121 investigation and report to the Joint Legislative Oversight  
122 Commission on Water Resources and the Legislature's Joint  
123 Committee on Government and Finance which examines: (1)  
124 The hazardous characteristics of leachate collected from solid  
125 waste facilities receiving drill cuttings and drilling waste,  
126 including, but not limited to, the presence of heavy metals,  
127 petroleum related chemicals (benzene, toluene, xylene, etc.)  
128 barium, chlorides, radium and radon; (2) the potential negative  
129 impacts on the surface water or groundwater resources of this  
130 state associated with the collection, treatment and disposal of  
131 leachate from such landfills; (3) the technical and economic  
132 feasibility and benefits of establishing additional and/or separate  
133 disposal locations which are funded, constructed, owned and/or  
134 operated by the oil and gas industry; and (4) viable alternatives  
135 for the handling, treatment and disposal of drill cuttings,  
136 including the potential for processing, reusing and reapplying a  
137 portion of the collected drill cuttings as suitable fill material for  
138 roads, brownfield development or other projects, instead of  
139 disposing of all collected material into landfills.

140 (k) The secretary shall submit any proposed contract for  
141 conducting the studies set forth in subsection (j) of this section  
142 for review and preapproval by the Legislature's Joint Committee  
143 on Government and Finance.

**§22-15-11. Solid waste assessment fee; penalties.**

1 (a) *Imposition.* — A solid waste assessment fee is hereby  
2 imposed upon the disposal of solid waste at any solid waste  
3 disposal facility in this state in the amount of \$1.75 per ton or  
4 part thereof of solid waste. The fee imposed by this section is in  
5 addition to all other fees and taxes levied by law and shall be  
6 added to and constitute part of any other fee charged by the  
7 operator or owner of the solid waste disposal facility.

8       (b) *Collection, return, payment and records.* — The person  
9 disposing of solid waste at the solid waste disposal facility shall  
10 pay the fee imposed by this section, whether or not such person  
11 owns the solid waste, and the fee shall be collected by the  
12 operator of the solid waste facility who shall remit it to the Tax  
13 Commissioner.

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

16       (2) The operator shall remit the fee imposed by this section  
17 to the Tax Commissioner on or before the fifteenth day of the  
18 month next succeeding the month in which the fee accrued.  
19 Upon remittance of the fee, the operator is required to file  
20 returns on forms and in the manner as prescribed by the Tax  
21 Commissioner.

22       (3) The operator shall account to the state for all fees  
23 collected under this section and shall hold them in trust for the  
24 state until remitted to the Tax Commissioner.

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

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

40 (6) Whenever the owner of a solid waste disposal facility  
41 leases the solid waste facility to an operator, the operator is  
42 primarily liable for collection and remittance of the fee imposed  
43 by this section and the owner is secondarily liable for remittance  
44 of the fee imposed by this section. However, if the operator fails,  
45 in whole or in part, to discharge his or her obligations under this  
46 section, the owner and the operator of the solid waste facility are  
47 jointly and severally responsible and liable for compliance with  
48 the provisions of this section.

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

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

62 (c) *Regulated motor carriers.* — The fee imposed by this  
63 section and section twenty-two, article five, chapter seven of this  
64 code is considered a necessary and reasonable cost for motor  
65 carriers of solid waste subject to the jurisdiction of the Public  
66 Service Commission under chapter twenty-four-a of this code.  
67 Notwithstanding any provision of law to the contrary, upon the  
68 filing of a petition by an affected motor carrier, the Public  
69 Service Commission shall, within fourteen days, reflect the cost  
70 of said fee in said motor carrier's rates for solid waste removal  
71 service. In calculating the amount of said fee to said motor  
72 carrier, the commission shall use the national average of pounds  
73 of waste generated per person per day as determined by the  
74 United States Environmental Protection Agency.

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

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

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

91       (2) Reuse or recycling of any solid waste;

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

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

103       (f) *Procedure and administration.* — Notwithstanding  
104 section three, article ten, chapter eleven of this code, each and  
105 every provision of the “West Virginia Tax Procedure and  
106 Administration Act” set forth in article ten, chapter eleven of this

107 code shall apply to the fee imposed by this section with like  
108 effect as if said act were applicable only to the fee imposed by  
109 this section and were set forth in extenso herein.

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

116 (h) *Dedication of proceeds.* — The net proceeds of the fee  
117 collected by the Tax Commissioner pursuant to this section shall  
118 be deposited at least monthly in an account designated by the  
119 secretary. The secretary shall allocate \$0.25 for each ton of solid  
120 waste disposed of in this state upon which the fee imposed by  
121 this section is collected and shall deposit the total amount so  
122 allocated into the “Solid Waste Reclamation and Environmental  
123 Response Fund” to be expended for the purposes hereinafter  
124 specified. The first \$1 million dollars of the net proceeds of the  
125 fee imposed by this section collected in each fiscal year shall be  
126 deposited in the “Solid Waste Enforcement Fund” and expended  
127 for the purposes hereinafter specified. The next \$250,000 of the  
128 net proceeds of the fee imposed by this section collected in each  
129 fiscal year shall be deposited in the “Solid Waste Management  
130 Board Reserve Fund”, and expended for the purposes hereinafter  
131 specified: *Provided*, That in any year in which the Water  
132 Development Authority determines that the Solid Waste  
133 Management Board Reserve Fund is adequate to defer any  
134 contingent liability of the fund, the Water Development  
135 Authority shall so certify to the secretary and the secretary shall  
136 then cause no less than \$50,000 nor more than \$250,000 to be  
137 deposited to the fund: *Provided, however*, That in any year in  
138 which the water development authority determines that the Solid  
139 Waste Management Board Reserve Fund is inadequate to defer  
140 any contingent liability of the fund, the Water Development  
141 Authority shall so certify to the secretary and the secretary shall

142 then cause not less than \$250,000 nor more than \$500,000 to be  
143 deposited in the fund: *Provided further*, That if a facility owned  
144 or operated by the state of West Virginia is denied site approval  
145 by a county or regional solid waste authority, and if such denial  
146 contributes, in whole or in part, to a default, or drawing upon a  
147 reserve fund, on any indebtedness issued or approved by the  
148 Solid Waste Management Board, then in that event the Solid  
149 Waste Management Board or its fiscal agent may withhold all or  
150 any part of any funds which would otherwise be directed to such  
151 county or regional authority and shall deposit such withheld  
152 funds in the appropriate reserve fund. The secretary shall  
153 allocate the remainder, if any, of said net proceeds among the  
154 following three special revenue accounts for the purpose of  
155 maintaining a reasonable balance in each special revenue  
156 account, which are hereby continued in the State Treasury:

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

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

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

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

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

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

183 (3) Local approved solid waste facilities are being  
184 prematurely depleted by solid waste originating from other  
185 locations.

186 (j) The "Gas Field Highway Repair and Horizontal Drilling  
187 Waste Study Fund" is hereby created as a special revenue fund  
188 in the State Treasury to be administered by the West Virginia  
189 Division of Highways and to be expended only on the  
190 improvement, maintenance, and repair of public roads of three  
191 lanes or less located in the watershed from which the revenue  
192 was received that are identified by the Commissioner of  
193 Highways as having been damaged by trucks and other traffic  
194 associated with horizontal well drilling sites or the disposal of  
195 waste generated by such sites, and that experience congestion  
196 caused, in whole or in part, by such trucks and traffic that  
197 interferes with the use of said roads by residents in the vicinity  
198 of such roads: *Provided*, That up to \$750,000 from such fund  
199 shall be made available to the Department of Environmental  
200 Protection from the same fund to offset contracted costs incurred  
201 by the Department of Environmental Protection while  
202 undertaking the horizontal drilling waste disposal studies  
203 mandated by the provisions of subsection (j), section eight of this  
204 article. Any balance remaining in the special revenue account at  
205 the end of any fiscal year shall not revert to the General Revenue  
206 Fund but shall remain in the special revenue account and shall be  
207 used solely in a manner consistent with this section. The fund  
208 shall consist of the fee provided for in subsection (k) of this  
209 section.

210 (k) Horizontal drilling waste assessment fee — An  
211 additional solid waste assessment fee is hereby imposed upon the  
212 disposal of drill cuttings and drilling waste generated by  
213 horizontal well sites in the amount of \$1 per ton, which fee is in  
214 addition to all other fees and taxes levied by this section or  
215 otherwise and shall be added to and constitute part of any other  
216 fee charged by the operator or owner of the solid waste disposal  
217 facility: *Provided*, That the horizontal drilling waste assessment  
218 fee shall be collected and administered in the same manner as the  
219 solid waste assessment fee imposed by this section, but shall be  
220 imposed only upon the disposal of drill cuttings and drilling  
221 waste generated by horizontal well sites.

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

*Danny Wells*  
Chairman, House Committee

*[Signature]*  
Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect from passage.

*Steve D. So*  
Clerk of the House of Delegates

*Joseph M. Minard*  
Clerk of the Senate

*[Signature]*  
Speaker of the House of Delegates

*[Signature]*  
President of the Senate

The within *is approved* this the *31st*  
day of *March*, 2014.

*Earl Ray Tomblin*  
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2017

Time 10:45 am