Second Enrollment

Committee Substitute

for

Senate Bill 601

BY SENATOR BOSO, original sponsor

[Repassed March 15, 2016; in effect from passage]
WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

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Committee Substitute
for

Senate Bill 601

BY SENATOR BOSO, original sponsor

[Repassed March 15, 2016; in effect from passage]
AN ACT to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §24-2-11, all relating to exemption from the jurisdiction of the Public Service Commission for materials recovery facilities or mixed waste processing facilities; and providing an exception to allow the Public Service Commission to retain limited jurisdiction over facilities meeting certain requirements which received a certificate of need prior to July 1, 2016.

Be it enacted by the Legislature of West Virginia:

That §22-15-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto a new section, designated §24-2-11, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


(a) Open dumps are prohibited and it is unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on the landowner’s property unless that open dump is under a compliance schedule approved by the director. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to April 1, 1998, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm are not a violation of this section if such open dump did not constitute a violation of law on January 1, 1998, and unauthorized dumps which were created by unknown persons do not constitute a violation of this section: Provided, That no person may contribute additional solid waste to any such dump after April 1, 1998, except that the owners of the land on which unauthorized dumps have been or are being made are not liable for such unauthorized dumping unless such landowners refuse to cooperate with the division in stopping such unauthorized dumping.
(b) It is unlawful for any person, unless the person holds a valid permit from the division to install, establish, construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.

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

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

(e) No person may dispose in the state of any solid waste in a manner which endangers the environment or the public health, safety or welfare as determined by the director: Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director, the commissioner of the bureau of public health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.
(f) A commercial solid waste facility shall not discriminate in favor of or against the receipt of any waste otherwise eligible for disposal at the facility based on its geographic origin.

(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of this article. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of this article: Provided, That the provisions of this subsection do not apply to materials recovery facilities or mixed waste processing facilities as defined by chapter twenty-two, article fifteen, section two of this code, except within a thirty-five mile radius of a facility sited in a karst geological region and which has been permitted by the West Virginia Department of Environmental Protection as a mixed waste processing facility and has received a certificate of need by July 1, 2016.

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1L. Commission jurisdiction does not extend to materials recovery facilities, mixed waste processing facilities, and oil and natural gas solid waste disposal.

Notwithstanding any other provision of this code, the jurisdiction of the commission does not extend to materials recovery facilities or mixed waste processing facilities as defined by
chapter twenty-two, article fifteen, section two of this code, except within a thirty-five mile radius of a facility sited in a county that is, in whole or in part, within a karst region as determined by the West Virginia Geologic and Economic Survey that has been permitted and classified by the WVDEP as a mixed waste processing resource recovery facility and has received a certificate of need by July 1, 2016: Provided, That nothing in this section shall affect the requirements of section five, article two and section three, article three, chapter twenty-four-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within … approved … this the 1st Day of April, ........................................................., 2016.

Governor
PRESENTED TO THE GOVERNOR

MAR 28 2016

Time: 3:05 pm