Enrolled
Committee Substitute
for

Senate Bill 601

BY SENATOR BOSO, original sponsor

[Passed March 12, 2016; in effect from passage]
Enr. CS for SB 601

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

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BY SENATOR BOSO, original sponsor

[Passed March 12, 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, relating to exception from the jurisdiction of the Public Service Commission for materials recovery facilities or mixed waste processing facilities.

Be it enacted by the Legislature of West Virginia:

That §22-15-2 and §22-15-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §24-2-1L, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


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

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

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

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

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

(3) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article.
(4) "Back hauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

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

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

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

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

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

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

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

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

(13) “Department” means the Department of Environmental Protection.

(14) “Energy recovery incinerator” means any solid waste facility at which solid wastes are
incinerated with the intention of using the resulting energy for the generation of steam, electricity
or any other use not specified herein.

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

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

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

(18) “Materials recovery facility” means any solid waste facility at which source-separated
materials or materials recovered through a mixed waste processing facility are manually or
mechanically shredded or separated for purposes of reuse and recycling, but does not include a
composting facility.

(19) "Mature compost" means compost which has been produced in an aerobic, microbial,
thermophilic manner and does not exhibit phytotoxic effects.

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

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

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

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

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

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

(26) “Recycling facility” means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, article fifteen-a of this chapter and article four, chapter twenty-two-c of this code.

(27) “Sewage sludge” means solid, semisolid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. “Sewage sludge” does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(28) “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to article one of this chapter.

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

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

(31) “Solid waste” means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive
or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from
industrial, commercial, mining or community activities but does not include solid or dissolved
material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges
which are point sources and have permits under article five-a of this chapter, or source, special
nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including
any nuclear or byproduct material considered by federal standards to be below regulatory
concern, or a hazardous waste either identified or listed under article five-e of this chapter or
refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or
steam generation, the exploration, development, production, storage and recovery of coal, oil and
gas and other mineral resources placed or disposed of at a facility which is regulated under
chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as placement or disposal
is in conformance with a permit issued pursuant to such chapters.

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

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

(34) “Solid waste facility” means any system, facility, land, contiguous land, improvements
on the land, structures or other appurtenances or methods used for processing, recycling or
disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed
waste processing facilities, sewage sludge processing facilities, commercial composting facilities
and other such facilities not herein specified, but not including land upon which sewage sludge is
applied in accordance with section twenty of this article. Such facility shall be deemed to be
situated, for purposes of this article, in the county where the majority of the spatial area of such
facility is located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility.

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

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


(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 facility. 
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 chapter shall affect the requirements of section five, article two and section three, article three, of chapter twenty-four-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is disapproved this the 11th Day of ............................. 2016.

[Signature]

Governor
PRESENTED TO THE GOVERNOR

MAR 14 2016

Time 4:38 pm