

WEST VIRGINIA LEGISLATURE FILED

2016 MAR 14 P 4: 09

2016 REGULAR SESSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Enrolled

Committee Substitute

for

Senate Bill 601

BY SENATOR BOSO, *original sponsor*

[Passed March 12, 2016; in effect from passage]

SB 601 (veto)

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1 AN ACT to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended; and
2 to amend said code by adding thereto a new section, designated §24-2-1I, relating to
3 exception from the jurisdiction of the Public Service Commission for materials recovery
4 facilities or mixed waste processing facilities.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§ 22-15-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (11) "Commercial composting facility" means any solid waste facility processing solid
39 waste by composting, including sludge composting, organic waste or yard waste composting, but

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

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

49 (13) "Department" means the Department of Environmental Protection.

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

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

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

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

63 (18) "Materials recovery facility" means any solid waste facility at which source-separated
64 materials or materials recovered through a mixed waste processing facility are manually or

65 mechanically shredded or separated for purposes of reuse and recycling, but does not include a
66 composting facility.

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

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

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

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

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

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

86 (25) "Publicly owned treatment works" means any treatment works owned by the state or
87 any political subdivision thereof, any municipality or any other public entity which processes raw
88 domestic, industrial or municipal sewage by any artificial or natural processes in order to remove
89 or so alter constituents as to render the waste less offensive or dangerous to the public health,

90 comfort or property of any of the inhabitants of this state before the discharge of the plant effluent
91 into any of the waters of this state, and which produces sewage sludge.

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

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

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

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

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

113 (31) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed
114 for the express purpose of incineration; sludge from a waste treatment plant; water supply
115 treatment plant or air pollution control facility; and other discarded materials, including offensive

116 or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from
117 industrial, commercial, mining or community activities but does not include solid or dissolved
118 material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges
119 which are point sources and have permits under article five-a of this chapter, or source, special
120 nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including
121 any nuclear or byproduct material considered by federal standards to be below regulatory
122 concern, or a hazardous waste either identified or listed under article five-e of this chapter or
123 refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or
124 steam generation, the exploration, development, production, storage and recovery of coal, oil and
125 gas and other mineral resources placed or disposed of at a facility which is regulated under
126 chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as placement or disposal
127 is in conformance with a permit issued pursuant to such chapters.

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

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

134 (34) "Solid waste facility" means any system, facility, land, contiguous land, improvements
135 on the land, structures or other appurtenances or methods used for processing, recycling or
136 disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed
137 waste processing facilities, sewage sludge processing facilities, commercial composting facilities
138 and other such facilities not herein specified, but not including land upon which sewage sludge is
139 applied in accordance with section twenty of this article. Such facility shall be deemed to be
140 situated, for purposes of this article, in the county where the majority of the spatial area of such

141 facility is located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of
142 article twenty-three, chapter seventeen of this code, is not a solid waste facility.

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

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

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

1 (a) Open dumps are prohibited and it is unlawful for any person to create, contribute to or
2 operate an open dump or for any landowner to allow an open dump to exist on the landowner's
3 property unless that open dump is under a compliance schedule approved by the director. Such
4 compliance schedule shall contain an enforceable sequence of actions leading to compliance and
5 shall not exceed two years. Open dumps operated prior to April 1, 1998, by a landowner or tenant
6 for the disposal of solid waste generated by the landowner or tenant at his or her residence or
7 farm are not a violation of this section if such open dump did not constitute a violation of law on
8 January 1, 1998, and unauthorized dumps which were created by unknown persons do not
9 constitute a violation of this section: *Provided*, That no person may contribute additional solid
10 waste to any such dump after April 1, 1998, except that the owners of the land on which
11 unauthorized dumps have been or are being made are not liable for such unauthorized dumping
12 unless such landowners refuse to cooperate with the division in stopping such unauthorized
13 dumping.

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

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

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

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

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

42 (g) In addition to all the requirements of this article and the rules promulgated hereunder,
43 a permit to construct a new commercial solid waste facility or to expand the spatial area of an

44 existing facility, may not be issued unless the public service commission has granted a certificate
45 of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director
46 approves a permit or permit modification, the certificate of need shall become a part of the permit
47 and all conditions contained in the certificate of need shall be conditions of the permit and may
48 be enforced by the division in accordance with the provisions of this article. If the director approves
49 a permit or permit modification, the certificate of need shall become a part of the permit and all
50 conditions contained in the certificate of need shall be conditions of the permit and may be
51 enforced by the division in accordance with the provisions of this article: *Provided*, That the
52 provisions of this subsection do not apply to materials recovery facilities or mixed waste
53 processing facilities as defined by chapter twenty-two, article fifteen, section two of this code,
54 except within a thirty-five mile radius of a facility sited in a karst geological region and which has
55 been permitted by the West Virginia Department of Environmental Protection as a mixed waste
56 processing facility and has received a certificate of need by July 1, 2016.

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

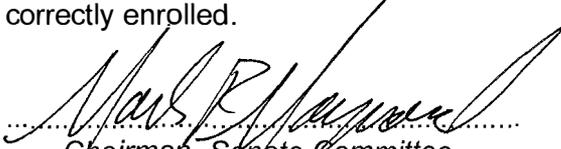
ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

1 Notwithstanding any other provision of this code, the jurisdiction of the commission does
2 not extend to materials recovery facilities or mixed waste processing facilities as defined by
3 chapter twenty-two, article fifteen, section two of this code, except within a thirty-five mile radius
4 of a facility sited in a county that is, in whole or in part, within a karst region as determined by the
5 West Virginia Geologic and Economic Survey that has been permitted and classified by the
6 WVDEP as a mixed waste processing resource recovery facility and has received a certificate of

- 7 need by July 1, 2016: *Provided*, that nothing in this chapter shall affect the requirements of section
8 five, article two and section three, article three, of chapter twenty-four-a of this code.

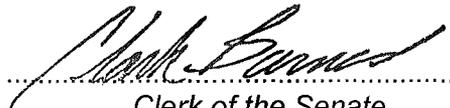
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

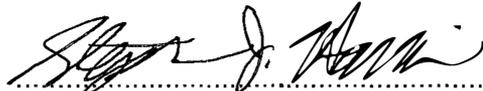

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Chairman, Senate Committee

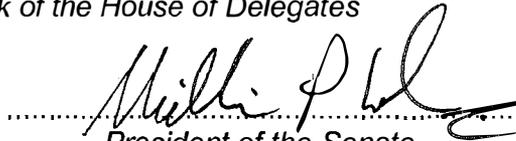

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Chairman, House Committee

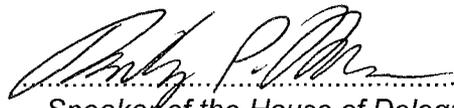
Originated in the Senate.

In effect from passage.

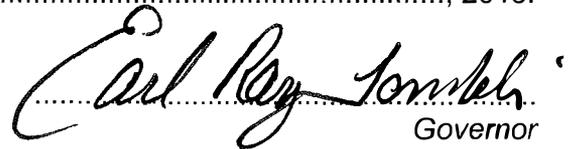

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within *is disapproved* this the *14th*
Day of *March*, 2016.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 14 2016

Time 4:38 pm