

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

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

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

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

10 **§22-15-8. Limit on the size of solid waste facilities; rulemaking.**

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

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

21 (c) The secretary shall, within the limits contained in this
22 article, place a limit on the amount of solid waste received or
23 disposed of per month in commercial solid waste facilities. The
24 secretary shall consider at a minimum the following criteria in

1 determining a commercial solid waste facility's monthly tonnage
2 limit:

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

5 (2) The projected life and design capacity of the solid waste
6 facility;

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

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

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

15 (e) The secretary shall promulgate emergency rules and propose
16 for legislative promulgation, legislative rules pursuant to the
17 provisions of article three, chapter twenty-nine-a of this code, to
18 effectuate the requirements of this section. When developing the
19 rules, the secretary shall consider at a minimum the potential
20 impact of the treatment, storage, processing, composting, dumping
21 or placing sewage sludge at a solid waste facility:

22 (1) On the groundwater, surface waters and potable waters in
23 the area;

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

1 (3) On the projected life and design capacity of the solid
2 waste facility;

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

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

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

11 (f) Sewage sludge disposed of at a landfill must contain at
12 least twenty percent solid by weight. This requirement may be met
13 by adding or blending sand, sawdust, lime, leaves, soil or other
14 materials that have been approved by the secretary prior to
15 disposal. Alternative sewage sludge disposal methods can be
16 utilized upon obtaining written approval from the secretary. No
17 facility may accept for land filling in any month sewage sludge in
18 excess of twenty-five percent of the total tons of solid waste
19 accepted at the facility for land filling in the preceding month.

20 (g) Notwithstanding any other provision of this code to the
21 contrary, a commercial solid waste facility that is not located in
22 a county that is, in whole or in part, within a karst region as
23 determined by the West Virginia Geologic and Economic Survey may
24 lawfully receive drill cuttings and drilling waste generated from

1 horizontal well sites above the monthly tonnage limits of the
2 commercial solid waste facility under the following conditions and
3 limitations:

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

7 (B) The separate cell dedicated to drill cuttings and
8 associated drilling waste is constructed and maintained pursuant to
9 the standards set out in this article and legislative rules
10 promulgated thereunder; and

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

17 (2) The secretary may only allow those solid waste facilities
18 that applied by December 31, 2013 for a permit modification to
19 construct a separate cell for drill cuttings and associated
20 drilling waste, to accept drill cuttings and associated drilling
21 waste at its commercial solid waste facility without counting the
22 deposited drill cuttings and associated drilling waste towards the
23 landfill's permitted monthly tonnage limits.

24 (3) No solid waste facility may exclude or refuse to take

1 municipal solid waste in the quantity up to and including its
2 permitted tonnage limit while the facility is allowed to lawfully
3 receive drill cuttings or drilling waste above its permitted
4 tonnage limits.

5 (h) Any solid waste facility taking drill cuttings and
6 drilling waste must install radiation monitors by January 1, 2015.
7 The secretary shall promulgate emergency and legislative rules to
8 establish limits for unique toxins associated with drill cuttings
9 and drilling waste including, but not limited to heavy metals,
10 petroleum-related chemicals, (benzene, toluene, xylene, barium,
11 chlorides, radium and radon) and establish the procedures the
12 facility must follow if that limit is exceeded: *Provided*, That
13 said rules shall establish and set forth a procedure to provide
14 that any detected radiation readings above any established
15 radiation limits will require that the solid waste landfill
16 immediately cease accepting all affected drill cuttings and
17 drilling waste until the secretary has inspected said landfill and
18 certified pursuant to established rules and regulations that
19 radiation levels have returned to below the established radiation
20 limits. Any truck load of drill cuttings or drilling waste which
21 exceeds the radiation reading limits shall not be allowed to enter
22 the landfill until inspected and approved by the Department of
23 Environmental Protection.

24 (i) Except for facilities which meet the requirements of

1 (g) (1) of this section, the total amount of waste received at a
2 commercial solid waste landfill that continues to mix said waste
3 with its municipal solid waste may not exceed the total volume of
4 its permitted capacity for that facility in any month, and the
5 quantities of drill cuttings and drilling waste received at that
6 facility shall be counted and applied toward the facility's
7 established tonnage cap.

8 (j) On or before July 1, 2015, the secretary shall submit an
9 investigation and report to the Joint Legislative Oversight
10 Commission on Water Resources and the Legislature's Joint Committee
11 on Government and Finance which examines: (1) The hazardous
12 characteristics of leachate collected from solid waste facilities
13 receiving drill cuttings and drilling waste, including, but not
14 limited to, the presence of heavy metals, petroleum related
15 chemicals (benzene, toluene, xylene, etc.) barium, chlorides,
16 radium and radon; (2) the potential negative impacts on the surface
17 water or groundwater resources of this state associated with the
18 collection, treatment and disposal of leachate from such landfills;
19 (3) the technical and economic feasibility and benefits of
20 establishing additional and/or separate disposal locations which
21 are funded, constructed, owned and/or operated by the oil and gas
22 industry; and (4) viable alternatives for the handling, treatment
23 and disposal of drill cuttings, including the potential for
24 processing, reusing and reapplying a portion of the collected drill

1 cuttings as suitable fill material for roads, brownfield
2 development or other projects, instead of disposing of all
3 collected material into landfills.

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

8 **§22-15-11. Solid waste assessment fee; penalties.**

9 (a) *Imposition.* -- A solid waste assessment fee is hereby
10 imposed upon the disposal of solid waste at any solid waste
11 disposal facility in this state in the amount of \$1.75 per ton or
12 part thereof of solid waste. The fee imposed by this section is in
13 addition to all other fees and taxes levied by law and shall be
14 added to and constitute part of any other fee charged by the
15 operator or owner of the solid waste disposal facility.

16 (b) *Collection, return, payment and records.* -- The person
17 disposing of solid waste at the solid waste disposal facility shall
18 pay the fee imposed by this section, whether or not such person
19 owns the solid waste, and the fee shall be collected by the
20 operator of the solid waste facility who shall remit it to the Tax
21 Commissioner.

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

24 (2) The operator shall remit the fee imposed by this section

1 to the Tax Commissioner on or before the fifteenth day of the month
2 next succeeding the month in which the fee accrued. Upon
3 remittance of the fee, the operator is required to file returns on
4 forms and in the manner as prescribed by the Tax Commissioner.

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

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

12 (5) Whenever any operator fails to collect, truthfully account
13 for, remit the fee or file returns with the fee as required in this
14 section, the Tax Commissioner may serve written notice requiring
15 such operator to collect the fees which become collectible after
16 service of such notice, to deposit such fees in a bank approved by
17 the Tax Commissioner, in a separate account, in trust for and
18 payable to the Tax Commissioner and to keep the amount of such fees
19 in such account until remitted to the Tax Commissioner. Such
20 notice remains in effect until a notice of cancellation is served
21 on the operator or owner by the Tax Commissioner.

22 (6) Whenever the owner of a solid waste disposal facility
23 leases the solid waste facility to an operator, the operator is
24 primarily liable for collection and remittance of the fee imposed

1 by this section and the owner is secondarily liable for remittance
2 of the fee imposed by this section. However, if the operator
3 fails, in whole or in part, to discharge his or her obligations
4 under this section, the owner and the operator of the solid waste
5 facility are jointly and severally responsible and liable for
6 compliance with the provisions of this section.

7 (7) If the operator or owner responsible for collecting the
8 fee imposed by this section is an association or corporation, the
9 officers thereof are liable, jointly and severally, for any default
10 on the part of the association or corporation, and payment of the
11 fee and any additions to tax, penalties and interest imposed by
12 article ten, chapter eleven of this code may be enforced against
13 them as against the association or corporation which they
14 represent.

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

20 (c) *Regulated motor carriers.* -- The fee imposed by this
21 section and section twenty-two, article five, chapter seven of this
22 code is considered a necessary and reasonable cost for motor
23 carriers of solid waste subject to the jurisdiction of the Public
24 Service Commission under chapter twenty-four-a of this code.

1 Notwithstanding any provision of law to the contrary, upon the
2 filing of a petition by an affected motor carrier, the Public
3 Service Commission shall, within fourteen days, reflect the cost of
4 said fee in said motor carrier's rates for solid waste removal
5 service. In calculating the amount of said fee to said motor
6 carrier, the commission shall use the national average of pounds of
7 waste generated per person per day as determined by the United
8 States Environmental Protection Agency.

9 (d) *Definition of solid waste disposal facility.* -- For
10 purposes of this section, the term "solid waste disposal facility"
11 means any approved solid waste facility or open dump in this state,
12 and includes a transfer station when the solid waste collected at
13 the transfer station is not finally disposed of at a solid waste
14 disposal facility within this state that collects the fee imposed
15 by this section. Nothing herein authorizes in any way the creation
16 or operation of or contribution to an open dump.

17 (e) *Exemptions.* -- The following transactions are exempt from
18 the fee imposed by this section:

19 (1) Disposal of solid waste at a solid waste disposal facility
20 by the person who owns, operates or leases the solid waste disposal
21 facility if the facility is used exclusively to dispose of waste
22 originally produced by such person in such person's regular
23 business or personal activities or by persons utilizing the
24 facility on a cost-sharing or nonprofit basis;

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

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

6 (4) Disposal of solid waste at a solid waste disposal facility
7 by a commercial recycler which disposes of thirty percent or less
8 of the total waste it processes for recycling. In order to qualify
9 for this exemption each commercial recycler must keep accurate
10 records of incoming and outgoing waste by weight. Such records
11 must be made available to the appropriate inspectors from the
12 division, upon request.

13 (f) *Procedure and administration.* -- Notwithstanding section
14 three, article ten, chapter eleven of this code, each and every
15 provision of the "West Virginia Tax Procedure and Administration
16 Act" set forth in article ten, chapter eleven of this code shall
17 apply to the fee imposed by this section with like effect as if
18 said act were applicable only to the fee imposed by this section
19 and were set forth in extenso herein.

20 (g) *Criminal penalties.* -- Notwithstanding section two,
21 article nine, chapter eleven of this code, sections three through
22 seventeen, article nine, chapter eleven of this code shall apply to
23 the fee imposed by this section with like effect as if said
24 sections were applicable only to the fee imposed by this section

1 and were set forth in extenso herein.

2 (h) *Dedication of proceeds.* -- The net proceeds of the fee
3 collected by the Tax Commissioner pursuant to this section shall be
4 deposited at least monthly in an account designated by the
5 secretary. The secretary shall allocate \$0.25 for each ton of
6 solid waste disposed of in this state upon which the fee imposed by
7 this section is collected and shall deposit the total amount so
8 allocated into the "Solid Waste Reclamation and Environmental
9 Response Fund" to be expended for the purposes hereinafter
10 specified. The first \$1 million dollars of the net proceeds of the
11 fee imposed by this section collected in each fiscal year shall be
12 deposited in the "Solid Waste Enforcement Fund" and expended for
13 the purposes hereinafter specified. The next \$250,000 of the net
14 proceeds of the fee imposed by this section collected in each
15 fiscal year shall be deposited in the "Solid Waste Management Board
16 Reserve Fund", and expended for the purposes hereinafter specified:
17 *Provided*, That in any year in which the Water Development Authority
18 determines that the Solid Waste Management Board Reserve Fund is
19 adequate to defer any contingent liability of the fund, the Water
20 Development Authority shall so certify to the secretary and the
21 secretary shall then cause no less than \$50,000 nor more than
22 \$250,000 to be deposited to the fund: *Provided, however*, That in
23 any year in which the water development authority determines that
24 the Solid Waste Management Board Reserve Fund is inadequate to

1 defer any contingent liability of the fund, the Water Development
2 Authority shall so certify to the secretary and the secretary shall
3 then cause not less than \$250,000 nor more than \$500,000 to be
4 deposited in the fund: *Provided further,* That if a facility owned
5 or operated by the state of West Virginia is denied site approval
6 by a county or regional solid waste authority, and if such denial
7 contributes, in whole or in part, to a default, or drawing upon a
8 reserve fund, on any indebtedness issued or approved by the Solid
9 Waste Management Board, then in that event the Solid Waste
10 Management Board or its fiscal agent may withhold all or any part
11 of any funds which would otherwise be directed to such county or
12 regional authority and shall deposit such withheld funds in the
13 appropriate reserve fund. The secretary shall allocate the
14 remainder, if any, of said net proceeds among the following three
15 special revenue accounts for the purpose of maintaining a
16 reasonable balance in each special revenue account, which are
17 hereby continued in the State Treasury:

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

21 (2) The "Solid Waste Management Board Reserve Fund" which
22 shall be exclusively dedicated to providing a reserve fund for the
23 issuance and security of solid waste disposal revenue bonds issued
24 by the solid waste management board pursuant to article three,

1 chapter twenty-two-c of this code;

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

9 (i) *Findings.* -- In addition to the purposes and legislative
10 findings set forth in section one of this article, the Legislature
11 finds as follows:

12 (1) In-state and out-of-state locations producing solid waste
13 should bear the responsibility of disposing of said solid waste or
14 compensate other localities for costs associated with accepting
15 such solid waste;

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

19 (3) Local approved solid waste facilities are being
20 prematurely depleted by solid waste originating from other
21 locations.

22 (j) The "Gas Field Highway Repair and Horizontal Drilling
23 Waste Study Fund" is hereby created as a special revenue fund in
24 the State Treasury to be administered by the West Virginia Division

1 of Highways and to be expended only on the improvement,
2 maintenance, and repair of public roads of three lanes or less
3 located in the watershed from which the revenue was received that
4 are identified by the Commissioner of Highways as having been
5 damaged by trucks and other traffic associated with horizontal well
6 drilling sites or the disposal of waste generated by such sites,
7 and that experience congestion caused, in whole or in part, by such
8 trucks and traffic that interferes with the use of said roads by
9 residents in the vicinity of such roads: *Provided*, That up to
10 \$750,000 from such fund shall be made available to the Department
11 of Environmental Protection from the same fund to offset contracted
12 costs incurred by the Department of Environmental Protection while
13 undertaking the horizontal drilling waste disposal studies mandated
14 by the provisions of subsection (j), section eight of this article.
15 Any balance remaining in the special revenue account at the end of
16 any fiscal year shall not revert to the General Revenue Fund but
17 shall remain in the special revenue account and shall be used
18 solely in a manner consistent with this section. The fund shall
19 consist of the fee provided for in subsection (k) of this section.

20 (k) Horizontal drilling waste assessment fee-- An additional
21 solid waste assessment fee is hereby imposed upon the disposal of
22 drill cuttings and drilling waste generated by horizontal well
23 sites in the amount of \$1 per ton, which fee is in addition to all
24 other fees and taxes levied by this section or otherwise and shall

1 be added to and constitute part of any other fee charged by the
2 operator or owner of the solid waste disposal facility:
3 *Provided*, That the horizontal drilling waste assessment fee shall
4 be collected and administered in the same manner as the solid waste
5 assessment fee imposed by this section, but shall be imposed only
6 upon the disposal of drill cuttings and drilling waste generated by
7 horizontal well sites.