

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

2 **§22-15-2. Definitions.**

3 The amendment to the definition of "solid waste" in this
4 section during the regular session of the 81st Legislature in 2014
5 is to clarify the intent of the Legislature as to the meaning of
6 the existing definition of "solid waste". Unless the context
7 clearly requires a different meaning, as used in this article the
8 terms:

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

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

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

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

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

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

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

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

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

20 (8) "Commercial solid waste facility" means any solid waste
21 facility which accepts solid waste generated by sources other than
22 the owner or operator of the facility and does not include an
23 approved solid waste facility owned and operated by a person for

1 the sole purpose of the disposal, processing or composting of solid
2 wastes created by that person or such person and other persons on
3 a cost-sharing or nonprofit basis and does not include land upon
4 which reused or recycled materials are legitimately applied for
5 structural fill, road base, mine reclamation and similar
6 applications.

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

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

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

21 (12) "Cured compost" or "finished compost" means compost which
22 has a very low microbial or decomposition rate which will not
23 reheat or cause odors when put into storage and that has been put

1 through a separate aerated curing cycle stage of thirty to sixty
2 days after an initial composting cycle or compost which meets all
3 regulatory requirements after the initial composting cycle.

4 (13) "Department" means the Department of Environmental
5 Protection.

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

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

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

20 (17) "Landfill" means any solid waste facility for the
21 disposal of solid waste on or in the land for the purpose of
22 permanent disposal. Such facility is situated, for purposes of
23 this article, in the county where the majority of the spatial area

1 of such facility is located.

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

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

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

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

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

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

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

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

20 (26) "Recycling facility" means any solid waste facility for
21 the purpose of recycling at which neither land disposal nor
22 biological, chemical or thermal transformation of solid waste
23 occurs: *Provided*, That mixed waste recovery facilities, sludge

1 processing facilities and composting facilities are not considered
2 recycling facilities nor considered to be reusing or recycling
3 solid waste within the meaning of this article, article fifteen-a
4 of this chapter and article four, chapter twenty-two-c of this
5 code.

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

13 (28) "Secretary" means the Secretary of the Department of
14 Environmental Protection or such other person to whom the Secretary
15 has delegated authority or duties pursuant to article one of this
16 chapter.

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

22 (30) "Sludge" means any solid, semisolid, residue or
23 precipitate, separated from or created by a municipal, commercial

1 or industrial waste treatment plant, water supply treatment plant
2 or air pollution control facility or any other such waste having
3 similar origin.

4 (31) ~~"Solid waste" means any garbage, paper, litter, refuse,~~
5 ~~cans, bottles, waste processed for the express purpose of~~
6 ~~incineration; sludge from a waste treatment plant; water supply~~
7 ~~treatment plant or air pollution control facility; and other~~
8 ~~discarded materials, including offensive or unsightly matter,~~
9 ~~solid, liquid, semisolid or contained liquid or gaseous material~~
10 ~~resulting from industrial, commercial, mining or community~~
11 ~~activities but does not include solid or dissolved material in~~
12 ~~sewage or solid or dissolved materials in irrigation return flows~~
13 ~~or industrial discharges which are point sources and have permits~~
14 ~~under article five a of this chapter, or source, special nuclear or~~
15 ~~byproduct material as defined by the Atomic Energy Act of 1954, as~~
16 ~~amended, including any nuclear or byproduct material considered by~~
17 ~~federal standards to be below regulatory concern, or a hazardous~~
18 ~~waste either identified or listed under article five e of this~~
19 ~~chapter or refuse, slurry, overburden or other wastes or material~~
20 ~~resulting from coal fired electric power or steam generation, the~~
21 ~~exploration, development, production, storage and recovery of coal,~~
22 ~~oil and gas and other mineral resources placed or disposed of at a~~
23 ~~facility which is regulated under chapter twenty-two, twenty-two-a~~

1 ~~or twenty-two b of this code, so long as placement or disposal is~~
2 ~~in conformance with a permit issued pursuant to such chapters means~~
3 any garbage, paper, litter, refuse, cans, bottles, waste processed
4 for the express purpose of incineration, sludge from a waste
5 treatment plant, water supply treatment plant or air pollution
6 control facility, other discarded material, including offensive or
7 unsightly matter, solid, liquid, semisolid or contained liquid or
8 gaseous material resulting from industrial, commercial, mining or
9 community activities but does not include solid or dissolved
10 material in sewage, or solid or dissolved materials in irrigation
11 return flows or industrial discharges which are point sources and
12 have permits under article eleven, chapter twenty-two of this code,
13 or source, special nuclear or byproduct material as defined by the
14 Atomic Energy Act of 1954, as amended, including any nuclear or
15 byproduct material considered by federal standards to be below
16 regulatory concern, or a hazardous waste either identified or
17 listed under article eighteen, chapter twenty-two of this code, or
18 refuse, slurry, overburden or other waste or material resulting
19 from coal-fired electric power or steam generation, the
20 exploration, development, production, storage and recovery of coal,
21 oil and gas, and other mineral resources placed or disposed of at
22 a facility which is regulated under article two, three, four, six,
23 seven, eight, nine or ten, chapter twenty-two or chapter twenty-

1 two-a of this code, so long as such placement or disposal is in
2 conformance with a permit issued pursuant to said chapters. "Solid
3 waste" does not include materials which are recycled by being used
4 or reused in an industrial process to make a product, as effective
5 substitutes for commercial products, or are returned to the
6 original process as a substitute for raw material feedstock.

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

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

14 (34) "Solid waste facility" means any system, facility, land,
15 contiguous land, improvements on the land, structures or other
16 appurtenances or methods used for processing, recycling or
17 disposing of solid waste, including landfills, transfer stations,
18 materials recovery facilities, mixed waste processing facilities,
19 sewage sludge processing facilities, commercial composting
20 facilities and other such facilities not herein specified, but not
21 including land upon which sewage sludge is applied in accordance
22 with section twenty of this article. Such facility shall be deemed
23 to be situated, for purposes of this article, in the county where

1 the majority of the spatial area of such facility is located:
2 *Provided*, That a salvage yard, licensed and regulated pursuant to
3 the terms of article twenty-three, chapter seventeen of this code,
4 is not a solid waste facility.

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

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

13 **§22-15-10. Prohibitions; permits required.**

14 (a) Open dumps are prohibited and it is unlawful for any
15 person to create, contribute to or operate an open dump or for any
16 landowner to allow an open dump to exist on the landowner's
17 property unless that open dump is under a compliance schedule
18 approved by the director. Such compliance schedule shall contain
19 an enforceable sequence of actions leading to compliance and shall
20 not exceed two years. Open dumps operated prior to April 1, 1988,
21 by a landowner or tenant for the disposal of solid waste generated
22 by the landowner or tenant at his or her residence or farm are not
23 a violation of this section if such open dump did not constitute a

1 violation of law on January 1, 1988, and unauthorized dumps which
2 were created by unknown persons do not constitute a violation of
3 this section: *Provided*, That no person may contribute additional
4 solid waste to any such dump after April 1, 1988, except that the
5 owners of the land on which unauthorized dumps have been or are
6 being made are not liable for such unauthorized dumping unless such
7 landowners refuse to cooperate with the division in stopping such
8 unauthorized dumping.

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

16 (c) Any permit issued under this article shall be issued in
17 compliance with the requirements of this article, its rules and
18 article eleven of this chapter and the rules promulgated
19 thereunder, so that only a single permit is required of a solid
20 waste facility under these two articles. Each permit issued under
21 this article shall have a fixed term not to exceed five years:
22 *Provided*, That the director may administratively extend a permit
23 beyond its five-year term if the approved solid waste facility is

1 in compliance with this article, its rules and article eleven of
2 this chapter and the rules promulgated thereunder: *Provided,*
3 *however,* That such administrative extension may not be for more
4 than one year. Upon expiration of a permit, renewal permits may be
5 issued in compliance with rules promulgated by the director.

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

16 (e) No person may dispose in the state of any solid waste in
17 a manner which endangers the environment or the public health,
18 safety or welfare as determined by the director: *Provided,* That
19 the carcasses of dead animals may be disposed of in any solid waste
20 facility or in any other manner as provided for in this code. Upon
21 request by the director, the Commissioner of the Bureau of Public
22 Health shall provide technical advice concerning the disposal of
23 solid waste or carcasses of dead animals within the state.

1 (f) ~~A~~ Except as provided in section eleven, article four,
2 chapter twenty-two-c of this code, a commercial solid waste
3 facility shall not discriminate in favor of or against the receipt
4 of any waste otherwise eligible for disposal at the facility based
5 on its geographic origin.

6 (g) In addition to all the requirements of this article and
7 the rules promulgated hereunder, a permit to construct a new
8 commercial solid waste facility or to expand the spatial area of an
9 existing facility, may not be issued unless the Public Service
10 Commission has granted a certificate of need, as provided in
11 section one-c, article two, chapter twenty-four of this code. If
12 the director approves a permit or permit modification, the
13 certificate of need shall become a part of the permit and all
14 conditions contained in the certificate of need shall be conditions
15 of the permit and may be enforced by the division in accordance
16 with the provisions of this article. If the director approves a
17 permit or permit modification, the certificate of need shall become
18 a part of the permit and all conditions contained in the
19 certificate of need shall be conditions of the permit and may be
20 enforced by the division in accordance with the provisions of this
21 article.

22 (h) The director shall promulgate legislative rules pursuant
23 to article three, chapter twenty-nine-a of this code which reflect

1 the purposes as set forth in this section.

2 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES,**
3 **COMMISSIONS AND COMPACTS.**

4 **ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.**

5 **§22C-3-3. Definitions.**

6 The amendment to the definition of "solid waste" in this
7 section during the regular session of the 81st Legislature in 2014
8 is to clarify the intent of the Legislature as to the meaning of
9 the existing definition of "solid waste". As used in this article,
10 unless the context clearly requires a different meaning:

11 (1) "Board" means the Solid Waste Management Board provided
12 ~~for~~ in section four of this article, the duties, powers,
13 responsibilities and functions of which are specified in this
14 article.

15 (2) "Bond" or "solid waste disposal revenue bond" means a
16 revenue bond or note issued by the Solid Waste Management Board,
17 previously known as the West Virginia Resource Recovery -- Solid
18 Waste Disposal Authority, to effect the intents and purposes of
19 this article.

20 (3) "Construction" includes reconstruction, enlargement,
21 improvement and providing furnishings or equipment for a solid
22 waste disposal project.

23 (4) "Cost" means, as applied to solid waste disposal projects,

1 the cost of their acquisition and construction; the cost of
2 acquisition of all land, rights-of-way, property, rights,
3 easements, franchise rights and interests required by the board for
4 such acquisition and construction; the cost of demolishing or
5 removing any buildings or structures on land so acquired, including
6 the cost of acquiring any land to which such buildings or
7 structures may be moved; the cost of diverting highways,
8 interchange of highways and access roads to private property,
9 including the cost of land or easements therefor; the cost of all
10 machinery, furnishings and equipment; all financing charges and
11 interest prior to and during construction and for no more than
12 eighteen months after completion of construction; the cost of all
13 engineering services and all expenses of research and development
14 with respect to solid waste facilities; the cost of all legal
15 services and expenses; the cost of all plans, specifications,
16 surveys and estimates of cost and revenues; all working capital and
17 other expenses necessary or incident to determining the feasibility
18 or practicability of acquiring or constructing any such project;
19 all administrative expenses and such other expenses as may be
20 necessary or incident to the acquisition or construction of the
21 project; the financing of such acquisition or construction,
22 including the amount authorized in the resolution of the board
23 providing for the issuance of solid waste disposal revenue bonds to

1 be paid into any special funds from the proceeds of such bonds; and
2 the financing of the placing of any such project in operation. Any
3 obligation or expenses incurred by any governmental agency, with
4 the approval of the board, for surveys, borings, preparation of
5 plans and specifications and other engineering services in
6 connection with the acquisition or construction of a project are a
7 part of the cost of such project and shall be reimbursed out of the
8 proceeds of loans or solid waste disposal revenue bonds as
9 authorized by the provisions of this article.

10 (5) "Governmental agency" means the state government or any
11 agency, department, division or unit thereof; counties;
12 municipalities; watershed improvement districts; soil conservation
13 districts; sanitary districts; public service districts; drainage
14 districts; regional governmental authorities and any other
15 governmental agency, entity, political subdivision, public
16 corporation or agency having the authority to acquire, construct or
17 operate solid waste facilities; the United States government or any
18 agency, department, division or unit thereof; and any agency,
19 commission or authority established pursuant to an interstate
20 compact or agreement.

21 (6) "Industrial waste" means any solid waste substance
22 resulting from or incidental to any process of industry,
23 manufacturing, trade or business, or from or incidental to the

1 development, processing or recovery of any natural resource.

2 (7) "Owner" includes all persons, partnerships or governmental
3 agencies having any title or interest in any property rights,
4 easements and interests authorized to be acquired by this article.

5 (8) "Person" means any public or private corporation,
6 institution, association, firm or company organized or existing
7 under the laws of this or any other state or country; the United
8 States or the State of West Virginia; governmental agency;
9 political subdivision; county commission; municipality; industry;
10 sanitary district; public service district; drainage district; soil
11 conservation district; solid waste disposal shed district;
12 partnership; trust; estate; individual; group of individuals acting
13 individually or as a group; or any other legal entity.

14 (9) "Pollution" means the discharge, release, escape or
15 deposit, directly or indirectly, of solid waste of whatever kind or
16 character, on lands or in waters in the state in an uncontrolled,
17 unregulated or unapproved manner.

18 (10) "Revenue" means any money or thing of value collected by,
19 or paid to, the Solid Waste Management Board as rent, use fee,
20 service charge or other charge for use of, or in connection with,
21 any solid waste disposal project, or as principal of or interest,
22 charges or other fees on loans, or any other collections on loans
23 made by the solid waste management board to governmental agencies

1 to finance, in whole or in part, the acquisition or construction of
2 any solid waste development project or projects, or other money or
3 property which is received and may be expended for or pledged as
4 revenues pursuant to this article.

5 (11) "Solid waste" ~~means any garbage, paper, litter, refuse,~~
6 ~~cans, bottles, waste processed for the express purpose of~~
7 ~~incineration, sludge from a waste treatment plant, water supply~~
8 ~~treatment plant or air pollution control facility, other discarded~~
9 ~~material, including offensive or unsightly matter, solid, liquid,~~
10 ~~semisolid or contained liquid or gaseous material resulting from~~
11 ~~industrial, commercial, mining or community activities but does not~~
12 ~~include solid or dissolved material in sewage, or solid or~~
13 ~~dissolved materials in irrigation return flows or industrial~~
14 ~~discharges which are point sources and have permits under article~~
15 ~~five-a, chapter twenty of this code, or source, special nuclear or~~
16 ~~byproduct material as defined by the Atomic Energy Act of 1954, as~~
17 ~~amended, including any nuclear or byproduct material considered by~~
18 ~~federal standards to be below regulatory concern, or a hazardous~~
19 ~~waste either identified or listed under article five-e, chapter~~
20 ~~twenty of this code, or refuse, slurry, overburden or other waste~~
21 ~~or material resulting from coal-fired electric power or steam~~
22 ~~generation, the exploration, development, production, storage and~~
23 ~~recovery of coal, oil and gas, and other mineral resources placed~~

1 ~~or disposed of at a facility which is regulated under chapter~~
2 ~~twenty-two, twenty-two-a or twenty-two-b of this code, so long as~~
3 ~~such placement or disposal is in conformance with a permit issued~~
4 ~~pursuant to said chapters. "Solid waste" does not include~~
5 ~~materials which are recycled by being used or reused in an~~
6 ~~industrial process to make a product, as effective substitutes for~~
7 ~~commercial products, or are returned to the original process as a~~
8 ~~substitute for raw material feedstock~~ means any garbage, paper,
9 litter, refuse, cans, bottles, waste processed for the express
10 purpose of incineration, sludge from a waste treatment plant, water
11 supply treatment plant or air pollution control facility, other
12 discarded material, including offensive or unsightly matter, solid,
13 liquid, semisolid or contained liquid or gaseous material resulting
14 from industrial, commercial, mining or community activities but
15 does not include solid or dissolved material in sewage, or solid or
16 dissolved materials in irrigation return flows or industrial
17 discharges which are point sources and have permits under article
18 eleven, chapter twenty-two of this code, or source, special nuclear
19 or byproduct material as defined by the Atomic Energy Act of 1954,
20 as amended, including any nuclear or byproduct material considered
21 by federal standards to be below regulatory concern, or a hazardous
22 waste either identified or listed under article eighteen, chapter
23 twenty-two of this code, or refuse, slurry, overburden or other

1 waste or material resulting from coal-fired electric power or steam
2 generation, the exploration, development, production, storage and
3 recovery of coal, oil and gas, and other mineral resources placed
4 or disposed of at a facility which is regulated under article two,
5 three, four, six, seven, eight, nine or ten, chapter twenty-two or
6 chapter twenty-two-a of this code, so long as such placement or
7 disposal is in conformance with a permit issued pursuant to said
8 chapters. "Solid waste" does not include materials which are
9 recycled by being used or reused in an industrial process to make
10 a product, as effective substitutes for commercial products, or are
11 returned to the original process as a substitute for raw material
12 feedstock.

13 (12) "Solid waste facility" means any system, facility, land,
14 contiguous land, improvements on land, structures or other
15 appurtenances or methods used for processing, recycling or
16 disposing of solid waste, including landfills, transfer stations,
17 materials recovery facilities and other such facilities not herein
18 specified. Such facility is situated, for purposes of this
19 article, in the county where the majority of the spatial area of
20 such facility is located.

21 (13) "Solid waste disposal project" or "project" means any
22 solid waste facility, wastewater treatment plants, sewer treatment
23 plants, water and sewer systems and connecting pipelines the

1 acquisition or construction of which is authorized by the solid
2 waste management board or any acquisition or construction which is
3 financed, in whole or in part, from funds made available by grant
4 or loan by, or through, the board as provided in this article,
5 including all buildings and facilities which the board deems
6 necessary for the operation of the project, together with all
7 property, rights, easements and interests which may be required for
8 the operation of the project.

9 (14) "Solid waste disposal shed" or "shed" means a
10 geographical area which the solid waste management board designates
11 as provided in section eight of this article for solid waste
12 management.

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

NOTE: The purpose of this bill is to update obsolete definitions of solid waste in §22-15-2 and §22C-3-3, and to make them consistent with the modern definition in code §22C-4-2. This amendment is not for the purpose of changing existing law, but rather to clarify the intent of the Legislature as to the apparently-conflicting definitions of "solid waste" and to correct cross references and other language that render the obsolete definitions meaningless. All the above definitions of "solid waste"

would have been consistent with one-another but for a mistake made during budget week in 1994. A comprehensive bill had just been passed that reorganized, repealed, moved and otherwise amended statutes pertaining to the DEP, including modernizing the definition of "solid waste." However, after the DEP reorganization bill had already passed, the Governor sent up a bill to extend the landfill closure deadline and to authorize bonds to fund loans for landfill closure assistance. The Governor's bill used the old code sections that had just been repealed or amended by the reorganization bill and that no longer existed. That caused old definitions to be recodified in §22-15-2 and §22C-3-3. The error was recently discovered and this bill corrects that error.

In 1997 Judge Stamp declared several sections of our solid waste code unconstitutional because they required landfills to discriminate against out of state waste in violation of the Commerce Clause. The Legislature took corrective action in 1998 to bring our statutes into compliance, including amendments to §22-15-10. However, §22-15-10 should have contained the reference to §22C-4-11, which properly allows (rather than requires) publicly-owned landfills to accept only local waste, to avoid a conflict between the two statutes. This bill adds that language and removes the conflict.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.