

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 601

BY SENATOR BOSO

[Introduced February 15, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §22-15-1, §22-15-2, §22-15-6, §22-15-10 and §22-15-13 of the
 2 Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new
 3 section, designated §22-15-9a; to amend and reenact §22C-4-2 of said code; to amend
 4 said code by adding thereto a new section, designated §22C-4-31; and to amend said
 5 code by adding thereto a new section, designated §24-2-1L, all relating to legislative
 6 findings relating to oil and gas solid waste facility; definitions; applicability of the fee for a
 7 certificate of site approval; promulgation of rules; limits and standards applicable to oil and
 8 gas solid waste facilities; provisions regarding certain permits that will not apply to or be
 9 required of oil and gas solid waste facilities; exception from the jurisdiction of county and
 10 regional solid waste authorities; and exception from the jurisdiction of the Public Service
 11 Commission.

Be it enacted by the Legislature of West Virginia:

1 That §22-15-1, §22-15-2, §22-15-6, §22-15-10 and §22-15-13 of the Code of West
 2 Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding
 3 thereto a new section, designated §22-15-9a; that §22C-4-2 of said code be amended and
 4 reenacted; that said code be amended by adding thereto a new section, designated §22C-4-31;
 5 and that said code be amended by adding thereto a new section, designated §24-2-1L, all to read
 6 as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-1. Purpose and legislative findings.

1 (a) The purpose of this article is to establish a comprehensive program of controlling all
 2 phases of solid waste management.

3 (b) The Legislature finds that solid waste disposal is a universal problem for all of the
 4 United States and that West Virginia is committed to participating in the waste stream market and

5 not interfering with the free flow of solid waste into or out of this state. However, the Legislature
6 also recognizes that solid waste disposal has inherent long-term environmental, health and
7 infrastructure impacts on local communities where the solid waste facilities are located. It is the
8 Legislature's intent to establish reasonable uniform requirements on all waste disposed of in this
9 state regardless of origin. Because of the importance and impact associated with the location and
10 operation of solid waste facilities, this article establishes a thorough and balanced application and
11 regulatory process which provides an efficient and reasonable permitting process while affording
12 the state and its citizens full and fair participation in decisions associated with the location,
13 operation and oversight of the solid waste collection and disposal process.

14 (c) The Legislature further finds that solid waste disposal has inherent risks and negative
15 impact on local communities and specifically finds the following: (1) Uncontrolled, inadequately
16 controlled and improper collection, transportation, processing and disposal of solid waste is a
17 public nuisance and a clear and present danger to people; (2) provides harborages and breeding
18 places for disease-carrying, injurious insects, rodents and other pests harmful to the public health,
19 safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the
20 value of private and public property, causes pollution, blight and deterioration of the natural beauty
21 and resources of the state and has adverse economic and social effects on the state and its
22 citizens; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources
23 contained in solid waste; (6) that resource recovery and recycling reduces the need for landfills
24 and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste
25 is for the general welfare of the citizens of this state.

26 (d) The Legislature further finds that Class A landfills often create special environmental
27 problems that require statewide coordination of the management of such landfills.

28 (e) The Legislature further finds based upon engineering, environmental concerns, land-
29 use planning, transportation system networks, public health, safety and welfare, that the amount
30 of solid waste disposed of by solid waste facilities must be limited in order to protect this state's

31 environment and the public in general against adverse impact.

32 (f) The Legislature further finds that incineration technologies present potentially
33 significant health and environmental problems.

34 (g) The Legislature further finds that there is a need for efforts to continue to evaluate the
35 viability of future incineration technologies that are both environmentally sound and economically
36 feasible.

37 (h) The Legislature further finds that composting large quantities of sewage sludge at a
38 single location can seriously impact the local community where the facility is located. The potential
39 adverse impact of noxious odors and environmental and health hazards requires assurances that
40 local communities are not adversely impacted by the location of sewage sludge composting
41 facilities. Further, the newness of the technology and processes for managing sewage sludge
42 processing require careful and evolving regulatory oversight mechanisms, assuring that sewage
43 sludge processing and composting are properly conducted. Therefore, limitations and
44 qualifications for location and management of sewage sludge processing facilities are a
45 necessary and integral part of the management of solid waste in West Virginia.

46 (i) The Legislature further finds that responsible development of our state's oil and natural
47 gas resources can enhance the economy of our state and the quality of life of our citizens; that
48 the exploration and production of such resources generates waste having unique qualities and
49 characteristics; and that orderly development and efficient regulation of solid waste facilities that
50 accept only waste resulting from the exploration, development, production, storage or recovery of
51 oil and gas is essential to the development of such resources, while assuring the long term
52 protection of the environment.

§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) "Karst terrain" means a terrain, generally underlain by limestone or dolomite, in which
61 the topography is formed chiefly by the dissolving of rock, and which may be characterized by
62 sinkholes, sinking streams, closed depressions, subterranean drainage and caves;

63 ~~(17)~~(18) "Landfill" means any solid waste facility for the disposal of solid waste on or in the
64 land for the purpose of permanent disposal. Such facility is situated, for purposes of this article,
65 in the county where the majority of the spatial area of such facility is located.

66 ~~(18)~~(19) "Materials recovery facility" means any solid waste facility at which source-
67 separated materials or materials recovered through a mixed waste processing facility are
68 manually or mechanically shredded or separated for purposes of reuse and recycling, but does
69 not include a composting facility.

70 ~~(19)~~(20) "Mature compost" means compost which has been produced in an aerobic,
71 microbial, thermophilic manner and does not exhibit phytotoxic effects.

72 ~~(20)~~(21) "Mixed solid waste" means solid waste from which materials sought to be reused
73 or recycled have not been source-separated from general solid waste.

74 ~~(21)~~(22) "Mixed waste processing facility" means any solid waste facility at which materials
75 are recovered from mixed solid waste through manual or mechanical means for purposes of
76 reuse, recycling or composting.

77 ~~(22)~~(23) "Municipal solid waste incineration" means the burning of any solid waste
78 collected by any municipal or residential solid waste disposal company.

79 (24) "Oil and gas solid waste facility" means a commercial solid waste facility that accepts
80 only waste resulting from the exploration, development, production, storage or recovery of oil and
81 gas.

82 ~~(23)~~(25) "Open dump" means any solid waste disposal which does not have a permit under
83 this article, or is in violation of state law, or where solid waste is disposed in a manner that does
84 not protect the environment.

85 ~~(24)~~(26) "Person" or "persons" means any industrial user, public or private corporation,
86 institution, association, firm or company organized or existing under the laws of this or any other
87 state or country; State of West Virginia; governmental agency, including federal facilities; political
88 subdivision; county commission; municipal corporation; industry; sanitary district; public service
89 district; drainage district; soil conservation district; watershed improvement district; partnership;
90 trust; estate; person or individual; group of persons or individuals acting individually or as a group;
91 or any legal entity whatever.

92 ~~(25)~~(27) "Publicly owned treatment works" means any treatment works owned by the state
93 or any political subdivision thereof, any municipality or any other public entity which processes
94 raw domestic, industrial or municipal sewage by any artificial or natural processes in order to
95 remove or so alter constituents as to render the waste less offensive or dangerous to the public
96 health, comfort or property of any of the inhabitants of this state before the discharge of the plant
97 effluent into any of the waters of this state, and which produces sewage sludge.

98 ~~(26)~~(28) "Recycling facility" means any solid waste facility for the purpose of recycling at
99 which neither land disposal nor biological, chemical or thermal transformation of solid waste
100 occurs: *Provided*, That mixed waste recovery facilities, sludge processing facilities and
101 composting facilities are not considered recycling facilities nor considered to be reusing or
102 recycling solid waste within the meaning of this article, article fifteen-a of this chapter and article
103 four, chapter twenty-two-c of this code.

104 ~~(27)~~(29) "Sewage sludge" means solid, semisolid or liquid residue generated during the
105 treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited
106 to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater
107 treatment processes and a material derived from sewage sludge. "Sewage sludge" does not

108 include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

109 ~~(28)~~(30) "Secretary" means the Secretary of the Department of Environmental Protection
110 or such other person to whom the Secretary has delegated authority or duties pursuant to article
111 one of this chapter.

112 ~~(29)~~(31) "Sewage sludge processing facility" is a solid waste facility that processes
113 sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill.
114 Such processes include, but are not limited to, composting, lime stabilization, thermophilic,
115 microbial and anaerobic digestion.

116 ~~(30)~~(32) "Sludge" means any solid, semisolid, residue or precipitate, separated from or
117 created by a municipal, commercial or industrial waste treatment plant, water supply treatment
118 plant or air pollution control facility or any other such waste having similar origin.

119 ~~(34)~~(33) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste
120 processed for the express purpose of incineration; sludge from a waste treatment plant; water
121 supply treatment plant or air pollution control facility; and other discarded materials, including
122 offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material
123 resulting from industrial, commercial, mining or community activities but does not include solid or
124 dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial
125 discharges which are point sources and have permits under article five-a of this chapter, or
126 source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as
127 amended, including any nuclear or byproduct material considered by federal standards to be
128 below regulatory concern, or a hazardous waste either identified or listed under article five-e of
129 this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired
130 electric power or steam generation, the exploration, development, production, storage and
131 recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which
132 is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as
133 placement or disposal is in conformance with a permit issued pursuant to such chapters.

134 ~~(32)~~(34) "Solid waste disposal" means the practice of disposing of solid waste including
135 placing, depositing, dumping or throwing or causing any solid waste to be placed, deposited,
136 dumped or thrown.

137 ~~(33)~~(35) "Solid waste disposal shed" means the geographical area which the solid waste
138 management board designates and files in the state register pursuant to section eight, article
139 twenty-six, chapter sixteen of this code.

140 ~~(34)~~(36) "Solid waste facility" means any system, facility, land, contiguous land,
141 improvements on the land, structures or other appurtenances or methods used for processing,
142 recycling or disposing of solid waste, including landfills, transfer stations, materials recovery
143 facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial
144 composting facilities and other such facilities not herein specified, but not including land upon
145 which sewage sludge is applied in accordance with section twenty of this article. Such facility shall
146 be deemed to be situated, for purposes of this article, in the county where the majority of the
147 spatial area of such facility is located: *Provided*, That a salvage yard, licensed and regulated
148 pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste
149 facility.

150 ~~(35)~~(37) "Solid waste facility operator" means any person or persons possessing or
151 exercising operational, managerial or financial control over a commercial solid waste facility,
152 whether or not such person holds a certificate of convenience and necessity or a permit for such
153 facility.

154 ~~(36)~~(38) "Source-separated materials" means materials separated from general solid
155 waste at the point of origin for the purpose of reuse and recycling but does not mean sewage
156 sludge.

§22-15-6. Fee for filing a certificate of site approval.

1 ~~The~~ Where applicable, the fee for the certificate of site approval is \$25 payable upon the
2 filing of the application therefor with the county, county solid waste authority or regional solid

3 waste authority, as the case may be.

§ 22-15-9a. Limits on oil and gas solid waste facilities; rulemaking.

1 (a) Except as is expressly set forth in this section, sections eight and nine of this article do
2 not apply to an oil and gas solid waste facility.

3 (b) The secretary shall establish a limit on the amount of solid waste received or disposed
4 of per month in an oil and gas solid waste facility. In determining an oil and gas solid waste
5 facility's monthly tonnage limit, the secretary shall consider a facility's design and operating
6 procedures, and the adequacy of its equipment, personnel and wastewater management plan.

7 (c) Oil and gas solid waste facilities shall comply with subdivision (h), section eight, article
8 fifteen of this chapter: *Provided*, That the secretary may in his or her discretion establish rules,
9 limits and standards applicable only to oil and gas solid waste facilities that are separate and
10 distinct from those applicable to other solid waste facilities that may permissibly accept drill
11 cuttings and drilling waste.

12 (d) The secretary may require additional safeguards in connection with the development
13 and operation of an oil and gas solid waste facility, to protect naturally occurring karst terrain, and
14 may promulgate emergency and legislative rules in accordance with the provisions of chapter
15 twenty-nine-a of this code to establish standards for the development and operation of oil and gas
16 solid waste facilities located in a county that is, in whole or in part, within a karst region as
17 determined by the West Virginia Geologic and Economic Survey. The rules shall, at a minimum:

18 (1) Require operators to perform certain testing to identify the location of caves and other
19 voids, faults and relevant features in the strata and the location of surface features prevalent in
20 naturally occurring karst terrain such as sink holes; and

21 (2) Provide any other requirements deemed necessary by the secretary to protect the
22 unique characteristics of naturally occurring karst terrain, which requirements may include
23 baseline water testing within an established distance from the facility.

24 (e) Nothing in this section allows the department to prevent the development and operation

25 of an oil and gas solid waste facility in naturally occurring karst terrain.

§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, 1988, 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, 1988, 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, 1988, 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 this
52 subsection does not apply to oil and gas solid waste facilities.

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

§22-15-13. Presiting notice.

1 Any person investigating an area for the purpose of siting a commercial solid waste facility
2 where no current solid waste permit exists, in order to determine a feasible, approximate location,
3 shall prior to filing an application for a solid waste permit publish a Class II legal advertisement in
4 a qualified newspaper serving the county where the proposed site is to be located. Such notice
5 shall inform the public of the location, nature and other details of the proposed activity as
6 prescribed in rules promulgated by the director. Within five days of such publication such person
7 shall file with the director a presiting notice, which shall be made in writing on forms prescribed
8 by the director and shall be signed and verified by the applicant. Such notice shall contain a
9 certification of publication from a qualified newspaper, description of the area, the period of
10 investigative review, a United States geological survey topographic map and a map showing the
11 location of property boundaries of the area proposed for siting and other such information as
12 required by rules promulgated pursuant to this section. The director shall hold a public hearing on
13 the presiting notice in the area potentially affected. The director shall define presiting activities by
14 promulgating legislative rules pursuant to chapter twenty-nine-a of this code. For facilities other
15 than oil and gas solid waste facilities, the presiting notice, as prescribed by the director, shall also
16 be filed with the county or regional solid waste authority, established pursuant to article four,
17 chapter twenty-two-c of this code, according to the county or region in which the proposed site is
18 located within five days of the publication of the notice.

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

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.**§22C-4-2. Definitions.**

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

2 (a) "Approved solid waste facility" means a commercial solid waste facility or practice
3 which has a valid permit or compliance order under article fifteen, chapter twenty-two of this code.

4 (b) "Commercial solid waste facility" means any solid waste facility which accepts solid
5 waste generated by sources other than the owner or operator of the facility and does not include
6 an approved solid waste facility owned and operated by a person for the sole purpose of disposing
7 of solid wastes created by that person or that person and another person on a cost-sharing or
8 nonprofit basis and does not include land upon which reused or recycled materials are legitimately
9 applied for structural fill, road base, mine reclamation and similar applications. "Commercial solid
10 waste facility" does not include a commercial solid waste facility which accepts only waste
11 resulting from the exploration, development, production, storage and recovery of oil and gas.

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

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

20 (e) "Class B facility" means a commercial solid waste facility which receives or is expected
21 to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons
22 each working day, or serves or is expected to serve a population equal to or exceeding forty

23 thousand persons, but which does not receive solid waste exceeding an aggregate of ten
24 thousand tons per month. Class B facilities do not include construction/demolition facilities:
25 *Provided*, That the definition of Class B facility may include such reasonable subdivisions or
26 subclassifications as the director may establish by legislative rule proposed in accordance with
27 the provisions of chapter twenty-nine-a of this code.

28 (f) "Compliance order" means an administrative order issued pursuant to section ten,
29 article fifteen, chapter twenty-two of this code authorizing a solid waste facility to operate without
30 a solid waste permit.

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

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

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

44 (j) ~~"Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed~~
45 ~~for the express purpose of incineration, sludge from a waste treatment plant, water supply~~
46 ~~treatment plant or air pollution control facility, other discarded material, including offensive or~~
47 ~~unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from~~
48 ~~industrial, commercial, mining or community activities but does not include solid or dissolved~~

49 ~~material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges~~
50 ~~which are point sources and have permits under article eleven, chapter twenty-two of this code,~~
51 ~~or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as~~
52 ~~amended, including any nuclear or byproduct material considered by federal standards to be~~
53 ~~below regulatory concern, or a hazardous waste either identified or listed under article eighteen,~~
54 ~~chapter twenty-two of this code, or refuse, slurry, overburden or other waste or material resulting~~
55 ~~from coal-fired electric power or steam generation, the exploration, development, production,~~
56 ~~storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a~~
57 ~~facility which is regulated under article two, three, four, six, seven, eight, nine or ten, chapter~~
58 ~~twenty-two or chapter twenty-two-a of this code, so long as such placement or disposal is in~~
59 ~~conformance with a permit issued pursuant to said chapters. "Solid waste" does not include~~
60 ~~materials which are recycled by being used or reused in an industrial process to make a product,~~
61 ~~as effective substitutes for commercial products, or are returned to the original process as a~~
62 ~~substitute for raw material feedstock. "Solid waste" means any garbage, paper, litter, refuse,~~
63 ~~cans, bottles, waste processed for the express purpose of incineration; sludge from a waste~~
64 ~~treatment plant; water supply treatment plant or air pollution control facility; and other discarded~~
65 ~~materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or~~
66 ~~gaseous material resulting from industrial, commercial, mining or community activities but does~~
67 ~~not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return~~
68 ~~flows or industrial discharges which are point sources and have permits under article five-a of this~~
69 ~~chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of~~
70 ~~1954, as amended, including any nuclear or byproduct material considered by federal standards~~
71 ~~to be below regulatory concern, or a hazardous waste either identified or listed under article five-~~
72 ~~e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired~~
73 ~~electric power or steam generation, the exploration, development, production, storage and~~
74 ~~recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which~~

75 is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as
76 placement or disposal is in conformance with a permit issued pursuant to such chapters.

77 (k) "Solid waste disposal" means the practice of disposing of solid waste including placing,
78 depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid
79 waste.

80 (l) "Solid waste disposal shed" means the geographical area which the solid waste
81 management board designates and files in the state register pursuant to section nine, article three
82 of this chapter.

83 (m) "Solid waste facility" means any system, facility, land, contiguous land, improvements
84 on the land, structures or other appurtenances or methods used for processing, recycling or
85 disposing of solid waste, including landfills, transfer stations, resource-recovery facilities and other
86 such facilities not herein specified. Such facility is situated, for purposes of this article, in the
87 county where the majority of the spatial area of such facility is located.

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

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

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

98 (q) "Materials recovery facility" means any solid waste facility at which solid wastes are
99 manually or mechanically shredded or separated so that materials are recovered from the general
100 waste stream for purposes of reuse and recycling.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§ 22C-4-31. Provisions not applicable to oil and gas solid waste facility.

1 The provisions of this article do not apply to oil and gas solid waste facilities as defined by
2 chapter twenty-two, article fifteen, section two of this code, and no authority established pursuant
3 to the provisions of this article has jurisdiction with respect to any such oil and gas solid waste
4 facility.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§ 24-2-1L. Commission jurisdiction does not extend to oil and gas solid waste facilities.

1 Notwithstanding any other provision of this code, the jurisdiction of the commission does
2 not extend to oil and gas solid waste facilities as defined by chapter twenty-two, article fifteen,
3 section two of this code, and the provisions of this chapter twenty-four are inapplicable to any
4 such oil and gas solid waste facility.

NOTE: The purpose of this bill is to simplify the procedure for issuing permits for solid waste facilities which accept only waste resulting from the exploration, development, production, storage and recovery of oil and gas. The bill makes the West Virginia Department of Environmental Protection the principal regulatory agency for such facilities, and clarifies that the Public Service Commission and County/Regional Solid Waste Authorities have no jurisdiction or authority with respect to such facilities.

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