

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 146

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on January 18, 2018]

1 A BILL to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended, relating
2 to correcting technical errors within the Solid Waste Management Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§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 The compliance schedule shall contain an enforceable sequence of actions leading to compliance
5 and shall not exceed two years. Open dumps operated prior to April 1, ~~1998~~ 1988, by a landowner
6 or tenant for the disposal of solid waste generated by the landowner or tenant at his or her
7 residence or farm, are not a violation of this section, if ~~such the~~ open dump ~~did not constitute~~ was
8 not a violation of law on January 1, ~~1998~~ 1988, and unauthorized dumps which were created by
9 unknown persons ~~do not constitute~~ are not a violation of this section: *Provided*, That ~~no~~ a person
10 may not contribute additional solid waste to any such dump after April 1, ~~1998~~ 1988, except that
11 ~~the owners of the land~~ landowners on which unauthorized dumps have been or are being made
12 are not liable for ~~such the~~ unauthorized dumping unless ~~such the~~ landowners refuse to cooperate
13 with the division in stopping ~~such the~~ unauthorized 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
17 abandoned in accordance with §22-15-1 *et seq.* of this code, plans, specifications, orders,
18 instructions, and rules in effect.

19 (c) Any permit issued under §22-15-1 *et seq.* of this code shall be issued in compliance
20 with the requirements of §22-15-1 *et seq.* of this code, its rules and §22-11-1 *et seq.* of this code
21 and the rules, promulgated ~~thereunder~~ under §22-11-1 et seq. of this code, so that only a single

22 permit is required of a solid waste facility under ~~these~~ those two articles. Each permit issued under
23 §22-15-1 *et seq.* of this code shall have a fixed term not to exceed five years: *Provided*, That the
24 director may administratively extend a permit beyond its five-year term, if the approved solid waste
25 facility is in compliance with §22-15-1 *et seq.* of this code, its rules, and §22-11-1 *et seq.* of this
26 code and the rules promulgated ~~thereunder~~ under §22-11-1 *et seq.* of this code: *Provided*,
27 *however*, That ~~such~~ the administrative extension may not be for more than one year. Upon
28 expiration of a permit, the division may issue renewal permits ~~may be issued~~ in compliance with
29 rules promulgated by the director.

30 (d) For existing solid waste facilities which formerly held division of health permits which
31 expired by law and for which complete permit applications for new permits pursuant to §22-15-1
32 *et seq.* of this code were submitted as required by law, the division may enter an administrative
33 order to govern solid waste activities at ~~such~~ the facilities, which may include a compliance
34 schedule, consistent with the requirements of the division's solid waste management rules, to be
35 effective until final action is taken to issue or deny a permit for ~~such~~ the facility pursuant to §22-
36 15-1 *et seq.* of this code, or until further order of the division.

37 (e) ~~No~~ A person may not dispose ~~in the state~~ of any solid waste in this state in a manner
38 which endangers the environment or the public health, safety, or welfare as determined by the
39 director: *Provided*, That the carcasses of dead animals may be disposed of in any solid waste
40 facility or in any other manner as provided for in this code. Upon request by the director, the
41 Commissioner of the Bureau ~~of~~ for Public Health shall provide technical advice concerning the
42 disposal of solid waste or carcasses of dead animals within the state.

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

45 (g) In addition to all the requirements of §22-15-1 *et seq.* of this code and the rules
46 promulgated ~~hereunder~~ under §22-15-1 *et seq.* of this code, the division may not issue a permit
47 to construct a new commercial solid waste facility or to expand the spatial area of an existing

48 facility, ~~may not be issued~~ unless the Public Service Commission has granted a certificate of
49 need, as provided in §24-2-1c of this code. ~~If the director approves a permit or permit modification,~~
50 ~~the certificate of need shall become a part of the permit and all conditions contained in the~~
51 ~~certificate of need shall be conditions of the permit and may be enforced by the division in~~
52 ~~accordance with the provisions of this article~~ If the director approves a permit or permit
53 modification, the certificate of need shall become a part of the permit and all conditions contained
54 in the certificate of need shall be conditions of the permit and may be enforced by the division in
55 accordance with the provisions of §22-15-1 *et seq.* of this code: *Provided*, That the provisions of
56 this subsection do not apply to materials recovery facilities or mixed waste processing facilities
57 as defined by §22-15-2 of this code, except within a 35-mile radius of a facility sited in a karst
58 geological region and which has been permitted by the West Virginia Department of
59 Environmental Protection as a mixed waste processing facility and has received a certificate of
60 need by July 1, 2016.

61 (h) The director shall ~~promulgate~~ propose legislative rules for promulgation pursuant to
62 §29A-3-1 *et seq.* of this code which reflect the purposes as set forth in this section.