

SB 130

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



## ENROLLED

*Committee Substitute for*

SENATE BILL NO. 130

(By Senators Miller and Withers)



PASSED March 12, 1994

In Effect from Passage

**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 130**

(SENATORS MILLER AND WITHERS, *original sponsors*)

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[Passed March 12, 1994; in effect from passage.]

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AN ACT to amend and reenact section three, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, five-a, and eight, article five-f; sections five and seven, article five-n; sections five and eight, article eleven, all of chapter twenty of said code; and to amend and reenact section one-i, article two, chapter twenty-four of said code, all relating to solid waste; adding definitions; authorizing a special extension of the landfill closure deadline up to the thirty-first day of December, one thousand nine hundred ninety-four; allowing certain permittees who satisfy certain requirements to satisfy repayment obligation of the solid waste assessment fee; authorizing the director of the division of environmental protection to assist certain solid waste facilities by allowing the pledge of certain funds to satisfy loan requirements; authorizing an implementation date for certain recyclable materials of the first day of July, one thousand nine hundred ninety-five; extending the yard waste prohibition until the first day of June, one thousand nine

hundred ninety-six; exempting certain recycling facilities from the necessity of obtaining certificates of need and public service commission jurisdiction; and exempting the public service commission from being required to make certain determinations regarding existing commercial solid waste disposal facilities.

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

That section three, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, five-a and eight, article five-f, chapter twenty be amended and reenacted; that section seven, article five-n of said chapter be amended and reenacted; that sections five and eight, article eleven of said chapter be amended and reenacted; and that section one-i, article two, chapter twenty-four of said code be amended and reenacted, all to read as follows:

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.**

#### **§16-26-3. Definitions.**

1 As used in this article, unless the context clearly  
2 requires a different meaning:

3 (1) "Board" means the solid waste management  
4 board created in section four of this article, heretofore  
5 known as the West Virginia state solid waste authority,  
6 the duties, powers, responsibilities and functions of  
7 which are specified in this article. All references in  
8 this code to the West Virginia resource recovery —  
9 solid waste disposal authority shall be construed as  
10 references to the solid waste management board.

11 (2) "Bond" or "solid waste disposal revenue bond"  
12 means a revenue bond or note issued by the solid  
13 waste management board, heretofore known as the  
14 West Virginia resource recovery — solid waste disposal  
15 authority, to effect the intents and purposes of this  
16 article.

17 (3) "Construction" includes reconstruction, enlarge-  
18 ment, improvement and providing furnishings or

19 equipment for a solid waste disposal project.

20 (4) "Cost" means, as applied to solid waste disposal  
21 projects, the cost of their acquisition and construction;  
22 the cost of acquisition of all land, rights-of-way,  
23 property, rights, easements, franchise rights and  
24 interests required by the board for such acquisition  
25 and construction; the cost of demolishing or removing  
26 any buildings or structures on land so acquired,  
27 including the cost of acquiring any land to which such  
28 buildings or structures may be moved; the cost of  
29 diverting highways, interchange of highways and  
30 access roads to private property, including the cost of  
31 land or easements therefor; the cost of all machinery,  
32 furnishings and equipment; all financing charges and  
33 interest prior to and during construction and for no  
34 more than eighteen months after completion of con-  
35 struction; the cost of all engineering services and all  
36 expenses of research and development with respect to  
37 solid waste facilities; the cost of all legal services and  
38 expenses; the cost of all plans, specifications, surveys  
39 and estimates of cost and revenues; all working capital  
40 and other expenses necessary or incident to determin-  
41 ing the feasibility or practicability of acquiring or  
42 constructing any such project; all administrative  
43 expenses and such other expenses as may be necessary  
44 or incident to the acquisition or construction of the  
45 project; the financing of such acquisition or construc-  
46 tion, including the amount authorized in the resolu-  
47 tion of the board providing for the issuance of solid  
48 waste disposal revenue bonds to be paid into any  
49 special funds from the proceeds of such bonds; and the  
50 financing of the placing of any such project in opera-  
51 tion. Any obligation or expenses incurred after the  
52 effective date of this article by any governmental  
53 agency, with the approval of the board, for surveys,  
54 borings, preparation of plans and specifications and  
55 other engineering services in connection with the  
56 acquisition or construction of a project shall be  
57 regarded as a part of the cost of such project and shall  
58 be reimbursed out of the proceeds of loans or solid  
59 waste disposal revenue bonds as authorized by the  
60 provisions of this article.

61 (5) "Governmental agency" means the state govern-  
62 ment or any agency, department, division or unit  
63 thereof; counties; municipalities; watershed improve-  
64 ment districts; soil conservation districts; sanitary  
65 districts; public service districts; drainage districts;  
66 regional governmental authorities and any other  
67 governmental agency, entity, political subdivision,  
68 public corporation or agency having the authority to  
69 acquire, construct or operate solid waste facilities; the  
70 United States government or any agency, department,  
71 division or unit thereof; and any agency, commission  
72 or authority established pursuant to an interstate  
73 compact or agreement.

74 (6) "Industrial waste" means any solid waste sub-  
75 stance resulting from or incidental to any process of  
76 industry, manufacturing, trade or business, or from or  
77 incidental to the development, processing or recovery  
78 of any natural resource.

79 (7) "Owner" includes all persons, partnerships or  
80 governmental agencies having any title or interest in  
81 any property rights, easements and interests autho-  
82 rized to be acquired by this article.

83 (8) "Person" means any public or private corpora-  
84 tion, institution, association, firm or company organ-  
85 ized or existing under the laws of this or any other  
86 state or country; the United States or the state of West  
87 Virginia; governmental agency; political subdivision;  
88 county commission; municipality; industry; sanitary  
89 district; public service district; drainage district; soil  
90 conservation district; solid waste disposal shed district;  
91 partnership; trust; estate; individual; group of individ-  
92 uals acting individually or as a group; or any other  
93 legal entity whatever.

94 (9) "Pollution" means the discharge, release, escape  
95 or deposit, directly or indirectly, of solid waste of  
96 whatever kind or character, on lands or in waters in  
97 the state in an uncontrolled, unregulated or unap-  
98 proved manner.

99 (10) "Revenue" means any money or thing of value  
100 collected by, or paid to, the solid waste management

101 board as rent, use fee, service charge or other charge  
102 for use of, or in connection with, any solid waste  
103 disposal project, or as principal of or interest, charges  
104 or other fees on loans, or any other collections on loans  
105 made by the solid waste management board to govern-  
106 mental agencies to finance in whole or in part the  
107 acquisition or construction of any solid waste develop-  
108 ment project or projects, or other money or property  
109 which is received and may be expended for or pledged  
110 as revenues pursuant to this article.

111 (11) "Solid waste" means any garbage, paper, litter,  
112 refuse, cans, bottles, waste processed for the express  
113 purpose of incineration, sludge from a waste treatment  
114 plant, water supply treatment plant or air pollution  
115 control facility, other discarded material, including  
116 offensive or unsightly matter, solid, liquid, semisolid  
117 or contained liquid or gaseous material resulting from  
118 industrial, commercial, mining or community activi-  
119 ties but does not include solid or dissolved material in  
120 sewage, or solid or dissolved materials in irrigation  
121 return flows or industrial discharges which are point  
122 sources and have permits under article five-a, chapter  
123 twenty of this code, or source, special nuclear or by-  
124 product material as defined by the Atomic Energy Act  
125 of 1954, as amended, including any nuclear or by-  
126 product material considered by federal standards to be  
127 below regulatory concern, or a hazardous waste either  
128 identified or listed under article five-e, chapter twenty  
129 of this code, or refuse, slurry, overburden or other  
130 waste or material resulting from coal-fired electric  
131 power or steam generation, the exploration, develop-  
132 ment, production, storage and recovery of coal, oil and  
133 gas, and other mineral resources placed or disposed of  
134 at a facility which is regulated under chapter twenty-  
135 two, twenty-two-a or twenty-two-b of this code, so  
136 long as such placement or disposal is in conformance  
137 with a permit issued pursuant to said chapters. "Solid  
138 waste" shall also not include materials which are  
139 recycled by being used or reused in an industrial  
140 process to make a product, as effective substitutes for  
141 commercial products, or are returned to the original  
142 process as a substitute for raw material feedstock.

143 (12) "Solid waste facility" means any system, facili-  
144 ty, land, contiguous land, improvements on land,  
145 structures or other appurtenances or methods used for  
146 processing, recycling or disposing of solid waste,  
147 including landfills, transfer stations, materials recov-  
148 ery facilities and other such facilities not herein  
149 specified. Such facility shall be deemed to be situated,  
150 for purposes of this article, in the county where the  
151 majority of the spatial area of such facility is located.

152 (13) "Solid waste disposal project" or "project"  
153 means any solid waste facility, wastewater treatment  
154 plants, sewer treatment plants, water and sewer  
155 systems and connecting pipelines the acquisition or  
156 construction of which is authorized by the solid waste  
157 management board or any acquisition or construction  
158 which is financed in whole or in part from funds made  
159 available by grant or loan by, or through, the board as  
160 provided in this article, including all buildings and  
161 facilities which the board deems necessary for the  
162 operation of the project, together with all property,  
163 rights, easements and interests which may be required  
164 for the operation of the project.

165 (14) "Solid waste disposal shed" or "shed" means a  
166 geographical area which the solid waste management  
167 board designates as provided in section eight of this  
168 article for solid waste management.

169 (15) "Solid waste facility operator" means any  
170 person or persons possessing or exercising operational,  
171 managerial or financial control over a commercial  
172 solid waste facility, whether or not such person holds  
173 a certificate of convenience and necessity or a permit  
174 for such facility.

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.**

#### **§20-5F-2. Definitions.**

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

3 (a) "Approved solid waste facility" means a solid

4 waste facility or practice which has a valid permit  
5 under this article.

6 (b) "Backhauling" means the practice of using the  
7 same container to transport solid waste and to trans-  
8 port any substance or material used as food by  
9 humans, animals raised for human consumption or  
10 reusable item which may be refilled with any sub-  
11 stance or material used as food by humans.

12 (c) "Chief" means the chief of the office of waste  
13 management of the division of environmental  
14 protection.

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

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

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

35 (g) "Division" means the division of environmental  
36 protection.

37 (h) "Director" means the director of the division of  
38 environmental protection.

39 (i) "Open dump" means any solid waste disposal  
40 which does not have a permit under this article, or is  
41 in violation of state law, or where solid waste is



42 disposed in a manner that does not protect the  
43 environment.

44 (j) "Person" or "persons" mean any industrial user,  
45 public or private corporation, institution, association,  
46 firm or company organized or existing under the laws  
47 of this or any other state or country; state of West  
48 Virginia; governmental agency, including federal  
49 facilities; political subdivision; county commission;  
50 municipal corporation; industry; sanitary district;  
51 public service district; drainage district; soil conserva-  
52 tion district; watershed improvement district; partner-  
53 ship; trust; estate; person or individual; group of  
54 persons or individuals acting individually or as a  
55 group; or any legal entity whatever.

56 (k) "Sludge" means any solid, semisolid, residue or  
57 precipitate, separated from or created by a municipal,  
58 commercial or industrial waste treatment plant, water  
59 supply treatment plant or air pollution control facility  
60 or any other such waste having similar origin.

61 (l) "Solid waste" means any garbage, paper, litter,  
62 refuse, cans, bottles, waste processed for the express  
63 purpose of incineration; sludge from a waste treatment  
64 plant; water supply treatment plant or air pollution  
65 control facility; and other discarded materials, includ-  
66 ing offensive or unsightly matter, solid, liquid, semisol-  
67 id or contained liquid or gaseous material resulting  
68 from industrial, commercial, mining or community  
69 activities but does not include solid or dissolved  
70 material in sewage or solid or dissolved materials in  
71 irrigation return flows or industrial discharges which  
72 are point sources and have permits under article five-  
73 a of this chapter, or source, special nuclear or by-  
74 product material as defined by the Atomic Energy Act  
75 of 1954, as amended, including any nuclear or by-  
76 product material considered by federal standards to be  
77 below regulatory concern, or a hazardous waste either  
78 identified or listed under article five-e of this chapter  
79 or refuse, slurry, overburden or other wastes or  
80 material resulting from coal-fired electric power or  
81 steam generation, the exploration, development,  
82 production, storage and recovery of coal, oil and gas

83 and other mineral resources placed or disposed of at a  
84 facility which is regulated under chapter twenty-two,  
85 twenty-two-a or twenty-two-b of this code, so long as  
86 such placement or disposal is in conformance with a  
87 permit issued pursuant to such chapters.

88 (m) "Solid waste disposal" means the practice of  
89 disposing of solid waste including placing, depositing,  
90 dumping or throwing or causing to be placed, deposit-  
91 ed, dumped or thrown any solid waste.

92 (n) "Solid waste disposal shed" means the geograph-  
93 ical area which the solid waste management board  
94 designates and files in the state register pursuant to  
95 section eight, article twenty-six, chapter sixteen of this  
96 code.

97 (o) "Solid waste facility" means any system, facility,  
98 land, contiguous land, improvements on the land,  
99 structures or other appurtenances or methods used for  
100 processing, recycling or disposing of solid waste,  
101 including landfills, transfer stations, materials recov-  
102 ery facilities, mixed waste processing facilities, sewage  
103 sludge processing facilities, composting facilities and  
104 other such facilities not herein specified, but not  
105 including land upon which sewage sludge is applied in  
106 accordance with subsection (b), section two-b of this  
107 article. Such facility shall be deemed to be situated, for  
108 purposes of this article, in the county where the  
109 majority of the spatial area of such facility is located:  
110 *Provided*, That a salvage yard, licensed and regulated  
111 pursuant to the terms of article twenty-three, chapter  
112 seventeen of this code, is not a solid waste facility.

113 (p) "Solid waste facility operator" means any person  
114 or persons possessing or exercising operational, mana-  
115 gerial or financial control over a commercial solid  
116 waste facility, whether or not such person holds a  
117 certificate of convenience and necessity or a permit for  
118 such facility.

119 (q) "Class A facility" means a commercial solid  
120 waste facility which handles an aggregate of between  
121 ten thousand and thirty thousand tons of solid waste  
122 per month. Class A facility shall include two or more

123 Class B solid waste landfills owned or operated by the  
124 same person in the same county, if the aggregate tons  
125 of solid waste handled per month by such landfills  
126 exceeds nine thousand nine hundred ninety-nine tons  
127 of solid waste per month.

128 (r) "Applicant" means the person applying for a  
129 commercial solid waste facility permit or similar  
130 renewal permit and any person related to such person  
131 by virtue of common ownership, common manage-  
132 ment or family relationships as the director of the  
133 division of environmental protection may specify,  
134 including the following: Spouses, parents and children  
135 and siblings.

136 (s) "Energy recovery incinerator" means any solid  
137 waste facility at which solid wastes are incinerated  
138 with the intention of using the resulting energy for  
139 the generation of steam, electricity or any other use  
140 not specified herein.

141 (t) "Incineration technologies" means any technolo-  
142 gy that uses controlled flame combustion to thermally  
143 break down solid waste, including refuse-derived fuel,  
144 to an ash residue that contains little or no combustible  
145 materials, regardless of whether the purpose is pro-  
146 cessing, disposal, electric or steam generation or any  
147 other method by which solid waste is incinerated.

148 (u) "Incinerator" means an enclosed device using  
149 controlled flame combustion to thermally break down  
150 solid waste, including refuse-derived fuel, to an ash  
151 residue that contains little or no combustible materials.

152 (v) "Materials recovery facility" means any solid  
153 waste facility at which source-separated materials or  
154 materials recovered through a mixed waste processing  
155 facility are manually or mechanically shredded or  
156 separated for purposes of reuse and recycling, but does  
157 not include a composting facility.

158 (w) "Source-separated materials" means materials  
159 separated from general solid waste at the point of  
160 origin for the purpose of reuse and recycling but does  
161 not mean sewage sludge.

162 (x) "Mixed waste processing facility" means any  
163 solid waste facility at which materials are recovered  
164 from mixed solid waste through manual or mechanical  
165 means for purposes of reuse, recycling or composting.

166 (y) "Mixed solid waste" means solid waste from  
167 which materials sought to be reused or recycled have  
168 not been source-separated from general solid waste.

169 (z) "Composting facility" means any solid waste  
170 facility processing solid waste by composting, including  
171 sludge composting, organic waste or yard waste com-  
172 posting, but does not include a facility for composting  
173 solid waste that is located at the site where the waste  
174 was generated.

175 (aa) "Recycling facility" means any solid waste  
176 facility for the purpose of recycling at which neither  
177 land disposal nor biological, chemical or thermal  
178 transformation of solid waste occurs: *Provided*, That  
179 mixed waste recovery facilities, sludge processing  
180 facilities and composting facilities are not considered  
181 recycling facilities nor considered to be reusing or  
182 recycling solid waste within the meaning of this article  
183 and articles nine and eleven of this chapter.

184 (bb) "Landfill" means any solid waste facility for the  
185 disposal of solid waste on land. Such facility is situated,  
186 for purposes of this article, in the county where the  
187 majority of the spatial area of such facility is located.

188 (cc) "Sewage sludge processing facility" is a solid  
189 waste facility that processes sewage sludge for land  
190 application, incineration or disposal at an approved  
191 landfill. Such processes include, but are not limited to,  
192 composting, lime stabilization, thermophilic digestion  
193 and anaerobic digestion.

194 (dd) "Bulking agent" means any material mixed and  
195 composted with sewage sludge.

196 (ee) "Sewage sludge" means solid, semisolid or  
197 liquid residue generated during the treatment of  
198 domestic sewage in a treatment works. Sewage sludge  
199 includes, but is not limited to, domestic septage, scum  
200 or solids removed in primary, secondary or advanced

201 wastewater treatment processes and a material  
202 derived from sewage sludge. "Sewage sludge" does not  
203 include ash generated during the firing of sewage  
204 sludge in a sewage sludge incinerator.

205 (ff) "Composting" means the aerobic, thermophilic  
206 decomposition of natural constituents of solid waste to  
207 produce a stable, humus-like material.

208 (gg) "Agronomic rate" means the whole sewage  
209 sludge application rate, by dry weight, designed:

210 (1) To provide the amount of nitrogen needed by the  
211 food crop, feed crop, fiber crop, cover crop or vegeta-  
212 tion on the land; and

213 (2) To minimize the amount of nitrogen in the  
214 sewage sludge that passes below the root zone of the  
215 crop or vegetation grown on the land to the ground  
216 water.

**§20-5F-5a. Solid waste assessment fee; penalties.**

1 (a) *Imposition.* — A solid waste assessment fee is  
2 hereby imposed upon the disposal of solid waste at any  
3 solid waste disposal facility in this state in the amount  
4 of one dollar and seventy-five cents per ton or part  
5 thereof of solid waste. The fee imposed by this section  
6 is in addition to all other fees and taxes levied by law  
7 and shall be added to and constitute part of any other  
8 fee charged by the operator or owner of the solid  
9 waste disposal facility.

10 (b) *Collection, return, payment and records.* — The  
11 person disposing of solid waste at the solid waste  
12 disposal facility shall pay the fee imposed by this  
13 section, whether or not such person owns the solid  
14 waste, and the fee shall be collected by the operator of  
15 the solid waste facility who shall remit it to the tax  
16 commissioner.

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

20 (2) The operator shall remit the fee imposed by this  
21 section to the tax commissioner on or before the

22 fifteenth day of the month next succeeding the month  
23 in which the fee accrued. Upon remittance of the fee,  
24 the operator is required to file returns on forms and  
25 in the manner as prescribed by the tax commissioner.

26 (3) The operator shall account to the state for all fees  
27 collected under this section and shall hold them in  
28 trust for the state until remitted to the tax  
29 commissioner.

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

35 (5) Whenever any operator fails to collect, truthfully  
36 account for, remit the fee or file returns with the fee  
37 as required in this section, the tax commissioner may  
38 serve written notice requiring such operator to collect  
39 the fees which become collectible after service of such  
40 notice, to deposit such fees in a bank approved by the  
41 tax commissioner, in a separate account, in trust for  
42 and payable to the tax commissioner, and to keep the  
43 amount of such fees in such account until remitted to  
44 the tax commissioner. Such notice remains in effect  
45 until a notice of cancellation is served on the operator  
46 or owner by the tax commissioner.

47 (6) Whenever the owner of a solid waste disposal  
48 facility leases the solid waste facility to an operator,  
49 the operator is primarily liable for collection and  
50 remittance of the fee imposed by this section and the  
51 owner is secondarily liable for remittance of the fee  
52 imposed by this section. However, if the operator fails,  
53 in whole or in part, to discharge his or her obligations  
54 under this section, the owner and the operator of the  
55 solid waste facility are jointly and severally responsi-  
56 ble and liable for compliance with the provisions of  
57 this section.

58 (7) If the operator or owner responsible for collect-  
59 ing the fee imposed by this section is an association or  
60 corporation, the officers thereof are liable, jointly and  
61 severally, for any default on the part of the association

62 or corporation, and payment of the fee and any  
63 additions to tax, penalties and interest imposed by  
64 article ten, chapter eleven of this code may be  
65 enforced against them as against the association or  
66 corporation which they represent.

67 (8) Each person disposing of solid waste at a solid  
68 waste disposal facility and each person required to  
69 collect the fee imposed by this section shall keep  
70 complete and accurate records in such form as the tax  
71 commissioner may require in accordance with the  
72 rules of the tax commissioner.

73 (c) *Regulated motor carriers.* — The fee imposed by  
74 this section and section twenty-two, article five,  
75 chapter seven of this code is considered a necessary  
76 and reasonable cost for motor carriers of solid waste  
77 subject to the jurisdiction of the public service com-  
78 mission under chapter twenty-four-a of this code.  
79 Notwithstanding any provision of law to the contrary,  
80 upon the filing of a petition by an affected motor  
81 carrier, the public service commission shall, within  
82 fourteen days, reflect the cost of said fee in said motor  
83 carrier's rates for solid waste removal service. In  
84 calculating the amount of said fee to said motor  
85 carrier, the commission shall use the national average  
86 of pounds of waste generated per person per day as  
87 determined by the United States environmental  
88 protection agency.

89 (d) *Definition of solid waste disposal facility.* — For  
90 purposes of this section, the term "solid waste disposal  
91 facility" means any approved solid waste facility or  
92 open dump in this state, and includes a transfer station  
93 when the solid waste collected at the transfer station  
94 is not finally disposed of at a solid waste disposal  
95 facility within this state that collects the fee imposed  
96 by this section. Nothing herein authorizes in any way  
97 the creation or operation of or contribution to an open  
98 dump.

99 (e) *Exemptions.* — The following transactions are  
100 exempt from the fee imposed by this section:

101 (1) Disposal of solid waste at a solid waste disposal

102 facility by the person who owns, operates or leases the  
103 solid waste disposal facility if the facility is used  
104 exclusively to dispose of waste originally produced by  
105 such person in such person's regular business or  
106 personal activities or by persons utilizing the facility  
107 on a cost-sharing or nonprofit basis;

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

109 (3) Disposal of residential solid waste by an individ-  
110 ual not in the business of hauling or disposing of solid  
111 waste on such days and times as designated by the  
112 director is exempt from the solid waste assessment fee;  
113 and

114 (4) Disposal of solid waste at a solid waste disposal  
115 facility by a commercial recycler which disposes of  
116 thirty percent or less of the total waste it processes for  
117 recycling. In order to qualify for this exemption each  
118 commercial recycler must keep accurate records of  
119 incoming and outgoing waste by weight. Such records  
120 must be made available to the appropriate inspectors  
121 from the division of environmental protection, upon  
122 request.

123 (f) *Procedure and administration.* — Notwithstand-  
124 ing section three, article ten, chapter eleven of this  
125 code, each and every provision of the "West Virginia  
126 Tax Procedure and Administration Act" set forth in  
127 said article shall apply to the fee imposed by this  
128 section with like effect as if said act were applicable  
129 only to the fee imposed by this section and were set  
130 forth in extenso herein.

131 (g) *Criminal penalties.* — Notwithstanding section  
132 two, article nine, chapter eleven of this code, sections  
133 three through seventeen of said article shall apply to  
134 the fee imposed by this section with like effect as if  
135 said sections were applicable only to the fee imposed  
136 by this section and were set forth in extenso herein.

137 (h) *Dedication of proceeds.* — The net proceeds of  
138 the fee collected by the tax commissioner pursuant to  
139 this section shall be deposited at least monthly in an  
140 account designated by the director. The director shall



141 allocate twenty-five cents for each ton of solid waste  
142 disposed of in this state upon which the fee imposed  
143 by this section is collected and shall deposit the total  
144 amount so allocated into the "Solid Waste Reclamation  
145 and Environmental Response Fund" to be expended  
146 for the purposes hereinafter specified. The first one  
147 million dollars of the net proceeds of the fee imposed  
148 by this section collected in each fiscal year shall be  
149 deposited in the "Solid Waste Enforcement Fund" and  
150 expended for the purposes hereinafter specified. The  
151 next two hundred fifty thousand dollars of the net  
152 proceeds of the fee imposed by this section collected in  
153 each fiscal year shall be deposited in the "Solid Waste  
154 Management Board Reserve Fund", and expended for  
155 the purposes hereinafter specified: *Provided*, That in  
156 any year in which the water development authority  
157 determines that the solid waste management board  
158 reserve fund is adequate to defer any contingent  
159 liability of the fund, the water development authority  
160 shall so certify to the director and the director shall  
161 then cause no less than fifty thousand dollars nor  
162 more than two hundred fifty thousand dollars to be  
163 deposited to the fund: *Provided, however*, That in any  
164 year in which the water development authority  
165 determines that the solid waste management board  
166 reserve fund is inadequate to defer any contingent  
167 liability of the fund, the water development authority  
168 shall so certify to the director and the director shall  
169 then cause not less than two hundred fifty thousand  
170 dollars nor more than five hundred thousand dollars  
171 to be deposited in the fund: *Provided further*, That if  
172 a facility owned or operated by the state of West  
173 Virginia is denied site approval by a county or regional  
174 solid waste authority, and if such denial contributes, in  
175 whole or in part, to a default, or drawing upon a  
176 reserve fund, on any indebtedness issued or approved  
177 by the solid waste management board, then in that  
178 event the solid waste management board or its fiscal  
179 agent may withhold all or any part of any funds which  
180 would otherwise be directed to such county or regional  
181 authority and shall deposit such withheld funds in the  
182 appropriate reserve fund. The director shall allocate

183 the remainder, if any, of said net proceeds among the  
184 following three special revenue accounts for the  
185 purpose of maintaining a reasonable balance in each  
186 special revenue account, which are hereby continued  
187 in the state treasury:

188 (1) The "Solid Waste Enforcement Fund" which  
189 shall be expended by the director for administration,  
190 inspection, enforcement and permitting activities  
191 established pursuant to this article;

192 (2) The "Solid Waste Management Board Reserve  
193 Fund" which shall be exclusively dedicated to provid-  
194 ing a reserve fund for the issuance and security of  
195 solid waste disposal revenue bonds issued by the solid  
196 waste management board pursuant to article twenty-  
197 six, chapter sixteen of this code; and

198 (3) The "Solid Waste Reclamation and Environmen-  
199 tal Response Fund" which may be expended by the  
200 director for the purposes of reclamation, cleanup and  
201 remedial actions intended to minimize or mitigate  
202 damage to the environment, natural resources, public  
203 water supplies, water resources and the public health,  
204 safety and welfare which may result from open dumps  
205 or solid waste not disposed of in a proper or lawful  
206 manner.

207 (i) *Findings.* — In addition to the purposes and  
208 legislative findings set forth in section one of this  
209 article, the Legislature finds as follows:

210 (1) In-state and out-of-state locations producing solid  
211 waste should bear the responsibility of disposing of  
212 said solid waste or compensate other localities for costs  
213 associated with accepting such solid waste;

214 (2) The costs of maintaining and policing the streets  
215 and highways of the state and its communities are  
216 increased by long distance transportation of large  
217 volumes of solid waste; and

218 (3) Local approved solid waste facilities are being  
219 prematurely depleted by solid waste originating from  
220 other locations.

**§20-5F-8. Limited extension of solid waste facility closure deadline.**

1 (a) The director may grant an extension of the  
2 closure deadline up to the thirtieth day of September,  
3 one thousand nine hundred ninety-four, to a solid  
4 waste facility required under the terms of an exten-  
5 sion granted pursuant to this subsection to close by the  
6 thirtieth day of June, one thousand nine hundred  
7 ninety-three, or required by solid waste management  
8 rules to close by the thirtieth day of September, one  
9 thousand nine hundred ninety-three, provided that  
10 the solid waste facility:

11 (1) Has a solid waste facility permit, or by the first  
12 day of March, one thousand nine hundred ninety-  
13 three, had an application to obtain a permit pending  
14 before the division for the construction of a landfill in  
15 accordance with title forty-seven, series thirty-eight,  
16 solid waste management rules; and

17 (2) Has a certificate of need or had an application  
18 pending therefor, from the public service commission;  
19 and

20 (3) Has been determined by the director to pose no  
21 significant hazard to public health, safety or the  
22 environment; and

23 (4) Has entered into a compliance schedule with the  
24 division of environmental protection to be in full  
25 compliance, no later than the thirtieth day of Septem-  
26 ber, one thousand nine hundred ninety-four, with title  
27 forty-seven, series thirty-eight, solid waste manage-  
28 ment rules or to be in full compliance, no later than  
29 the thirtieth day of September, one thousand nine  
30 hundred ninety-four, with preclosure provisions of  
31 title forty-seven, series thirty-eight, solid waste man-  
32 agement rules: *Provided*, That no such extension of  
33 closure deadline shall extend beyond the thirty-first  
34 day of March, one thousand nine hundred ninety-four,  
35 or such date as any landfill installs a composite liner  
36 system for any landfill in a county in which there is  
37 also located a commercial solid waste landfill which  
38 has installed a composite liner system in accordance

39 with the requirements of the solid waste management  
40 rules.

41 (b) Any solid waste facility seeking to extend its  
42 closure deadline until the thirtieth day of September,  
43 one thousand nine hundred ninety-four, shall submit  
44 to the director, no later than the thirtieth day of April,  
45 one thousand nine hundred ninety-three, an applica-  
46 tion sufficient to demonstrate compliance with the  
47 requirements of subsection (a) of this section. The  
48 director shall grant or deny any application within  
49 thirty days of receipt thereof: *Provided*, That as a  
50 condition precedent for granting such closure exten-  
51 sion, a solid waste facility must enter into an agree-  
52 ment with the director that the solid waste facility  
53 shall, no later than the thirtieth day of September, one  
54 thousand nine hundred ninety-three, complete and  
55 submit to the director an analysis of the facility's  
56 specific requirements and cost to comply with the  
57 applicable design criteria, groundwater monitoring  
58 provisions of title forty-seven, series thirty-eight, solid  
59 waste management rules and the corrective action,  
60 financial assurance and closure and post-closure care  
61 provisions of Subtitle (d) of the federal Resource  
62 Conservation and Recovery Act, 42 U.S.C. 6941-6949.

63 (c) Any party who is aggrieved by an order of the  
64 director regarding the grant or denial of an extension  
65 of the closure deadline for a solid waste facility  
66 pursuant to this section may obtain judicial review  
67 thereof in the same manner as provided in section  
68 four, article five, chapter twenty-nine-a of this code,  
69 which provisions shall apply to and govern such  
70 review with like effect as if the provisions of said  
71 section were set forth in extenso in this section, except  
72 that the petition shall be filed, within the time  
73 specified in section four, article five, chapter twenty-  
74 nine-a of this code, in the circuit court of the county  
75 where such facility exists: *Provided*, That the court  
76 shall not in any manner permit the continued accep-  
77 tance of solid waste at the facility pending review of  
78 the decision of the director of the division.

79 (d) The judgment of the circuit court shall be final

80 unless reversed, vacated or modified on appeal to the  
81 supreme court of appeals, in accordance with the  
82 provisions of section one, article six, chapter twenty-  
83 nine-a of this code, except that notwithstanding the  
84 provisions of said section, the petition seeking such  
85 review must be filed with said supreme court of  
86 appeals within thirty days from the date of entry of  
87 the judgment of the circuit court.

88 (e) Notwithstanding any other provision of this  
89 article, the director, upon receipt of a request for an  
90 extension, shall grant an extension of the closure  
91 deadline up to the thirtieth day of September, one  
92 thousand nine hundred ninety-four, to any solid waste  
93 facility required to close on the thirty-first day of  
94 March, one thousand nine hundred ninety-three, or  
95 the thirtieth day of September, one thousand nine  
96 hundred ninety-three, which is owned by a solid waste  
97 authority or owned by a municipality and which  
98 accepts at least thirty percent of its waste from within  
99 the county in which it is located and which has not  
100 been determined by the director to pose a significant  
101 risk to human health and safety or cause substantial  
102 harm to the environment and which could not be  
103 granted an extension up to the thirtieth day of  
104 September, one thousand nine hundred ninety-four,  
105 pursuant to the terms of subsections (a) and (b) of this  
106 section if:

107 (1) The cost of transporting the waste is prohibitive;  
108 or

109 (2) The cost of disposing of waste in other solid waste  
110 facilities within the wasteshed would increase.

111 (f) Notwithstanding any other provision of this  
112 article, the director shall grant an extension of the  
113 closure deadline up to the thirtieth day of September,  
114 one thousand nine hundred ninety-four, to any solid  
115 waste landfill which, on or before the first day of  
116 March, one thousand nine hundred ninety-three, has  
117 entered into a compliance schedule with the director  
118 for the construction of a transfer station or to any solid  
119 waste landfill which on the first day of March, one

120 thousand nine hundred ninety-three, is already in the  
 121 process of constructing a solid waste transfer station  
 122 and applies by the first day of April, one thousand  
 123 nine hundred ninety-three, to enter into with the  
 124 director, a compliance schedule for the completion of  
 125 the transfer station: *Provided*, That upon the comple-  
 126 tion of the transfer station and commencement of  
 127 operations of the transfer station, such landfill shall  
 128 cease accepting solid waste for disposal.

129 (g) Notwithstanding any other provision of this  
 130 article, any commercial solid waste facility which has  
 131 demonstrated and continues to be in compliance with  
 132 the requirements of subsections (a) and (b) of the prior  
 133 enactment of this section in chapter one hundred  
 134 twenty-five, acts of the Legislature, regular session,  
 135 one thousand nine hundred ninety-three, may make  
 136 application by the first day of August, one thousand  
 137 nine hundred ninety-four, to the director for a special  
 138 extension of the closure deadline up to the thirty-first  
 139 day of December, one thousand nine hundred ninety-  
 140 four. Such application shall set forth all reasons why  
 141 the applicant should receive a special extension. The  
 142 director shall grant or deny an application within  
 143 thirty days of receipt thereof. As a condition for being  
 144 granted a special extension, the solid waste facility  
 145 permittee must meet one of the following conditions:

146 (1) Have started construction of an approved com-  
 147 posite liner system; or

148 (2) Have obtained financing for such construction; or

149 (3) Have demonstrated good faith efforts to obtain  
 150 such financing and the director has made a finding, in  
 151 writing, that such financing and construction is likely  
 152 to occur within the extension period and that the  
 153 facility is necessary to the waste management plan of  
 154 the watershed or the geographic area served.

**ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE  
 PROGRAM.**

**§20-5N-5. Limitation on assistance.**

1 The director may provide closure assistance only to

2 permittees who meet the following requirements:

3 (1) The permittee of a landfill that does not have a  
4 liner and ceases accepting solid waste on or before the  
5 thirtieth day of November, one thousand nine hun-  
6 dred ninety-one, except for those landfills allowed to  
7 accept solid waste pursuant to the provisions of section  
8 eight, article five-f of this chapter and ceases accepting  
9 solid waste on or before the extension deadline as  
10 determined by the director; or the permittee of a  
11 landfill that has only a single liner and ceases accept-  
12 ing solid waste on or before the thirtieth day of  
13 September, one thousand nine hundred ninety-three;

14 (2) The permittee of the landfill must demonstrate to  
15 the satisfaction of the director that it does not have the  
16 financial resources on hand or the ability to generate  
17 the amounts needed to comply, in a timely manner,  
18 with the closure requirements provided in article five-  
19 f of this chapter and any rules promulgated pursuant  
20 thereto: *Provided*, That any permittee which is a  
21 municipality, county, county solid waste authority or  
22 regional solid waste authority and which has been  
23 required to close a landfill, or any portion thereof, due  
24 to the lack of an approved composite liner system,  
25 shall be eligible for closure assistance for any closure  
26 costs related to such closure that exceed the amount  
27 that permittee has set aside for closure expenses  
28 pursuant to section four, subsection (a) of this article.  
29 If any such permittee continues to accept solid waste  
30 after receiving such closure assistance, the payment of  
31 the "solid waste assessment fee" by that permittee as  
32 required in section four of this article shall satisfy both  
33 the repayment of any such closure assistance and the  
34 payment of said solid waste assessment fee; and

35 (3) The permittee must maintain a permit for the  
36 landfill pursuant to the provisions of section five,  
37 article five-f of this chapter and maintain the full  
38 amount of the bond required to be submitted pursuant  
39 to section five-b of said article.

**§20-5N-7. Solid waste facility closure cost assistance fund.**

1 (a) The "Closure Cost Assistance Fund" is hereby

2 created as a special revenue account in the state  
3 treasury. The fund shall operate as a special fund  
4 whereby all deposits and payments thereto shall not  
5 expire to the general revenue fund, but shall remain  
6 in such account and be available for expenditure in  
7 the succeeding fiscal year. Separate subaccounts may  
8 be established within the special account for the  
9 purpose of identification of various revenue resources  
10 and payment of specific obligations.

11 (b) Interest earned on any money in the fund shall  
12 be deposited to the credit of the fund.

13 (c) The fund consists of the following:

14 (1) Moneys collected and deposited in the state  
15 treasury which are specifically designated by acts of  
16 the Legislature for inclusion in the fund;

17 (2) Contributions, grants and gifts from any source,  
18 both public and private, which may be used by the  
19 director for any project or projects;

20 (3) Amounts repaid by permittees pursuant to  
21 section nine, article five-f of this chapter; and

22 (4) All interest earned on investments made by the  
23 state from moneys deposited in this fund.

24 (d) The amounts deposited in the fund may be  
25 expended only on the cost of projects as provided for  
26 in sections three and ten of this article and as provided  
27 in subsections (e) and (f) of this section: *Provided*, That  
28 no more than one percent of the annual deposits to  
29 such fund may be used for administrative purposes.

30 (e) Notwithstanding any provision of this article,  
31 upon request of the solid waste management board,  
32 and with the approval of the projects by the director  
33 of the division of environmental protection, the  
34 director may pledge and place into escrow accounts up  
35 to an aggregate of two million dollars of the fund to  
36 satisfy two years debt service requirement that per-  
37 mittees of publicly owned landfills and transfer  
38 stations are required to meet in order to obtain loans.  
39 Pledges shall be made on a project by project basis,



40 may not exceed five hundred thousand dollars for a  
41 project and shall be made available after loan commit-  
42 ments are received. The director may pledge funds for  
43 a loan only when the following conditions are met:

44 (1) The proceeds of the loan are used only to  
45 perform construction of a transfer station or a compos-  
46 ite liner system that is required to meet the provisions  
47 of title forty-seven, series thirty-eight, solid waste  
48 management rules;

49 (2) The permittee dedicates all yearly debt service  
50 revenue, as determined by the public service commis-  
51 sion, to meet the repayment schedule of the loan,  
52 before it uses available revenue for any other purpose;  
53 and

54 (3) That any funds pledged may only be paid to the  
55 lender if the permittee is in default on the loan.

**ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.**

**§20-11-5. Establishment of county recycling programs for  
solid waste; petition for referendum; ballot  
contents; election procedure; effect of such  
election.**

1 (a) Within twelve months following the effective  
2 date of this section, each municipality described in  
3 subsection (b) of this section shall submit a proposal to  
4 the solid waste management board, consistent with the  
5 provisions of this section, describing the establishment  
6 and implementation of the mandatory recycling pro-  
7 gram. The solid waste management board shall review  
8 the submitted plans for consistency with the criteria  
9 provided in this section, the county or regional solid  
10 waste management plan and the statewide manage-  
11 ment plan. The solid waste management board may  
12 make suggested changes to the plan and shall provide  
13 technical assistance to the municipalities in the  
14 development of the plans.

15 (b) Within twenty-four months following the effec-  
16 tive date of this section, each municipality with a  
17 population of ten thousand or more people, as deter-  
18 mined by the most recent decennial census by the

19 bureau of the census of the United States department  
20 of commerce, shall establish and commence imple-  
21 mentation of a source separation and curbside collec-  
22 tion program for recyclable materials. Implementation  
23 shall be phased in by the first day of July, one  
24 thousand nine hundred ninety-five. Such program  
25 shall include, at a minimum, the following:

26 (1) An ordinance adopted by the governing body of  
27 the municipality requiring that each person, partner-  
28 ship, corporation or other entity in the municipality  
29 shall separate at least three recyclable materials, as  
30 deemed appropriate by the municipality, from other  
31 solid waste: *Provided*, That the list of recyclables to be  
32 separated may be adjusted according to whether the  
33 generator is residential, commercial or other type of  
34 establishment.

35 (2) A scheduled day, at least one per month, during  
36 which separated materials are to be placed at the  
37 curbside, or similar location, for collection.

38 (3) A system that collects recyclable materials from  
39 the curbside, or similar location, at least once per  
40 month: *Provided*, That to encourage full participation,  
41 the program shall, to the maximum extent possible,  
42 provide for the collection of recyclables at the same  
43 rate of frequency, and simultaneous with, the regular  
44 collection of solid waste.

45 (4) Provisions to ensure compliance with the ordi-  
46 nance, including incentives and penalties.

47 (5) A comprehensive public information and educa-  
48 tion program covering the importance and benefits of  
49 recycling, as well as the specific features and require-  
50 ments of the recycling program. As part of the educa-  
51 tion program, each municipality shall, at a minimum,  
52 notify all persons occupying residential, commercial,  
53 institutional or other premises within its boundaries of  
54 the requirements of the program, including how the  
55 system will operate, the dates of collection, the  
56 responsibilities of persons within the municipality, and  
57 incentives and penalties.

58 (6) Consultation with the county or regional solid  
59 waste authority in which the municipality is located to  
60 avoid duplication, ensure coordination of solid waste  
61 programs, and maximize the market for recyclables.

62 (c) Notwithstanding the provisions of subsection (b)  
63 of this section, a comprehensive recycling program for  
64 solid waste may be established in any county of this  
65 state by action of a county commission in accordance  
66 with the provisions of this section. Such program shall  
67 require:

68 (1) That, prior to collection at its source, all solid  
69 waste shall be segregated into separate identifiable  
70 recyclable materials by each person, partnership,  
71 corporation and governmental agency subscribing to a  
72 solid waste collection service in the county or trans-  
73 porting solid waste to a commercial solid waste facility  
74 in the county;

75 (2) Each person engaged in the commercial collec-  
76 tion, transportation, processing or disposal of solid  
77 waste within the county shall accept only such solid  
78 waste from which recyclable materials in accordance  
79 with said county's comprehensive recycling program  
80 have been segregated; and

81 (3) That the provisions of the recycling plan pre-  
82 pared pursuant to section four of this article shall, to  
83 the extent practicable, be incorporated in said county's  
84 comprehensive recycling program.

85 (d) For the purposes of this article, recyclable  
86 materials shall include, but not be limited to, steel and  
87 bi-metallic cans, aluminum, glass, paper and such  
88 other solid waste materials as may be specified by  
89 either the municipality or county commission with the  
90 advice of the county or regional solid waste authority.

91 (e) A comprehensive recycling program for solid  
92 waste may be established in any county of this state  
93 by: (1) A petition filed with the county commission  
94 bearing the signatures of registered voters of the  
95 county equal to not less than five percent of the  
96 number of votes cast within the county for governor

97 at the preceding gubernatorial election; and (2) appro-  
 98 val by a majority of the voters in a subsequent  
 99 referendum on the issue. A referendum to determine  
 100 whether it is the will of the voters of a county that a  
 101 comprehensive recycling program for solid waste be  
 102 established in the county may be held at any regular  
 103 primary or general election or in conjunction with any  
 104 other countywide election. Any election at which the  
 105 question of establishing a policy of comprehensive  
 106 recycling for solid waste is voted upon shall be held at  
 107 the voting precincts established for holding primary or  
 108 general elections. All of the provisions of the general  
 109 election laws, when not in conflict with the provisions  
 110 of this article, shall apply to voting and elections  
 111 hereunder, insofar as practicable. The secretary of  
 112 state shall prescribe the form of the petition which  
 113 shall include the printed name, address and date of  
 114 birth of each person whose signature appears on the  
 115 petition. Upon verification of the required number of  
 116 signatures on the petition, the county commission  
 117 shall, not less than seventy days before the election,  
 118 order that the issue be placed on the ballot and  
 119 referendum held at the next primary, general or  
 120 special election to determine whether it is the will of  
 121 the voters of said county that a policy of comprehen-  
 122 sive recycling of solid waste be established in the  
 123 county: *Provided*, That the petition bearing the neces-  
 124 sary signatures has been filed with the county com-  
 125 mission at least one hundred days prior to the election.

126 The ballot, or the ballot labels where voting  
 127 machines are used, shall have printed thereon sub-  
 128 stantially the following:

129 “Shall the County Commission be required to  
 130 establish a comprehensive recycling program for solid  
 131 waste in County, West Virginia?

132  For Recycling

133  Against Recycling

134 (Place a cross mark in the square opposite your  
 135 choice.)”

136 If a majority of legal votes cast upon the question be  
137 for the establishment of a policy of comprehensive  
138 recycling of solid waste, the county commission shall,  
139 after the certification of the results of the referendum,  
140 thereafter adopt an ordinance, within one hundred  
141 eighty days of said certification, establishing a compre-  
142 hensive recycling program for solid waste in the  
143 county: *Provided*, That such program shall be imple-  
144 mented and operational no later than twelve months  
145 following said certification. If a majority of the legal  
146 votes cast upon the question be against the establish-  
147 ment of a policy of comprehensive recycling of solid  
148 waste, said policy shall not take effect, but the ques-  
149 tion may again be submitted to a vote at any subse-  
150 quent election in the manner herein provided.

151 (f) A comprehensive recycling program for solid  
152 waste established by petition and referendum may be  
153 rescinded only pursuant to the procedures set out  
154 herein to establish the program.

155 To rescind the program, the ballot, or the ballot  
156 labels where voting machines are used, shall have  
157 printed thereon substantially the following:

158 "Shall the County Commission be required to  
159 terminate the comprehensive recycling program for  
160 solid waste in County, West Virginia?

161  Continue Recycling

162  End Recycling

163 (Place a cross mark in the square opposite your  
164 choice.)"

165 (g) If a majority of legal votes cast upon the question  
166 be for the termination of a policy of comprehensive  
167 recycling of solid waste previously established in the  
168 county, the county commission shall, after the certifi-  
169 cation of the results of the referendum, thereafter  
170 rescind by ordinance the comprehensive recycling  
171 program for solid waste in the county within ninety  
172 days of said certification. If a majority of the legal  
173 votes cast upon the question be for the continuation of  
174 the policy of comprehensive recycling of solid waste,

175 said ordinance shall not be rescinded, but the question  
 176 may again be submitted to a vote at any subsequent  
 177 election in the manner herein provided.

178 (h) In the case of any municipality having a popu-  
 179 lation greater than thirty thousand persons, as indicat-  
 180 ed by the most recent decennial census conducted by  
 181 the United States, the governing body of such munic-  
 182 ipality may by ordinance establish a materials recov-  
 183 ery facility in lieu of or in addition to the mandatory  
 184 recycling program required under the provisions of  
 185 this section: *Provided*, That such materials recovery  
 186 facility shall be subject to approval by both the public  
 187 service commission and the solid waste management  
 188 board upon a finding by both the public service  
 189 commission and the solid waste management board  
 190 that the establishment of such materials recovery  
 191 facility will not hinder, and will be consistent with, the  
 192 purposes of this article.

**§20-11-8. Prohibition on the disposal of certain items; plans  
 for the proper handling of said items  
 required.**

1 (a) Effective the first day of June, one thousand nine  
 2 hundred ninety-four, it shall be unlawful to deposit  
 3 yard waste, including grass clippings and leaves, and  
 4 lead-acid batteries in a solid waste facility in West  
 5 Virginia; effective the first day of June, one thousand  
 6 nine hundred ninety-five, it shall be unlawful to  
 7 deposit tires in a solid waste facility in West Virginia;  
 8 and effective the first day of January, one thousand  
 9 nine hundred ninety-six, it shall be unlawful to  
 10 deposit yard waste, including grass clippings and  
 11 leaves, in a solid waste facility in West Virginia:  
 12 *Provided*, That such prohibitions do not apply to a  
 13 facility designed specifically to compost such yard  
 14 waste or otherwise recycle or reuse such items:  
 15 *Provided, however*, That reasonable and necessary  
 16 exceptions to such prohibitions may be included as  
 17 part of the rules promulgated pursuant to subsection  
 18 (c) of this section.

19 (b) No later than the first day of May, one thousand

20 nine hundred ninety-three, the solid waste manage-  
21 ment board shall design a comprehensive program to  
22 provide for the proper handling of yard waste and  
23 lead-acid batteries. No later than the first day of May,  
24 one thousand nine hundred ninety-four, a comprehen-  
25 sive plan shall be designed in the same manner to  
26 provide for the proper handling of tires.

27 (c) No later than the first day of August, one  
28 thousand nine hundred ninety-three, the division of  
29 environmental protection shall promulgate rules, in  
30 accordance with chapter twenty-nine-a of this code, as  
31 amended, to implement and enforce the program for  
32 yard waste and lead-acid batteries designed pursuant  
33 to subsection (b) of this section. No later than the first  
34 day of August, one thousand nine hundred ninety-  
35 four, the division of environmental protection shall  
36 promulgate rules, in accordance with chapter twenty-  
37 nine-a of said code, as amended, to implement and  
38 enforce the program for tires designed pursuant to  
39 subsection (b) of this section.

**§20-11-12. Recycling facilities exemption.**

1 Recycling facilities, as defined in section two, article  
2 five-f of this chapter, whose only function is to accept  
3 without charge, buy or transfer source-separated  
4 material or recycled material for resale or transfer for  
5 further processing shall be exempt from the provisions  
6 of sections one-c and one-f, article two, chapter  
7 twenty-four of this code.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE  
COMMISSION.**

**§24-2-1i. Commission authorized to issue emergency certifi-  
cate of need to certain commercial solid  
waste facilities; division of environmental  
protection to modify facility permit; criteria  
for emergency certificates.**

1 (a) Notwithstanding any provision of this article, or  
2 any provision of article five-f or nine, chapter twenty  
3 of this code, or any other provision of this code, upon

4 the application of any commercial solid waste facility,  
5 the commission may grant to a commercial solid waste  
6 facility an emergency certificate of need to increase  
7 the maximum monthly solid waste disposal tonnage  
8 for a period not to exceed one year, to the extent  
9 deemed necessary to prevent any disruption of solid  
10 waste disposal services in any county or watershed of  
11 the state resulting from the closure of an existing  
12 landfill in said county or watershed: *Provided*, That  
13 the commission is not required to make any determi-  
14 nation of need, necessity or reasonableness when  
15 acting on any application filed pursuant to this article  
16 regarding an existing commercial solid waste disposal  
17 facility, which is owned or operated by a county  
18 government or by an agency, board or entity thereof,  
19 and which has previously been denied a certificate of  
20 need prior to the effective date of this section. The  
21 authority granted to the commission under this section  
22 shall expire after the thirtieth day of September, one  
23 thousand nine hundred ninety-three. No temporary  
24 certificate issued pursuant to this section shall extend  
25 beyond the thirtieth day of September, one thousand  
26 nine hundred ninety-four. The director of the division  
27 of environmental protection shall modify any commer-  
28 cial solid waste facility permit, issued under article  
29 five-f, chapter twenty of this code, to conform with the  
30 maximum monthly solid waste disposal tonnage and  
31 any other terms and conditions set forth in a tempo-  
32 rary certificate issued under this section.

33 (b) If the net tonnage increase under a temporary  
34 certificate application made pursuant to subsection (a)  
35 of this section would cause the gross monthly solid  
36 waste disposal tonnage of such facility to exceed ten  
37 thousand tons, a temporary certificate shall be issued  
38 only if the solid waste facility has: (1) Obtained from  
39 the county or regional solid waste authority for the  
40 county or counties in which the facility is located a  
41 certificate of site approval or approval for conversion  
42 from a Class B facility to a Class A facility; and (2)  
43 obtained from the county or regional solid waste  
44 authority for the county or counties in which the  
45 facility is located approval to increase the maximum



46 monthly tonnage disposed at the facility; and (3)  
47 obtained from the county commission for the county  
48 or counties in which the landfill is located approval to  
49 operate as a Class A facility; and (4) has a certificate  
50 of need application pending before the public service  
51 commission; and (5) has installed a composite liner  
52 system in compliance with the requirements set forth  
53 in the solid waste management rules promulgated by  
54 the division of environmental protection or its prede-  
55 cessor. Such emergency certificate shall not authorize  
56 an increase in the maximum monthly solid waste  
57 disposal tonnage in an amount greater than that  
58 approved by the county or regional solid waste author-  
59 ity for the county or counties in which the landfill is  
60 located.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Ernest C. Moore  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is disapproved* is the *30<sup>th</sup>* day of *March*, 1994.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/30/94

Time

1:01 pm