

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 464**

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AND BALDWIN

[Originating in the Committee on Economic

Development; reported on March 4, 2021]

1 A BILL to amend and reenact §22-15-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new section, designated §22-15-24, all relating to  
3 the development and implementation of a program to regulate source-separated organic  
4 material waste; requiring permits for the facilities and general operation; providing for  
5 general handling of organic material waste; authorizing the secretary to promulgate rules;  
6 and authorizing the secretary to provide exemptions.

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

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

### **§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 10,000 and 30,000 tons of solid waste per month. Class A facility includes two or more  
21 Class B solid waste landfills owned or operated by the same person in the same county, if the  
22 aggregate tons of solid waste handled per month by such landfills exceeds 9,999 tons of solid  
23 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 70 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 30 to 60 days after an initial  
47 composting cycle or compost which meets all regulatory requirements after the initial composting  
48 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) "Landfill" means any solid waste facility for the disposal of solid waste on or in the  
61 land for the purpose of permanent disposal. Such facility is situated, for purposes of this article,  
62 in the county where the majority of the spatial area of such facility is located.

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

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

69 (20) "Mixed solid waste" means solid waste from which materials sought to be reused or

70 recycled have not been source-separated from general solid waste.

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

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

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

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

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

92 (26) "Recycling facility" means any solid waste facility for the purpose of recycling at which  
93 neither land disposal nor biological, chemical, or thermal transformation of solid waste occurs:  
94 *Provided*, That mixed waste recovery facilities, sludge processing facilities, and composting  
95 facilities are not considered recycling facilities nor considered to be reusing or recycling solid

96 waste within the meaning of this article, §22-15A-1 *et seq.*, §22C-4-1 *et seq.*, and §22C-1-1 *et*  
97 *seq.* of this code.

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

103 (28) "Secretary" means the Secretary of the Department of Environmental Protection or  
104 such other person to whom the secretary has delegated authority or duties pursuant to §-22-1-1  
105 *et seq.* of this code.

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

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

113 (31) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste  
114 processed for the express purpose of incineration; sludge from a waste treatment plant; water  
115 supply treatment plant or air pollution control facility; and other discarded materials, including  
116 offensive or unsightly matter, solid, liquid, semisolid, or contained liquid or gaseous material  
117 resulting from industrial, commercial, mining, or community activities but does not include solid or  
118 dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial  
119 discharges which are point sources and have permits under §-22-5A-1 *et seq.* of this code, or  
120 source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as  
121 amended, including any nuclear or byproduct material considered by federal standards to be

122 below regulatory concern, or a hazardous waste either identified or listed under §22-5A-1 *et seq.*  
123 of this code or refuse, slurry, overburden, or other wastes or material resulting from coal-fired  
124 electric power or steam generation, the exploration, development, production, storage, and  
125 recovery of coal, oil, and gas and other mineral resources placed or disposed of at a facility which  
126 is regulated under §§22A-1-1 *et seq.* or §§22B-1-1 *et seq.* of this code, so long as placement or  
127 disposal is in conformance with a permit issued pursuant to such chapters.

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

131 (33) "Solid waste disposal shed" means the geographical area which the solid waste  
132 management board designates and files in the state register pursuant to § 16-26-8, and §16-26-  
133 1 *et seq.* of this code.

134 (34) "Solid waste facility" means any system, facility, land, contiguous land, improvements  
135 on the land, structures, or other appurtenances or methods used for processing, recycling, or  
136 disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed  
137 waste processing facilities, sewage sludge processing facilities, commercial composting facilities,  
138 and other such facilities not herein specified, but not including land upon which sewage sludge is  
139 applied in accordance with §22-15-20 of this code. Such facility shall be deemed to be situated,  
140 for purposes of this article, in the county where the majority of the spatial area of such facility is  
141 located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of §17-23-  
142 1 *et seq.* of this code, is not a solid waste facility.

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

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

148 (37) “Organic composting facility” means land, appurtenances, structures, or equipment  
149 in which organic materials originating from another process or location that have been separated  
150 at the point or source of generation from nonorganic material are recovered using a process of  
151 accelerated biological decomposition of organic material under controlled aerobic or anaerobic  
152 conditions.

153 (38) “Organic material waste” includes, but is not limited to, food scraps, food processing  
154 residue, and soiled or unrecyclable paper.

155 (39) “Source-separated organic material waste” means organic material waste that has  
156 been separated at the point or source of generation from nonorganic material.

157 (40) “Backyard organic composting” means composting of food scraps and food residuals  
158 that are managed so as not to attract vectors at residential, commercial, or industrial property by  
159 the owner or tenant for use on site. All feedstocks must be generated and composted on site.”

## **ARTICLE 23. FOOD WASTE MANAGEMENT.**

### **§22-15-24. Food waste management.**

1 (a) The department shall develop and implement a comprehensive program for the  
2 regulation and management of source-separated organic material waste. The department is  
3 authorized to require permits for all facilities and activities which generate, process, or dispose of  
4 source-separated organic material waste by whatever means, including, but not limited to,  
5 composting, incinerations, or any other method of handling organic material waste within this  
6 State.

7 (b) The secretary shall promulgate emergency rules and propose legislative rules for  
8 legislative approval in accordance with the provision of §29A-3-1 et seq. of this code to effectuate  
9 the requirements of this section. All rules, whether emergency or not, promulgated pursuant to  
10 this section shall assure, at a minimum, the following in the proposed rules:

11 (1) A method to ensure proper maintenance and upkeep of organic composting facilities;

12 (2) A method to ensure that compost digestion be done at a minimum temperature of 140

13 degrees Fahrenheit;

14 (3) Appropriate training of organic composting facility employees pursuant to the  
15 standards adopted by the United States Composting Council, or other such standards deemed  
16 appropriate by the secretary;

17 (4) A method to determine appropriate odor and greenhouse gas pollutants and implement  
18 necessary restrictions of those pollutant levels;

19 (5) A method to collect and record relevant data and nutrient load in the finished compost;

20 (6) A certification process to ensure the finished compost satisfies an appropriate standard  
21 pursuant to the United States Composting Council, United States Environmental Protection  
22 Agency, or such other standard as deemed appropriate by the secretary;

23 (7) Permit requirements; and

24 (8) Appropriate fees.

25 (c) The secretary may provide for exemptions to the general provisions of this section  
26 relating to backyard organic composting.

NOTE: The purpose of this bill is to provide a safe process for organic waste composting and require the West Virginia Department of Environmental Protection to promulgate related rules related to implementing organic waste composting.

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