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Committee Substitute

for

House Bill 4084

By Delegates Zatezalo, Anderson, J. Kelly, Reynolds, Howell, Miller, Forsht, Keaton, Mandt, Evans and Young

[Originating in the Committee on Energy and Manufacturing, February 1, 2022.]

A BILL to amend and reenact §22-15-2 of the Code of West Virginia, 1931, as amended, relating to advanced recycling of solid waste under the Solid Waste Management Act; adding definitions of advanced recycling, advanced recycling facility, catalytic cracking, depolymerization, gasification, hydrogenation, post-use polymer, pyrolysis, recovered feedstock, and solvolysis; amending the definition of solid waste to except out post-use polymers and recovered feedstocks which are converted or held for conversion at an advanced recycling facility; amending the definition of solid waste facility to except out advanced recycling facilities; and facilitating the conversion and use of plastics and other recovered materials through advanced recycling processes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-2. Definitions.

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

(1) “Advanced recycling” means a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, and other products like waxes and lubricants through processes that include pyrolysis, gasification, depolymerization, catalytic cracking, hydrogenation, solvolysis, and other similar technologies. The recycled products produced at advanced recycling facilities include, but are not limited to, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and other basic hydrocarbons. Advanced recycling shall not be considered solid waste management or solid waste disposal.

(2) “Advanced recycling facility” means a facility that receives, stores and converts post-use polymers and recovered feedstocks it receives using advanced recycling. An advanced recycling facility is a manufacturing facility subject to applicable department manufacturing regulations for air, water, and land use. Advanced recycling facilities shall not be considered solid waste facilities.

~~(1)~~ (3) “Agronomic rate” means the whole sewage sludge application rate, by dry weight, designed:

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

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

~~(2)~~ (4) “Applicant” means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director may specify, including the following: Spouses, parents and children and siblings.

~~(3)~~ (5) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article.

~~(4)~~ (6) “Back hauling” means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.

~~(5)~~ (7) “Bulking agent” means any material mixed and composted with sewage sludge.

(8) “Catalytic cracking” is a manufacturing process through which post-use polymers are heated and melted in the absence of oxygen and then processed in the presence of a catalyst to produce valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons.

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

~~(7)~~ (10) “Commercial recycler” means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

~~(8)~~ (11) “Commercial solid waste facility” means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing or composting of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

~~(9)~~ (12) “Compost” means a humus-like material resulting from aerobic, microbial, thermophilic decomposition of organic materials.

~~(10)~~ (13) “Composting” means the aerobic, microbial, thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

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

~~(12)~~ (15) “Cured compost” or “finished compost” means compost which has a very low microbial or decomposition rate which will not reheat or cause odors when put into storage and that has been put through a separate aerated curing cycle stage of thirty to sixty days after an initial composting cycle or compost which meets all regulatory requirements after the initial composting cycle.

~~(13)~~ (16) “Department” means the Department of Environmental Protection.

(17) “Depolymerization” means a manufacturing process where post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate, or final products, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and other basic hydrocarbons.

~~(14)~~ (18) “Energy recovery incinerator” means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(19) “Gasification” means a manufacturing process through which recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons that are returned to economic utility in the form of raw materials and products.

(20) “Hydrogenation” is a manufacturing process through which hydrogen is used to remove impurities from post-use polymers or recovered feedstock to enable further processing into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons.

~~(15)~~ (21) “Incineration technologies” means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

~~(16)~~ (22) “Incinerator” means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

~~(17)~~ (23) “Landfill” means any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

~~(18)~~ (24) “Materials recovery facility” means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

~~(19)~~ (25) “Mature compost” means compost which has been produced in an aerobic, microbial, thermophilic manner and does not exhibit phytotoxic effects.

~~(20)~~ (26) “Mixed solid waste” means solid waste from which materials sought to be reused or recycled have not been source-separated from general solid waste.

~~(21)~~ (27) “Mixed waste processing facility” means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling or composting.

~~(22)~~ (28) “Municipal solid waste incineration” means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

~~(23)~~ (29) “Open dump” means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

~~(24)~~ (30) “Person” or “persons” means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(31) “Post-use polymer” means a plastic to which all of the following apply:

(A) The plastic is derived from any industrial, commercial, agricultural, or domestic activities;

(B) It is not mixed with solid waste or hazardous waste onsite or during processing at the advanced recycling facility;

(C) The plastic’s use or intended use is as a feedstock for the manufacturing of plastic and chemical feedstocks, other basic hydrocarbons, raw materials, or other intermediate products or final products using advanced recycling;

(D) The plastic has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste such as organic material and incidental contaminants or impurities (e.g., paper labels and metal rings); and,

(E) The plastic is processed at an advanced recycling facility or held at such facility prior to processing.

~~(25)~~ (32) “Publicly owned treatment works” means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw domestic, industrial or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort or property of any of the inhabitants of this state before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.

(33) “Pyrolysis” means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed and are then cooled, condensed, and converted into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons, that are returned to economic utility in the form of raw materials or products.

(34) “Recovered feedstock” means one or more of the following materials that has been processed so that it may be used as feedstock in an advanced recycling facility:

(A) Post-use polymers;

(B) Materials for which the United States Environmental Protection Agency has made a nonwaste determination pursuant to 40 C.F.R. 241.3(c), or has otherwise determined are feedstocks and not solid waste;

(C) Recovered feedstock does not include unprocessed municipal solid waste;

(D) Recovered feedstock is not mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility.

~~(26)~~ (35) “Recycling facility” means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: *Provided*, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, article fifteen-a of this chapter and article four, chapter twenty-two-c of this code.

~~(27)~~ (36) “Sewage sludge” means solid, semisolid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. “Sewage sludge” does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

~~(28)~~ (37) “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to article one of this chapter.

~~(29)~~ (38) “Sewage sludge processing facility” is a solid waste facility that processes sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic, microbial and anaerobic digestion.

~~(30)~~ (39) “Sludge” means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

~~(31)~~ (40) “Solid waste” means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters, or post-use polymers and recovered feedstocks converted at an advanced recycling facility or held at such facility prior to conversion.

~~(32)~~ (41) “Solid waste disposal” means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing any solid waste to be placed, deposited, dumped or thrown.

~~(33)~~ (42) “Solid waste disposal shed” means the geographical area which the solid waste management board designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code.

~~(34)~~ (43) “Solid waste facility” means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with section twenty of this article. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility and an advanced recycling facility is not a solid waste facility.

~~(35)~~ (44) “Solid waste facility operator” means any person or persons possessing or exercising operational, managerial or financial control over a commercial solid waste facility, whether or not such person holds a certificate of convenience and necessity or a permit for such facility.

(45) “Solvolysis” means a manufacturing process through which post-use polymers are purified with the aid of solvents, while heated at low temperatures and/or pressurized to make useful products, allowing additives and contaminants to be separated. The products of solvolysis include monomers, intermediates, and valuable chemicals and raw materials. The process includes, but is not limited to, hydrolysis, aminolysis, ammonoloysis, methanolysis and glycolysis.

~~(36)~~ (46) “Source-separated materials” means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

NOTE: The purpose of this bill is to allow advanced recycling facilities in the state and to facilitate the conversion of plastics and other recovered materials through advanced recycling processes.

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