

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3162

By Delegates Ross, Hanna, and Keaton

[Introduced January 31, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended, relating
 2 to increasing the criminal penalty for littering and open dumping; and providing for a time to
 3 correct the offense.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-10. Prohibitions; permits required.

1 (a) Open dumps are prohibited and it is unlawful for any person to create, contribute to, or
 2 operate an open dump or for any landowner to allow an open dump to exist on the landowner's
 3 property unless that open dump is under a compliance schedule approved by the director. Any
 4 person who violates the terms of this section is guilty of a misdemeanor and, upon conviction
 5 thereof, shall be fined not less than \$500, nor more than \$2,500, and shall have 60 days to correct
 6 the offense. The compliance schedule shall contain an enforceable sequence of actions leading to
 7 compliance and shall not exceed two years. Open dumps operated prior to April 1, 1988, by a
 8 landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or
 9 her residence or farm, are not a violation of this section, if the open dump was not a violation of law
 10 on January 1, 1988, and unauthorized dumps which were created by unknown persons are not a
 11 violation of this section: Provided, That a person may not contribute additional solid waste to any
 12 such dump after April 1, 1988, except that the landowners on which unauthorized dumps have
 13 been or are being made are not liable for the unauthorized dumping unless the landowners refuse
 14 to cooperate with the division in stopping the unauthorized dumping.

15 (b) It is unlawful for any person, unless the person holds a valid permit from the division to
 16 install, establish, construct, modify, operate, or abandon any solid waste facility. All approved solid
 17 waste facilities shall be installed, established, constructed, modified, operated, or abandoned in
 18 accordance with §22-15-1 et seq. of this code, plans, specifications, orders, instructions, and rules
 19 in effect.

20 (c) Any permit issued under §22-15-1 et seq. of this code shall be issued in compliance

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

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

37 (e) A person may not dispose of any solid waste in this state in a manner which endangers
38 the environment or the public health, safety, or welfare as determined by the director: *Provided*,
39 That the carcasses of dead animals may be disposed of in any solid waste facility or in any other
40 manner as provided for in this code. Upon request by the director, the Commissioner of the Bureau
41 for Public Health shall provide technical advice concerning the disposal of solid waste or
42 carcasses of dead animals within the state.

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

45 (g) In addition to all the requirements of §22-15-1 et seq. of this code and the rules
46 promulgated under §22-15-1 et seq. of this code, the division may not issue a permit to construct a

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

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

NOTE: The purpose of this bill is to increase the penalty of littering and open dumping.

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