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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



# ENROLLED

*Committee Substitute for*  
HOUSE BILL No. 2445

(By Delegate Mr. Spader, Mr. Chandler, et al.)



Passed April 10, 1993

In Effect ninety days from Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 2445**

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATES P. WHITE,  
DOUGLAS, MANUEL, HUNTWORK AND COMPTON)

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[Passed April 10, 1993; in effect ninety days from passage.]

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AN ACT to repeal section twelve, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, five-a, five-b and ten of said article; and to amend and reenact section four, article five-n of said chapter, all relating to the management and disposal of solid waste; adding legislative findings which provide that solid waste incineration presents potentially significant health and environmental problems; that efforts should continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible; solid waste assessment fees; penalties; performance bonds; amount and method of bonding; bonding requirements; period of bonding liability; prohibiting new municipal and commercial solid waste facilities utilizing incineration technologies for the purpose of solid waste incineration; county assessment for Class A facilities; amount of county assessment fees and purposes for which they may be expended; solid waste disposal facility assessment fees; and penalties.

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

That section twelve, article five-f, chapter twenty of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, five-a, five-b and ten of said article be amended and reenacted; and that section four, article five-n of said chapter be amended and reenacted, all to read as follows:

## CHAPTER 20. NATURAL RESOURCES.

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

#### §20-5F-1. Purpose and legislative findings.

1 (a) The purpose of this article is to transfer jurisdic-  
2 tion over the management of solid waste under section  
3 nine, article one, chapter sixteen of the code from the  
4 division of health to the division of environmental  
5 protection and to establish a comprehensive program of  
6 controlling solid waste disposal.

7 (b) The Legislature finds that uncontrolled, inade-  
8 quately controlled and improper collection, transporta-  
9 tion, processing and disposal of solid waste (1) is a public  
10 nuisance and a clear and present danger to people; (2)  
11 provides harborage and breeding places for disease-  
12 carrying, injurious insects, rodents and other pests  
13 harmful to the public health, safety and welfare; (3)  
14 constitutes a danger to livestock and domestic animals;  
15 (4) decreases the value of private and public property,  
16 causes pollution, blight and deterioration of the natural  
17 beauty and resources of the state and has adverse  
18 economic and social effects on the state and its citizens;  
19 (5) results in the squandering of valuable nonrenewable  
20 and nonreplenishable resources contained in solid waste;  
21 (6) that resource recovery and recycling reduces the  
22 need for landfills and extends their life; and that (7)  
23 proper disposal, resource recovery or recycling of solid  
24 waste is for the general welfare of the citizens of this  
25 state.

26 (c) The Legislature further finds that disposal in West  
27 Virginia of solid waste from unknown origins threatens  
28 the environment and the public health, safety and  
29 welfare, and therefore, it is in the interest of the public  
30 to identify the type, amount and origin of solid waste  
31 accepted for disposal at West Virginia solid waste

32 facilities.

33 (d) The Legislature further finds that other states of  
34 these United States of America have imposed stringent  
35 standards for the proper collection and disposal of solid  
36 waste and that the relative lack of such standards and  
37 enforcement for such activities in West Virginia has  
38 resulted in the importation and disposal in the state of  
39 increasingly large amounts of infectious, dangerous and  
40 undesirable solid wastes and hazardous waste from  
41 other states by persons and firms who wish to avoid the  
42 costs and requirements for proper, effective and safe  
43 disposal of such wastes in the states of origin.

44 (e) The Legislature further finds that Class A landfills  
45 often have capacities far exceeding the needs of the state  
46 or the areas of the state which they serve and that such  
47 landfills create special environmental problems that  
48 require statewide coordination of the management of  
49 such landfills.

50 (f) The Legislature further finds that incineration  
51 technologies present potentially significant health and  
52 environmental problems.

53 (g) The Legislature further finds that there is a need  
54 for efforts to continue to evaluate the viability of future  
55 incineration technologies that are both environmentally  
56 sound and economically feasible.

**§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 waste  
9 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 waste,

14 and the fee shall be collected by the operator of the solid  
15 waste facility who shall remit it to the tax commissioner.

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

19 (2) The operator shall remit the fee imposed by this  
20 section to the tax commissioner on or before the fifteenth  
21 day of the month next succeeding the month in which  
22 the fee accrued. Upon remittance of the fee, the operator  
23 is required to file returns on forms and in the manner  
24 as prescribed by the tax commissioner.

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

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

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

45 (6) Whenever the owner of a solid waste disposal  
46 facility leases the solid waste facility to an operator, the  
47 operator is primarily liable for collection and remittance  
48 of the fee imposed by this section and the owner is  
49 secondarily liable for remittance of the fee imposed by  
50 this section. However, if the operator fails, in whole or  
51 in part, to discharge his or her obligations under this  
52 section, the owner and the operator of the solid waste

53 facility are jointly and severally responsible and liable  
54 for compliance with the provisions of this section.

55 (7) If the operator or owner responsible for collecting  
56 the fee imposed by this section is an association or  
57 corporation, the officers thereof are liable, jointly and  
58 severally, for any default on the part of the association  
59 or corporation, and payment of the fee and any additions  
60 to tax, penalties and interest imposed by article ten,  
61 chapter eleven of this code may be enforced against  
62 them as against the association or corporation which  
63 they represent.

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

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

85 (d) *Definition of solid waste disposal facility.* — For  
86 purposes of this section, the term "solid waste disposal  
87 facility" means any approved solid waste facility or open  
88 dump in this state, and includes a transfer station when  
89 the solid waste collected at the transfer station is not  
90 finally disposed of at a solid waste disposal facility  
91 within this state that collects the fee imposed by this  
92 section. Nothing herein authorizes in any way the

93 creation or operation of or contribution to an open dump.

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

96 (1) Disposal of solid waste at a solid waste disposal  
97 facility by the person who owns, operates or leases the  
98 solid waste disposal facility if the facility is used  
99 exclusively to dispose of waste originally produced by  
100 such person in such person's regular business or  
101 personal activities or by persons utilizing the facility on  
102 a cost-sharing or nonprofit basis;

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

104 (3) Disposal of residential solid waste by an individual  
105 not in the business of hauling or disposing of solid waste  
106 on such days and times as designated by the director is  
107 exempt from the solid waste assessment fee; and

108 (4) Disposal of solid waste at a solid waste disposal  
109 facility by a commercial recycler which disposes of  
110 thirty percent or less of the total waste it processes for  
111 recycling. In order to qualify for this exemption each  
112 commercial recycler must keep accurate records of  
113 incoming and outgoing waste by weight. Such records  
114 must be made available to the appropriate inspectors  
115 from the division of solid waste authority, upon request.

116 (f) *Procedure and administration.* — Notwithstanding  
117 section three, article ten, chapter eleven of this code,  
118 each and every provision of the "West Virginia Tax  
119 Procedure and Administration Act" set forth in article  
120 ten, chapter eleven of this code shall apply to the fee  
121 imposed by this section with like effect as if said act  
122 were applicable only to the fee imposed by this section  
123 and were set forth in extenso herein.

124 (g) *Criminal penalties.* — Notwithstanding section  
125 two, article nine, chapter eleven of this code, sections  
126 three through seventeen, article nine, chapter eleven of  
127 this code shall apply to the fee imposed by this section  
128 with like effect as if said sections were applicable only  
129 to the fee imposed by this section and were set forth in  
130 extenso herein.

131 (h) *Dedication of proceeds.* — The net proceeds of the  
132 fee collected by the tax commissioner pursuant to this  
133 section shall be deposited at least monthly in an account  
134 designated by the director. The director shall allocate  
135 twenty-five cents for each ton of solid waste disposed of  
136 in this state upon which the fee imposed by this section  
137 is collected and shall deposit the total amount so  
138 allocated into the “Solid Waste Reclamation and  
139 Environmental Response Fund” to be expended for the  
140 purposes hereinafter specified. The first one million  
141 dollars of the net proceeds of the fee imposed by this  
142 section collected in each fiscal year shall be deposited  
143 in the “Solid Waste Enforcement Fund” and expended  
144 for the purposes hereinafter specified. The next two  
145 hundred fifty thousand dollars of the net proceeds of the  
146 fee imposed by this section collected in each fiscal year  
147 shall be deposited in the “Solid Waste Management  
148 Board Reserve Fund”, and expended for the purposes  
149 hereinafter specified: *Provided*, That in any year in  
150 which the water development authority determines that  
151 the solid waste management board reserve fund is  
152 adequate to defer any contingent liability of the fund,  
153 the water development authority shall so certify to the  
154 director and the director shall then cause no less than  
155 fifty thousand dollars nor more than two hundred fifty  
156 thousand dollars to be deposited to the fund: *Provided*,  
157 *however*, That in any year in which the water develop-  
158 ment authority determines that the solid waste manage-  
159 ment board reserve fund is inadequate to defer any  
160 contingent liability of the fund, the water development  
161 authority shall so certify to the director and the director  
162 shall then cause not less than two hundred fifty  
163 thousand dollars nor more than five hundred thousand  
164 dollars to be deposited in the fund: *Provided further*,  
165 That if a facility owned or operated by the state of West  
166 Virginia is denied site approval by a county or regional  
167 solid waste authority, and if such denial contributes, in  
168 whole or in part, to a default, or drawing upon a reserve  
169 fund, on any indebtedness issued or approved by the  
170 solid waste management board, then in that event the  
171 solid waste management board or its fiscal agent may  
172 withhold all or any part of any funds which would



173 otherwise be directed to such county or regional  
174 authority and shall deposit such withheld funds in the  
175 appropriate reserve fund. The director shall allocate the  
176 remainder, if any, of said net proceeds among the  
177 following three special revenue accounts for the purpose  
178 of maintaining a reasonable balance in each special  
179 revenue account, which are hereby continued in the  
180 state treasury:

181 (1) The "Solid Waste Enforcement Fund" which shall  
182 be expended by the director for administration, inspec-  
183 tion, enforcement and permitting activities established  
184 pursuant to this article;

185 (2) The "Solid Waste Management Board Reserve  
186 Fund" which shall be exclusively dedicated to providing  
187 a reserve fund for the issuance and security of solid  
188 waste disposal revenue bonds issued by the solid waste  
189 management board pursuant to article three, chapter  
190 twenty-two-c of this code;

191 (3) The "Solid Waste Reclamation and Environmental  
192 Response Fund" which may be expended by the director  
193 for the purposes of reclamation, cleanup and remedial  
194 actions intended to minimize or mitigate damage to the  
195 environment, natural resources, public water supplies,  
196 water resources and the public health, safety and  
197 welfare which may result from open dumps or solid  
198 waste not disposed of in a proper or lawful manner.

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

202 (1) In-state and out-of-state locations producing solid  
203 waste should bear the responsibility of disposing of said  
204 solid waste or compensate other localities for costs  
205 associated with accepting such solid waste;

206 (2) The costs of maintaining and policing the streets  
207 and highways of the state and its communities are  
208 increased by long distance transportation of large  
209 volumes of solid waste; and

210 (3) Local approved solid waste facilities are being  
211 prematurely depleted by solid waste originating from

212 other locations.

**§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.**

1 (a) After a solid waste permit application has been  
2 approved pursuant to this article, or once operations  
3 have commenced pursuant to a compliance order, but  
4 before a permit has been issued, each operator of a  
5 commercial solid waste facility shall furnish bond, on a  
6 form to be prescribed and furnished by the director,  
7 payable to the state of West Virginia and conditioned  
8 upon the operator faithfully performing all of the  
9 requirements of this article, rules promulgated here-  
10 under and the permit: *Provided*, That the director has  
11 the discretion to waive the requirement of a bond from  
12 the operator of a commercial solid waste facility, other  
13 than a Class A facility, which is operating under a  
14 compliance order. The amount of the bond required is  
15 one thousand dollars per acre and may include an  
16 additional amount determined by the director based  
17 upon the total estimated cost to the state of completing  
18 final closure according to the permit granted to such  
19 facility and such measures as are necessary to prevent  
20 adverse effects upon the environment; such measures  
21 include, but are not limited to, satisfactory monitoring,  
22 post-closure care and remedial measures: *Provided*,  
23 *however*, That the amount of the bond shall not exceed  
24 eight thousand dollars per acre. All permits shall be  
25 bonded for at least ten thousand dollars. The bond shall  
26 cover either (1) the entire area to be used for the disposal  
27 of solid waste, or (2) that increment of land within the  
28 permit area upon which the operator will initiate and  
29 conduct commercial solid waste facility operations  
30 within the initial term of the permit pursuant to  
31 legislative rules promulgated by the director pursuant  
32 to chapter twenty-nine-a of this code. If the operator  
33 chooses to use incremental bonding, as succeeding  
34 increments of commercial solid waste facility operations  
35 are to be initiated and conducted within the permit area,  
36 the operator shall file with the director an additional  
37 bond or bonds to cover such increments in accordance

38 with this section: *Provided further*, That once the  
39 operator has chosen to proceed with bonding either the  
40 entire area to be used for the disposal of solid waste or  
41 with incremental bonding, the operator shall continue  
42 bonding in that manner for the term of the permit.

43 (b) The period of liability for performance bond  
44 coverage shall commence with issuance of a permit and  
45 continue for the full term of the permit and for a period  
46 of up to thirty full years after final closure of the permit  
47 site: *Provided*, That any further time period necessary  
48 to achieve compliance with the requirements in the  
49 closure plan of the permit is considered an additional  
50 liability period.

51 (c) The form of the performance bond shall be  
52 approved by the director and may include, at the option  
53 of the director, surety bonding, collateral bonding  
54 (including cash and securities), establishment of an  
55 escrow account, letters of credit, performance bonding  
56 fund participation (as established by the director), self-  
57 bonding or a combination of these methods.

58 If collateral bonding is used, the operator may elect  
59 to deposit cash, or collateral securities or certificates as  
60 follows: Bonds of the United States or its possessions, of  
61 the federal land bank, or of the homeowners' loan  
62 corporation; full faith and credit general obligation  
63 bonds of the state of West Virginia, or other states, and  
64 of any county, district or municipality of the state of  
65 West Virginia or other states; or certificates of deposit  
66 in a bank in this state, which certificates shall be in  
67 favor of the division. The cash deposit or market value  
68 of such securities or certificates shall be equal to or  
69 greater than the sum of the bond. The director shall,  
70 upon receipt of any such deposit of cash, securities or  
71 certificates, promptly place the same with the treasurer  
72 of the state of West Virginia whose duty it is to receive  
73 and hold the same in the name of the state in trust for  
74 the purpose for which the deposit is made when the  
75 permit is issued. The operator making the deposit is  
76 entitled from time to time to receive from the state  
77 treasurer, upon the written approval of the director, the  
78 whole or any portion of any cash, securities or certifi-

79 cates so deposited, upon depositing with the treasurer  
80 in lieu thereof, cash or other securities or certificates of  
81 the classes herein specified having value equal to or  
82 greater than the sum of the bond.

83 (d) Within twelve months prior to the expiration of the  
84 thirty-year period following final closure, the division  
85 will conduct a final inspection of the facility. The  
86 purpose of the inspection is to determine compliance  
87 with this article, the division's rules the terms and  
88 conditions of the permit, orders of the division and the  
89 terms and conditions of the bond. Based upon this  
90 determination, the division will either forfeit the bond  
91 prior to the expiration of the thirty-year period follow-  
92 ing final closure, or release the bond at the expiration  
93 of the thirty-year period following final closure. Bond  
94 release requirements shall be provided in rules promul-  
95 gated by the director.

96 (e) If the operator of a commercial solid waste facility  
97 abandons the operation of a solid waste disposal facility  
98 for which a permit is required by this article or if the  
99 permittee fails or refuses to comply with the require-  
100 ments of this article in any respect for which liability  
101 has been charged on the bond, the director shall declare  
102 the bond forfeited and shall certify the same to the  
103 attorney general who shall proceed to enforce and collect  
104 the amount of liability forfeited thereon, and where the  
105 operation has deposited cash or securities as collateral  
106 in lieu of corporate surety, the secretary shall declare  
107 said collateral forfeited and shall direct the state  
108 treasurer to pay said funds into a waste management  
109 fund to be used by the director to effect proper closure  
110 and to defray the cost of administering this article.  
111 Should any corporate surety fail to promptly pay, in full,  
112 forfeited bond, it is disqualified from writing any  
113 further surety bonds under this article.

**§20-5F-10. Municipal and commercial solid waste incin-  
eration and backhauling prohibited;  
exceptions.**

1 (a) Notwithstanding any other provision of this code  
2 to the contrary, it shall be unlawful to install, establish

3 or construct a new municipal or commercial solid waste  
4 facility utilizing incineration technology for the purpose  
5 of solid waste incineration: *Provided*, That such prohi-  
6 bition shall not include the development of pilot projects  
7 which may include tire or tire material incineration,  
8 designed to analyze the efficiency and environmental  
9 impacts of incineration technologies: *Provided, however*,  
10 That any pilot project proposing to incinerate solid  
11 waste must comply with regulatory requirements for  
12 solid waste facilities established in this chapter and  
13 shall demonstrate with particularity to the division that  
14 it has the financial and technical ability to comply with  
15 all regulations applicable to solid waste facilities  
16 utilizing incineration technologies. The division shall  
17 require a surety bond, deposit or similar instrument in  
18 an amount sufficient to cover the costs of potential  
19 future environmental harm at the site.

20 (b) It shall be unlawful to engage in the practice of  
21 backhauling as such term is defined in section two of  
22 this article.

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

**§20-5N-4. Solid waste assessment fee; penalties.**

1 (a) *Imposition.* — A solid waste assessment fee is  
2 hereby levied and imposed upon the disposal of solid  
3 waste at any solid waste disposal facility in this state  
4 in the amount of three dollars and fifty cents per ton  
5 or like ratio on any part thereof of solid waste, except  
6 as provided in subsection (e) of this section: *Provided*,  
7 That any solid waste disposal facility may deduct from  
8 this assessment fee an amount, not to exceed the fee,  
9 equal to the amount that such facility is required by the  
10 public service commission to set aside for the purpose  
11 of closure of that portion of the facility required to close  
12 by article fifteen of this chapter. The fee imposed by this  
13 section is in addition to all other fees and taxes levied  
14 by law and shall be added to and constitute part of any  
15 other fee charged by the operator or owner of the solid  
16 waste disposal facility.

17 (b) *Collection, return, payment and records.* — The

18 person disposing of solid waste at the solid waste  
19 disposal facility shall pay the fee imposed by this  
20 section, whether or not such person owns the solid waste,  
21 and the fee shall be collected by the operator of the solid  
22 waste facility who shall remit it to the tax commissioner.

23 (1) The fee imposed by this section accrues at the time  
24 the solid waste is delivered to the solid waste disposal  
25 facility.

26 (2) The operator shall remit the fee imposed by this  
27 section to the tax commissioner on or before the fifteenth  
28 day of the month next succeeding the month in which  
29 the fee accrued. Upon remittance of the fee, the operator  
30 shall file returns on forms and in the manner prescribed  
31 by the tax commissioner.

32 (3) The operator shall account to the state for all fees  
33 collected under this section and shall hold them in trust  
34 for the state until they are remitted to the tax  
35 commissioner.

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

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

53 (6) Whenever the owner of a solid waste disposal  
54 facility leases the solid waste facility to an operator, the  
55 operator is primarily liable for collection and remittance  
56 of the fee imposed by this section and the owner is

57 secondarily liable for remittance of the fee imposed by  
58 this section. However, if the operator fails, in whole or  
59 in part, to discharge his or her obligations under this  
60 section, the owner and the operator of the solid waste  
61 facility are jointly and severally responsible and liable  
62 for compliance with the provisions of this section.

63 (7) If the operator or owner responsible for collecting  
64 the fee imposed by this section is an association or  
65 corporation, the officers thereof are liable, jointly and  
66 severally, for any default on the part of the association  
67 or corporation, and payment of the fee and any additions  
68 to tax, penalties and interest imposed by article ten,  
69 chapter eleven of this code may be enforced against  
70 them as against the association or corporation which  
71 they represent.

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

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

91 (d) *Definitions.* — For purposes of this section, the  
92 term "solid waste disposal facility" means any approved  
93 solid waste facility or open dump in this state, and  
94 includes a transfer station when the solid waste collected  
95 at the transfer station is not finally disposed of at a solid  
96 waste facility within this state that collects the fee

97 imposed by this section. Nothing in this section autho-  
98 rizes in any way the creation or operation of or  
99 contribution to an open dump.

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

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

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

110 (3) Disposal of residential solid waste by an individual  
111 not in the business of hauling or disposing of solid waste  
112 on such days and times as designated by the director as  
113 exempt from the solid waste assessment fee; 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 or solid waste authority, upon  
122 request.

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

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



136 fee imposed by this section and were set forth in extenso  
137 herein.

138 (h) *Dedication of proceeds.* — Fifty percent of the  
139 proceeds of the fee collected pursuant to this article in  
140 excess of thirty thousand tons per month from any  
141 landfill which is permitted to accept in excess of thirty  
142 thousand tons per month pursuant to section nine,  
143 article fifteen of this chapter shall be remitted, at least  
144 monthly, to the county commission in the county in  
145 which the landfill is located. The remainder of the  
146 proceeds of the fee collected pursuant to this section  
147 shall be deposited in the closure cost assistance fund  
148 established pursuant to section twelve of this article.

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

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

*Ernest C. Moore*  
.....  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harold Estelmas*  
.....  
Clerk of the Senate

*Donald L. Gapp*  
.....  
Clerk of the House of Delegates

*Robert Curran*  
.....  
President of the Senate

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

The within is approved ..... this the *22nd* day of *April* ..... 1993.

*Garson Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/93

Time 3:00 pm