



1 Protection to the Legislature on specified issues associated  
2 with the disposal of drill cuttings and drilling wastes at  
3 landfills; required scope of study; establishing deadlines;  
4 effective dates; creating a special revenue fund in the State  
5 Treasury; establishing an additional solid waste fee; and  
6 requiring the promulgation of emergency and legislative rules.

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

8 That §22-15-8 and §22-15-11 of the Code of West Virginia,  
9 1931, as amended, be amended and reenacted, all to read as follows:

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

11 **§22-15-8. Limit on the size of solid waste facilities; rulemaking.**

12 (a) On and after October 1, 1991, it is unlawful to operate  
13 any commercial solid waste facility that handles between ten  
14 thousand and thirty thousand tons of solid waste per month, except  
15 as provided in section nine of this article and sections  
16 twenty-six, twenty-seven and twenty-eight, articles four and  
17 four-a, chapter twenty-two-c of this code.

18 (b) Except as provided in section nine of this article, the  
19 maximum quantity of solid waste which may lawfully be received or  
20 disposed of at any commercial solid waste facility is thirty  
21 thousand tons per month.

22 (c) The ~~director~~ secretary shall, within the limits contained

1 in this article, place a limit on the amount of solid waste  
2 received or disposed of per month in commercial solid waste  
3 facilities. The ~~director~~ secretary shall consider at a minimum the  
4 following criteria in determining a commercial solid waste  
5 facility's monthly tonnage limit:

6 (1) The proximity and potential impact of the solid waste  
7 facility upon groundwater, surface water and potable water;

8 (2) The projected life and design capacity of the solid waste  
9 facility;

10 (3) The available air space, lined acreage, equipment type and  
11 size, adequate personnel and wastewater treatment capabilities; and

12 (4) Other factors related to the environmentally safe and  
13 efficient disposal of solid waste.

14 (d) Within the limits established in this article, the  
15 ~~director~~ secretary shall determine the amount of sewage sludge  
16 which may be safely treated, stored, processed, composted, dumped  
17 or placed in a solid waste facility.

18 (e) The ~~director~~ secretary shall promulgate emergency rules  
19 and propose for legislative promulgation legislative rules pursuant  
20 to the provisions of article three, chapter twenty-nine-a of this  
21 code to effectuate the requirements of this section. When  
22 developing the rules, the ~~director~~ secretary shall consider at a

1 minimum the potential impact of the treatment, storage, processing,  
2 composting, dumping or placing sewage sludge at a solid waste  
3 facility:

4 (1) On the groundwater, surface waters and potable waters in  
5 the area;

6 (2) On the air quality in the area;

7 (3) On the projected life and design capacity of the solid  
8 waste facility;

9 (4) On the available air space, lined acreage, equipment type  
10 and size, personnel and wastewater treatment capabilities;

11 (5) The facility's ability to adequately develop markets and  
12 market the product which results from the proper treatment of  
13 sewage sludge; and

14 (6) Other factors related to the environmentally safe and  
15 efficient treatment, storage, processing, composting, dumping or  
16 placing of sewage sludge at a solid waste facility.

17 (f) Sewage sludge disposed of at a landfill must contain at  
18 least twenty percent solid by weight. This requirement may be met  
19 by adding or blending sand, sawdust, lime, leaves, soil or other  
20 materials that have been approved by the ~~director~~ secretary prior  
21 to disposal. Alternative sewage sludge disposal methods can be  
22 utilized upon obtaining written approval from the ~~director~~

1 secretary. No facility may accept for land filling in any month  
2 sewage sludge in excess of twenty-five percent of the total tons of  
3 solid waste accepted at the facility for land filling in the  
4 preceding month.

5 (g) Notwithstanding any other provision of this code to the  
6 contrary, a commercial solid waste facility that is not located in  
7 a county that is, in whole or in part, within a karst region as  
8 determined by the West Virginia Geologic and Economic Survey may  
9 lawfully receive drill cuttings and drilling waste generated from  
10 horizontal well sites above the monthly tonnage limits of the  
11 commercial solid waste facility under the following conditions and  
12 limitations:

13 (1) (A) The drill cuttings and associated drilling waste are  
14 placed in a separate cell dedicated solely to the disposal of drill  
15 cuttings and drilling waste;

16 (B) The separate cell dedicated to drill cuttings and  
17 associated drilling waste is constructed and maintained pursuant to  
18 the standards set out in this article and legislative rules  
19 promulgated thereunder; and

20 (C) On or before March 8, 2014, the facility has either  
21 obtained a certificate of need, or amended certificate of need, or  
22 has a pending application for a certificate or amended certificate

1 of need, authorizing such separate cell as may be required by the  
2 Public Service Commission in accordance with section one-c, article  
3 two, chapter twenty-four of this code.

4 (2) The secretary may only allow those solid waste facilities  
5 that applied by December 31, 2013, for a permit modification to  
6 construct a separate cell for drill cuttings and associated  
7 drilling waste, to accept drill cuttings and associated drilling  
8 waste at its commercial solid waste facility without counting the  
9 deposited drill cuttings and associated drilling waste towards the  
10 landfill's permitted monthly tonnage limits.

11 (3) No solid waste facility may exclude or refuse to take  
12 municipal solid waste in the quantity of, up to and including, its  
13 permitted tonnage limit while the facility is allowed to lawfully  
14 receive drill cuttings or drilling waste above its permitted  
15 tonnage limits.

16 (h) Any solid waste facility taking drill cuttings and  
17 drilling waste must install radiation monitors by January 1, 2015.  
18 The secretary shall promulgate emergency and legislative rules to  
19 establish limits for unique toxins associated with drill cuttings  
20 and drilling waste including, but not limited to, heavy metals,  
21 petroleum-related chemicals (benzene, toluene, xylene, barium,  
22 chlorides, radium and radon) and establish the procedures the

1 facility must follow if that limit is exceeded: *Provided*, That  
2 said rules shall establish and set forth a procedure to provide  
3 that any detected radiation readings above any established  
4 radiation limits will require that the solid waste landfill  
5 immediately cease accepting all affected drill cuttings and  
6 drilling waste until the secretary has inspected said landfill and  
7 certified pursuant to established rules and regulations that  
8 radiation levels have returned to below the established radiation  
9 limits. Any truck load of drill cuttings or drilling waste which  
10 exceeds the radiation reading limits shall not be allowed to enter  
11 the landfill until inspected and approved by the Department of  
12 Environmental Protection.

13 (i) Except for facilities which meet the requirements of  
14 subdivision (1), subsection (g) of this section, the total amount  
15 of waste received at a commercial solid waste landfill that  
16 continues to mix said waste with its municipal solid waste may not  
17 exceed the total volume of its permitted capacity for that facility  
18 in any month, and the quantities of drill cuttings and drilling  
19 waste received at that facility shall be counted and applied toward  
20 the facility's established tonnage cap.

21 (j) On or before July 1, 2015, the secretary shall submit an  
22 investigation and report to the Joint Legislative Oversight

1 Commission on Water Resources and the Legislature's Joint Committee  
2 on Government and Finance which examines: (1) The hazardous  
3 characteristics of leachate collected from solid waste facilities  
4 receiving drill cuttings and drilling waste including, but not  
5 limited to, the presence of heavy metals, petroleum-related  
6 chemicals (benzene, toluene, xylene, etc.), barium, chlorides,  
7 radium and radon; (2) the potential negative impacts on the surface  
8 water or groundwater resources of this state associated with the  
9 collection, treatment and disposal of leachate from such landfills;  
10 (3) the technical and economic feasibility and benefits of  
11 establishing additional and/or separate disposal locations which  
12 are funded, constructed, owned and/or operated by the oil and gas  
13 industry; and (4) viable alternatives for the handling, treatment  
14 and disposal of drill cuttings, including the potential for  
15 processing, reusing and reapplying a portion of the collected drill  
16 cuttings as suitable fill material for roads, brownfield  
17 development or other projects, instead of disposing of all  
18 collected material into landfills.

19 (k) The secretary shall submit any proposed contract for  
20 conducting the studies set forth in subsection (j) of this section  
21 for review and preapproval by the Legislature's Joint Committee on  
22 Government and Finance.



1 **§22-15-11. Solid waste assessment fee; penalties.**

2 (a) *Imposition.* -- A solid waste assessment fee is hereby  
3 imposed upon the disposal of solid waste at any solid waste  
4 disposal facility in this state in the amount of \$1.75 per ton or  
5 part thereof of solid waste. The fee imposed by this section is in  
6 addition to all other fees and taxes levied by law and shall be  
7 added to and constitute part of any other fee charged by the  
8 operator or owner of the solid waste disposal facility.

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

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

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

22 (3) The operator shall account to the state for all fees

1 collected under this section and shall hold them in trust for the  
2 state until remitted to the Tax Commissioner.

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

7 (5) Whenever any operator fails to collect, truthfully account  
8 for, remit the fee or file returns with the fee as required in this  
9 section, the Tax Commissioner may serve written notice requiring  
10 such operator to collect the fees which become collectible after  
11 service of such notice, to deposit such fees in a bank approved by  
12 the Tax Commissioner, in a separate account, in trust for and  
13 payable to the Tax Commissioner and to keep the amount of such fees  
14 in such account until remitted to the Tax Commissioner. Such  
15 notice remains in effect until a notice of cancellation is served  
16 on the operator or owner by the Tax Commissioner.

17 (6) Whenever the owner of a solid waste disposal facility  
18 leases the solid waste facility to an operator, the operator is  
19 primarily liable for collection and remittance of the fee imposed  
20 by this section and the owner is secondarily liable for remittance  
21 of the fee imposed by this section. However, if the operator  
22 fails, in whole or in part, to discharge his or her obligations

1 under this section, the owner and the operator of the solid waste  
2 facility are jointly and severally responsible and liable for  
3 compliance with the provisions of this section.

4 (7) If the operator or owner responsible for collecting the  
5 fee imposed by this section is an association or corporation, the  
6 officers thereof are liable, jointly and severally, for any default  
7 on the part of the association or corporation, and payment of the  
8 fee and any additions to tax, penalties and interest imposed by  
9 article ten, chapter eleven of this code may be enforced against  
10 them as against the association or corporation which they  
11 represent.

12 (8) Each person disposing of solid waste at a solid waste  
13 disposal facility and each person required to collect the fee  
14 imposed by this section shall keep complete and accurate records in  
15 such form as the Tax Commissioner may require in accordance with  
16 the rules of the Tax Commissioner.

17 (c) *Regulated motor carriers.* -- The fee imposed by this  
18 section and section twenty-two, article five, chapter seven of this  
19 code is considered a necessary and reasonable cost for motor  
20 carriers of solid waste subject to the jurisdiction of the Public  
21 Service Commission under chapter twenty-four-a of this code.  
22 Notwithstanding any provision of law to the contrary, upon the

1 filing of a petition by an affected motor carrier, the Public  
2 Service Commission shall, within fourteen days, reflect the cost of  
3 said fee in said motor carrier's rates for solid waste removal  
4 service. In calculating the amount of said fee to said motor  
5 carrier, the commission shall use the national average of pounds of  
6 waste generated per person per day as determined by the United  
7 States Environmental Protection Agency.

8 (d) *Definition of solid waste disposal facility.* -- For  
9 purposes of this section, the term "solid waste disposal facility"  
10 means any approved solid waste facility or open dump in this state,  
11 and includes a transfer station when the solid waste collected at  
12 the transfer station is not finally disposed of at a solid waste  
13 disposal facility within this state that collects the fee imposed  
14 by this section. Nothing herein authorizes in any way the creation  
15 or operation of or contribution to an open dump.

16 (e) *Exemptions.* -- The following transactions are exempt from  
17 the fee imposed by this section:

18 (1) Disposal of solid waste at a solid waste disposal facility  
19 by the person who owns, operates or leases the solid waste disposal  
20 facility if the facility is used exclusively to dispose of waste  
21 originally produced by such person in such person's regular  
22 business or personal activities or by persons utilizing the

1 facility on a cost-sharing or nonprofit basis;

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

3 (3) Disposal of residential solid waste by an individual not  
4 in the business of hauling or disposing of solid waste on such days  
5 and times as designated by the ~~director~~ secretary is exempt from  
6 the solid waste assessment fee; and

7 (4) Disposal of solid waste at a solid waste disposal facility  
8 by a commercial recycler which disposes of thirty percent or less  
9 of the total waste it processes for recycling. In order to qualify  
10 for this exemption each commercial recycler must keep accurate  
11 records of incoming and outgoing waste by weight. Such records  
12 must be made available to the appropriate inspectors from the  
13 division, upon request.

14 (f) *Procedure and administration.* -- Notwithstanding section  
15 three, article ten, chapter eleven of this code, each and every  
16 provision of the West Virginia Tax Procedure and Administration Act  
17 set forth in article ten, chapter eleven of this code shall apply  
18 to the fee imposed by this section with like effect as if said act  
19 were applicable only to the fee imposed by this section and were  
20 set forth in extenso herein.

21 (g) *Criminal penalties.* -- Notwithstanding section two,  
22 article nine, chapter eleven of this code, sections three through

1 seventeen, inclusive, article nine, chapter eleven of this code  
2 shall apply to the fee imposed by this section with like effect as  
3 if said sections were applicable only to the fee imposed by this  
4 section and were set forth in extenso herein.

5       (h) *Dedication of proceeds.* -- The net proceeds of the fee  
6 collected by the Tax Commissioner pursuant to this section shall be  
7 deposited at least monthly in an account designated by the ~~director~~  
8 secretary. The ~~director~~ secretary shall allocate twenty-five cents  
9 for each ton of solid waste disposed of in this state upon which  
10 the fee imposed by this section is collected and shall deposit the  
11 total amount so allocated into the Solid Waste Reclamation and  
12 Environmental Response Fund to be expended for the purposes  
13 hereinafter specified. The first \$1 million of the net proceeds of  
14 the fee imposed by this section collected in each fiscal year shall  
15 be deposited in the Solid Waste Enforcement Fund and expended for  
16 the purposes hereinafter specified. The next \$250,000 of the net  
17 proceeds of the fee imposed by this section collected in each  
18 fiscal year shall be deposited in the Solid Waste Management Board  
19 Reserve Fund and expended for the purposes hereinafter specified:  
20 *Provided*, That in any year in which the Water Development Authority  
21 determines that the Solid Waste Management Board Reserve Fund is  
22 adequate to defer any contingent liability of the fund, the Water

1 Development Authority shall so certify to the ~~director~~ secretary  
2 and the ~~director~~ secretary shall then cause no less than \$50,000  
3 nor more than \$250,000 to be deposited to the fund: *Provided,*  
4 *however,* That in any year in which the Water Development Authority  
5 determines that the Solid Waste Management Board Reserve Fund is  
6 inadequate to defer any contingent liability of the fund, the Water  
7 Development Authority shall so certify to the ~~director~~ secretary  
8 and the ~~director~~ secretary shall then cause not less than \$250,000  
9 nor more than \$500,000 to be deposited in the fund: *Provided*  
10 *further,* That if a facility owned or operated by the State of West  
11 Virginia is denied site approval by a county or regional solid  
12 waste authority, and if such denial contributes, in whole or in  
13 part, to a default, or drawing upon a reserve fund, on any  
14 indebtedness issued or approved by the Solid Waste Management  
15 Board, then in that event the Solid Waste Management Board or its  
16 fiscal agent may withhold all or any part of any funds which would  
17 otherwise be directed to such county or regional authority and  
18 shall deposit such withheld funds in the appropriate reserve fund.  
19 The ~~director~~ secretary shall allocate the remainder, if any, of  
20 said net proceeds among the following three special revenue  
21 accounts for the purpose of maintaining a reasonable balance in  
22 each special revenue account, which are hereby continued in the

1 State Treasury:

2 (1) The Solid Waste Enforcement Fund which shall be expended  
3 by the ~~director~~ secretary for administration, inspection,  
4 enforcement and permitting activities established pursuant to this  
5 article;

6 (2) The Solid Waste Management Board Reserve Fund which shall  
7 be exclusively dedicated to providing a reserve fund for the  
8 issuance and security of solid waste disposal revenue bonds issued  
9 by the solid waste management board pursuant to article three,  
10 chapter twenty-two-c of this code;

11 (3) The Solid Waste Reclamation and Environmental Response  
12 Fund which may be expended by the ~~director~~ secretary for the  
13 purposes of reclamation, cleanup and remedial actions intended to  
14 minimize or mitigate damage to the environment, natural resources,  
15 public water supplies, water resources and the public health,  
16 safety and welfare which may result from open dumps or solid waste  
17 not disposed of in a proper or lawful manner.

18 (i) *Findings.* -- In addition to the purposes and legislative  
19 findings set forth in section one of this article, the Legislature  
20 finds as follows:

21 (1) In-state and out-of-state locations producing solid waste  
22 should bear the responsibility of disposing of said solid waste or



1 compensate other localities for costs associated with accepting  
2 such solid waste;

3 (2) The costs of maintaining and policing the streets and  
4 highways of the state and its communities are increased by long  
5 distance transportation of large volumes of solid waste; and

6 (3) Local approved solid waste facilities are being  
7 prematurely depleted by solid waste originating from other  
8 locations.

9 (j) The Gas Field Highway Repair and Horizontal Drilling Waste  
10 Study Fund is hereby created as a special revenue fund in the State  
11 Treasury to be administered by the West Virginia Division of  
12 Highways and to be expended only on the improvement, maintenance  
13 and repair of public roads of three lanes or less located in the  
14 watershed from which the revenue was received that are identified  
15 by the Commissioner of Highways as having been damaged by trucks  
16 and other traffic associated with horizontal well drilling sites or  
17 the disposal of waste generated by such sites, and that experience  
18 congestion caused, in whole or in part, by such trucks and traffic  
19 that interferes with the use of said roads by residents in the  
20 vicinity of such roads: *Provided*, That up to \$750,000 from such  
21 fund shall be made available to the Department of Environmental  
22 Protection from the same fund to offset contracted costs incurred

1 by the Department of Environmental Protection while undertaking the  
2 horizontal drilling waste disposal studies mandated by the  
3 provisions of subsection (j), section eight of this article. Any  
4 balance remaining in the special revenue account at the end of any  
5 fiscal year shall not revert to the General Revenue Fund but shall  
6 remain in the special revenue account and shall be used solely in  
7 a manner consistent with this section. The fund shall consist of  
8 the fee provided for in subsection (k) of this section.

9 (k) *Horizontal drilling waste assessment fee.* -- An additional  
10 solid waste assessment fee is hereby imposed upon the disposal of  
11 drill cuttings and drilling waste generated by horizontal well  
12 sites in the amount of \$1 per ton, which fee is in addition to all  
13 other fees and taxes levied by this section or otherwise and shall  
14 be added to and constitute part of any other fee charged by the  
15 operator or owner of the solid waste disposal facility:  
16 *Provided, That the horizontal drilling waste assessment fee shall*  
17 *be collected and administered in the same manner as the solid waste*  
18 *assessment fee imposed by this section, but shall be imposed only*  
19 *upon the disposal of drill cuttings and drilling waste generated by*  
20 *horizontal well sites.*

NOTE: The purpose of this bill is to allow for the receipt of additional drill cuttings and drilling waste generated from well

sites at certain commercial solid waste facilities above the facility's existing tonnage limit if certain conditions are met. The bill requires radiation and leachate monitoring at all facilities receiving drill cuttings and drilling waste. The bill requires the Department of Environmental Protection to conduct an investigation and report to the Legislature on specified issues associated with the disposal of drill cuttings and drilling wastes at landfills. The bill also establishes an additional solid waste fee to be imposed on the disposal of drill cuttings and drilling waste generated by horizontal well sites.

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