H. B. 2985

(By Delegates Storch, R. Phillips, Howell and D. Evans)

[Introduced February 24, 2015; referred to the
Committee on Energy then the Judiciary.]

A BILL to amend and reenact §22-15-8 of the Code of West Virginia, 1931, as amended, relating to establishing radiation levels for oil and gas drill cuttings that are disposed in solid waste, and to allow mixing of drill cuttings with dirt and other substances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

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

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

(b) Except as provided in section nine of this article, the maximum quantity of solid waste

which may lawfully be received or disposed of at any commercial solid waste facility is thirty thousand tons per month.

(c) The secretary shall, within the limits contained in this article, place a limit on the amount of solid waste received or disposed of per month in commercial solid waste facilities. The secretary shall consider at a minimum the following criteria in determining a commercial solid waste facility's monthly tonnage limit:

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

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

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

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

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

(e) The secretary shall promulgate emergency rules and propose for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, to effectuate the requirements of this section. When developing the rules, the secretary shall consider at a minimum the potential impact of the treatment, storage, processing, composting, dumping or placing sewage sludge at a solid waste facility:

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

(2) On the air quality in the area;

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

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

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

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

(f) Sewage sludge disposed of at a landfill must contain at least twenty percent solid by weight. This requirement may be met by adding or blending sand, sawdust, lime, leaves, soil or other materials that have been approved by the secretary prior to disposal. Alternative sewage sludge disposal methods can be utilized upon obtaining written approval from the secretary. No facility may accept for land filling in any month sewage sludge in excess of twenty-five percent of the total tons of solid waste accepted at the facility for land filling in the preceding month.

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

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

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

thereunder; and

(C) On or before March 8, 2014, the facility has either obtained a certificate of need, or amended certificate of need, or has a pending application for a certificate or amended certificate of need, authorizing such separate cell as may be required by the Public Service Commission in accordance with section one-c, article two, chapter twenty-four of this code.

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

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

(h) Any solid waste facility taking drill cuttings and drilling waste must install radiation monitors by January 1, 2015. Notwithstanding any other provision of this code, the secretary may regulate all radiation, including naturally occurring radioactive materials and technologically enhanced naturally occurring radioactive materials, associated with drill cuttings and drilling wastes, and shall promulgate emergency and legislative rules to establish limits for unique toxins associated with drill cuttings and drilling waste including, but not limited to, heavy metals, petroleum-related chemicals, (benzene, toluene, xylene, barium, chlorides, radium and radon) and establish the procedures the facility must follow if that limit is exceeded: *Provided,* That the limit for radiation of all types shall be thirty picocuries per gram above background and said rules shall establish and

set forth a procedure to provide that any detected radiation readings ~~above any established radiation limits~~ greater than thirty picocuries per gram above background will require that the solid waste landfill immediately cease accepting all affected drill cuttings and drilling waste until the secretary has inspected said landfill and certified pursuant to established rules and regulations that radiation levels have returned to below the established radiation limits. Any truck load of drill cuttings or drilling waste which exceeds the radiation reading limits shall not be allowed to enter the landfill until inspected and approved by the Department of Environmental Protection: *Provided, however*, That nothing in this code shall prevent the mixing of drill cuttings and drilling wastes with dirt, debris or other substances that may lawfully be disposed in a solid waste facility in order to reduce the average radiation level below thirty picocuries per gram above background.

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

(j) On or before July 1, 2015, the secretary shall submit an investigation and report to the Joint Legislative Oversight Commission on Water Resources and the Legislature's Joint Committee on Government and Finance which examines: (1) The hazardous characteristics of leachate collected from solid waste facilities receiving drill cuttings and drilling waste, including, but not limited to, the presence of heavy metals, petroleum related chemicals (benzene, toluene, xylene, etc.) barium, chlorides, radium and radon; (2) the potential negative impacts on the surface water or groundwater resources of this state associated with the collection, treatment and disposal of leachate from such

landfills; (3) the technical and economic feasibility and benefits of establishing additional and/or separate disposal locations which are funded, constructed, owned and/or operated by the oil and gas industry; and (4) viable alternatives for the handling, treatment and disposal of drill cuttings, including the potential for processing, reusing and reapplying a portion of the collected drill cuttings as suitable fill material for roads, brownfield development or other projects, instead of disposing of all collected material into landfills.

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

NOTE: The purpose of this bill is to establish radiation levels for oil and gas drill cuttings that are disposed in solid waste. The bill also would allow the mixing of drill cuttings with dirt and other substances to achieve the radiation limits.

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