

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 601

BY SENATOR BOSO, *original sponsor*

[Passed March 12, 2016; in effect from passage]

1 AN ACT to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended; and
2 to amend said code by adding thereto a new section, designated §24-2-1I, all relating to
3 exemption from the jurisdiction of the Public Service Commission for materials recovery
4 facilities or mixed waste processing facilities; and providing an exception to allow the
5 Public Service Commission to retain limited jurisdiction over facilities meeting certain
6 requirements which received a certificate of need prior to July 1, 2016.

Be it enacted by the Legislature of West Virginia:

1 That §22-15-10 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and to amend said code by adding thereto a new section, designated §24-2-1I, to read
3 as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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. Such
4 compliance schedule shall contain an enforceable sequence of actions leading to compliance and
5 shall not exceed two years. Open dumps operated prior to April 1, 1998, by a landowner or tenant
6 for the disposal of solid waste generated by the landowner or tenant at his or her residence or
7 farm are not a violation of this section if such open dump did not constitute a violation of law on
8 January 1, 1998, and unauthorized dumps which were created by unknown persons do not
9 constitute a violation of this section: *Provided*, That no person may contribute additional solid
10 waste to any such dump after April 1, 1998, except that the owners of the land on which
11 unauthorized dumps have been or are being made are not liable for such unauthorized dumping
12 unless such landowners refuse to cooperate with the division in stopping such unauthorized
13 dumping.

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

18 (c) Any permit issued under this article shall be issued in compliance with the requirements
19 of this article, its rules and article eleven of this chapter and the rules promulgated thereunder, so
20 that only a single permit is required of a solid waste facility under these two articles. Each permit
21 issued under this article shall have a fixed term not to exceed five years: *Provided*, That the
22 director may administratively extend a permit beyond its five-year term if the approved solid waste
23 facility is in compliance with this article, its rules and article eleven of this chapter and the rules
24 promulgated thereunder: *Provided, however*, That such administrative extension may not be for
25 more than one year. Upon expiration of a permit, renewal permits may be issued in compliance
26 with rules promulgated by the director.

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

34 (e) No person may dispose in the state of any solid waste in a manner which endangers
35 the environment or the public health, safety or welfare as determined by the director: *Provided*,
36 That the carcasses of dead animals may be disposed of in any solid waste facility or in any other
37 manner as provided for in this code. Upon request by the director, the commissioner of the bureau
38 of public health shall provide technical advice concerning the disposal of solid waste or carcasses
39 of dead animals within the state.

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

42 (g) In addition to all the requirements of this article and the rules promulgated hereunder,
43 a permit to construct a new commercial solid waste facility or to expand the spatial area of an
44 existing facility, may not be issued unless the public service commission has granted a certificate
45 of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director
46 approves a permit or permit modification, the certificate of need shall become a part of the permit
47 and all conditions contained in the certificate of need shall be conditions of the permit and may
48 be enforced by the division in accordance with the provisions of this article. If the director approves
49 a permit or permit modification, the certificate of need shall become a part of the permit and all
50 conditions contained in the certificate of need shall be conditions of the permit and may be
51 enforced by the division in accordance with the provisions of this article: *Provided*, That the
52 provisions of this subsection do not apply to materials recovery facilities or mixed waste
53 processing facilities as defined by chapter twenty-two, article fifteen, section two of this code,
54 except within a thirty-five mile radius of a facility sited in a karst geological region and which has
55 been permitted by the West Virginia Department of Environmental Protection as a mixed waste
56 processing facility and has received a certificate of need by July 1, 2016.

57 (h) The director shall promulgate legislative rules pursuant to article three, chapter twenty-
58 nine-a of this code which reflect the purposes as set forth in this section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

**§24-2-1L. Commission jurisdiction does not extend to materials recovery facilities, mixed
waste processing facilities, and oil and natural gas solid waste disposal.**

1 Notwithstanding any other provision of this code, the jurisdiction of the commission does
2 not extend to materials recovery facilities or mixed waste processing facilities as defined by
3 chapter twenty-two, article fifteen, section two of this code, except within a thirty-five mile radius

4 of a facility sited in a county that is, in whole or in part, within a karst region as determined by the
5 West Virginia Geologic and Economic Survey that has been permitted and classified by the
6 WVDEP as a mixed waste processing resource recovery facility and has received a certificate of
7 need by July 1, 2016: *Provided*, That nothing in this section shall affect the requirements of section
8 five, article two and section three, article three, chapter twenty-four-a of this code.