

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 436

BY SENATOR RUCKER

[Introduced February 24, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §22-15-2 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §22-15A-19 of said code; to amend and reenact §22-16-2 and §22-16-4 of
 3 said code; to amend and reenact §22C-4-2 and §22C-4-30 of said code; and to amend
 4 and reenact §24-2-1m of said code, all relating to solid waste facilities; defining terms;
 5 specifying that a mixed waste resource recovery facility is not a solid waste facility;
 6 conforming definition of “commercial solid waste facility” in articles relating to recycling
 7 assessment fees, solid waste landfill assistance programs, and county and regional solid
 8 waste authorities; providing for exemption of such facilities from solid waste assessment
 9 interim fees; clarifying that mixed waste resource recovery facilities are not subject to the
 10 jurisdiction of the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-2. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article the terms:
 2 (1) “Agronomic rate” means the whole sewage sludge application rate, by dry weight,
 3 designed:
 4 (A) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover
 5 crop or vegetation on the land; and
 6 (B) To minimize the amount of nitrogen in the sewage sludge that passes below the root
 7 zone of the crop or vegetation grown on the land to the groundwater.
 8 (2) “Applicant” means the person applying for a commercial solid waste facility permit or
 9 similar renewal permit and any person related to such person by virtue of common ownership,
 10 common management or family relationships as the director may specify, including the following:
 11 Spouses, parents and children and siblings.

12 (3) "Approved solid waste facility" means a solid waste facility or practice which has a valid
13 permit under this article.

14 (4) "Back hauling" means the practice of using the same container to transport solid waste
15 and to transport any substance or material used as food by humans, animals raised for human
16 consumption or reusable item which may be refilled with any substance or material used as food
17 by humans.

18 (5) "Bulking agent" means any material mixed and composted with sewage sludge.

19 (6) "Class A facility" means a commercial solid waste facility which handles an aggregate
20 of between 10,000 and 30,00 tons of solid waste per month. Class A facility includes two or more
21 Class B solid waste landfills owned or operated by the same person in the same county, if the
22 aggregate tons of solid waste handled per month by such landfills exceeds 9,999 tons of solid
23 waste per month.

24 (7) "Commercial recycler" means any person, corporation or business entity whose
25 operation involves the mechanical separation of materials for the purpose of reselling or recycling
26 at least 70 percent by weight of the materials coming into the commercial recycling facility.

27 (8) "Commercial solid waste facility" means any solid waste facility which accepts solid
28 waste generated by sources other than the owner or operator of the facility. ~~and~~ Commercial solid
29 waste facility" does not include an approved solid waste facility: ~~owned~~ (A) Owned and operated
30 by a person for the sole purpose of the disposal, processing or composting of solid wastes created
31 by that person or such person and other persons on a cost-sharing or nonprofit basis; ~~and does~~
32 ~~not include~~ (B) a mixed waste resource recovery facility as that term is defined in §22-16-2 of this
33 code; or (C) land upon which reused or recycled materials are legitimately applied for structural
34 fill, road base, mine reclamation and similar applications.

35 (9) "Compost" means a humus-like material resulting from aerobic, microbial, thermophilic
36 decomposition of organic materials.

37 (10) "Composting" means the aerobic, microbial, thermophilic decomposition of natural

38 constituents of solid waste to produce a stable, humus-like material.

39 (11) "Commercial composting facility" means any solid waste facility processing solid
40 waste by composting, including sludge composting, organic waste or yard waste composting, but
41 does not include a composting facility owned and operated by a person for the sole purpose of
42 composting waste created by that person or such person and other persons on a cost-sharing or
43 nonprofit basis and shall not include land upon which finished or matured compost is applied for
44 use as a soil amendment or conditioner.

45 (12) "Cured compost" or "finished compost" means compost which has a very low
46 microbial or decomposition rate which will not reheat or cause odors when put into storage and
47 that has been put through a separate aerated curing cycle stage of 30 to 60 days after an initial
48 composting cycle or compost which meets all regulatory requirements after the initial composting
49 cycle.

50 (13) "Department" means the Department of Environmental Protection.

51 (14) "Energy recovery incinerator" means any solid waste facility at which solid wastes are
52 incinerated with the intention of using the resulting energy for the generation of steam, electricity
53 or any other use not specified herein.

54 (15) "Incineration technologies" means any technology that uses controlled flame
55 combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue
56 that contains little or no combustible materials, regardless of whether the purpose is processing,
57 disposal, electric or steam generation or any other method by which solid waste is incinerated.

58 (16) "Incinerator" means an enclosed device using controlled flame combustion to
59 thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains
60 little or no combustible materials.

61 (17) "Landfill" means any solid waste facility for the disposal of solid waste on or in the
62 land for the purpose of permanent disposal. Such facility is situated, for purposes of this article,
63 in the county where the majority of the spatial area of such facility is located.

64 (18) "Materials recovery facility" means any solid waste facility at which source-separated
65 materials or materials recovered through a mixed waste processing facility are manually or
66 mechanically shredded or separated for purposes of reuse and recycling, but does not include a
67 composting facility.

68 (19) "Mature compost" means compost which has been produced in an aerobic, microbial,
69 thermophilic manner and does not exhibit phytotoxic effects.

70 (20) "Mixed solid waste" means solid waste from which materials sought to be reused or
71 recycled have not been source-separated from general solid waste.

72 (21) "Mixed waste processing facility" means any solid waste facility at which materials
73 are recovered from mixed solid waste through manual or mechanical means for purposes of
74 reuse, recycling or composting.

75 (22) "Municipal solid waste incineration" means the burning of any solid waste collected
76 by any municipal or residential solid waste disposal company.

77 (23) "Open dump" means any solid waste disposal which does not have a permit under
78 this article, or is in violation of state law, or where solid waste is disposed in a manner that does
79 not protect the environment.

80 (24) "Person" or "persons" means any industrial user, public or private corporation,
81 institution, association, firm or company organized or existing under the laws of this or any other
82 state or country; State of West Virginia; governmental agency, including federal facilities; political
83 subdivision; county commission; municipal corporation; industry; sanitary district; public service
84 district; drainage district; soil conservation district; watershed improvement district; partnership;
85 trust; estate; person or individual; group of persons or individuals acting individually or as a group;
86 or any legal entity whatever.

87 (25) "Publicly owned treatment works" means any treatment works owned by the state or
88 any political subdivision thereof, any municipality or any other public entity which processes raw
89 domestic, industrial or municipal sewage by any artificial or natural processes in order to remove

90 or so alter constituents as to render the waste less offensive or dangerous to the public health,
91 comfort or property of any of the inhabitants of this state before the discharge of the plant effluent
92 into any of the waters of this state, and which produces sewage sludge.

93 (26) "Recycling facility" means any solid waste facility for the purpose of recycling at which
94 neither land disposal nor biological, chemical or thermal transformation of solid waste occurs:
95 *Provided*, That mixed waste recovery facilities, sludge processing facilities and composting
96 facilities are not considered recycling facilities nor considered to be reusing or recycling solid
97 waste within the meaning of this article, §22-15A-1 *et seq.* of this code, and 22X-4-1 *et seq.* of
98 this code.

99 (27) "Sewage sludge" means solid, semisolid or liquid residue generated during the
100 treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited
101 to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater
102 treatment processes and a material derived from sewage sludge. "Sewage sludge" does not
103 include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

104 (28) "Secretary" means the Secretary of the Department of Environmental Protection or
105 such other person to whom the secretary has delegated authority or duties pursuant to §22-15-1
106 *et seq.* of this code.

107 (29) "Sewage sludge processing facility" is a solid waste facility that processes sewage
108 sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such
109 processes include, but are not limited to, composting, lime stabilization, thermophilic, microbial
110 and anaerobic digestion.

111 (30) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created
112 by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air
113 pollution control facility or any other such waste having similar origin.

114 (31) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed
115 for the express purpose of incineration; sludge from a waste treatment plant; water supply

116 treatment plant or air pollution control facility; and other discarded materials, including offensive
117 or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from
118 industrial, commercial, mining or community activities but does not include solid or dissolved
119 material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges
120 which are point sources and have permits under §22-5A-1 *et seq.* of this code, or source, special
121 nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including
122 any nuclear or byproduct material considered by federal standards to be below regulatory
123 concern, or a hazardous waste either identified or listed under §22-5E-1 *et seq.* of this code or
124 refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or
125 steam generation, the exploration, development, production, storage and recovery of coal, oil and
126 gas and other mineral resources placed or disposed of at a facility which is regulated under
127 Chapter 22, Chapter 22A, or Chapter 22B of this code, so long as placement or disposal is in
128 conformance with a permit issued pursuant to such chapters.

129 (32) "Solid waste disposal" means the practice of disposing of solid waste including
130 placing, depositing, dumping or throwing or causing any solid waste to be placed, deposited,
131 dumped or thrown.

132 (33) "Solid waste disposal shed" means the geographical area which the solid waste
133 management board designates and files in the state register pursuant to §16-26-8 of this code.

134 (34) "Solid waste facility" means any system, facility, land, contiguous land, improvements
135 on the land, structures or other appurtenances or methods used for processing, recycling or
136 disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed
137 waste processing facilities, sewage sludge processing facilities, commercial composting facilities
138 and other such facilities not herein specified, but not including land upon which sewage sludge is
139 applied in accordance with §22-15-20 of this code. Such facility shall be deemed to be situated,
140 for purposes of this article, in the county where the majority of the spatial area of such facility is
141 located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of §17-23-

142 1 *et seq.* of this code, is not a solid waste facility.

143 (35) "Solid waste facility operator" means any person or persons possessing or exercising
 144 operational, managerial or financial control over a commercial solid waste facility, whether or not
 145 such person holds a certificate of convenience and necessity or a permit for such facility.

146 (36) "Source-separated materials" means materials separated from general solid waste at
 147 the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL
 ACTION PLAN.**

**§22-15A-19. Recycling assessment fee; regulated motor carriers; dedication of proceeds;
 criminal penalties.**

1 (a) *Imposition.* -- A recycling assessment fee is hereby levied and imposed upon the
 2 disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate
 3 of \$2 per ton or part of a ton of solid waste. The fee imposed by this section is in addition to all
 4 other fees levied by law.

5 (b) *Collection, return, payment and records.* — The person disposing of solid waste at the
 6 solid waste disposal facility shall pay the fee imposed by this section, whether or not that person
 7 owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who
 8 shall remit it to the Tax Commissioner:

9 (1) The fee imposed by this section accrues at the time the solid waste is delivered to the
 10 solid waste disposal facility;

11 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on
 12 or before the 15th day of the month next succeeding the month in which the fee accrued. Upon
 13 remittance of the fee, the operator shall file returns on forms and in the manner as prescribed by
 14 the Tax Commissioner;

15 (3) The operator shall account to the state for all fees collected under this section and shall

16 hold them in trust for the state until they are remitted to the Tax Commissioner;

17 (4) If any operator fails to collect the fee imposed by this section, he or she is personally
18 liable for the amount that he or she failed to collect, plus applicable additions to tax, penalties and
19 interest imposed by §11-10-1 *et seq.* of this code;

20 (5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns
21 with the fee as required in this section, the Tax Commissioner may serve written notice requiring
22 the operator to collect the fees which become collectible after service of the notice, to deposit the
23 fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable
24 to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the
25 Tax Commissioner. The notice remains in effect until a notice of cancellation is served on the
26 operator or owner by the Tax Commissioner;

27 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to
28 an operator, the operator is primarily liable for collection and remittance of the fee imposed by
29 this section and the owner is secondarily liable for remittance of the fee imposed by this section.
30 However, if the operator fails, in whole or in part, to discharge his or her obligations under this
31 section, the owner and the operator of the solid waste facility are jointly and severally responsible
32 and liable for compliance with the provisions of this section;

33 (7) If the operator or owner responsible for collecting the fee imposed by this section is an
34 association or corporation, the officers of the association or corporation are liable, jointly and
35 severally, for any default on the part of the association or corporation, and payment of the fee and
36 any additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code may be
37 enforced against them and against the association or corporation which they represent; and

38 (8) Each person disposing of solid waste at a solid waste disposal facility and each person
39 required to collect the fee imposed by this section shall keep complete and accurate records in
40 the form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

41 (c) *Regulated motor carriers.* — The fee imposed by this section is a necessary and

42 reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service
43 Commission under Chapter 24A of this code. Notwithstanding any provision of law to the contrary,
44 upon the filing of a petition by an affected motor carrier, the Public Service Commission shall,
45 within 14 days, reflect the cost of the fee in the motor carrier's rates for solid waste removal
46 service. In calculating the amount of the fee to the motor carrier, the Commission shall use the
47 national average of pounds of waste generated per person per day as determined by the United
48 States Environmental Protection Agency.

49 (d) *Definition.* — For purposes of this section, “solid waste disposal facility” means any
50 approved solid waste facility or open dump in this state and includes a transfer station when the
51 solid waste collected at the transfer station is not finally disposed of at a solid waste facility within
52 this state that collects the fee imposed by this section.

53 Nothing in this section authorizes in any way the creation or operation of or contribution to
54 an open dump.

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

57 (1) Disposal of solid waste at a solid waste facility: ~~by~~ (A) By the person who owns,
58 operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste
59 originally produced by that person in his or her regular business or personal activities; ~~or~~ (B) by
60 persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) where the facility is
61 otherwise excluded from the definition of “commercial solid waste facility” pursuant to §22-15-2 of
62 this code;

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

64 (3) Disposal of residential solid waste by an individual not in the business of hauling or
65 disposing of solid waste on the days and times designated by the secretary by rule as exempt
66 from the fee imposed pursuant to §22-15-11 of this code.

67 (f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and

68 every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1
69 *et seq.* of this code applies to the fee imposed by this section with like effect as if the act were
70 applicable only to the fee imposed by this section and were set forth in extenso in this section.

71 (g) *Criminal penalties.* — Notwithstanding §11-9-2 of this code, sections §11-9-3 through
72 §11-9-17 of this code apply to the fee imposed by this section with like effect as if the sections
73 were the only fee imposed by this section and were set forth in extenso in this section.

74 (h) *Dedication of proceeds.* — The proceeds of the fee collected pursuant to this section
75 shall be deposited by the Tax Commissioner, at least monthly, in a special revenue account
76 designated as the Recycling Assistance Fund which is hereby continued and transferred to the
77 Department of Environmental Protection. The secretary shall allocate the proceeds of the fund as
78 follows:

79 (1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities,
80 counties and other interested parties in the planning and implementation of recycling programs,
81 public education programs and recycling market procurement efforts, established pursuant to this
82 article. The secretary shall promulgate rules, in accordance with Chapter 29A of this code,
83 containing application procedures, guidelines for eligibility, reporting requirements and other
84 matters considered appropriate: *Provided,* That persons responsible for collecting, hauling or
85 disposing of solid waste who do not participate in the collection and payment of the solid waste
86 assessment fee imposed by this section in addition to all other fees and taxes levied by law for
87 solid waste generated in this state which is destined for disposal, are not eligible to receive grants
88 under the provisions of this article;

89 (2) Twelve and one-half percent of the total proceeds shall be expended for personal
90 services and benefit expenses of full-time salaried natural resources police officers;

91 (3) Twelve and one-half percent of the total proceeds shall be directly allocated to the solid
92 waste planning fund;

93 (4) Twelve and one-half percent of the total proceeds shall be transferred to the Solid

94 Waste Reclamation and Environmental Response Fund, established pursuant to §22-15-11 of
 95 this code, to be expended by the Department of Environmental Protection to assist in the funding
 96 of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse,
 97 waste reduction and clean-up activities; and

98 (5) Twelve and one-half percent of the total proceeds shall be deposited in the Hazardous
 99 Waste Emergency Response Fund established in §22-19-1 *et seq.* of this code.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "Commercial recycler" means any person, corporation or business entity whose
 3 operation involves the mechanical separation of materials for the purpose of reselling or recycling
 4 at least 70 percent by weight of the materials coming into the commercial recycling facility;

5 (2) "Cost of project" includes the cost of the services authorized in §22-16-3 and §22-16-
 6 15 of this code, property, material and labor which are essential thereto, financing charges,
 7 interest during construction and all other expenses, including legal fees, trustees', engineers' and
 8 architects' fees which are necessarily or properly incidental to the program;

9 (3) "Director" means the director of the Division of Environmental Protection or such other
 10 person to whom the director has delegated duties or authority pursuant to §22-1-6 or §22-1-8 of
 11 this code;

12 (4) "Landfill" means any solid waste facility for the disposal of solid waste on land, and
 13 also means any system, facility, land, contiguous land, improvements on the land, structures or
 14 other appurtenances or methods used for processing, recycling or disposing of solid waste,
 15 including landfills, transfer stations, resource recovery facilities and other such facilities not herein
 16 specified. Such facility is situated, for purposes of this article, in the county where the majority of
 17 the spatial area of such facility is located;

18 (5) "Mixed Waste Resource Recovery Facility" means any solid waste facility at which

19 materials are recovered from mixed solid waste through manual or mechanical means for
20 purposes of converting these materials into alternative or supplemental fuel sources and, to the
21 extent possible, recycled metals and other inert materials not included in the manufacturing of
22 fuel.

23 ~~(5)~~ (6) "Permittee" means a person who has or should obtain a permit for a commercial
24 solid waste facility that is a landfill;

25 ~~(6)~~ (7) "Project" means the providing of closure assistance to one or more landfills under
26 this article.

27 The definitions provided in §16-15-2 of this code, to the extent they are applicable, apply
28 in this article.

§22-16-4. Solid waste assessment fee; penalties.

1 (a) *Imposition.* -- A solid waste assessment fee is levied and imposed upon the disposal
2 of solid waste at any solid waste disposal facility in this state in the amount of \$3.50 per ton or
3 like ratio on any part of a ton of solid waste, except as provided in subsection (e) of this section:
4 *Provided,* That any solid waste disposal facility may deduct from this assessment fee an amount,
5 not to exceed the fee, equal to the amount that the facility is required by the Public Service
6 Commission to set aside for the purpose of closure of that portion of the facility required to close
7 by §22-15-1 *et seq.* of this code. The fee imposed by this section is in addition to all other fees
8 and taxes levied by law and shall be added to and constitute part of any other fee charged by the
9 operator or owner of the solid waste disposal facility.

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

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

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

20 (3) The operator shall account to the state for all fees collected under this section and shall
21 hold them in trust for the state until they are remitted to the Tax Commissioner;

22 (4) If any operator fails to collect the fee imposed by this section, he or she is personally
23 liable for the amount he or she failed to collect, plus applicable additions to tax, penalties and
24 interest imposed by §11-10-1 *et seq.* of this code;

25 (5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns
26 with the fee as required in this section, the Tax Commissioner may serve written notice requiring
27 the operator to collect the fees which become collectible after service of the notice, to deposit the
28 fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable
29 to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the
30 Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served on the
31 operator or owner by the Tax Commissioner;

32 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to
33 an operator, the operator is primarily liable for collection and remittance of the fee imposed by
34 this section and the owner is secondarily liable for remittance of the fee imposed by this section.
35 However, if the operator fails, in whole or in part, to discharge his or her obligations under this
36 section, the owner and the operator of the solid waste facility are jointly and severally responsible
37 and liable for compliance with the provisions of this section;

38 (7) If the operator or owner responsible for collecting the fee imposed by this section is an
39 association or corporation, the officers of the association or corporation are liable, jointly and
40 severally, for any default on the part of the association or corporation, and payment of the fee and
41 any additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code may be

42 enforced against them as against the association or corporation which they represent; and

43 (8) Each person disposing of solid waste at a solid waste disposal facility and each person
44 required to collect the fee imposed by this section shall keep complete and accurate records in
45 the form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

46 (c) *Regulated motor carriers.* -- The fee imposed by this section is a necessary and
47 reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service
48 Commission under Chapter 24A of this code. Notwithstanding any provision of law to the contrary,
49 upon the filing of a petition by an affected motor carrier, the Public Service Commission shall,
50 within 14 days, reflect the cost of the fee in the motor carrier's rates for solid waste removal
51 service. In calculating the amount of the fee to the motor carrier, the commission shall use the
52 national average of pounds of waste generated per person per day as determined by the United
53 States environmental protection agency.

54 (d) *Definitions.* -- For purposes of this section, the term "solid waste disposal facility"
55 means any approved solid waste facility or open dump in this state, and includes a transfer station
56 when the solid waste collected at the transfer station is not finally disposed of at a solid waste
57 facility within this state that collects the fee imposed by this section. Nothing in this section
58 authorizes in any way the creation or operation of or contribution to an open dump.

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

61 (1) Disposal of solid waste at a solid waste disposal facility by the person who owns,
62 operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of
63 waste originally produced by that person in the person's regular business or personal activities or
64 by persons utilizing the facility on a cost-sharing or nonprofit basis;

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

66 (3) Disposal of residential solid waste by an individual not in the business of hauling or
67 disposing of solid waste on the days and times designated by the director as exempt from the

68 solid waste assessment fee; and

69 (4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which
70 disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for
71 this exemption each commercial recycler shall keep accurate records of incoming and outgoing
72 waste by weight. The records shall be made available to the appropriate inspectors from the
73 division, upon request.

74 (f) *Procedure and administration.* -- Notwithstanding §11-10-3 of this code, each and every
75 provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 *et seq.*
76 of this code applies to the fee imposed by this section with like effect as if the act were applicable
77 only to the fee imposed by this section and were set forth in extenso in this section.

78 (g) *Criminal penalties.* -- Notwithstanding §11-9-2 of this code, sections §11-9-3 through
79 §11-9-17 of this code apply to the fee imposed by this section with like effect as if the sections
80 were applicable only to the fee imposed by this section and were set forth in extenso in this
81 section.

82 (h) *Dedication of proceeds.* -- (1) The proceeds of the fee collected pursuant to this section
83 shall be deposited in the closure cost assistance fund established pursuant to §22-16-12 of this
84 code: *Provided,* That the director may transfer up to 50 cents for each ton of solid waste disposed
85 of in this state upon which the fee imposed by this section is collected on or after July 1, 1998, to
86 the solid waste enforcement fund established pursuant to §22-15-11 of this code.

87 (2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of
88 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per
89 month pursuant to §22-15-9 of this cod shall be remitted, at least monthly, to the county
90 commission in the county in which the landfill is located. The remainder of the proceeds of the fee
91 collected pursuant to this section shall be deposited in the closure cost assistance fund
92 established pursuant to §22-16-12 of this code.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,
AUTHORITIES, COMMISSIONS AND COMPACTS.**

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-2. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article: ~~the terms:~~

2 (a) "Approved solid waste facility" means a commercial solid waste facility or practice
3 which has a valid permit or compliance order under §22-15-1 *et seq.* of this code.

4 (b) "Commercial solid waste facility" means any solid waste facility ~~which accepts solid~~
5 ~~waste generated by sources other than the owner or operator of the facility and does not include~~
6 ~~an approved solid waste facility owned and operated by a person for the sole purpose of disposing~~
7 ~~of solid wastes created by that person or that person and another person on a cost-sharing or~~
8 ~~nonprofit basis and does not include land upon which reused or recycled materials are legitimately~~
9 ~~applied for structural fill, road base, mine reclamation and similar applications. as defined in §22-~~
10 15-2 of this code.

11 (c) "Commercial recycler" means any person, corporation or business entity whose
12 operation involves the mechanical separation of materials for the purpose of reselling or recycling
13 at least 70 percent by weight of the materials coming into the commercial recycling facility.

14 (d) "Class A facility" means a commercial solid waste facility which handles an aggregate
15 of between 10,000 and 30,000 tons of solid waste per month. Class A facility includes two or more
16 Class B solid waste landfills owned or operated by the same person in the same county, if the
17 aggregate tons of solid waste handled per month by such landfills exceeds 9,999 tons of solid
18 waste per month.

19 (e) "Class B facility" means a commercial solid waste facility which receives or is expected
20 to receive an average daily quantity of mixed solid waste equal to or exceeding 100 tons each
21 working day, ~~or~~ serves or is expected to serve, a population equal to or exceeding 40,000 persons,

22 but which does not receive solid waste exceeding an aggregate of 10,000 tons per month. Class
23 B facilities do not include construction/demolition facilities: *Provided*, That the definition of Class
24 B facility may include such reasonable subdivisions or subclassifications as the director may
25 establish by legislative rule proposed in accordance with the provisions of Chapter 29A of this
26 code.

27 (f) "Compliance order" means an administrative order issued pursuant to §22-15-10 of this
28 code authorizing a solid waste facility to operate without a solid waste permit.

29 (g) "Open dump" means any solid waste disposal which does not have a permit under this
30 article, or is in violation of state law, or where solid waste is disposed in a manner that does not
31 protect the environment.

32 (h) "Person" means any industrial user, public or private corporation, institution,
33 association, firm or company organized or existing under the laws of this or any other state or
34 country; the State of West Virginia; governmental agency, including federal facilities; political
35 subdivision; county commission; municipal corporation; industry; sanitary district; public service
36 district; drainage district; soil conservation district; watershed improvement district; partnership;
37 trust; estate; person or individual; group of persons or individuals acting individually or as a group;
38 or any legal entity whatever.

39 (i) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created
40 by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air
41 pollution control facility or any other such waste having similar origin.

42 (j) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed
43 for the express purpose of incineration, sludge from a waste treatment plant, water supply
44 treatment plant or air pollution control facility, other discarded material, including offensive or
45 unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from
46 industrial, commercial, mining or community activities but does not include solid or dissolved
47 material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges

48 which are point sources and have permits under §22-11-1 *et seq.* of this code, or source, special
49 nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including
50 any nuclear or byproduct material considered by federal standards to be below regulatory
51 concern, or a hazardous waste either identified or listed under §22-18-1 *et seq.* of this code, or
52 refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or
53 steam generation, the exploration, development, production, storage and recovery of coal, oil and
54 gas, and other mineral resources placed or disposed of at a facility which is regulated under ~~article~~
55 ~~two, three, four, six, seven, eight, nine or ten, chapter twenty-two or chapter twenty-two-a~~ Chapter
56 22 or Chapter 22A of this code, so long as such placement or disposal is in conformance with a
57 permit issued pursuant to said chapters. "Solid waste" does not include materials which are
58 recycled by being used or reused in an industrial process to make a product, as effective
59 substitutes for commercial products, or are returned to the original process as a substitute for raw
60 material feedstock.

61 (k) "Solid waste disposal" means the practice of disposing of solid waste including placing,
62 depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid
63 waste.

64 (l) "Solid waste disposal shed" means the geographical area which the solid waste
65 management board designates and files in the state register pursuant to §22-3-9 of this code.

66 (m) "Solid waste facility" means any system, facility, land, contiguous land, improvements
67 on the land, structures or other appurtenances or methods used for processing, recycling or
68 disposing of solid waste, including landfills, transfer stations, resource-recovery facilities and other
69 such facilities not herein specified. Such facility is situated, for purposes of this article, in the
70 county where the majority of the spatial area of such facility is located.

71 (n) "Energy recovery incinerator" means any solid waste facility at which solid wastes are
72 incinerated with the intention of using the resulting energy for the generation of steam, electricity
73 or any other use not specified herein.

74 (o) "Incineration technologies" means any technology that uses controlled flame
75 combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue
76 that contains little or no combustible materials, regardless of whether the purpose is processing,
77 disposal, electric or steam generation or any other method by which solid waste is incinerated.

78 (p) "Incinerator" means an enclosed device using controlled flame combustion to thermally
79 break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no
80 combustible materials.

81 (q) "Materials recovery facility" means any solid waste facility at which solid wastes are
82 manually or mechanically shredded or separated so that materials are recovered from the general
83 waste stream for purposes of reuse and recycling.

**§22C-4-30. Solid waste assessment interim fee; regulated motor carriers; dedication of
proceeds; criminal penalties.**

1 (a) *Imposition.* -- Effective July 1, 1989, a solid waste assessment fee is hereby levied and
2 imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be
3 collected at the rate of \$1 per ton or part thereof of solid waste. The fee imposed by this section
4 is in addition to all other fees levied by law.

5 (b) *Collection, return, payment and record.* -- The person disposing of solid waste at the
6 solid waste disposal facility shall pay the fee imposed by this section, whether or not such person
7 owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who
8 shall remit it to the Tax Commissioner.

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

11 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on
12 or before the 15th day of the month next succeeding the month in which the fee accrued. Upon
13 remittance of the fee, the operator is required to file returns on forms and in the manner as
14 prescribed by the Tax Commissioner.

15 (3) The operator shall account to the state for all fees collected under this section and shall
16 hold them in trust for the state until they are remitted to the Tax Commissioner.

17 (4) If any operator fails to collect the fee imposed by this section, he or she is personally
18 liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and
19 interest imposed by §11-10-1 *et seq.* of this code.

20 (5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns
21 with the fee as required in this section, the Tax Commissioner may serve written notice requiring
22 such operator to collect the fees which become collectible after service of such notice, to deposit
23 such fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and
24 payable to the Tax Commissioner, and to keep the amount of such fees in such account until
25 remitted to the Tax Commissioner. Such notice remains in effect until a notice of cancellation is
26 served on the operator or owner by the Tax Commissioner.

27 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to
28 an operator, the operator is primarily liable for collection and remittance of the fee imposed by
29 this section and the owner is secondarily liable for remittance of the fee imposed by this section.
30 However, if the operator fails, in whole or in part, to discharge his or her obligations under this
31 section, the owner and the operator of the solid waste facility are jointly and severally responsible
32 and liable for compliance with the provisions of this section.

33 (7) If the operator or owner responsible for collecting the fee imposed by this section is an
34 association or corporation, the officers thereof are liable, jointly and severally, for any default on
35 the part of the association or corporation, and payment of the fee and any additions to tax,
36 penalties and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them as
37 against the association or corporation which they represent.

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

41 Commissioner.

42 (c) *Regulated motor carriers.* -- The fee imposed by this section and §7-5-22 of this code
43 is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of
44 the Public Service Commission under Chapter-24A of this code. Notwithstanding any provision of
45 law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service
46 Commission shall, within 14 days, reflect the cost of said fee in said motor carrier's rates for solid
47 waste removal service. In calculating the amount of said fee to said motor carrier, the commission
48 shall use the national average of pounds of waste generated per person per day as determined
49 by the United States Environmental Protection Agency.

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

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

57 (1) Disposal of solid waste at a solid waste disposal facility: ~~by~~ (A) By the person who
58 owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of
59 waste originally produced by such person in such person's regular business or personal activities;
60 ~~or~~ (B) by persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) where the facility
61 is otherwise excluded from the definition of "commercial solid waste facility" pursuant to §22-15-
62 2 of this code;

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

64 (3) Disposal of residential solid waste by an individual not in the business of hauling or
65 disposing of solid waste on such days and times as designated by the director of the Division of
66 Environmental Protection as exempt from the fee imposed pursuant to §22-15-11 of this code;

67 and

68 (4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which
69 disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for
70 this exemption each commercial recycler must keep accurate records of incoming and outgoing
71 waste by weight. Such records must be made available to the appropriate inspectors from the
72 Division of Environmental Protection of solid waste authority, upon request.

73 (f) *Procedure and administration.* -- Notwithstanding §11-10-3 of this code, each and every
74 provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 *et seq.*
75 of this code applies to the fee imposed by this section with like effect as if said act were applicable
76 only to the fee imposed by this section and were set forth in extenso herein.

77 (g) *Criminal penalties.* -- Notwithstanding §11-9-2 of this code, sections §11-9-3 through
78 §11-9-17 of this code apply to the fee imposed by this section with like effect as if said sections
79 were the only fee imposed by this section and were set forth in extenso herein.

80 (h) *Dedication of proceeds.* -- The net proceeds of the fee collected by the Tax
81 Commissioner pursuant to this section shall be deposited, at least monthly, in a special revenue
82 account known as the "Solid Waste Planning Fund" which is hereby continued. The solid waste
83 management board shall allocate the proceeds of the said fund as follows:

84 (1) Fifty percent of the total proceeds shall be divided equally among, and paid over to,
85 each county solid waste authority to be expended for the purposes of this article: *Provided,* That
86 where a regional solid waste authority exists, such funds shall be paid over to the regional solid
87 waste authority to be expended for the purposes of this article in an amount equal to the total
88 share of all counties within the jurisdiction of said regional solid waste authority; and

89 (2) Fifty percent of the total proceeds shall be expended by the solid waste management
90 board for:

91 (A) Grants to the county or regional solid waste authorities for the purposes of this article;

92 and

93 (B) Administration, technical assistance or other costs of the solid waste management
94 board necessary to implement the purposes of this article and §22C-3-1 *et seq.* of this chapter.

95 (i) *Effective date.* -- This section is effective on July 1, 1990.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

**§24-2-1m. 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 §22-
3 15-2 of this code, except within a 35 mile radius of a facility sited in a county that is, in whole or
4 in part, within a karst region as determined by the West Virginia Geologic and Economic Survey
5 that has been permitted and classified by the WVDEP as a mixed waste processing resource
6 recovery facility and has received a certificate of need by July 1, 2016: *Provided*, That nothing in
7 this section shall affect the requirements of §24A-2-5 and §24A-3-3 of this code: *Provided*,
8 *however*, That the jurisdiction of the commission does not extend to any mixed waste resource
9 recovery facility as defined in §22-16-2 of this code.

NOTE: The purpose of this bill is to clarify distinctions between solid waste facilities and mixed waste resource recovery facilities, including respective fees and the jurisdiction of the Public Service Commission.

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