

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 436

BY SENATOR RUCKER

[Originating in the Committee on Government

Organization; reported on March 19, 2021]

1 A BILL to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §22-15A-19 of said code; to amend and reenact §22-16-4 of said
3 code; to amend and reenact §22C-4-30 of said code; and to amend and reenact §24-2-
4 1m of said code, all relating to solid waste facilities; specifying that a mixed waste resource
5 recovery facility is not a solid waste facility; providing for exemption of solid mixed waste
6 resource recovery facilities from certain fees; and clarifying that mixed waste resource
7 recovery facilities are not subject to the 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.

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

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

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

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

12 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on
13 or before the 15th day of the month next succeeding the month in which the fee accrued. Upon

14 remittance of the fee, the operator is required to file returns on forms and in the manner as
15 prescribed by the Tax Commissioner.

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

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

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

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

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

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

43 (c) *Regulated motor carriers.* — The fee imposed by this section and §7-5-22 of this code
44 is considered a necessary and reasonable cost for motor carriers of solid waste subject to the
45 jurisdiction of the Public Service Commission under §24A-1-1 *et seq.* of this code.
46 Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected
47 motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of said fee in
48 said motor carrier’s rates for solid waste removal service. In calculating the amount of said fee to
49 said motor carrier, the commission shall use the national average of pounds of waste generated
50 per person per day as determined by the United States Environmental Protection Agency.

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

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

59 (1) Disposal of solid waste at a solid waste facility: ~~by (A)~~ By the person who owns,
60 operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste
61 originally produced by that person in his or her regular business or personal activities; ~~or (B)~~ by
62 persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste
63 processing and resource recovery facility as those facilities are defined in code or rule and which

64 processes a minimum of 70 percent of the material brought to the facility on any given day on a
65 30-day aggregate basis;

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

67 (3) Disposal of residential solid waste by an individual not in the business of hauling or
68 disposing of solid waste on the days and times as designated by the secretary is exempt from the
69 solid waste assessment fee; and

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

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

80 (g) *Criminal penalties.* — Notwithstanding the provisions of §11-9-2 ~~of this code~~ and §11-
81 3-3 through §11-3-17, inclusive, of this code shall apply to the fee imposed by this section with
82 like effect as if said sections were applicable only to the fee imposed by this section and were set
83 forth in extenso herein.

84 (h) *Dedication of proceeds.* — The net proceeds of the fee collected by the Tax
85 Commissioner pursuant to this section shall be deposited at least monthly in an account
86 designated by the secretary. The secretary shall allocate 25 cents for each ton of solid waste
87 disposed of in this state upon which the fee imposed by this section is collected and shall deposit
88 the total amount so allocated into the Solid Waste Reclamation and Environmental Response
89 Fund to be expended for the purposes hereinafter specified. The first \$1 million of the net

90 proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the
91 Solid Waste Enforcement Fund and expended for the purposes hereinafter specified. The next
92 \$250,000 of the net proceeds of the fee imposed by this section collected in each fiscal year shall
93 be deposited in the Solid Waste Management Board Reserve Fund, and expended for the
94 purposes hereinafter specified: *Provided*, That in any year in which the Water Development
95 Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer
96 any contingent liability of the fund, the Water Development Authority shall so certify to the
97 secretary and the secretary shall then cause no less than \$50,000 nor more than \$250,000 to be
98 deposited to the fund: *Provided, however*, That in any year in which the Water Development
99 Authority determines that the Solid Waste Management Board Reserve Fund is inadequate to
100 defer any contingent liability of the fund, the Water Development Authority shall so certify to the
101 secretary and the secretary shall then cause not less than \$250,000 nor more than \$500,000 to
102 be deposited in the fund: *Provided further*, That if a facility owned or operated by the State of
103 West Virginia is denied site approval by a county or regional solid waste authority, and if the denial
104 contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness
105 issued or approved by the Solid Waste Management Board, then in that event the Solid Waste
106 Management Board or its fiscal agent may withhold all or any part of any funds which would
107 otherwise be directed to the county or regional authority and shall deposit the withheld funds in
108 the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net
109 proceeds among the following three special revenue accounts for the purpose of maintaining a
110 reasonable balance in each special revenue account, which are hereby continued in the State
111 Treasury:

112 (1) The Solid Waste Enforcement Fund which shall be expended by the secretary for
113 administration, inspection, enforcement, and permitting activities established pursuant to this
114 article;

115 (2) The Solid Waste Management Board Reserve Fund which shall be exclusively
116 dedicated to providing a reserve fund for the issuance and security of solid waste disposal
117 revenue bonds issued by the Solid Waste Management Board pursuant to §22C-3-1 *et seq.* of
118 this code; and

119 (3) The Solid Waste Reclamation and Environmental Response Fund which may be
120 expended by the secretary for the purposes of reclamation, cleanup, and remedial actions
121 intended to minimize or mitigate damage to the environment, natural resources, public water
122 supplies, water resources, and the public health, safety, and welfare which may result from open
123 dumps or solid waste not disposed of in a proper or lawful manner.

124 (i) *Findings.* — In addition to the purposes and legislative findings set forth in §22-15-1 of
125 this code, the Legislature finds as follows:

126 (1) In-state and out-of-state locations producing solid waste should bear the responsibility
127 of disposing of said solid waste or compensate other localities for costs associated with accepting
128 the solid waste;

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

131 (3) Local approved solid waste facilities are being prematurely depleted by solid waste
132 originating from other locations.

133 (j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby
134 created as a special revenue fund in the State Treasury to be administered by the West Virginia
135 Division of Highways and to be expended only on the improvement, maintenance, and repair of
136 public roads of three lanes or less located in the Division of Highways district where the waste is
137 deposited that are identified by the Commissioner of Highways as having been damaged by trucks
138 and other traffic associated with horizontal well drilling sites or the disposal of waste generated
139 by the sites, and that experience congestion caused, in whole or in part, by the trucks and traffic
140 that interferes with the use of said roads by residents in the vicinity of the roads: *Provided, That*

141 up to \$750,000 from the fund shall be made available to the Department of Environmental
142 Protection from the same fund to offset contracted costs incurred by the Department of
143 Environmental Protection while undertaking the horizontal drilling waste disposal studies
144 mandated by the provisions of §22-15-8(j) of this code. Any balance remaining in the special
145 revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but
146 shall remain in the special revenue account and shall be used solely in a manner consistent with
147 this section. The fund shall consist of the fee provided for in subsection (k) of this section.

148 (k) *Horizontal drilling waste assessment fee.* — An additional solid waste assessment fee
149 is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal
150 well sites in the amount of \$1 per ton, which fee is in addition to all other fees and taxes levied by
151 this section or otherwise and shall be added to and constitute part of any other fee charged by
152 the operator or owner of the solid waste disposal facility: *Provided*, That the horizontal drilling
153 waste assessment fee shall be collected and administered in the same manner as the solid waste
154 assessment fee imposed by this section, but shall be imposed only upon the disposal of drill
155 cuttings and drilling waste generated by horizontal well sites.

**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 §24A-1-1 *et seq.* of this code. Notwithstanding any provision of law to the
44 contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission
45 shall, 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) by a mixed waste
61 processing and resource recovery facility as those facilities are defined in code or rule and which
62 processes a minimum of 70 percent of the material brought to the facility on any given day on a
63 30-day aggregate basis:

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

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

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

73 (g) *Criminal penalties.* — Notwithstanding §11-9-2 ~~of this code~~ and §11-9-3 through §11-
74 9-17, inclusive, of this code apply to the fee imposed by this section with like effect as if the
75 sections were the only fee imposed by this section and were set forth in extenso in this section.

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

81 (1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities,
82 counties, and other interested parties in the planning and implementation of recycling programs,
83 public education programs and recycling market procurement efforts, established pursuant to this
84 article. The secretary shall promulgate rules, in accordance with ~~§29A-1-1 et seq.~~ §29A-3-1 et

85 seq. of this code, containing application procedures, guidelines for eligibility, reporting
86 requirements, and other matters considered appropriate: *Provided*, That persons responsible for
87 collecting, hauling, or disposing of solid waste who do not participate in the collection and payment
88 of the solid waste assessment fee imposed by this section in addition to all other fees and taxes
89 levied by law for solid waste generated in this state which is destined for disposal, are not eligible
90 to receive grants under the provisions of this article;

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

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

95 (4) Twelve and one-half percent of the total proceeds shall be transferred to the Solid
96 Waste Reclamation and Environmental Response Fund, established pursuant to §22-15-11 of
97 this code, to be expended by the Department of Environmental Protection to assist in the funding
98 of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse,
99 waste reduction, and clean-up activities; and

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

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§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 15th day of the month next succeeding the month in which the fee accrued. Upon
18 remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the
19 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 §24A-1-1 *et seq.* of this code. Notwithstanding any provision of law to the
49 contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission
50 shall, 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 facility: ~~by (A) By~~ the person who owns,
62 operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste
63 originally produced by that person in his or her regular business or personal activities; ~~or (B) by~~
64 persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste
65 processing and resource recovery facility as those facilities are defined in code or rule and which
66 processes a minimum of 70 percent of the material brought to the facility on any given day on a
67 30-day aggregate basis;

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

69 (3) Disposal of residential solid waste by an individual not in the business of hauling or
70 disposing of solid waste on the days and times designated by the director as exempt from the
71 solid waste assessment fee; and

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

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

81 (g) *Criminal penalties.* — Notwithstanding §11-9-2 ~~of this code~~ and §11-9-3 through §11-
82 9-17, inclusive, of this code apply to the fee imposed by this section with like effect as if the
83 sections were applicable only to the fee imposed by this section and were set forth in extenso in
84 this section.

85 (h) *Dedication of proceeds.* — (1) The proceeds of the fee collected pursuant to this
86 section shall be deposited in the closure cost assistance fund established pursuant to §22-16-12
87 of this code: *Provided*, That the director may transfer up to 50 cents for each ton of solid waste
88 disposed of in this state upon which the fee imposed by this section is collected on or after July
89 1, 1998, to the solid waste enforcement fund established pursuant to §22-15-11 of this code.

90 (2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of
91 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per
92 month pursuant to §22-15-9 of this code shall be remitted, at least monthly, to the county
93 commission in the county in which the landfill is located. The remainder of the proceeds of the fee
94 collected pursuant to this section shall be deposited in the closure cost assistance fund
95 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-4-30. 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
2 and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to
3 be 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 §24A-1-1 *et seq.* of this code. Notwithstanding any
45 provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public
46 Service Commission shall, within 14 days, reflect the cost of said fee in said motor carrier's rates
47 for solid waste removal service. In calculating the amount of said fee to said motor carrier, the
48 commission shall use the national average of pounds of waste generated per person per day as
49 determined 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 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) by a mixed waste

61 processing and resource recovery facility as those facilities are defined in code or rule and which
62 processes a minimum of 70 percent of the material brought to the facility on any given day on a
63 30-day aggregate basis;

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

65 (3) Disposal of residential solid waste by an individual not in the business of hauling or
66 disposing of solid waste on such days and times as designated by the director of the Division of
67 Environmental Protection as exempt from the fee imposed pursuant to §22-15-11 of this code;
68 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 must keep accurate records of incoming and outgoing
72 waste by weight. Such records must be made available to the appropriate inspectors from the
73 Division of Environmental Protection of solid waste authority, upon request.

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

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

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

85 (1) Fifty percent of the total proceeds shall be divided equally among, and paid over, to,
86 each county solid waste authority to be expended for the purposes of this article: *Provided, That*

87 where a regional solid waste authority exists, such funds shall be paid over to the regional solid
88 waste authority to be expended for the purposes of this article in an amount equal to the total
89 share of all counties within the jurisdiction of said regional solid waste authority; and

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

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

93 and

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

96 (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~~ West Virginia Department of Environment
6 Protection as a mixed waste processing resource recovery facility and has received a certificate
7 of need by July 1, 2016: *Provided*, That nothing in this section shall affect the requirements of
8 §24A-2-5 and §24A-3-3 of this code: *Provided, however*, That the jurisdiction of the commission
9 does not extend to any mixed waste processing and resource recovery facility.