

AN ACTION to amend and reenact the Preston County Clean-Up  
Committee and Preston County Litter Control Officer Ordinance.

*Be it enacted by the Preston County Commission,*  
A new ordinance as follows:

ORDINANCE

AN ORDINANCE OF THE COUNTY COMMISSION OF PRESTON COUNTY, WEST VIRGINIA, REGARDING THE CONTROL OF DETRIMENTAL REFUSE OR DEBRIS, UNDER THE AUTHORITY OF CHAPTER 7, ARTICLE 1, SECTION 3ff OF THE OFFICIAL CODE OF WEST VIRGINIA, 1931, AS AMENDED.

It appearing to the County Commission of Preston County, West Virginia that the Commission is authorized to regulate the prevention, clearance or removal of unsafe or unsanitary litter, refuse or debris, pursuant to the power granted the Commission by Chapter 7, Article 1, Section 3ff of the Official Code of West Virginia, 1931, as amended, the Commission hereby adopts the following Ordinance and it shall read as follows:

- (A) The County Commission of Preston County, West Virginia (hereinafter “the Commission”) finds and declares that, pursuant to the statutes of the State of West Virginia, the Commission has broad authority to regulate the prevention, removal and clean up of litter, refuse or debris.
- (B) Whereas the legislature of the State of West Virginia has described the power and the authority of the county commissions as “plenary,” this Ordinance should be afforded the broadest construction that is consistent with W. Va. Code § 7-1-3ff.
- (C) The Commission does hereby designate an enforcement agency for this Ordinance, to be known as “the Clean-Up Committee,” which shall consist of six persons as follows: (1) the county surveyor or other county officer,

employee, or consultant who holds an engineering degree or an engineering license, or who has completed all technical requirements necessary to obtain an engineering license; (2) a county health officer who holds an executive position or professional license; (3) a fire chief from a county fire company; (4) the county litter control officer; and (5) two members at large selected by the Commission to serve for two-year terms.

(E) The county litter control officer:

- (1) Shall have the authority to initiate or investigate complaints of violations of this Ordinance for review by the Commission; and
- (2) In addition to the powers otherwise set forth in this Ordinance, after completing a training course offered by the West Virginia Department of Environmental Protection, the county litter control officer shall have authority to issue citations for:
  - (a) Creating, contributing to or operating an open dump, as defined by W. Va. Code §22-15-2 and prohibited by W. Va. Code §22-15-10;
  - (b) A landowner allowing an unauthorized open dump to exist on the landowner's property, as prohibited by W. Va. Code §22-15-10;
  - (c) Unlawful disposal of litter, as defined by W. Va. Code §22-15A-2 and prohibited by W. Va. Code §22-15A-4;
  - (d) Failure to provide proof of proper disposal of solid waste, as defined by W. Va. Code §22C-4-10(a).

- (3) Any investigation by the Clean-Up Committee or by the county litter control officer that requires entrance upon premises shall be made in such a manner as to cause the least possible inconvenience to the persons in possession, but in every instance the county litter control officer shall have the power and authority to enter said property in accordance with this Ordinance.
- (F) Complaints authorized by this Ordinance shall be brought before the Commission in accordance with the following adjudicatory procedure:
  - (1) If the county litter control officer, acting for and on behalf of the Clean-Up Committee, has investigated an alleged violation of a statute referenced in this Ordinance and has preliminarily determined that a prohibited act or condition is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, the county litter control officer may issue a citation to the alleged offender;
  - (2) Thereafter, the Clean-Up Committee shall consider the allegations and evidence submitted by the county litter control officer and render an opinion as to whether the alleged act or condition (a) is supported by the evidence provided, (b) is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, and (c) should be abated.
  - (3) If the Clean-Up Committee determines that the alleged act or condition (a) is supported by the evidence provided, (b) is unsafe, unsanitary, dangerous or detrimental to the public safety or

welfare, and (c) should be abated, the Clean-Up Committee shall prepare a Complaint and tender it to the Commission.

- (4) The Commission shall cause the owner or owners of the private land in question to be served with a copy of the Complaint. Service shall be accomplished in the manner provided in Rule 4 of the West Virginia Rules of Civil Procedure.
- (5) The Complaint shall state the findings and recommendations of the Clean-Up Committee and that unless the owner or owners of the property file with the Clerk of the County Commission a written request for a hearing within ten days of receipt of the Complaint, an order will be issued by the Commission implementing the recommendations of the Clean-Up Committee.
- (6) If the owner or owners of the property file a request for a hearing, the Commission shall issue an order setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses.
- (7) The Clean-Up Committee has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence.
- (8) At the conclusion of the hearing the Commission shall make findings of fact, determinations and conclusions of law as to

whether the alleged act or condition (a) is supported by the evidence provided, (b) is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, and (c) should be abated.

(9) The Commission has authority to order the owner or owners thereof to remove or clean up any accumulation of litter, refuse or debris within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey an order.

(10) Appeals from the order of the Commission to the circuit court shall be in accordance with the provisions of article three, chapter fifty-eight of this code.

(G) Upon the failure of the owner or owners of the private land to perform the ordered duties and obligations as set forth in the order of the Commission, the Commission may advertise for and seek contractors to make the ordered removal or clean up, and the Commission may enter into any contract with any contractor to accomplish the ordered removal or clean-up.


(H) The Commission may bring civil proceedings in circuit court against the owner or owners of the private land, or other party responsible for the subject matter of the Commission's order, (a) to subject the private land in question to a lien for the amount of the contractor's costs in making the ordered removal or clean up, together with any daily civil monetary penalty imposed; (b) to order and decree the sale of the private land in question to satisfy the lien; (c) to order and decree that the contractor may

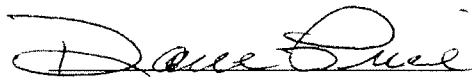
enter upon the private land in question at any and all times necessary to make ordered removal or clean up; and/or (d) to order the payment of all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

- (I) Nothing in this Ordinance supersedes the authority or duty of the Department of Environmental Protection or other law-enforcement officers to preserve law and order or to enforce litter control programs or laws.
- (J) The Commission may receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this Ordinance.
- (K) This Ordinance applies to all areas within the geographic boundaries of Preston County, West Virginia, whether inside or outside the boundaries of a municipal corporation, provided that, this Ordinance shall not be construed as prohibiting a municipal corporation from lawfully adopting a municipal ordinance with greater protections against the hazards or detriments addressed by this Ordinance.
- (L) In the event that any court declares any provision of this Ordinance to be unenforceable, said declaration shall not be construed as invalidating the remaining provisions.
- (M) This enactment of this Ordinance does not limit the discretion of the Commission to address unsafe, unsanitary, dangerous or detrimental acts or conditions in any other manner allowed by law.

Adopted this 28 day of December, 2009, effective immediately upon passage.

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President of the Commission

  
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Commissioner

  
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Commissioner

**§22-15-2. Definitions.**

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

(1) "Agronomic rate" means the whole sewage sludge application rate, by dry weight, designed:

(A) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and

(B) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

(2) "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director may specify, including the following: Spouses, parents and children and siblings.

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

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

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

(6) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing or composting of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

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

(8) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing or composting of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

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

(10) "Composting" means the aerobic, microbial, thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

(25) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw domestic, industrial or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort or property of any of the

inhabitants of this state before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.

(26) "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, article fifteen-a of this chapter and article four, chapter twenty-two-c of this code.

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

(28) "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to article one of this chapter.

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

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

(31) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the purpose of incineration, sludge from a waste treatment plant, or any other waste, including:

semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters.

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

(33) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code.

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

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

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

#### **§22-15-10. Prohibitions; permits required.**

(a) Open dumps are prohibited and it is unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on the landowner's property unless that open dump is under a compliance schedule approved by the director. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm are not a violation of this section if such open dump did not constitute a violation of law on the first day of January, one thousand nine hundred eighty-eight, and unauthorized dumps which were created by unknown persons do not constitute a violation of this section: Provided, That no person may contribute additional solid waste to any such dump after the first day of April, one thousand nine hundred eighty-eight, except that the owners of the land on which unauthorized dumps have been or are being made are not liable for such unauthorized dumping unless such landowners refuse to cooperate with the division in stopping such unauthorized dumping.

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

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

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

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

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

(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-

c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of this article. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of this article.

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

**§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.**

(a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section two of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.

(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than five hundred dollars nor more than two thousand dollars, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person is subject to a fine not less than twenty-five hundred dollars or not more than twenty-five thousand dollars, or confinement in a county or regional jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of said article.

(7) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(8) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(9) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

(10) All law-enforcement agencies, officers and environmental inspectors shall enforce compliance with this section within the limits of each agency's statutory authority.

(11) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this section: Provided, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources or the Department of Environmental Protection, the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.

(b) Any indication of ownership found in litter shall be prima facie evidence that the person identified violated the provisions of this section: Provided, That no inference may be drawn solely from the presence appearing on the found litter.

(c) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty in the sum of not less than one hundred dollars nor more than one thousand dollars as costs for clean up, investigation and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

The clerk of the circuit court, magistrate court or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund to be known as the Litter Control Fund which is hereby continued and transferred to the Department of Environmental Protection. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining fifty percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention, clean up and enforcement. The county commission shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of this code.

(e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a summary of this section and section fourteen, article fourteen, chapter seventeen-c of the code.

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates or otherwise controls any public area as may be designated by the Secretary by rule promulgated pursuant to subdivision (8), subsection (a), section three of this article shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the Secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the Secretary shall be fined fifteen dollars per day of the violation.

**§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report.**

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this

conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars or sentenced to perform not less than ten nor more than forty hours of community service, such as picking up litter, or both fined and sentenced to community service.

(b) The Solid Waste Management Board, in consultation and collaboration with the Public Service Commission, shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: Provided, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.

(c) The Public Service Commission, in consultation and collaboration with the Division of Human Services, shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of reducing solid waste collection fees to individuals who directly pay such fees and who receive public assistance from state or federal government agencies and are therefore limited in their ability to afford to pay for solid waste disposal. This report shall consider the individual's health and income maintenance and other relevant matters. This report shall also include recommended procedures for individuals or households to qualify for and avail themselves of a reduction in fees. This report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.