

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971



ENROLLED

HOUSE BILL No. 916

(By Mr. Speaker, Mr. Baird
and Mr. Seibert)



PASSED March 13 1971

In Effect ninety days from Passage



916

FILED IN THE OFFICE
HOWARD COBBELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71

ENROLLED

House Bill No. 916

(By MR. SPEAKER, MR. BOIARSKY, and MR. STEPTOE)

[Passed March 13, 1971; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two and five, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and eleven-c, all relating to air pollution control; specifying a declaration of policy and purpose of the article; relating to the clean air amendments of one thousand nine hundred seventy; defining terms; relating to the powers and duties of the air pollution control commission; relating to the right to enter and inspect any property, premise or place in connection with air pollution abatement or control; relating to advisory councils; authorizing consent

orders; requiring emission reports and data; relating to the release of records, reports, data or information; relating to the confidentiality of certain matters and providing for a determination and review in connection therewith; requiring permits in connection with stationary sources of air pollutants; relating to rules and regulations of the air pollution control commission; relating to motor vehicle pollution; relating to prohibitions; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two and five, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections eleven-a, eleven-b and eleven-c, all to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.

§16-20-1. Declaration of policy and purpose.

1 It is hereby declared to be the public policy of this state
2 and the purpose of this article to achieve and maintain
3 such levels of air quality as will protect human health

4 and safety, and to the greatest degree practicable, pre-
5 vent injury to plant and animal life and property, foster
6 the comfort and convenience of the people, promote the
7 economic and social development of this state and facili-
8 tate the enjoyment of the natural attractions of this state.

9 To these ends it is the purpose of this article to provide
10 for a coordinated statewide program of air pollution pre-
11 vention, abatement and control; to facilitate cooperation
12 across jurisdictional lines in dealing with problems of air
13 pollution not confined within single jurisdictions; and to
14 provide a framework within which all values may be
15 balanced in the public interest.

16 Further, it is the public policy of this state to fulfill its
17 primary responsibility for assuring air quality pursuant
18 to the "Clean Air Amendments of 1970" act of the Con-
19 gress of the United States. To that end it is the public
20 policy of this state and the purpose of this article to pro-
21 vide priorities in the preparation and implementation of
22 a plan for achieving and maintaining and enforcing nat-
23 ional primary and secondary ambient air quality stand-
24 ards in the state.

§16-20-2. Definitions.

1 The terms used in this article are defined as follows:

2 The term "person" shall mean any and all persons,
3 natural or artificial, including any municipal, public or
4 private corporation organized or existing under the laws
5 of this or any other state or country, and any firm,
6 partnership or association of whatever nature.

7 The term "commission" shall mean the air pollution
8 control commission, and the term "commissioner" shall
9 mean a member of said commission.

10 The term "air pollutants" shall mean solids, liquids or
11 gases which, if discharged into the air, may result in a
12 statutory air pollution.

13 The term "discharge" shall refer to the release, escape
14 or emission of air pollutants into the air.

15 The term "statutory air pollution" shall mean and be
16 limited to the discharge into the air by the act of man
17 of substances (liquid, solid, gaseous, organic or inor-
18 ganic) in a locality, manner and amount as to be in-
19 jurious to human health or welfare, animal or plant life,

20 or property, or which would interfere with the enjoy-
21 ment of life or property.

22 The term "director" shall mean the director of the West
23 Virginia air pollution control commission appointed as
24 hereinafter provided.

**§16-20-5. Air pollution control commission—Powers and
duties; legal services; rules and regulations; public
hearings.**

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation
3 and control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other agen-
5 cies of the state, political subdivisions of the state, other
6 states, agencies of the federal government, industries
7 and with affected groups in furtherance of the declared
8 purposes of this article;

9 (3) To encourage and conduct such studies and re-
10 search relating to air pollution and its control and abate-
11 ment as the commission may deem advisable and neces-
12 sary;

13 (4) To adopt and to promulgate reasonable rules and
14 regulations, not inconsistent with the provisions of this ar-

15 ticle, relating to the control of air pollution: *Provided,*

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16 That no rule ^(and) ~~or~~ regulation of the commission shall specify

17 the design of equipment, type of construction, or par-

18 ticular method which a person shall use to reduce the

19 discharge of air pollutants, nor shall any such rule ~~or~~ ^(and)

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20 regulation apply to any aspect of an employer-employee

21 relationship;

22 (5) To enter orders requiring compliance with the

23 provisions of this article and the rules and regulations

24 lawfully promulgated hereunder;

25 (6) To consider complaints, subpoena witnesses, ad-

26 minister oaths, make investigations, and hold hearings

27 relevant to the promulgation of rules and regulations and

28 the entry of compliance orders hereunder;

29 (7) To encourage voluntary cooperation by munici-

30 palities, counties, industries and others in preserving the

31 purity of the air within the state;

32 (8) To employ personnel, including specialists and

33 consultants, purchase materials and supplies, and enter

34 into contracts necessary, incident or convenient to the

35 accomplishment of the purpose of this article;

36 (9) To enter and inspect any property, premise or
37 place on or at which a source of air pollutants is lo-
38 cated or is being constructed, installed or established
39 at any reasonable time for the purpose of ascertaining
40 the state of compliance with this article and rules and
41 regulations in force pursuant thereto. No person shall
42 refuse entry or access to any authorized representative
43 of the commission who requests entry for purposes of
44 inspection, and who presents appropriate credentials; nor
45 shall any person obstruct, hamper or interfere with any
46 such inspection: *Provided, however,* That nothing con-
47 tained in this article shall be construed to allow a search
48 of ²private dwelling, including the curtilage thereof,
49 without a proper warrant;

50 (10) Upon reasonable evidence of a violation of this
51 article, which presents an imminent and serious hazard
52 to public health, to give notice to the public or to that
53 portion of the public which is in danger by any and all
54 appropriate means;

55 (11) To cooperate with, receive and expend money
56 from the federal government and other sources;

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57 (12) To represent the state in any and all matters
58 pertaining to plans, procedures and negotiations for inter-
59 state compacts in relation to the control of air pollu-
60 tion;

61 (13) To appoint advisory councils from such areas of
62 the state as it may determine. Each such council so ap-
63 pointed shall consist of not more than five members ap-
64 pointed from the general public, for each area so desig-
65 nated. Such members shall possess some knowledge and
66 interest in matters pertaining to the regulation, control
67 and abatement of air pollution. The council may advise
68 and consult with the commission about all matters per-
69 taining to the regulation, control and abatement of air
70 pollution within such area;

71 (14) To require any and all persons who are directly
72 or indirectly discharging air pollutants into the air to
73 file with the commission such information as the di-
74 rector may require in a form or manner prescribed by
75 him for such purpose, including, but not limited to, lo-
76 cation, size and height of discharge outlets, processes
77 employed, fuels used and the nature and time periods of

78 duration of discharges. Such information shall be filed
79 with the director, when and in such reasonable time, and
80 in such manner as the director may prescribe;

81 (15) To require the owner or operator of any sta-
82 tionary source discharging air pollutants to install such
83 monitoring equipment or devices as the director may pre-
84 scribe and to submit periodic reports on the nature and
85 amount of such discharges to the commission.

86 (16) To do all things necessary and convenient to pre-
87 pare and submit a plan or plans for the implementation,
88 maintenance and enforcement of each primary and sec-
89 ondary ambient air quality standard for any air pollutant
90 established pursuant to the "Clean Air Amendments of
91 1970" act: *Provided*, That in preparing and submitting
92 each such plan the commission shall establish in such
93 plan that such standard shall be first achieved, maintained
94 and enforced by limiting and controlling emissions of
95 pollutants from commercial and industrial sources and
96 locations and shall only provide in such plans for limiting
97 and controlling emissions of pollutants from private
98 dwellings and the curtilage thereof as a last resort: *Pro-*

99 *vided further*, That nothing herein contained shall be con-
100 strued to affect plans for achievement, maintenance and
101 enforcement of motor vehicle emission standards and of
102 standards for fuels used in dwellings; and

103 (17) Whenever the commission achieves informally,
104 by letter, or otherwise, an agreement with any person
105 that said person will cease and desist in any act resulting
106 in the discharge of pollutants or do any act to reduce or
107 eliminate such discharge, such agreement shall be em-
108 bodied in a consent order and entered as, and shall have
109 the same effect as, an order entered after a hearing as
110 provided in section six of this article.

111 The attorney general and his assistants and the prose-
112 cuting attorneys of the several counties shall render to
113 the commission without additional compensation such
114 legal services as the commission may require of them to
115 enforce the provisions of this article.

116 No rule and regulation of the commission pertaining to
117 the control, reduction or abatement of air pollution shall
118 become effective until after at least one public hearing
119 thereon shall have been held by the commission within

120 the state. Notice to the public of the time and place of
121 any such hearing shall be given by the commission at
122 least thirty days prior to the scheduled date of such hear-
123 ing by advertisement published as a Class II legal adver-
124 tisement in compliance with the provisions of article
125 three, chapter fifty-nine of this code, and the publication
126 area for such publication shall be the county wherein
127 such hearing is to be held. Full opportunity to be heard
128 shall be accorded to all persons in attendance and any
129 person, whether or not in attendance at such hearing,
130 may submit in writing his views with respect to any such
131 rule and regulation to the commission within thirty days
132 after such hearing. After such thirty-day period, no views
133 or comments shall be received in writing or otherwise,
134 unless formally solicited by the commission. The pro-
135 ceedings at the hearing before the commission shall be
136 recorded by mechanical means or otherwise as may be
137 prescribed by the commission. Such record of proceedings
138 need not be transcribed unless requested by an interested
139 party, in which event the prevailing rates for such tran-
140 scripts will be required from such interested party.

§16-20-11a. Confidentiality of information.

1 All air quality data, emission data, permits, compliance
2 schedules, commission orders and any other information
3 required by a federal implementation program (all for
4 convenience hereinafter referred to in this section as
5 “records, reports, data or information”) obtained under
6 this article shall be available to the public, except that
7 upon a showing satisfactory to the director, by any
8 person, that records, reports, data or information or
9 any particular part thereof, to which the director has
10 access under this article if made public, would divulge
11 methods or processes entitled to protection as trade se-
12 crets of such person, the director shall consider such rec-
13 ords, reports, data or information or such particular por-
14 tion thereof confidential: *Provided*, That such confiden-
15 tiality shall not apply to the types and amounts of air
16 pollutants discharged, and that such records, reports,
17 data or information may be disclosed to other officers
18 or employees of the state concerned with enforcing this
19 article when relevant to any official proceedings there-
20 under.

21 All requests to inspect or copy documents must state
22 with reasonable specificity the documents or type of
23 documents sought to be inspected or copied. Within five
24 business days of the receipt of such a request, the di-
25 rector or his designate shall: (a) advise the person
26 making such request of the time and place at which
27 he may inspect and copy the documents; or (b) deny
28 the request, stating in writing the reasons for such de-
29 nial. For purposes of judicial appeal, a written denial
30 by the director or his designate shall be deemed an
31 exhaustion of administrative remedies. Any person whose
32 request for information is denied in whole or in part
33 may appeal from such denial by filing with the director
34 a notice of appeal. Such notice shall be filed within
35 thirty days from the date the request for information
36 was denied, and shall be signed by the person whose
37 request was denied or his attorney. The appeal shall
38 be taken to the circuit court of Kanawha county, where
39 it shall be heard without a jury. The scope of review
40 shall be limited to the question of whether the records,
41 reports, data or other information, or any particular

42 part thereof (other than emission data), sought to be
43 inspected or copied, would, if made public, divulge
44 methods or processes entitled to protection as trade
45 secrets. The said court shall make findings of fact and
46 conclusions of law based upon the evidence and testi-
47 mony. The director, the person whose request was de-
48 nied, or any other person whose interest shall have been
49 substantially affected by the final order of the circuit
50 court may appeal to the supreme court of appeals in the
51 manner prescribed by law.

§16-20-11b. Prohibitions; permits required.

1 No person shall construct or modify any stationary
2 source of air pollutants without first obtaining a permit
3 therefore as hereinafter provided.

4 The commission shall by rule and regulation specify
5 the class or categories of stationary sources to which
6 this section shall apply and compliance with this section
7 shall be required only with respect to such sources as are
8 specified in such rule and regulation. Application for per-
9 mits shall be made upon such form, in such manner, and

10 within such time as the rule ^{and} ~~as~~ regulation shall prescribe

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11 and shall include such information, as in the judgment of
12 the director, will enable him to determine whether such
13 source will be so designed as to operate in conformance
14 with the provisions of this article or any rules and regula-
15 tions promulgated thereunder.

16 Within ninety days of the receipt of an application
17 required pursuant to this section the director shall issue
18 such permit unless he determines that the proposed
19 construction or modification will not be in accordance
20 with this article or rules and regulations promulgated
21 thereunder, in which case he shall issue an order for
22 the prevention of such construction or modification.
23 Failure to issue the permit or such order within the
24 time prescribed herein shall be deemed a determination
25 that such construction or modification may proceed:
26 *Provided*, That it is in accordance with the plans and
27 specifications or other information required to be sub-
28 mitted on the application required herein.

29 For the purposes of this section a modification is deemed
30 to be any physical change in, or change in the method
31 of operation of, a stationary source which increases the

32 amount of any air pollutant discharged by such source
33 or which results in the emission of any air pollutant not
34 previously discharged.

§16-20-11c. Motor vehicle pollution.

1 (a) As the state of knowledge and technology re-
2 lating to the control of emissions from motor vehicles
3 may permit or make appropriate, and in furtherance of
4 the purposes of this article, the commission may provide
5 by rules and regulations for the control of emissions
6 from motor vehicles. Such rules and regulations may
7 prescribe requirements for the installation and use of
8 equipment designed to reduce or eliminate emissions
9 and for the proper maintenance of such equipment and
10 of vehicles. Any rules ^(and) ~~or~~ regulations pursuant to this
11 section shall be consistent with provisions of federal
12 law, if any, relating to control of emissions from the
13 vehicles concerned. The commission shall not require,
14 as a condition precedent to the initial sale of a vehicle
15 or vehicular equipment, the inspection, certification or
16 other approval of any feature or equipment designed for
17 the control of emissions from motor vehicles, if such

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18 feature or equipment has been certified, approved, or
19 otherwise authorized pursuant to federal law.

20 (b) Except as permitted or authorized by law, no
21 person shall fail to maintain in good working order or
22 remove, dismantle, or otherwise cause to be inoperative
23 any equipment or feature constituting an operational
24 element of the air pollution control system or mechanism
25 of a motor vehicle required by rules ^{and} or regulations of
26 the commission to be maintained in or on the vehicle.
27 Any such failure to maintain in good working order or
28 removal, dismantling, or causing of inoperability shall
29 subject the owner or operator to suspension or cancella-
30 tion of the registration for the vehicle by the department
31 of motor vehicles. The vehicle shall not thereafter be
32 eligible for registration until all parts and equipment
33 constituting operational elements of the motor vehicle
34 have been restored, replaced or repaired and are in good
35 working order.

36 (c) The commission shall consult with the depart-
37 ment of motor vehicles and furnish it with technical in-
38 formation, including testing techniques, standards and

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39 instructions for emission control features and equip-
40 ment.

41 (d) When the commission has issued rules and
42 regulations requiring the maintenance of features or
43 equipment in or on motor vehicles for the purpose of
44 controlling emissions therefrom, no motor vehicle shall
45 be issued an inspection sticker as required by article
46 sixteen, chapter seventeen-c of this code, unless all such
47 required features or equipment have been inspected in
48 accordance with the standards, testing techniques and
49 instructions furnished by the commission pursuant to
50 this section eleven-c and have been found to meet those
51 standards.

52 (e) The remedies and penalties provided in this sec-
53 tion eleven-c, shall apply to violations hereof, and no pro-
54 visions of sections eight or nine of this article shall apply
55 thereto.

56 (f) As used in this section "motor vehicle" shall have
57 the same meaning as in chapter seventeen-c of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Russell G. Beall

Chairman Senate Committee

Phyllis J. Rutledge

Chairman House Committee

Originated in the House.

In effect ninety days from passage.

Johnnie Keyser

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

E. Hans McKeon

President of the Senate

Lewis T. McManus

Speaker House of Delegates

The within *approved* this the *1st*
day of *April*, 1971.

Arch A. Shupe Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 3/22/71

Time 12 noon

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA