WEST VIRGINIA CODE CHAPTER 22 ARTICLE 1

WV Legislature

§22-1-1. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds that:

(1) Restoring and protecting the environment is fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for our citizens.

(2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

(3) Governmental decisions on matters which relate to the use, enhancement, preservation, protection and conservation of the environment should be made after public participation and public hearings.

(4) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making and would benefit from the coordination, consolidation and integration of state programs and agencies which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

(5) Those functions of government which regulate the environment should be consolidated in order to accomplish the purposes set forth in this article, to carry out the environmental functions of government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic development consistent with environmental goals and standards.

(b) The Legislature declares that the establishment of a Department of Environmental Protection is in the public interest and will promote the general welfare of the State of West Virginia without sacrificing social and economic development. It is the policy of the State of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use all practicable means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations. The purposes of this chapter are:

(1) To strengthen the commitment of this state to restore, maintain and protect the environment;

(2) To consolidate environmental regulatory programs in a single state agency;

(3) To provide a comprehensive program for the conservation, protection, exploration, development, enjoyment and use of the natural resources of the State of West Virginia;

WV Legislature

(4) To supplement and complement the efforts of the state by coordinating state programs with the efforts of other governmental entities, public and private organizations and the general public; to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries;

(5) Insofar as federal environmental programs require state participation, to endeavor to obtain and continue state primacy in the administration of such federally-mandated environmental programs, and to endeavor to maximize federal funds which may be available to accomplish the purposes of the state and federal environmental programs and to cooperate with appropriate federal agencies to meet environmental goals;

(6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;

(7) To promote improvements in the quality of the environment through research, evaluation and sharing of information;

(8) To improve the management and effectiveness of state environmental protection programs;

(9) To increase the accountability of state environmental protection programs to the Governor, the Legislature and the public generally; and

(10) To promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitutions, in-process recycling, reduction of raw material use or other source reduction opportunities.

WV Legislature

§22-1-2. Definitions.

As used in this chapter, unless otherwise provided or indicated by the context:

(1) "Chief" means the Secretary of the Department of Environmental Protection, or his or her designee, who is also the chief executive officer of an office, division or section within the department.

(2) “Department” means the Department of Environmental Protection.

(3) “Director” means the Secretary of the Department of Environmental Protection or his or her designee.

(4) “Division” means the Department of Environmental Protection.

(5) “Function” means any duty, obligation, power, authority, responsibility, right, privilege, activity or program.

(6) “Office” means any office, division, board, agency, unit, organizational entity or component thereof within the Department of Environmental Protection.

(7) “Secretary” means the Secretary of the Department of Environmental Protection.

WV Legislature

§22-1-3. Rulemaking generally; relationship to federal programs.

(a) The director has the power and authority to propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out and implement the provisions of this chapter and to carry out and implement any other provision of law relating to offices or functions of the division.

(b) The requirements and limitations set forth in this section apply to any rule-making authority granted pursuant to this chapter or chapters twenty-two-b and twenty-two-c of this code.

(c) Prior to the proposal of any new rule, the director shall consult with the Division of Environmental Protection advisory council and after such consultation, the director may determine that such a rule should be the same in substance as a counterpart federal regulation. If the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practicable, such proposed rule shall incorporate by reference the counterpart federal regulation. The director shall file, contemporaneously with the proposed rule, a statement setting forth whether the rule is the same in substance as a counterpart federal regulation. If the director determines that the rule should not be the same in substance as a counterpart federal regulation, then the director shall file contemporaneously with the proposed rule, a statement setting forth the differences between the proposed rule and the counterpart federal regulation. In addition, the director shall file a statement setting forth the results of the consultation with the advisory council.

(d) Whenever any existing rule is modified, amended or replaced, the provisions of subsection (c) of this section apply to the proposal of any such modification, amendment or replacement rule.

(e) Notwithstanding the provisions of article three, chapter twenty-nine-a of this code, at least one public hearing shall be held by the division in conjunction with each rule making prior to the expiration of the public comment period for the proposed rules.

WV Legislature

§22-1-3a. Rules -- New or amended environmental provisions.

Except for legislative rules promulgated for the purpose of implementing the provisions of section four, article twelve, section six, article seventeen, and section six, article eighteen, all of this chapter, and notwithstanding the provisions of section four, article five of this chapter, legislative rules promulgated by the director which become effective on or after July 1, 1994, may include new or amended environmental provisions which are more stringent than the counterpart federal rule or program to the extent that the director first provides specific written reasons which demonstrate that such provisions are reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the event that legislative rules promulgated by the director which become effective on or after July 1, 1994, include new or amended environmental provisions which are less stringent than a counterpart federal rule which recommends, but does not require, a particular standard or any federally recommended environmental standard whether or not there be a counterpart federal rule, the division shall first provide specific written reasons which demonstrate that such provisions are not reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristic of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the absence of a federal rule, the adoption of a state rule shall not be construed to be more stringent than a federal rule, unless the absence of a federal rule is the result of a specific federal exemption.

WV Legislature

§22-1-4.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§22-1-5. Jurisdiction vested in division.

Except as may be otherwise provided in this code, the division is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to all activities regulated under this chapter.

WV Legislature

§22-1-6. Secretary of the Department of Environmental Protection.

(a) The secretary is the chief executive officer of the department. Subject to §22-1-7 of this code and other provisions of law, the secretary shall organize the department into such offices, sections, agencies, and other units of activity as may be found by the secretary to be desirable for the orderly, efficient, and economical administration of the department, and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel, and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(b) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings, or other activities with such substitute having the same powers, duties, authority and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority, and responsibility relating to issuing permits, hiring and training inspectors, and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

(1) That the department carries out its functions in a manner which supplements and complements the environmental policies, programs, and procedures of the federal government, other state governments and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over environmental policies, programs, and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties, and responsibilities granted and assigned to the secretary by this chapter, the secretary is authorized and empowered to:

(1) Sign and execute in the name of the state by the Department of Environmental Protection any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships, or individuals: *Provided,* That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards

WV Legislature

that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter 5F of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the department is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the department is charged with enforcing;

(4) Require any applicant or holder of a permit to install, establish, modify, operate, or close a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer, director, or manager of the applicant or permittee; any person owning a five percent or more interest, beneficial or otherwise, in the applicant's or permittee's business; or any other person conducting or managing the affairs of the applicant or permittee or of the proposed licensed premises, in whole or in part. These fingerprints may be used to obtain and review any police record for the purposes set may be relevant pursuant to §20-15-5 of this code, and to use the fingerprints furnished to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of the checks shall be provided to the secretary.

(5) Acquire for the state in the name of the Department of Environmental Protection by purchase, condemnation, lease, or agreement, or accept or reject for the state, in the name of the Department of Environmental Protection, gifts, donations, contributions, bequests, or devises of money, security, or property, both real and personal, and any interest in property;

(6) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training, and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training, and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary;

(7) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of §22-11-7a of this code. Prior to issuing any certification the secretary shall solicit from the Division of Natural Resources reports and comments concerning the possible certification. The Division of Natural Resources shall direct the reports and comments to the secretary for consideration;

WV Legislature

(8) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call upon the Attorney General for legal assistance and representation as provided by law; and

(9) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

(e) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the Governor.

(f) At the time of his or her initial appointment, the secretary must be at least 30 years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The secretary must have at least a bachelor's degree in a related field and at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the secretary will be responsible upon assumption of the office. The secretary may not be a candidate for or hold any other public office, may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as secretary in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The secretary shall receive an annual salary as provided in §6-7-2a of this code and is allowed and shall be paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the secretary shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of $10,000, which executed oath and bond will be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from the department funds.

WV Legislature

§22-1-7. Offices within division.

Consistent with the provisions of this article, the secretary shall, at a minimum, maintain the following offices within the division:

(1) The Office of Abandoned Mine Lands and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of article two of this chapter;

(2) The Division of Mining and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of articles three and four of this chapter;

(3) The Division of Air Quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of article five of this chapter;

(4) The Office of Oil and Gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of articles six, seven, eight, nine and ten of this chapter; and

(5) The Division of Water and Waste Management, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of articles eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter.

WV Legislature

§22-1-7a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§22-1-8. Supervisory officers.

(a) The secretary shall appoint a competent and qualified person to be the chief executive officer of each office specified in section seven of this article. The chief executive officer is the principal administrative officer of that office and is accountable and responsible for the orderly and efficient performance of the duties, functions and services of her or his office.

(b) There shall be in the department such other supervisory officers as the secretary determines is necessary to administer the functions of the department. Such supervisory officers are "administrators" as such term is defined in section two, article six, chapter twenty-nine of this code, notwithstanding the fact that the positions filled by such persons are not statutorily created. Any such supervisory officer may be designated by the secretary as a deputy director, assistant director, chief, administrator or other administrative title or designation. Each of the supervisory officers shall be appointed by the secretary and serve at the will and pleasure of the secretary. The compensation of such supervisory officers shall be fixed by the secretary. A single individual may be appointed to serve simultaneously in two distinct supervisory positions, but in a case where a dual appointment is made, the supervisory officer shall not receive additional compensation above that which would be paid for serving in one supervisory position.

(c) A supervisory officer appointed pursuant to the provisions of this section shall report directly to the secretary and shall, in addition to any functions vested in or required to be delegated to such officer, perform additional functions as the secretary may prescribe.

(d) Each supervisory officer of the department shall, before entering upon the discharge of his or her duties, take the oath of office prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond in the penalty of $2,000, with security to be approved by the Governor, conditioned upon the faithful discharge of their duties, a certificate of the oath and bond shall be filed in the office of the Secretary of State. Premiums on the bond shall be paid from the department funds.

www.legislature

§22-1-8a. General powers and duties of the Director of the Division of Mines and Minerals.

The Director of the Division of Mines and Minerals is hereby empowered and it shall be his duty to execute and carry out, administer and enforce such provisions of this chapter and chapter twenty-two-a of the code relating to surface and underground mining permits and coal mine reclamation inspections as are expressly conferred upon him by such provisions or delegated to him by the commissioner relating to mines and minerals.

WV Legislature

§22-1-9. Environmental Protection Advisory Council.

(a) There is created within the Department of Environmental Protection the Environmental Protection Advisory Council. The Environmental Protection Advisory Council consists of eight members. The secretary serves as an ex officio member of the council and as its chair. The remaining seven members are appointed by the Governor. Each member serves for a term of four years and may be reappointed. Vacancies on the council shall be filled within sixty days after the vacancy occurs.

(b) Two members of the council shall represent industries regulated by the department or their trade associations. Two members shall represent organizations advocating environmental protection. One member shall represent organizations representing local governments. One member shall represent public service districts. One member shall represent the largest coal miner's labor organization in the state. In making subsequent appointments this balance of membership shall be maintained.

(c) Appointed members shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(d) The council shall meet at least once every quarter, at the call of the chair or upon the unanimous request of its members.

(e) The council shall:

(1) Consult with and advise the director on program and policy development, problem solving and other appropriate subjects;

(2) Identify and define problems associated with the implementation of the policy set forth in section one of this article;

(3) Provide and disseminate to industry and the public early identification of major federal program and regulatory changes;

(4) Provide a forum for the resolution of conflicts between constituency groups;

(5) To the extent possible, strive for consensus on the development of overall environmental policy; and

(6) Provide an annual report to the Joint Committee on Government and Finance on or before January 1 of each year relating to its findings with regard to the department's performance during the previous year. The report will specifically address the department's performance in accomplishing the nine purposes set forth in subsection (b), section one of this article.

WV Legislature

(f) Notwithstanding any other provision of this code to the contrary, upon approval by majority vote of the Environmental Protection Advisory Council's members, the council may submit recommendations for rulemaking to the Secretary of the Department of Environmental Protection. The secretary shall consider the council's recommendations for rulemaking when developing agency rules to be submitted for legislative approval.

WV Legislature

§22-1-10. Allocation of appropriations and effect on personnel.

(a) The director may, with the exception of the special reclamation fund established in section eleven, article three of this chapter, expend, in accordance with the provisions of chapter five-a of this code, from special revenue accounts, and funds established pursuant to this chapter and chapters twenty-two-b and twenty-two-c of this code, amounts necessary to implement and administer the general powers, duties and responsibilities of the Division of Environmental Protection: Provided, That federal funds required by law to be expended for a specific purpose may not be expended for any purpose contrary to the laws, rules or regulations of the federal government.

(b) With respect to employees affected by the creation of the division or the transfer of functions and offices to the division the layoff and recall rights of such employees within the classified service of the state as provided in subsections (5) and (6), section ten, article six, chapter twenty-nine of this code are limited to the department of commerce, labor and environmental resources and further limited to an occupational group substantially similar to the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed: Provided, That the employee has the qualifications established for the job class. The duration of recall rights provided in this subsection is limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section abridges the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code.

(c) The director is empowered to authorize the payment of all or any part of the reasonable expenses of employees of the division in moving their household furniture and effects as a result of a reassignment of such employee caused by a transfer of functions or offices to the division.

WV Legislature

§22-1-11. Saving provisions.

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, or allowed to become effective by the Governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the director or to the division, and were in effect on the date such transfer occurred continue in effect, for the benefit of the division, according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the Governor, the secretary, the director, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) Any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before any department, division or other office, functions of which were transferred to the division are not affected by the transfer. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Governor, the secretary, the director, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if the division had not been created or if functions or offices had not been transferred to the division. The director is authorized to propose legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the orderly transfer of proceedings continued under the provisions of this subsection.

(c) Except as provided in subsection (e) of this section, the creation of the division and the subsequent transfer of functions to it do not affect suits commenced prior to the effective date of the creation or any transfer of functions or offices to it, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with like effect as if the creation or transfer had not occurred.

(d) No suit, action or other proceeding commenced by or against any officer in the official capacity of such individual as an officer of any department, division or other office, functions of which were transferred to the division abates by reason of such transfer. No cause of action by or against any department, division or other office, functions of which were transferred to the division, or by or against any officer thereof in the official capacity of such officer, abates by reason of the transfer.

(e) If, before the transfer, any department, division or other office, or officer thereof in the official capacity of such officer, was a party to a suit, and any function of such department, division or other office, or officer was transferred to the secretary, the director or other officer of the division, then such suit shall be continued with the secretary, the director or other appropriate officer substituted or added as a party.

WV Legislature

§22-1-12. Public information.

The division shall collect, organize and from time to time distribute to the public, through news media or otherwise, interesting facts, information and data concerning the state's environment and its environmental regulatory programs. The director may organize and promote lectures, demonstrations, symposiums, schools and other educational programs relating to the state's environment and its protection. Video tapes, motion pictures, slide films and other photographic services may be provided for instruction on the environment and its protection for schools, other governmental agencies, and civic organizations under such rules as may be prescribed by the director.

The director shall select and designate a competent and qualified person as division public information officer, who is responsible for the organization and management of the division's public information and public affairs programs.

WV Legislature

§22-1-13. Notification of permitting decisions.

Any person may request the director to notify the person of a decision to issue or deny a specific permit applied for under this chapter. The request must be in writing and received by the director within the public comment period or at a public hearing held for the specific permit application. If there is no public comment period or public hearing held for the specific permit application the director is required to make the notification under this section only if the request for notification is received by the director at least two working days prior to notifying the applicant of the decision. The director shall notify all persons who have made a timely request under this section of the decision on the application at the same time the applicant is notified of the decision. The notification shall advise the person of any appeal rights under this chapter.

WV Legislature

§22-1-14. Stream restoration fund; creation; special account; purposes and expenditures.

(a) There is hereby created in the state Treasury a special interest bearing account known as the "stream restoration fund". Moneys received by the division pursuant to transfers from any other account lawfully transferred, from the federal government and other sources, from mitigation, moneys, from gifts, bequests, donations and contributions, and other moneys lawfully received from whatever source, may be deposited in the state Treasury to the credit of the stream restoration fund.

(b) Expenditures from the fund are not authorized from collections but shall only be authorized by line item appropriation by the Legislature. The moneys are to be used and expended for the restoration and enhancement of the streams and water resources of this state which have been affected by coal mining or acid mine drainage.

WV Legislature

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

(a) The director shall promulgate rules to require the certification of laboratories conducting waste and wastewater tests and analyses to be used for purposes of demonstrating compliance under the covered statutory programs, including reasonable annual certification fees based upon the type or classification of tests or analyses being conducted by laboratories, to be assessed against laboratory owners or operators in an amount necessary to cover the actual costs of administration of this program and the processing of certification applications, to be deposited in the state Environmental Laboratory Certification Fund created pursuant to this section. By July 1, of each year, the director shall provide to the secretary a written report reflecting funds collected, how the funds were expended, and an assessment of the adequacy of the funding to administer the program.

(b) After the effective date of the rules promulgated pursuant to this section, waste and wastewater tests and analyses conducted in laboratories that are not certified for the parameters or toxicity being tested or analyses shall not be accepted by the division, except as otherwise provided, as being in compliance with the requirements, rules or orders of the division issued under authority of one or more of the covered statutory programs: Provided, That field tests and remote monitoring or testing equipment which is conducted or located away from any laboratory may be considered a laboratory for purposes of assessing the fee, but shall be subject to such quality assurance and quality control standards as may be established by the director in rules promulgated pursuant to this section. The director shall provide by rule for the granting of certification for laboratories located outside of West Virginia pursuant to this section if the laboratories provide written documentation that approval has been received under requirements in their state and determined by the director to be equivalent to the West Virginia laboratory certification program. The reciprocal certification shall be granted only for testing methods and parameters for which the laboratory holds a valid authorization in the other state and only for laboratories in states which allow reciprocity with respect to laboratories located in this state.

(c) Application shall be made to the director for approval or certification by laboratories on forms and in a manner prescribed by the director.

(d) Certification shall be renewed on an annual basis. The existing certification remains in effect until the director notifies the applicant for renewal that renewal of certification has been granted or denied.

(e) Certification shall be granted for those tests or parameters for which the laboratory demonstrates adequate performance on performance evaluation tests based on the criteria established in rules by the director. The director shall, by rule, establish criteria governing what shall be considered in any decision to deny or issue a certification.

(f) Failure to comply with the requirements of the applicable analytical methods and procedures or standards specified in the rules of the director is grounds for revocation or

suspension of certification for the affected test procedures or parameters.

(g) No person subject to the covered statutory programs shall be allowed to use data or test results from waste and wastewater tests and analyses conducted at laboratories lacking certification for purposes of demonstrating compliance under the covered statutory programs: Provided, That any person whose data or test results are invalidated because that person had relied upon a laboratory which loses its certification, shall be granted 30 days after notice of the invalidated test results by the director during which data or test results may be repeated or reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered statutory programs.

(h) A special revenue fund designated the Environmental Laboratory Certification Fund shall be continued in the State Treasury on July 1, 1994. The net proceeds of all fees collected pursuant to this section shall be deposited in the environmental laboratory certification fund. Upon line-item appropriation by the Legislature, the director shall expend the proceeds, including the interest thereon, of the environmental laboratory certification fund solely for the administration of the requirements of this section.

(i) For purposes of this section, "covered statutory program" means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature: Water Pollution Control Act, §22-11-1 *et seq*. of this code; Hazardous Waste Management Act, §22-18-1 *et seq*. of this code; Hazardous Waste Emergency Response Fund Act, §22-19-1 et seq. of this code; Underground Storage Tank Act, §22-17-1 *et seq*. of this code; the Solid Waste Management Act, §22-15-1 et seq. of this code; or the Groundwater Protection Act, §22-12-1 *et seq*. of this code.

(j) Any person adversely affected by an order or action by the director pursuant to this section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by the action of the director in granting or denying a certification or renewal of a certification, may appeal to the environmental quality board pursuant to §22B-1-1 *et seq*. of this code.

(k) The provisions of this section apply only to tests and analyses of waste or wastewater subject to regulation by the Division of Environmental Protection. The provisions of this section do not apply to tests or analyses of potable or drinking water.

WV Legislature

§22-1-16. Time for commencing proceedings.

Notwithstanding any provision of this code to the contrary, no action, suit or proceeding for the administrative, civil or criminal enforcement of any provision of this chapter may be entertained unless commenced within three years from the date the right to bring the action, suit or proceeding has accrued. The limitation of this section applies, but is not limited to, actions, suits or proceedings for the recovery of any fine, penalty or forfeiture, pecuniary or otherwise. This section does not apply to the enforcement of any provision when the violation is part of a continuing violation and the last act of the continuing violation occurred within three years from the date of the commencement of the enforcement action.

WV Legislature

§22-1-17. Special reclamation fund advisory council.

(a) There is hereby created within the Department of Environmental Protection a special reclamation fund advisory council. The council's purpose is to ensure the effective, efficient and financially stable operation of the special reclamation fund. The special reclamation advisory council shall consist of eight members, including the secretary of the Department of Environmental Protection or his or her designee, the treasurer of the State of West Virginia or his or her designee, the director of the national mine land reclamation center at West Virginia University and five members to be appointed by the Governor with the advice and consent of the Senate.

(b) Each appointed member of the council shall be selected based on his or her ability to serve on the council and effectuate its purposes. The Governor shall appoint, from a list of three names submitted by the major trade association representing the coal industry regulated under article three of this chapter, a member to represent the interests of the industry. The Governor shall appoint, from a list of three names submitted by organizations advocating environmental protection, one member to represent the interest of environmental protection organizations. The Governor shall appoint, from a list of four names submitted by the coal mining industry and the organizations advocating environmental protection, one member who, by training and profession, is an actuary or an economist. The Governor shall appoint, from a list of three names submitted by the united mine workers of America, one member to represent the interests of coal miners. The Governor shall appoint a member to represent the interests of the general public.

(c) The terms of all members shall begin on July 1, 2002. The secretary shall be an ex officio, nonvoting member and serve as chairperson of the council. The terms of the Governor's appointees shall be for six years. Appointees may be reappointed to serve on the council. The terms of the appointed members first taking office are to be expired as designated by the Governor at the time of the nomination, two at the end of the second year, two at the end of the fourth year and one at the end of the sixth year. As the original appointments expire, each subsequent appointment will be for a full six-year term. Any appointed member whose term has expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy is to serve only for the unexpired term.

(d) Appointed members of the council shall be paid the same compensation and expense reimbursement as is provided for members of the Legislature pursuant to sections six and eight, article two-a, chapter four of this code. Council members who are state employees or officials shall be reimbursed for expenses in accordance with the applicable agency's policy.

(e) The council shall meet at the call of the chairperson or his or her designee, but not less than once every six months. The secretary shall provide funds for necessary administrative and technical services for the council from the special reclamation fund.

(f) The council shall, at a minimum:

WV Legislature

(1) Study the effectiveness, efficiency and financial stability of the special reclamation fund with an emphasis on development of a financial process that ensures long-term stability of the special reclamation program;

(2) Identify and define problems associated with the special reclamation fund, including, but not limited to, the enforcement of federal and state law, regulation and rules pertaining to contemporaneous reclamation;

(3) Evaluate bond forfeiture collection, reclamation efforts at bond forfeiture sites and compliance with approved reclamation plans as well as any modifications;

(4) Provide a forum for a full and fair discussion of issues relating to the special reclamation fund;

(5) Contract with a qualified actuary who shall make a determination as to the special reclamation fund's fiscal soundness. This determination shall be completed on December 31, 2004, and every four years thereafter. The review is to include an evaluation of the present and prospective assets and liabilities of the special reclamation fund; and

(6) Study and recommend to the Legislature alternative approaches to the current funding scheme of the special reclamation fund, considering revisions which will assure future proper reclamation of all mine sites and continued financial viability of the state's coal industry.

(g) On or before January 1, 2003, and every year thereafter, the council shall submit to the Legislature and the Governor a report on the adequacy of the special reclamation tax and the fiscal condition of the special reclamation fund. The report shall, at a minimum, contain:

(1) A recommendation as to whether or not any adjustments to the special reclamation tax should be made considering the cost, timeliness and adequacy of bond forfeiture reclamation, including water treatment;

(2) A discussion of the council's required study issues as set forth in subsection (f) of this section; and

(3) The availability of federal abandoned mine lands funds for West Virginia reclamation projects.

WV Legislature