

WEST VIRGINIA CODE: §22-11-18

§22-11-18. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

When any person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution or when ceasing does not stop the pollution, such person shall immediately upon issuance of the permit required under section sixteen of this article take or begin appropriate steps or proceedings to carry out such remedial action. In any such case it is the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately. The director may require progress reports, at such time intervals as he or she deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligently prosecuted to completion.

Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association or other legal entity whatever, to provide immediately for the financing and carrying out of such remedial action, as may be necessary to comply with said order, constitutes failure to take or begin appropriate steps or proceedings to comply with such order. If such person is a municipal corporation, the cost of all such remedial action as is necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the General Funds of such municipal corporation, not otherwise appropriated, and if there is not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds. Any direct general obligation bond issue is subject to the approval of the Municipal Bond Commission and the Attorney General of the State of West Virginia.

If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the Constitutional limit imposed upon such indebtedness by the Constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said Constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in article thirteen, chapter sixteen of this code:

Provided, That the provisions of section six of said article, allowing objections to be filed with the governing body, and providing that a written protest of thirty percent or more of the owners of real estate requires a four-fifths vote of the governing body for the issuance of said revenue bonds, does not apply to bond issues proposed by any municipal corporation to comply with an order made and entered under the authority of this article, and such objections and submission of written protest is not authorized, nor does the same, if made or had, operate to justify or excuse failure to comply with such order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, does constitute a "sanitary fund," and shall be used for no other purpose than for carrying out such order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the director. The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided, and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same is financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of article thirteen, chapter sixteen of this code.