WEST VIRGINIA CODE: §22-11-4

§22-11-4. General powers and duties of director with respect to pollution.

(a) In addition to all other powers and duties the director has and may exercise, subject to specific grants of authority to the chief or the board in this article or elsewhere in this code, the director has the following powers and authority and shall perform the following duties:

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," 33 U.S.C. §1251 *et seq.*, as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System," 33 U.S.C. §1342, established under that act;

(2) To encourage voluntary cooperation by all persons in the conservation, improvement, and development of water resources and in controlling and reducing the pollution of the waters of this state, and to advise, consult, and cooperate with all persons, all agencies of this state, the federal government, or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments, and demonstrations pertaining thereto, the division may receive moneys from such agencies, officers, and persons on behalf of the state. The division shall pay all moneys so received into a special fund hereby created in the state Treasury, which fund shall be expended under the direction of the director solely for the purpose or purposes for which the grant, gift, or contribution was made;

(3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(4) To encourage, participate in, or conduct, or cause to be conducted studies, scientific or other investigations, research, experiments, and demonstrations relating to the water resources of the state and water pollution and its causes, control and reduction, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution, and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(7) To develop a public education and promotion program to aid and assist in publicizing the need for, and securing support for, pollution control and abatement;

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(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

(9) To develop programs for the control and reduction of the pollution of the waters of the state;

(10) To exercise general supervision over the administration and enforcement of the provisions of this article, and all rules, permits and orders issued pursuant to the provisions of this article, §22-11-1 *et seq.*, §22-11A-1 *et seq.*, §22-11B-1 *et seq.*, of this code and §22B-1-1 *et seq*. of this code;

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies, scientific or other investigations, research, experiments, and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control, and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the director may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state Treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by the director according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the division;

(12) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such permits as are required by this article, §22-11A-1 *et seq*. and §22-11B-1 *et seq.*, of this code or the rules promulgated thereunder;

(13) To require any and all persons directly or indirectly discharging, depositing, or disposing of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, to file with the division such information as the director may require in a form or manner prescribed for such purpose, including, but not limited to, data as to the kind, characteristics, amount, and rate of flow of any such discharge, deposit, escape, release, or disposition;

(14) To adopt, modify, or repeal procedural rules and interpretive rules in accordance with the provisions of Chapter 29A of this code administering and implementing the powers, duties and responsibilities vested in the director by the provisions of this article, and §22-11A-1 *et seq*. and §22-11B-1 *et seq*. of this code;

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(15) To cooperate with interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to:

(A) The control and reduction of water pollution; and

(B) the state's share of waters in watercourses bordering the state;

(16) To adopt, modify, repeal, and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code:

(A) Implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the director and the chief by the provisions of this article and otherwise by law;

(B) preventing, controlling and abating pollution; and

(C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: *Provided*, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(17) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development, and conservation.

(b) Whenever required to carry out the objectives of this article, §22-11A-1 *et seq*. or §22-11B-1 *et seq*. of this code, the director shall require the owner or operator of any point source or establishment to:

(i) Establish and maintain such records;

(ii) make such reports;

(iii) install, use, and maintain such monitoring equipment or methods;

(iv) sample such effluents in accordance with such methods, at such locations, at such intervals, and in such manner as the director shall prescribe; and

(v) provide such other information as the director may reasonably require.

(c) The director upon presentation of credentials:

(i) Has a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under subsection (b) of this section are located; and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under subsection (b) of this section, and sample any streams

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in the area as well as sample any effluents which the owner or operator of such source is required to sample under subsection (b) of this section. Nothing in this subsection eliminates any obligation to follow any process that may be required by law.

(d) The director may investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the Public Service Commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in §16-13A-1 *et seq*. of this code. In the event a county commission fails to act to establish a county-wide public service district or districts, the director shall act jointly with the Commissioner of the Bureau of Public Health to further investigate and ascertain the financial feasibility and projected financial capability and, subject to the approval of the Public Service Commission, order the county commission to take action to establish such public service district or districts as may be necessary to control, reduce, or abate the pollution, and when so ordered, the county commission members must act to establish such a county-wide public service district or districts.

(e) The director may enter at all reasonable times upon any private or public property for the purpose of making surveys, examinations, investigations, and studies needed in the gathering of facts concerning the water resources of the state and their use, subject to responsibility for any damage to the property entered. Upon entering, and before making any survey, examination, investigation, and study, such person shall immediately present himself or herself to the occupant of the property. Upon entering property used in any manufacturing, mining, or other commercial enterprise, or by any municipality or governmental agency or subdivision, and before making any survey, examination, investigation, and study, such person shall immediately present himself or herself to the person in charge of the operation, and if he or she is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such surveys, examinations, investigations, and studies, the director may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance or the making of such surveys, examinations, investigations, and studies; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: *Provided*, That nothing in this subsection eliminates any obligation to follow any process that may be required by law.

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