

# WEST VIRGINIA CODE: §22-12-5

## §22-12-5. Authority of other agencies; applicability.

- (a) Notwithstanding any other provision of this code to the contrary, no agency of state government or any political subdivision may regulate any facility or activities for the purpose of maintaining and protecting the groundwater except as expressly authorized pursuant to this article.
- (b) To the extent that such agencies have the authority pursuant to any provision of this code, other than this article, to regulate facilities or activities, the Division of Environmental Protection, the Department of Agriculture, the bureau of public health, and such agencies of the state or any political subdivision as may be specifically designated by the director with the concurrence of such designated agencies or political subdivisions, as appropriate, are hereby authorized to be groundwater regulatory agencies for purposes of regulating such facilities or activities to satisfy the requirements of this article. In addition, the Department of Agriculture is hereby authorized to be the groundwater regulatory agency for purposes of regulating the use or application of pesticides and fertilizers. Where the authority to regulate facilities or activities which may adversely impact groundwater is not otherwise assigned to the Division of Environmental Protection, the Department of Agriculture, the bureau of public health or such other specifically designated agency pursuant to any other provision of this code, the Division of Environmental Protection is hereby authorized to be the groundwater regulatory agency with respect to such unassigned facilities or activities. The Division of Environmental Protection shall cooperate with the Department of Agriculture and the bureau of public health, as appropriate, in the regulation of such unassigned facilities or activities.
- (c) Within one year of the effective date of this article, the Department of Agriculture, bureau of public health and Division of Environmental Protection shall promulgate in accordance with the provisions of chapter twenty-nine-a of this code such legislative rules as may be necessary to implement the authority granted them by this article.
- (d) Groundwater regulatory agencies shall develop groundwater protection practices to prevent groundwater contamination from facilities and activities within their respective jurisdictions consistent with this article. Such practices shall include, but not be limited to, criteria related to facility design, operational management, closure, remediation and monitoring. Such agencies shall issue such rules, permits, policies, directives or any other appropriate regulatory devices, as necessary, to implement the requirements of this article.
- (e) Groundwater regulatory agencies shall take such action as may be necessary to assure that facilities or activities within their respective jurisdictions maintain and protect groundwater at existing quality, where the existing quality is better than that required to maintain and protect the standards of purity and quality promulgated by the board to support the present and future beneficial uses of the state's groundwater.

(f) Where a person establishes to the director that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives, the director may allow for a deviation from such existing quality. Upon the director's finding of (1) and (2) above, the director may grant or deny such a deviation for a specific site, activity or facility or for a class of activities or facilities which have impacts which are substantially similar and exist in a defined geographic area. The director's reasons for granting or denying such a deviation shall be set forth in writing and the director has the exclusive authority to determine the terms and conditions of such a deviation. To insure that groundwater standards promulgated by the board are not violated and that the present and future beneficial uses of groundwater are maintained and protected, the director shall evaluate the cumulative impacts of all facilities and activities on the groundwater resources in question prior to any granting of such deviation from existing quality. The director shall consult with the Department of Agriculture and the bureau of public health as appropriate in the implementation of this subsection. The director shall, upon a written request for such information, provide notice of any deviations from existing quality granted pursuant to this subsection.

(g) Should the approval required in subsection (f) of this section be granted allowing for a deviation from existing quality, the groundwater regulatory agencies shall take such alternative action as may be necessary to assure that facilities and activities within their respective jurisdictions maintain and protect the standards of purity and quality promulgated by the board to support the present and future beneficial uses for that groundwater. In maintaining and protecting such standards of the board, such agencies shall establish preventative action limits which, once reached, shall require action to control a source of contamination to assure that such standards are not violated. The director shall provide guidelines to the groundwater regulatory agencies with respect to the establishment of such preventative action limits.

(h) Subsections (e), (f) and (g) of this section do not apply to coal extraction and earth disturbing activities directly involved in coal extraction that are subject to either or both article three or eleven of this chapter. Such activities are subject to all other provisions of this article.

(i) This article is not applicable to groundwater within areas of geologic formations which are site specific to:

- (1) The production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to articles six, seven, eight, nine or ten of this chapter; and
- (2) The injection zones of Class II or III wells permitted pursuant to the statutes and rules governing the underground injection control program.

All groundwater outside such areas remain subject to the provisions of this article.

Groundwater regulatory agencies have the right to require the submission of data with respect to the nature of the activities subject to this subsection.

(j) Those agencies regulating the activities specified in subsections (h) and (i), of this section retain their groundwater regulatory authority as provided for in the relevant statutes and rules governing such activities, other than this article.

(k) The director has authority to modify the requirements of subsection (g) of this section with respect to noncoal mining activities subject to article four of this chapter. Such modification shall assure protection of human health and the environment. Those agencies regulating such noncoal mining activities shall retain their groundwater regulatory authority as provided for in the relevant statutes and rules governing such activities other than this article.

(l) If the director proposes a need for a variance for classes of activities which by their nature cannot be conducted in compliance with the requirements of subsection (g) of this section, then the director shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code, following public hearing on the record. The rules so promulgated shall set forth the director's findings to substantiate such need and the criteria by which such variances shall be granted or denied. Should any person petition or request the director to undertake such a determination, that person will give contemporaneous notice of such petition or request by Class I advertisement in a newspaper of general circulation in the area to be affected by the request.

(m) All rules, permits, policies, directives and orders of the Department of Agriculture, the bureau of public health and Division of Environmental Protection, in effect on the effective date of this article and which are consistent with this article shall remain in full force and effect as if they were issued pursuant to this article unless and until modified pursuant to this article.