WEST VIRGINIA CODE CHAPTER 22 ARTICLE 12

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§22-12-1. Short title.

This article may be known and cited as the Groundwater Protection Act.

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§22-12-2. Legislative findings, public policy and purposes.

(a) The Legislature finds that:

(1) West Virginia has relatively pure groundwater resources which are abundant and readily available;

(2) Over fifty percent of West Virginia's overall population, and over ninety percent of the state's rural population, depend on groundwater for drinking water;

(3) A rural lifestyle has created a quality of life in many parts of West Virginia which is highly valued. Maintaining this lifestyle depends upon protecting groundwater to avoid increased expenses associated with providing treated drinking water supplies to rural households;

(4) West Virginia's groundwater resources are geologically complex, with the nature and vulnerability of groundwater aquifers and recharge areas not fully known;

(5) Contamination of groundwater is generally much more difficult and expensive to clean up than is the case with surface water;

(6) Groundwaters and surface waters can be highly interconnected. The quality of any given groundwater can have a significant impact on the quality of groundwaters and surface waters to which it is hydrologically connected;

(7) A diverse array of human activities can adversely impact groundwater, making it necessary to develop regulatory programs that utilize a variety of approaches;

(8) Various agencies of state government currently exercise regulatory control over activities which may impact on groundwater. Coordination and streamlining of the regulatory activities of these agencies is necessary to assure that the state's groundwater is maintained and protected through an appropriate groundwater protection program;

(9) Disruption of existing state regulatory programs should be avoided to the maximum extent practical;

(10) The maintenance and protection of the state's groundwater resources can be achieved consistent with the maintenance and expansion of employment opportunities, agriculture, and industrial development; and

(11) A state groundwater management program will provide economic, social, and environmental benefits for the citizens of West Virginia now and in the future.

(b) Therefore, the Legislature establishes that it is the public policy of the State of West Virginia to maintain and protect the state's groundwater so as to support the present and future beneficial uses and further to maintain and protect groundwater at existing quality

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where the existing quality is better than that required to maintain and protect the present and future beneficial uses. Such existing quality shall be maintained and protected unless it is established 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. Such a change shall maintain and protect groundwater quality so as to support the present and future beneficial uses of such groundwater.

(c) The purposes of this article are to:

(1) Maintain and protect the state's groundwater resources consistent with this article to protect the present and future beneficial uses of the groundwater;

(2) Provide for the establishment of a state groundwater management program which will:

(i) Define the roles of agencies of the state and political subdivisions with respect to the maintenance and protection of groundwater, and designate a lead agency for groundwater management;

(ii) Designate a state agency responsible for establishment of groundwater quality standards;

(iii) Provide for the establishment of standards of purity and quality for all groundwater;

(iv) Provide for the establishment of groundwater protection programs consistent with this article;

(v) Establish groundwater protection and groundwater remediation funds;

(vi) Provide for the mapping and analysis of the state's groundwater resources and coordination of the agencies involved; and

(vii) Provide for public education on groundwater resources and methods for preventing contamination;

(3) Provide such enforcement and compliance mechanisms as will assure the implementation of the state's groundwater management program; and

(4) Assure that actions taken to implement this article are consistent with the policies set forth in section two, article eleven of this chapter.

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§22-12-3. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Agency action" means the issuance, renewal or denial of any permit, license or other required agency approval, or any terms or conditions thereof, or any order or other directive issued by the Division of Environmental Protection, bureau of public health, Department of Agriculture or any other agency of the state or a political subdivision to the extent that such action relates directly to the implementation, administration or enforcement of this article.

(b) "Beneficial uses" means those uses which are protective of human health and welfare and the environment. Pollution of groundwater is not considered a beneficial use.

(c) "Board" means the state water resources environmental quality board.

(d) "Constituent" means any chemical or biological substance found in groundwater due to either natural or man-made conditions.

(e) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(f) "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

(g) "Groundwater certification" means an assurance issued by the director of the Division of Environmental Protection that a permit or other approval issued by a state, county or local government body regarding an activity that affects or is reasonably anticipated to affect groundwater complies with all requirements of this chapter, the legislative rules promulgated pursuant to this chapter in accordance with chapter twenty-nine-a of this code and any other requirements of state law, rules or agreements regarding groundwater.

(h) "Person" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(i) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of the groundwater.

(j) "Preventative action limit" means a numerical value expressing the concentration of a substance in groundwater that, if exceeded, causes action to be taken to assure that standards of purity and quality of groundwater are not violated.

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(k) "Water" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands.

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§22-12-4. Authority of Secretary to promulgate standards of purity and quality.

(a) The secretary has the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state.

(b) These standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall the standards allow contaminant levels in groundwater to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. The secretary may set standards more restrictive than the maximum contaminant levels where it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the federal Safe Drinking Water Act, standards for such contaminants shall be established by the secretary to be no less stringent than may be reasonable and prudent to protect drinking water or any other beneficial use. Where the concentration of a certain constituent exceeds such standards due to natural conditions, the natural concentration is the standard for that constituent. Where the concentration of a certain constituent exceeds such standard due to human-induced contamination, no further contamination by that constituent is allowed and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination and to strive where practical to reduce the level of contamination over time to support drinking water use.

(c) The standards of purity and quality for groundwater promulgated by the secretary shall recognize the degree to which groundwater is hydrologically connected with surface water and other groundwater and such standards shall provide protection for such surface water and other groundwater.

(d) In the promulgation of such standards the secretary shall consult with the Department of Agriculture and the Bureau for Public Health, as appropriate.

(e) Any groundwater standard that is in effect on the effective date of this article shall remain in effect until modified by the secretary. Notwithstanding any other provisions of this code to the contrary, the authority of the secretary to adopt standards of purity and quality for groundwater granted by the provisions of this article is exclusive, and to the extent that any other provisions of this code grant such authority to any person, body, agency or entity other than the secretary, those other provisions are void.

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§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

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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.

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§22-12-6. Lead agency designation; additional powers and duties.

(a) The Division of Environmental Protection is hereby designated to be the lead agency for groundwater and is authorized and shall perform the following additional powers and duties:

(1) To maintain the state groundwater management strategy;

(2) To develop, as soon as practical, a central groundwater data management system for the purpose of providing information needed to manage the state's groundwater program;

(3) To provide a biennial report to the Legislature on the status of the state's groundwater and groundwater management program, including detailed reports from each groundwater regulatory agency;

(4) To coordinate with other agencies to develop a uniform groundwater program;

(5) To perform any and all acts necessary to obtain the benefits to the state of any federal program related to groundwater;

(6) To receive grants, gifts or contributions for purposes of implementing this article from federal agencies, state agencies or any other persons interested in the management of groundwater resources; and

(7) To promulgate legislative rules implementing this subsection in accordance with the provisions of chapter twenty-nine-a of this code, including rules relating to monitoring and analysis of groundwater.

(b) The Division of Environmental Protection, bureau of public health, and Department of Agriculture shall participate in the data management system developed by the Division of Environmental Protection pursuant to subsection (a) of this section and shall provide the director with such information as the director shall reasonably request in support of his or her promulgation of rules pursuant to this article.

(c) The Division of Environmental Protection, bureau of public health, and Department of Agriculture are hereby authorized:

(1) To engage the voluntary cooperation of all persons in the maintenance and protection of groundwater, and to advise, consult and cooperate with all persons, all agencies of this state, universities and colleges, 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 purposes of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, receive and spend funds as appropriated by the Legislature, and from such agencies and other officers and persons on behalf of the state;

(2) To encourage the formulation and execution of plans to maintain and protect groundwater by cooperative groups or associations of municipal corporations, industries,

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industrial users and other users of groundwaters of the state, who, jointly or severally, are or may be impacting on the maintenance and protection of groundwater;

(3) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the maintenance and protection of groundwater, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article, and to make reports and recommendations with respect thereto;

(4) To conduct groundwater sampling, data collection, analyses and evaluation with sufficient frequency so as to ascertain the characteristics and quality of groundwater, and the sufficiency of the groundwater protection programs established pursuant to this article;

(5) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for the maintenance and protection of groundwater.

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§22-12-7. Groundwater coordinating committee; creation.

(a) The state groundwater coordinating committee is continued. It consists of the commissioner of the bureau of public health, the commissioner of agriculture, the chair of the environmental quality board, the chief of the office of water resources of the Division of Environmental Protection and the director of the Division of Environmental Protection who shall serve as its chair.

(b) The groundwater coordinating committee shall consult, review and make recommendations on the implementation of this article by each of the groundwater regulatory agencies. Such committee shall require the periodic submittal to it of the groundwater protection programs of each groundwater regulatory agency including all rules, permits, policies, directives and any other regulatory devices employed to implement this article.

(c) Upon a review of such programs, the groundwater coordinating committee shall recommend to the director approval of such programs, in whole or in part, and identify in writing any aspect of such programs that are not sufficient to satisfy the requirements of this article and specify a reasonable time period for correcting those portions of the program that are found not to be sufficient.

(d) The director may accept the recommendation of the committee, in whole or in part, and identify in writing any additional aspects of such programs that are not sufficient to satisfy the requirements of this article and specify a time period for correcting those portions of the program that are found not to be sufficient.

(e) In the biennial report to the Legislature required by this article, the director shall identify all portions of groundwater protection programs which have been determined not to be sufficient to satisfy the requirements of this article and which have not been adequately addressed within the time period specified by the director.

(f) No agency shall modify any aspect of its groundwater protection program as approved by the director without the prior written approval of the director of such modification. This requirement does not relieve such agency of any other requirements of law that may be applicable to such a modification.

(g) The groundwater coordinating committee is authorized and empowered to promulgate such legislative rules as may be necessary to implement this section in accordance with the provisions of chapter twenty-nine-a of this code.

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§22-12-8. Groundwater certification.

(a) To ensure a comprehensive, consistent and unfragmented approach to the management and protection of groundwater, including evaluation of the cumulative effects of all activities that have the potential to impact on groundwater, the director shall oversee and coordinate the implementation of this article by each of the groundwater regulatory agencies through a groundwater certification program as hereby established.

(b) Every state, county or local government body which reviews or issues permits, licenses, registrations, certificates of other forms of approval, or renewal thereof, for activities or practices which may affect groundwater quality shall first submit to the director for review and approval an application for certification. Such application shall include a copy of the approval proposed by such body, including any terms and conditions which have been imposed by it. Upon receipt of this application, the director shall act within thirty days to determine whether to waive or exercise his or her certification powers. If no decision is made or communicated by the director within said thirty day period, groundwater certification is approved. If the director decides to exercise his or her certification powers, he or she may utilize additional time, not to exceed an additional sixty days, to further review the materials submitted or to conduct such investigations as he or she deems necessary.

(c) The director may waive, grant, grant with conditions, or deny groundwater certification. Groundwater certification, and all conditions required under such certification, shall become a condition on any permit, approval or renewal thereof, issued by any state, county or local government body. Where appropriate, the director may provide general groundwater certification for or may waive certification for classes or categories of activities or approvals.

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§22-12-9. Groundwater protection fees authorized; director to promulgate rules; dedication of fee proceeds; groundwater protection fund established; groundwater remediation fund established.

(a) The Director of the Division of Environmental Protection shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater protection fees applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article. The schedule of fees shall be calculated by the director to recover the reasonable and necessary costs of implementing the provisions of this article as it relates to a particular facility or activity. In addition, the fee may include an appropriate assessment of other program costs not otherwise attributable to any particular facility or activity. Such fees in the aggregate shall not exceed $1 million per year and shall be deposited into the groundwater protection fund established pursuant to this article: Provided, That any unexpended balance in the groundwater protection fund at the end of each fiscal year may, by an act of the Legislature, be transferred to the groundwater remediation fund created by this article: Provided, however, That if no action is taken to transfer the unexpended balance to the remediation fund, such moneys shall not be transferred to the General Revenue Fund, but shall remain in the groundwater protection fund. Such fees imposed by this section are in addition to all other fees and taxes levied by law. The director shall require such fees to be paid at the time of certification pursuant to section eight of this article, or at such more frequent time as the director may deem to be appropriate. The director may withhold certification pursuant to section eight of this article where such fees have not been timely paid.

(b) The Director of the Division of Environmental Protection shall also promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater remediation fees which in the aggregate shall not exceed $250,000. Such groundwater remediation fees shall be assessed over a time period not to exceed two years from effective date of such rules and shall be deposited into the groundwater remediation fund established pursuant to this article. Such fees shall be assessed against persons who own or operate facilities or conduct activities subject to the provisions of this article in proportion to the groundwater protection fees assessed pursuant to subsection (a) of this section for the year in which such groundwater remediation fees, or any portion thereof, are assessed.

(c) The following two special revenue accounts are continued in the state Treasury:

(1) The "Groundwater Protection Fund", the moneys of which shall be expended by the director in the administration, certification, enforcement, inspection, monitoring, planning, research and other activities of the environmental quality board, Division of Environmental Protection, Bureau for Public Health and Department of Agriculture in accordance with legislative rules promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The moneys, including the interest thereon, in said fund shall be kept and maintained by the director and expended without appropriation by the Legislature for the purpose of implementing the provisions of this article. The director may withhold the payment of any

such moneys to any agency whose groundwater protection program has been determined by the director, in consultation with the groundwater coordinating committee, not to be sufficient to satisfy the requirements of this article and where such agency has failed to adequately address such determination within the time period specified by the director. At the end of each fiscal year, any unexpended balance of said fund may not be transferred to the General Revenue Fund, but shall remain in the groundwater protection fund.

(2) The "Groundwater Remediation Fund", the moneys of which, to the extent that moneys are available, shall be expended by the director for the purposes of investigation, clean-up and remedial action intended to identify, minimize or mitigate damage to the environment, natural resources, public and private water supplies, surface waters and groundwaters and the public health, safety and general welfare which may result from contamination of groundwater or the related environment. The director or other authorized agency officials are authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any and all groundwater remediation fund moneys expended pursuant to this article. All moneys expended from such fund which are so recovered shall be deposited in such fund. The director may expend moneys from said fund and the interest thereon without necessity of appropriation by the Legislature. All civil penalties and assessments of civil administrative penalties collected pursuant to this article shall be deposited into the said fund. In addition, said fund may receive proceeds from any gifts, grants, contributions or other moneys accruing to the state which are specifically designated for inclusion in the fund.

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§22-12-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearings.

(a) Any person who violates any provision of this article, or any permit or agency approval, rule or order issued to implement this article, is subject to civil penalties in accordance with the provisions of section twenty-two, article eleven of this chapter: Provided, That such penalties are in lieu of civil penalties which may be imposed under other provisions of this code for the same violation.

(b) Any person who willfully or negligently violates any provision of this article, or any provision of a permit or agency approval, rule or order issued to implement this article, is subject to criminal penalties in accordance with the provisions of section twenty-four, article eleven of this chapter: Provided, That such penalties are in lieu of other criminal penalties which may be imposed under other provisions of this code for the same violation.

(c) Any person who violates any provision of this article, or any permit or rule or order issued to implement this article, is subject to a civil administrative penalty to be levied by the director, the commissioner of agriculture or the commissioner of the bureau of public health, as appropriate, of not more than $5,000 for each day of such violation, not to exceed a maximum of $20,000. In assessing any such penalty, any such official shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by such official by legislative rules promulgated pursuant to this article and the provisions of chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by such official by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to such official a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, such official shall inform the alleged violator of the time and place of the hearing. Such official may appoint an assessment officer to conduct the informal hearing who shall make a written recommendation to such official concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, such official shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of such official's decision, the alleged violator may request a formal hearing before the board in accordance with the provisions of section eleven of this article. Any administrative civil penalty assessed pursuant to this section is in lieu of any other civil penalty which may be assessed under any provision of this code for the same violation. No combination of assessments against any violator under this section may exceed $25,000 per day of each such violation. All administrative penalties shall be levied in accordance with legislative

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rules promulgated by such official in accordance with the provisions of chapter twenty-nine-a of this code.

(d) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section and all assessments of any civil administrative penalties collected pursuant to subsection (c) of this section shall be deposited into the groundwater remediation fund established pursuant to this article.

(e) Any such official may seek an injunction, or may institute a civil action against any person in violation of any provision of this article or any permit, agency approval, rule or order issued to implement this article. In seeking an injunction, it is not necessary for such official to post bond nor to allege or prove at any point in the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) If any such official upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, or any permit, order or rules issued to implement the provisions of this article, he or she may issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders implementing this article which: (1) Suspend, revoke or modify permits; (2) require a person to take remedial action; or (3) are cease and desist orders.

(g) Any person issued a cease and desist order under subsection (f) of this section may file a notice of request for reconsideration with such official not more than seven days from the issuance of such order and shall have a hearing before such official to contest the terms and conditions of such order within ten days after filing such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order.

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§22-12-11. Appeal procedures.

Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director or any public official authorized to take or implement an agency action, or by the issuance or denial of a permit issued to implement this article or by such permit's term or conditions, or by the failure or refusal to act within a reasonable time, may appeal to the environmental quality board as provided in article one, chapter twenty-two-b of this code.

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§22-12-12. Rule-making petition.

Any person may petition the appropriate rule-making agency for rule making on an issue arising under this article. The appropriate rule-making agency, if it believes such issue to merit rule making, may initiate rulemaking in accordance with the provisions of chapter twenty-nine-a of this code. A decision by the appropriate rule-making agency not to pursue rule making must set forth in writing reasons for refusing to do so. Any person may petition an agency to issue a declaratory ruling pursuant to section one, article four, chapter twenty-nine-a of this code with respect to the applicability to any person, property or state of facts of any rules promulgated by that agency pursuant to this article.

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§22-12-13. Existing rights and remedies preserved; effect of compliance.

(a) It is the purpose of this article to provide additional and cumulative remedies to address the quality of the groundwater of the state. This article does not alter the authority of any agency with respect to water other than groundwater. Except as expressly stated in this article, it is not the intention of the Legislature in enacting this article to repeal any other provision of this code.

(b) Nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article, or any act done by virtue of this article, estop the state, municipalities, public health officers or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.

(c) Where a person is operating a source or conducting an activity in compliance with the terms and conditions of a permit, rule, order, directive or other authorization issued by a groundwater regulatory agency pursuant to this article, such person is not subject to criminal prosecution for pollution recognized and authorized by such permit, rule, order, directive or other authorization.

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§22-12-14. Effective dates of provisions subject to federal approval.

To the extent that this article modifies any powers, duties, functions and responsibilities of any state agency that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of federal regulatory programs by the state, any such modifications become effective upon a proclamation by the Governor stating either that final approval of such modifications has been given by the appropriate federal agency or official or that final approval of such modification is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

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