

# WEST VIRGINIA CODE: §22-5-4

## §22-5-4. Powers and duties of director; and legal services; rules.

(a) The director is authorized:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: *Provided*, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: *Provided, however*, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries, and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident, or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise, or place on or at which a source of air pollutants is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules

promulgated under the provisions of this article. No person shall refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: *Provided*, That nothing contained in this article eliminates any obligation to follow any process that may be required by law;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources.

(12) To cooperate with any public or private agency or person and receive therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of the "Air Pollution Education and Environment Fund" which is hereby continued in the state Treasury.

(A) The moneys collected pursuant to this article which are directed to be deposited in the "Air Pollution Education and Environment Fund" must be deposited in a separate account in the state Treasury and expenditures for purposes set forth in this article are not authorized from collection but are to be made only in accordance with appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code.

(B) Moneys in the fund, if not needed for immediate use or disbursement, may be invested or reinvested by the agency in obligations or securities which are considered lawful investments for public funds under this code.

(C) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Air Pollution Education and Environment Fund shall not be transferred to the General Revenue Fund, but shall remain in the Air Pollution Education and Environment Fund for expenditure pursuant to this section.

(13) To represent the state in any and all matters pertaining to plans, procedures, and negotiations for interstate compacts in relation to the control of air pollution;

(14) To appoint advisory councils from such areas of the state as he or she may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control, and abatement of air pollution. The council may advise and consult with the director about all matters pertaining to the regulation, control, and abatement of air pollution within such area;

(15) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or

manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(16) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director;

(17) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended: *Provided*, That in preparing and submitting each such plan the director shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: *Provided, however*, That nothing herein contained affects plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(18) To promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, providing for the following:

(A) Procedures and requirements for permit applications, transfers and modifications and the review thereof;

(B) Imposition of permit application and transfer fees;

(C) Establishment of criteria for construction, modification, relocation, and operating permits;

(D) Imposition of permit fees and of certificate fees: *Provided*, That any person subject to operating permit fees pursuant to section twelve of this article is exempt from imposition of the certificate fee; and

(E) Imposition of fees, and penalties and interest for the nonpayment of fees.

(i) The fees, penalties, and interest shall be deposited in a special account in the State Treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the board, the division of air quality and their employees to carry out the provisions of this article: *Provided*, That the fees, penalties and interest collected for operating permits required by section twelve of this article shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program.

(ii) The fees collected pursuant to this subdivision must be deposited in a separate account

in the State Treasury and expenditures for purposes set forth in this article are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code.

(iii) Moneys in the fund, if not needed for immediate use or disbursement, may be invested or reinvested by the agency in obligations or securities which are considered lawful investments for public funds under this code.

(iv) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Air Pollution Control Fund shall not be transferred to the General Revenue Fund, but shall remain in the Air Pollution Control Fund for expenditure pursuant to this section.

(19) Receipt of any money by the director as a result of the entry of any consent order shall be deposited in the State Treasury to the credit of the Air Pollution Education and Environment Fund.

(b) The Attorney General and his or her assistants and the prosecuting attorneys of the several counties shall render to the director without additional compensation such legal services as the director may require of them to enforce the provisions of this article.