WEST VIRGINIA CODE CHAPTER 22 ARTICLE 5

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§22-5-1. Declaration of policy and purpose.

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the Federal Clean Air Act, as amended.

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§22-5-2. Definitions.

The terms used in this article are defined as follows:

(1) “Air pollutants” means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

(2) “Board” means the air quality board continued pursuant to the provisions of §22B-2-1 *et seq*. of this code.

(3) “Director” means the Secretary of the Department of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to §22-1-6 or §22-1-8 of this code.

(4) “Discharge” means any release, escape, or emission of air pollutants into the air.

(5) “Person” means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public, or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

(6) “Statutory air pollution” means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

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§22-5-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.

It is unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules promulgated pursuant to this article to operate any facility subject to the permit requirements of the director without a valid permit, or to knowingly misrepresent to any person in the State of West Virginia that the sale of air pollution control equipment will meet the standards of this article or any rules promulgated pursuant to this article. Nothing contained in this article provides any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

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§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

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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

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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

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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.

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§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.

If, from any investigation made by the director or from any complaint filed with him or her, the director is of the opinion that a person is violating the provisions of this article, or any rules promulgated pursuant thereto, he or she shall make and enter an order directing the person to cease and desist the activity, unless the director determines the violation is of a minor nature or the violation has been abated. The director shall fix a reasonable time in such order by which the activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter the order.

If, after any investigation made by the director, or from any complaint filed with him or her, the director is of the opinion that a permit holder is violating the provisions of this article, or any rules promulgated pursuant thereto, or any order of the director, or any provision of a permit, the director may issue notice of intent to suspend, modify or revoke and reissue such permit. Upon notice of the director's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order is a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter the order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the board.

The director shall cause a copy of any such order to be served upon the person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of the final order has been served may appeal such order to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

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§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed $10,000 for each day of such violation, which penalty shall be recovered in a civil action brought by the director in the name of the State of West Virginia in the circuit court of any county wherein the person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury: Provided, That any person is not subject to civil penalties unless the person has been given written notice thereof by the director: Provided, however, That for the first such minor violation, if the person corrects the violation within the time as was specified in the notice of violation issued by the director, no civil penalty may be recovered: Provided further, That if the person fails to correct a minor violation or for any serious or subsequent serious or minor violation, the person is subject to civil penalties imposed pursuant to this section from the first day of the violation notwithstanding the date of the issuance or receipt of the notice of violation. The director shall, by rule subject to the provisions of chapter twenty-nine-a of this code, determine the definitions of serious and minor violations. The amount of any penalty collected by the director shall be deposited in the general revenue of the state Treasury according to law.

(b)(1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 or imprisoned in the county jail not more than six months or both fined and imprisoned: Provided, That if the violation occurs on separate days or is continuing in nature, the fine shall be no more than $25,000 for each day of such violation.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 for each day of such violation or imprisoned in the county jail not more than one year or both fined and imprisoned.

(c) Upon a request in writing from the director it is the duty of the Attorney General and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section seven of this article may be brought to institute and prosecute all such actions on behalf of the director.

(d) For the purpose of this section, violations on separate days are separate offenses.

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§22-5-7. Applications for injunctive relief.

The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of 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 brought under this section or for civil penalty brought under section six of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section six or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

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§22-5-8. Emergencies.

Whenever air pollution conditions in any area of the state become such as, in the opinion of the director, to create an emergency and to require immediate action for the protection of the public health, the director may, with the written approval of the Governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the director shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the director shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the director may thereafter apply by petition to the circuit court of the county for a review of the director's action. The circuit court shall forthwith fix a time for hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside, in whole or in part, the order and action of the director. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the Supreme Court of Appeals in the manner prescribed by law.

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§22-5-9. Powers reserved to Secretary of the Department of Health, Commissioner of Bureau for Public Health, local health boards and political subdivisions; conflicting statutes repealed.

Nothing in this article affects or limits the powers or duties heretofore conferred by the provisions of chapter sixteen of this code upon the Secretary of the Department of Health, the Commissioner of the Bureau for Public Health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise apply to the control, reduction or abatement of air pollution, hereby repealed: *Provided,* That no ordinance previously adopted by any municipality relating to the control, reduction or abatement of air pollution is repealed by this article.

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§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

(a) All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of the person, the director shall consider these records, reports, data or information or a particular portion thereof confidential: Provided, That this confidentiality does not apply to the types and amounts of air pollutants discharged and that these records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: Provided, however, That the officers, employees or authorized representatives of the state or federal environmental protection agency protect these records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

(b) Upon receipt of a request for records, reports, data or information which constitute trade secrets and prior to making a final determination to grant or deny the request, the director shall notify the person claiming that any record, report, data or information is entitled to protection as a trade secret, and allow the person an opportunity to respond to the request in writing.

(c) All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of a request, the director or his or her designate shall by order: (1) Advise the person making the request of the time and place at which the person may inspect and copy the documents, which, if the request addresses information claimed as confidential, may not be sooner than thirty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming the confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

Any person adversely affected by a determination, by order or otherwise, regarding information confidentiality under this article may appeal the determination to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code. The filing of a timely notice of appeal shall stay any determination, by order or otherwise, to disclose confidential information pending a final decision on the appeal. The scope of review is

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limited to the question of whether the records, reports, data or other information, or any particular part thereof sought to be inspected or copied, are entitled to be treated as confidential under subsection (a) of this section. The air quality board shall afford evidentiary protection in appeals as is necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records where appropriate.

(d) In lieu of the provision of chapter twenty-nine-b of this code, the provision of this section shall apply to determinations of confidentiality.

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§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.

(a) Unless otherwise specifically provided in this article, no person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as provided in this article.

(b) The secretary shall by rule specify the class or categories of stationary sources to which this section applies. Application for permits shall be made upon such form, in such manner, and within such time as the rule prescribes and shall include such information, as in the judgment of the secretary, will enable him or her to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules of the secretary.

(c) Unless otherwise specifically provided in this article, the secretary shall issue a permit for a major stationary source within a reasonable time not to exceed three hundred sixty-five calendar days, after the secretary determines that the application is complete.

(d) Unless otherwise specifically provided in this article, the secretary shall issue a permit for all other sources including modifications of existing major stationary sources which are not major modifications within a reasonable time not to exceed ninety calendar days, after the date the secretary determines the application is complete. The Secretary may extend this time by thirty calendar days to allow for public comment.

(e) A permit application will be denied if the secretary determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated thereunder.

(f) For purposes of this section, a modification is any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by a source above the de minimis level set by the secretary.

(g) With respect to the construction of new nonmajor stationary sources, or modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, or relocations of nonmajor stationary sources, the following requirements apply:

(1) The secretary shall issue an administrative update to a permit issued under this section with respect to any of these sources, unless he or she determines that the proposed administrative update will not be in accordance with this article or rules promulgated hereunder, in which case the secretary shall issue an order denying the administrative update. Any administrative update shall be issued by the secretary within a reasonable time not to exceed sixty calendar days after receipt of a complete application. Administrative updates are minor revisions of existing permits as further described and authorized by rule.

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(2) The secretary shall, within a reasonable time not to exceed forty-five calendar days after the date the secretary determines that an application is complete, issue a registration under a general permit applicable to any of these sources, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. General permits are permits authorizing the construction, modification or relocation of a category of sources by the same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit for those types of sources.

(3) The secretary shall, within a reasonable time not to exceed forty-five calendar days after receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. Temporary permits are permits authorizing the owner or operator to make limited changes for limited periods of time as further described and authorized by rule.

(h) The secretary shall determine whether an application filed under this section is complete within thirty calendar days after receipt of that application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(i) The secretary, shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty nine-a of this code, to implement the provisions of this section by August 1, 2008.

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§22-5-11a. Activities authorized in advance of permit issuance.

(a) With respect to the modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, the following activities are authorized in advance of permit issuance. Any authorized activities undertaken by or on behalf of the permit applicant prior to the issuance of a final permitting action by the secretary are undertaken at the permit applicant's own risk and with the knowledge that the application for a permit or permit modification may be denied:

(1) Receiving or storing on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure.

(2) A person who holds an active West Virginia air quality permit issued under this article at an existing source, and who has applied to the secretary for permission to alter, expand or modify that source or to allow a new emissions unit at that source, may begin the construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with this section. The person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by rules promulgated by the secretary.

(3) The following sources are ineligible for submission of an application for permission to commence construction in advance of permit issuance:

(A) Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).

(B) Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards;

(C) Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

(4)(A) To qualify for the authorization to construct in advance of permit issuance as provided in this section, the permittee shall submit to the secretary an application for permission to commence construction in advance of permit issuance.

(B) Such application for permission to commence construction shall include all of the following:

(1) The name and location of the source and the name and address of the permittee;

(2) The permit number of each active permit issued under this article for such source;

(3) The nature of the sources and equipment associated with

such alteration, expansion, modification or new emission unit;

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(4) An estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit;

(5) The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit;

(6) A listing of the applicable state and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit, and sufficient information which, in the judgement of the secretary, will demonstrate compliance with any applicable state and federal air quality regulatory requirements;

(7) The anticipated construction or building schedule for alteration, expansion, modification or new emission unit;

(8) A certification signed by the responsible official that the source, equipment and devices that are subject to a request for construction authorization will not be operated until the permittee has obtained a permit under rules promulgated by the secretary;

(9) A certification by the responsible official that any construction undertaken prior to the issuance of a final permit under rules of the secretary is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a permit or permit modification without regard to the permittee's financial investment or addition to or modification of the source;

(10) A certification signed by the responsible official that all of the information contained in the application is complete and accurate to the best of the responsible official's knowledge and ability; and

(11) Upon submission of the application for permission to construct, the applicant shall give notice by publishing a Class I legal advertisement of the applicant's intent to alter or expand the physical arrangement or operation of an existing stationary source and the opportunity to provide written comment to the secretary within thirty calendar days of the publication. The applicant shall post a visible and accessible sign, at a minimum 2 feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that an air quality permit has been applied for and include the West Virginia Division of Air Quality permitting section telephone number and web site for additional information. The applicant must post the sign for the duration of the public notice period. Public notice shall be in a newspaper having general circulation in the county or counties where the facility is located. The notice shall contain the information required by rules promulgated by the secretary. Within fifteen days of completion of the public comment period, the secretary shall consider and respond to all written comments. If the secretary finds that concerns raised by the public comment period give rise to issues or concerns that would cause a construction or operational permit not to be issued, the secretary may issue a revocation or stay of the authorization to construct until those issues or concerns are resolved.

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(c) The secretary shall determine whether an application for permission to commence construction in advance of permit issuance is complete within fifteen calendar days after receipt of the application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(d) Within fifteen calendar days after the secretary has made a determination that an application for permission to commence construction in advance of permit issuance is complete, unless the secretary for good cause shown, extends the fifteen day time period for up to an additional fifteen calendar days, the secretary shall notify the applicant in writing of his or her determination as to whether each of the following conditions has or has not been satisfied:

(1) The applicant is and has been for a period of at least three years in substantial compliance with all other active permits and applicable state and federal air quality regulatory requirements under this article;

(2) The applicant has demonstrated that the alteration, expansion, modification or new emission unit will be in compliance with all applicable state and federal air quality regulatory requirements;

(3) The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of this article;

(4) The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted;

(5) The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted; and

(6) The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.

If the secretary finds that all of the conditions have been satisfied, the notice issued by the secretary shall state that construction of the alteration, expansion, modification or new emission unit in advance of permit issuance may begin immediately. If the secretary finds that one or more of the conditions has not been met, the notice shall state that the requested construction, alteration, expansion, modification or new emission unit may not begin prior to issuance of a new or modified permit.

(e) If at any time during the construction of such alteration, expansion, modification or new emission unit, the secretary determines that the source is not likely to qualify for a permit or permit modification under applicable rules, the secretary may order that construction cease

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until the secretary makes a decision on the application for a permit or permit modification. If the secretary orders that construction cease, then construction of the alteration, expansion, modification or new emission unit may resume only if the secretary either makes a subsequent written determination that the circumstances that resulted in such order have been adequately addressed or if the secretary issues a permit or permit modification under the rules that authorize construction to resume.

(f) The secretary shall evaluate an application for a permit or permit modification under the rules and make a decision on the same basis as if the construction of the alteration, expansion, modification or new emission unit in advance of permit issuance had not been authorized pursuant to this section. No evidence regarding any contract entered into, financial investment made, construction undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under this article is admissible in any contested case or judicial proceeding involving any permit required under the rules. No evidence as to any determination or order by the secretary pursuant to this section shall be admissible in any contested case or judicial proceeding related to any permit required under this article.

(g) Any permittee who proceeds under this section shall be precluded from bringing any action, suit or proceeding against the state, the officials, agents, and employees of the state or the secretary for any loss resulting from any contract entered into, financial investment made, construction undertaken, or economic loss incurred by the permittee in reliance upon the provisions of this section.

(h) This section does not relieve any person of the obligation to comply with any other requirement of state law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or method of operation of a source at a facility for which a permit is required under the rules.

(i) This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the secretary. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary.

(j) A permittee who submits an application to commence construction in advance of permit issuance under this section shall pay to the department a fee of $200 for each application submitted to cover a portion of the administrative costs of implementing this section.

WV Legislature

(k) The secretary, in accordance with chapter twenty-nine-a of this code, shall propose legislative rule that may be necessary to implement the provisions of this section by August 1, 2008.

(l) The secretary is directed to report back to the Joint Committee on Government and Finance by January 1, 2010, on the impact of the implementation of the expedited permits authorized pursuant to this section. The report shall include, but not be limited to, assessments regarding the number and types of facilities utilizing this section, whether the agency has found this expedited process has assisted these facilities to implement construction and make revisions to their operations efficiently, without adverse impacts on the agency, the permitting process, or statewide air quality.

WV Legislature

§22-5-11b. Construction and operating permits required for natural gas electric generation facilities as stationary sources of air pollutants.

(a) This section applies to natural gas electric generation facilities as identified and communicated to the secretary by the Secretary of the Department of Economic Development as sites that may be suitable for one or more natural gas electric generation facilities in accordance with §5B-2N-1 *et seq*. of this code, or as identified by an applicant for a construction and operating permit for one or more natural gas electric generation facilities.

(b) The secretary shall take all reasonable steps to expedite consideration of permit applications utilizing sites designated by the Secretary of the Department of Economic Development as a site suitable for use as a natural gas electric generation facility and communicated to the secretary in accordance with §5B-2N-1 *et seq*. of this code. Such steps shall include:

(1) An initial determination of whether the identified site is in compliance with national ambient air quality standards and the West Virginia State Implementation Plan; and

(2) Evaluation of whether there is sufficient data, meteorological and otherwise, that would allow acceptable modeling of the impacts of emissions from a natural gas electric generation facility, and if not, inform the Department of Economic Development where to initiate construction of sampling and measuring devices to acquire such data at the site.

(c) Unless otherwise specifically provided in this article, the secretary shall act on a permit for a natural gas electric generation facility which is determined to be a major stationary source within a reasonable time, not to exceed 270 calendar days, and for a minor stationary source, 90 days, after the secretary determines that the application is complete. The secretary must determine whether an application is complete within 30 days from the date the permit application is filed with the secretary and communicated to the permit applicant.

WV Legislature

§22-5-11c. Construction and operating permits required for coal electric generation facilities as stationary sources of air pollutants.

(a) This section applies to coal electric generation facilities as identified and communicated to the Secretary by the West Virginia Department of Economic Development as sites that may be suitable for one or more coal electric generation facilities in accordance with §5B-2O-1 *et seq*. of this code, or as identified by an applicant for a construction and operating permit for one or more coal electric generation facilities.

(b) The secretary shall take all reasonable steps to expedite consideration of permit applications utilizing sites designated by the Department of Economic Development as a site suitable for use as a coal electric generation facility and communicated to the secretary in accordance with §5B-2O-1 *et seq*. of this code. Such steps shall include:

(1) An initial determination of whether the identified site is in compliance with National Ambient Air Quality Standards and the West Virginia State Implementation Plan, whether emissions from a coal electric generation facility would be likely to interfere with compliance with the same and, if interference is likely, the steps necessary to avoid noncompliance with National Ambient Air Quality Standards and the State Implementation Plan; and

(2) Evaluation of whether there is sufficient data, meteorological and otherwise, that would allow acceptable modeling of the impacts of emissions from a coal electric generation facility, and if not, construction of sampling and measuring devices to acquire such data at the site.

(c) Unless otherwise specifically provided in this article, the secretary shall issue a permit for a coal electric generation facility which is determined to be a major stationary source within a reasonable time, not to exceed 270 calendar days, after the secretary determines that the application is complete. The secretary must determine whether an application is complete within 30 days from the date the permit application is filed with the secretary and communicated to the permit applicant.

WV Legislature

§22-5-12. Operating permits required for stationary sources of air pollution.

No person may operate a stationary source of air pollutants without first obtaining an operating permit as provided in this section. The director shall promulgate legislative rules, in accordance with chapter twenty-nine-a of this code, which specify classes or categories of stationary sources which are required to obtain an operating permit. The legislative rule shall provide for the form and content of the application procedure including time limitations for obtaining the required permits. Any person who has filed a timely and complete application for a permit or renewal thereof required by this section, and who is abiding by the requirements of this article and the rules promulgated pursuant thereto is in compliance with the requirements of this article and any rule promulgated thereunder until a permit is issued or denied. Any legislative rule promulgated pursuant to the authority granted by this section shall be equivalent to and consistent with rules and regulations adopted by the administrator of United States environmental protection agency pursuant to Title IV and Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7651 et seq. and 42 U.S.C. §7661 et seq., respectively: Provided, That such legislative rule may deviate from the federal rules and regulations where a deviation is appropriate to implement the policy and purpose of this article taking into account such factors unique to West Virginia.

WV Legislature

§22-5-13. Consolidation of permits.

For permits required by sections eleven and twelve of this article, the director may incorporate the required permits with an existing permit or consolidate the required permits into a single permit.

WV Legislature

§22-5-14. Administrative review of permit actions.

Any person whose interest may be affected, including, but not necessarily limited to, the applicant and any person who participated in the public comment process, by a permit issued, modified or denied by the secretary, or construction authorization pursuant to section eleven-a of this article, may appeal such action of the secretary to the air quality board pursuant to article one, chapter twenty-two-b of this code.

WV Legislature

§22-5-15. Motor vehicle pollution, inspection and maintenance.

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate and in furtherance of the purposes of this article, the director may provide by legislative rule for the control of emissions from motor vehicles. The legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The director shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law or legislative rule, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules of the director to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability subjects the owner or operator to suspension or cancellation of the registration for the vehicle by the Department of Transportation, Division of Motor Vehicles. The vehicle is not thereafter eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The Department of Transportation, Division of Motor Vehicles, Department of Administration, information and communication services division and the State Police shall make available technical information and records to the director to implement the legislative rule regarding motor vehicle pollution, inspection and maintenance. The director may promulgate a legislative rule establishing motor vehicle pollution, inspection and maintenance standards and imposing an inspection fee at a rate sufficient to implement the motor vehicle inspection program and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards.

(d) The director may promulgate a legislative rule requiring maintenance of features of equipment in or on motor vehicles for the purpose of controlling emissions therefrom and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards, and no motor vehicle may be issued a Division of Motor Vehicles registration certificate, or the existing registration certificate shall be revoked, unless the motor vehicle has been found to be in compliance with the director's legislative rule.

(e) The remedies and penalties provided in this section and section one, article three, chapter seventeen-a of this code, apply to violations hereof and the provisions of sections six or seven of this article do not apply thereto.

WV Legislature

(f) As used in this section "motor vehicle" has the same meaning as in chapter seventeen-c of this code.

WV Legislature

§22-5-16. Small business environmental compliance assistance program, compliance advisory panel.

The secretary of the Department of Commerce, labor, and environmental resources shall establish a small business stationary source technical and environmental compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

(a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(b) One member selected by the Speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(d) One member selected by the President of the Senate who is an owner or who represents owners of small business stationary sources;

(e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources; and

(f) One member selected by the director to represent the director.

WV Legislature

§22-5-17. Interstate ozone transport.

(a) This section of the Air Pollution Control Act may be referred to as the Interstate Ozone Transport Oversight Act.

(b) The Legislature hereby finds that:

(1) The federal Clean Air Act, as amended, contains a comprehensive regulatory scheme for the control of emissions from mobile and stationary sources, which will improve ambient air quality and health and welfare in all parts of the nation.

(2) The number of areas unable to meet national ambient air quality standards for ozone has been declining steadily and will continue to decline with air quality improvements resulting from implementation of the federal Clean Air Act amendments of 1990, and the mobile and stationary source emission controls specified therein.

(3) Scientific research on the transport of atmospheric ozone across state boundaries is proceeding under the auspices of the United States environmental protection agency (U.S. EPA), state agencies, and private entities, which research will lead to improved scientific understanding of the causes and nature of ozone transport, and emission control strategies potentially applicable thereto.

(4) The northeast ozone transport commission established by the federal Clean Air Act Amendments of 1990 has proposed emission control requirements for stationary and mobile sources in certain northeastern states and the District of Columbia in addition to those specified by the federal Clean Air Act amendments of 1990.

(5) Membership of the northeast ozone transport commission includes, by statute, representatives of state environmental agencies and Governors' offices; similar representation is required in the case of other ozone transport commissions established by the Administrator of the United States environmental protection agency pursuant to Section 176A of the federal Clean Air Act, as amended.

(6) The northeast ozone transport commission neither sought nor obtained state Legislative Oversight or approval prior to reaching its decisions on mobile and stationary source requirements for states included within the northeast ozone transport region.

(7) The Commonwealth of Virginia and other parties have challenged the Constitutionality of the northeast ozone transport commission and its regulatory proposals under the guarantee, compact, and joinder clauses of the United States Constitution.

(8) The United States environmental protection agency, acting outside of the aforementioned statutory requirements for the establishment of new interstate transport commissions, is encouraging the State of West Virginia and twenty-four other states outside of the northeast to participate in multistate negotiations through the ozone transport assessment group; such negotiations are intended to provide the basis for an interstate memorandum of

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understanding or other agreement on ozone transport requiring reductions of emissions of nitrogen oxides or volatile organic compounds in addition to those specified by the federal Clean Air Act amendments of 1990, membership of the ozone transport assessment group consists of state and federal air quality officials, without state legislative representation or participation by the Governor.

(9) Emission control requirements exceeding those specified by federal law can adversely affect state economic development, competitiveness, employment, and income without corresponding environmental benefits; in the case of electric utility emissions of nitrogen oxides, it is estimated that control costs in addition to those specified by the federal Clean Air Act could exceed $5 billion annually in a thirty-seven state region of the eastern United States, including the State of West Virginia.

(10) Requiring certain eastern states to meet emission control requirements more stringent than those otherwise applicable to other states and unnecessary for environmental protection would unfairly affect interstate competition for new industrial development and employment opportunities.

(c) It is therefore directed that:

(1) Not later than ten days subsequent to the receipt by the director of the Division of Environmental Protection of any proposed memorandum of understanding or other agreement by the ozone transport assessment group, or similar group, potentially requiring the State of West Virginia to undertake emission reductions in addition to those specified by the federal Clean Air Act, the director of the Division of Environmental Protection shall submit such proposed memorandum or other agreement to the President of the Senate and the Speaker of the House of Delegates for consideration.

(2) Upon receipt of the aforesaid memorandum of understanding or agreement, the President and the Speaker shall refer the understanding or agreement to one or more appropriate legislative committees with a request that such committees convene one or more public hearings to receive comments from agencies of government and other interested parties on its prospective economic and environmental impacts on the State of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(3) Upon completion of the public hearings required by the preceding subdivision, the committees(s) shall forward to the president and the speaker a report containing its findings and recommendations concerning any proposed memorandum of understanding or other agreement related to the interstate transport of ozone. The report shall make findings with respect to the economic, health, safety and welfare and environmental impacts on the State of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(4) Upon receipt of the report required by the preceding subdivision, the president and

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speaker shall thereafter transmit the report to the Governor for such further consideration or action as may be warranted.

(5) Nothing in this section shall be construed to preclude the Legislature from taking such other action with respect to any proposed memorandum of understanding or other agreement related to the interstate transport of ozone as it deems appropriate.

(6) No person is authorized to commit the State of West Virginia to the terms of any such memorandum or agreement unless specifically approved by an act of the Legislature.

WV Legislature

§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.

(a) The director shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, to the full extent allowed by federal and state law, one or more rules establishing a voluntary emissions trading and banking program that provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air contaminants or the protection of human health and welfare and the environment from air pollution.

(b) The director shall establish a system by legislative rule for quantifying, verifying, determining eligibility, registering, trading and using all emissions reduction credits, for banking and trading if achieved after January 1, 1991, to the extent permitted by federal law. Credits also shall be available for permanent shutdowns. Ten percent of any emission reduction credits registered with the director shall be retired from future use: Provided, That fifty percent of any emission reduction credits generated from permanent shutdowns prior to the effective date of the legislative rule or rules promulgated pursuant to this section shall be retired from future use. All other emissions reduction credits registered shall remain in effect until used and debited or retired. Credits not used within ten years shall be retired from future use. The director may charge a reasonable transaction fee at the time any credits are registered and shall deposit the fees in the air pollution control fund.

The division may establish the emissions trading program as a state, multistate or regional program as long as the program contributes to the goal of improving the air quality in West Virginia and in the air quality region where the source is located.

WV Legislature

§22-5-19. Inventory of greenhouse gases.

(a) The secretary shall establish a program to inventory greenhouse gas emissions from major sources that are subject to mandatory federal greenhouse gases reporting requirements. The secretary shall obtain available emissions data directly from the appropriate federal entity, including the United States Environmental Protection Agency.

(b) As used in this section, "greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydroflurocarbons, perfluorocarbons and sulfur hexafluoride.

WV Legislature

§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.

The West Virginia Department of Environmental Protection shall propose a legislative rule for promulgation in accordance with §29A-3-1 of this code to implement the Affordable Clean Energy rule, consisting of Emission Guidelines for Greenhouse Gas, Emissions from Existing Electric Utility Generating Units (EGUs) pursuant to the federal Clean Air Act, section 111(d). The proposed rule shall be filed with the Secretary of State in time for consideration during the 2021 legislative session. Notwithstanding any provision to the contrary, the agency shall submit a complete or partial state compliance plan to the federal Environmental Protection Agency no later than September 1, 2020, which may be comprised of one or more EGU facilities that are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs.

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