WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

SENATE BILL NO. 76
(By Mr. Moreland)

PASSED March 8th, 1961

In Effect ninety days from Passage

Filed in Office of the Secretary of State
of West Virginia March 11, 1961
JOE F. BURDETT
SECRETARY OF STATE
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article nineteen, relating to air pollution control; creating an air pollution control commission and defining its powers and duties; defining what shall constitute the pollution of air in violation of the provisions of this article; providing for procedures before the commission; providing penalties and remedies for violations; providing for emergency powers of the commission; and repealing statutes or parts of statutes inconsistent with the provisions of this article.
Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article designated article nineteen, to read as follows:

Article 19. Air Pollution Control.

Section 1. Declaration of Policy and Purpose.—It is hereby determined and declared to be the policy of the state of West Virginia to maintain such a reasonable degree of purity of the air resources of the state as shall be technically feasible, economically reasonable, and necessary for the protection of the normal health, the general welfare and the property of the people of the state. The measures for the accomplishment of this purpose shall not unreasonably obstruct the attraction, development and expansion of business, industry and commerce within the state. The program for the control of air pollution under this act shall be sought to be accomplished by a maximum of cooperation and conciliation among all the parties concerned. All powers herein conferred upon the
air pollution control commission shall be exercised solely
to effectuate the policy declared in this section.

Sec. 2. Definitions.—The terms used in this article are
defined as follows:

The term "person" shall mean any and all persons.
natural or artificial, including any municipal, public or
private corporation organized or existing under the laws
of this or any other state or county, and any firm, partner-
ship or association of whatever nature.

The term "commission" shall mean the air pollution
control commission herein created, and the term "commis-
ioner" shall mean a member of said commission.

The term "air pollutants" shall mean solids, liquids or
gases which, if discharged into the air, will result in a
statutory air pollution.

The term "discharge" shall refer to any continuous or
regular release, escape or emission of air pollutants into
the air.

The term "statutory air pollution" shall mean and be
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 unreasonably
and materially injurious to human, animal or plant life
or to property.

Sec. 3. Making it Unlawful to Cause Statutory Air:
Pollution.—For the purposes of this article and subject to
all of the provisions hereof, it shall be unlawful for any
person to cause a statutory air pollution as herein defined:
Provided, however, That nothing contained in this article
shall be construed to provide 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.

Sec. 4. Creation of Air Pollution Control Commission;
Personnel; Records.—There is hereby created, as an
agency of this state, an air pollution control commission
which shall consist of five members, including the state
director of health and the commissioner of agriculture,
who shall be members ex officio, and three other members
who shall be appointed by the governor, with the advice
and consent of the senate, at least two of whom shall be
truly representative of industries engaged in business in
this state. The term of office of the three members of the commission to be appointed by the governor shall be four years, except that the first members to be so appointed under the provisions of this article shall take office immediately and their terms shall be two, three and four years, respectively, from July first, one thousand nine hundred sixty-one. All members appointed by the governor shall serve until their respective successors are appointed and shall have qualified, and any vacancy in such membership occurring by expiration of term or otherwise shall be filled by the governor with the advice and consent of the senate.

The members of the commission shall receive no salary or remuneration for their services as such but they shall be reimbursed, out of moneys appropriated for such purposes, for actual and necessary expenses incurred in the performance of their duties as such.

At its first meeting the commission shall elect from its membership a chairman and at the first meeting in each fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year.
At similar times the commission shall appoint a secretary who need not be a member of the commission. The commission shall employ such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

The commission may establish rules for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved. Copies of orders entered by the commission, as well as copies of papers or documents filed with it or the records of proceedings before the commission, shall be attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two commissioners, all of which meetings shall be general meetings for the consideration of any and
Sec. 5. Authority and Powers of Commission; Rules and Regulations; Public Hearings.—The commission is hereby authorized and empowered:

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

(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 commission may deem advisable and necessary.

(4) To adopt and to promulgate reasonable regulations, not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, however, that no rule or regulation of the commission shall specify the design of equipment, type of construction, or par-
20 ticular method which a person shall use to reduce the
discharge of air pollutants, nor shall any such rule or
regulation apply to any aspect of an employer-employee
relationship;
(5) To enter orders requiring compliance with the
provisions of this article and the regulations lawfully
promulgated hereunder;
(6) To consider complaints, subpoena witnesses, ad-
minister oaths, make investigations, and hold hearings
relevant to the promulgation of regulations and the entry
of compliance orders hereunder;
(7) To encourage voluntary cooperation by munici-
palities, 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 purposes of this article;
(9) To enter at reasonable times upon any private or
public property for the purpose of investigating an alleged
statutory air pollution: Provided, however, That no such
investigation shall extend to information relating to secret processes or methods of manufacturing or production;

(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 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; and

(13) The commission may appoint technical advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members for each area so designated, at least two of whom shall be truly representative of industries operating within such area, and may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area.
No rule or regulation of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published once a week for two successive weeks in at least one daily newspaper of general circulation in the county wherein such hearing is to be held. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule or regulation to the commission within thirty days after such hearing. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party in which event the prevailing rates for such transcripts will be required from such interested party.
The commission may, in its discretion, solicit the comments in writing of any person who may be affected by or interested in such proposed rules and regulations.

Sec. 6. Complaints Before The Commission and Procedure Thereon.—If, from any investigation made by it or from any complaint filed before it, the commission shall be of the opinion that there is sufficient cause to believe that a person may be violating the provisions of this article, the commission may give written notice to such person to appear before the commission at a time and place, within the county wherein the pollution is alleged to have originated, to be specified in such notice, then and there to show cause, if any shall exist, why said commission should not enter an order finding that such person has violated the provisions of this article and regulating or controlling the alleged pollution. The said notice shall with reasonable particularity specify the nature of the alleged air pollution which is to be the subject of inquiry at such hearing. No such hearing shall be held less than thirty days from the date of said notice. Any such notice may be served and returned in the same manner as a summons in
a civil action or may be served by sending a copy thereof
by registered mail addressed to the person or persons
alleged to be causing such pollution at his and/or its usual,
or last known, post office address. Any person to whom
such notice has been given may appear in person or by
counsel at the hearing and adduce evidence in answer to
the alleged violation.

In any proceeding under this article the commission
shall consider all pertinent factors, including a balancing
of the conflicting interests and equities involved, the
availability and practicality of control devices, the phy-
sical and economic feasibility of eliminating, controlling
or reducing the alleged pollution, the nature of the lo-
cality affected by the alleged pollution, the reasonableness
of existing conditions and such other factors as may ap-
pear to the commission to be consonant with the policy
declared in section one of this article.

Consistent with the evidence adduced at the hearing
and a consideration of the aforesaid factors, the commis-
sion shall enter such order as in its opinion will best pro-
mote the declared policy of this article. Such order shall
contain specific findings of fact with respect to all factors considered by the commission and shall require that the statutory air pollution, if any be found, be corrected within a reasonable period of time to be fixed therein. A true copy of such order shall be promptly served, either by service as a summons in a civil action or by registered mail as aforesaid, upon all persons substantially affected by such order. Within twenty days after service of such order, any person substantially affected thereby may file with the secretary of the commission a petition in writing requesting the commission to modify or vacate such order. The petition shall assign the grounds relied upon by the petitioner in support of a modification or vacation of such order. The commission shall thereupon reconsider its original order and shall, within twenty days after the filing of the petition, enter of record an order confirming, modifying or vacating the original order. A true copy of such order shall be promptly served upon all persons substantially affected thereby in the same manner as the original order was served. Any order of the commission entered hereunder shall become final and conclusive upon
all persons affected thereby unless an appeal therefrom is
taken in the manner provided in section seven of this
article.

The proceedings at any such hearing shall be recorded
by mechanical means or otherwise as may be prescribed
by the commission: Provided, however, That the pro-
ceedings shall be taken by a stenographer appointed by
the commission upon demand of any interested person. A
copy of such transcript shall be furnished on demand to
any person substantially affected upon payment of the fee
prescribed therefor in the rules and regulations of the
commission, such fee not to exceed that prescribed for
transcripts in the circuit court.

Sec. 7. Right of Appeal; Jurisdiction of Court.—Any
person whose interest shall have been substantially af-
fected by an order of the commission may appeal from
such order or decision by filing with the commission a
written notice of appeal. Such notice shall be filed within
thirty days from the date notice of the order or decision
of the commission was given to such person and shall be
signed by him or his attorney. Within thirty days from
the receipt of the notice of appeal, the commission shall
toprepare and forward to the appellant or his attorney a
copy of a full transcript of the proceedings, together with
a copy of the order or decision of the commission and a
copy of the notice of appeal, and at the same time shall
file a transcript of the proceedings before the commission
and the other documents mentioned above with the clerk
of the circuit court herein designated. All documents
shall be duly certified by the secretary of the commission.
The court shall thereafter have complete jurisdiction of
the matter.

The appeal shall be taken to the circuit court of the
county wherein the alleged statutory air pollution com-
plained of originated. The circuit court to which any such
appeal shall have been taken, or the judge thereof, shall
fix a time for the hearing of the appeal and shall, after
such hearing, without a jury, by order entered of record,
affirm, modify or set aside in whole or in part the order of
the commission. The said court shall make findings of
fact and conclusions of law based upon the transcript of
the proceedings before the commission and upon any addi-
tional evidence adduced before said court, the right to adduce such additional evidence being hereby reserved to the commission or to any person substantially affected by the order of the commission. In the event the circuit court shall affirm or modify the commission's order that a statutory air pollution exists under the provisions of this article, the order of the court shall specify that such pollution shall be corrected within a reasonable period of time to be fixed therein. The commission or any person whose interests shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

An appeal to a circuit court or to the supreme court of appeals shall serve to stay the order of the commission or circuit court, as the case may be, pending final determination thereof.

Sec. 8. Penalties.—(a) Any person who shall fail or refuse to comply with any lawful order of the commission to correct a statutory air pollution within the time fixed by such order or any extension of time granted by the com-
mission shall be subject to a penalty of not more than one hundred dollars for each day that such failure or refusal continues after such time has expired, which penalty may be recovered in a civil action brought by the commission in the name of the state of West Virginia in the circuit court of any county wherein such person resides or is engaged in the activity complained of. The amount of the penalty shall be fixed by the court without a jury. The amount of any such penalties collected by the commission shall be deposited in the general fund of the state treasury according to law. Upon a request in writing from the commission, it shall be the duty of the prosecuting attorney of the county in which any such action for penalties accruing under this section may be brought to institute and prosecute all such actions on behalf of the commission.

(b) For the purpose of this section, violations on separate days shall be considered separate offenses.

Sec. 9. Applications for Injunctive Relief.—In addition to the remedy provided for in section eight of this article and in the absence of reasonable progress toward correction of the statutory air pollution, the commission may
request the prosecuting attorney of the county in which the defendant resides or is engaged in the activity complained of to apply to the circuit court of such county for an injunction to restrain all violations of any final order of the commission entered pursuant to section six of this article.

Sec. 10. Emergencies; Powers of Commission; Procedure.—Whenever air pollution conditions in any area of the state become such as, in the opinion of the commission, to create an emergency and to require immediate action for the protection of the public health, the commission 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 commission 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 commission shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the commission may thereafter apply by petition to the circuit court of the county for a review of the commission’s action. The circuit court shall forthwith fix a time for a 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 commission. 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.
Sec. 11. Powers Reserved to State Board of Health, Local Health Boards and Political Subdivisions; Conflicting Statutes Repealed.—Nothing in this article shall affect or limit the powers or duties heretofore conferred by the provisions of this chapter upon the state board of 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 be hereafter deemed to 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 be deemed to apply to the control, reduction or abatement of air pollution, hereby repealed: Provided, however, That no ordinance heretofore adopted by any municipality relating to the control, reduction or abatement of air pollution shall be deemed repealed by this article.

Sec. 12. Severability.—The provisions of this act are severable and if any provision, section or part thereof shall
be held invalid, unconstitutional or inapplicable to any
person or circumstance, such invalidity, unconstitution-
ality or inapplicability shall not affect or impair any of
the remaining provisions, sections or parts of the act or
their application to him or to other persons and circum-
stances. It is hereby declared to be the legislative intent
that this act would have been adopted if such invalid or
unconstitutional provision, section or part had not been
included therein.

Sec. 13. Effective Date of Rules and Regulations.—The
rules and regulations promulgated pursuant to the pro-
visions of this article shall be of no effect until one (1)
year after the effective date of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within... 

[Signature]
Governor

day of March, 1961.