

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964

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ENROLLED

HOUSE BILL No. 2

(By Mr. Myles ~~and~~ Mr. England)

—●—
PASSED February 5, 1964

In Effect July 1, 1964 ~~Passage~~



FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 2-11-64

#2.

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House Bill No. 2

(By MR. MYLES and MR. ENGLAND)

[Passed February 5, 1964; in effect July 1, 1964.]

AN ACT to repeal article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article five; to amend and reenact sections two and three, article nine, chapter sixteen of said code; to amend and reenact section seven, article one and section four, article seven of chapter twenty of said code; and to further amend said chapter twenty by adding thereto a new article, designated article five-a; said new article five of said chapter twenty relating generally to water resources and the regulation and control thereof and providing criminal offenses and penalties; said sections two and three, article nine of said chapter sixteen relating to the throwing or placing of dead

animals, or parts thereof, putrid, nauseous or offensive substances hazardous to public health, garbage, slop, spoiled meat, or the contents of privy vaults, septic tanks or cesspools in or near certain waters or on or near certain public places, or the permitting of the same so to remain and providing criminal offenses and penalties; said section seven, article one of said chapter twenty relating to additional powers, duties, services and responsibilities of the director of the department of natural resources; said section four, article seven of said chapter twenty relating to the powers and duties of conservation officers; and said new article five-a of said chapter twenty relating to the rights, obligations and procedures pertaining to water pollution control, providing for the adoption of a water pollution control act and providing civil and criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article five enacted in lieu thereof; that sections two and three, article nine, chapter sixteen of said

code be amended and reenacted; and that section seven, article one and section four, article seven of chapter twenty of said code be amended and reenacted; and that chapter twenty of said code be further amended by adding thereto a new article, designated article five-a, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

Article 9. Offenses Generally.

Section 2. Throwing Dead Animals or Offensive Sub-

2 **stances into Waters Used for Domestic Purposes; Penalty;**
3 **Jurisdiction of Justices; Exception.**—Any person who
4 knowingly and wilfully shall throw, or cause to be
5 thrown, any dead animal, carcass or part thereof, or any
6 putrid, nauseous or offensive substances hazardous to
7 public health, into any well, cistern, spring, brook or
8 branch of running water, which is used for domestic pur-
9 poses, shall be guilty of a misdemeanor, and, upon con-
10 viction thereof, shall be punished by a fine of not less than
11 twenty dollars nor more than five hundred dollars, or by
12 imprisonment in the county jail for a period not to exceed
13 six months, or, in the discretion of the court, by both such
14 fine and imprisonment, and, moreover, shall be liable to
15 the party injured in a civil action for damages.

16 Justices of the peace shall have concurrent jurisdiction
17 with the circuit, criminal and intermediate courts of the
18 state for the enforcement of the criminal penalties of this
19 section.

Sec. 3. Depositing Dead Animals or Offensive Sub-
2 **stances in or near Waters or on or near Roads or on Pub-**
3 **lic Grounds; Penalties; Failure to Bury or Destroy Offen-**
4 **sive Substances after Conviction; Successive Offenses;**
5 **Jurisdiction of Justices; Exception.**—Any person who
6 shall place, cast, discharge, or deposit the carcass of any
7 dead animal, or part thereof, or garbage, or slop, or
8 spoiled meat, or putrid organic substances hazardous to
9 public health, or the contents of privy vaults, or septic
10 tanks, or cesspools, into any river, creek or other stream,
11 or upon the surface of any land adjacent to such river,
12 creek or other stream in such a location that high water
13 or normal drainage conditions will cause such offensive
14 material to be washed, drained or cast into the river, creek
15 or other stream; or any person who shall place, cast, dis-
16 charge, or deposit such offensive material upon the sur-
17 face of any public road, street, alley, city or town lot, pub-

18 lic ground, market space, or common, or upon the surface
19 of any land within one hundred yards of a public street or
20 road; or any person, who, being the owner, lessee or occu-
21 pant of any such city or town lot, public ground, market
22 space, common, or land within one hundred yards of a
23 public street or road, shall knowingly permit any of the
24 offensive materials hereinbefore named to remain thereon,
25 to the annoyance of any of the citizens of this state, or
26 shall neglect or refuse to remove or abate the nuisance oc-
27 casioned thereby, within twenty-four hours after such
28 person has knowledge of the existence of such nuisance
29 upon any of the above-described premises owned, leased,
30 or occupied by him, or within twenty-four hours of serv-
31 ice of notice thereof in writing from the health officer
32 of the county, or the mayor or health officer of the mu-
33 nicipal corporation, as the case may be, in which any
34 such nuisance exists, shall be guilty of a misdemeanor,
35 and, upon conviction thereof, shall be punished by a
36 fine of not less than twenty dollars nor more than five
37 hundred dollars.

38 Upon a conviction for any such offense, the person

39 convicted shall, within twenty-four hours after such
40 conviction, bury or cause to be buried at least three feet
41 under the ground, or destroy or cause to be destroyed
42 by fire or as otherwise directed by the health officer
43 within whose jurisdiction the offense may have occurred,
44 any of the offensive materials or substances hereinbefore
45 named which the person so convicted has placed or know-
46 ingly permitted to remain upon such city or town lot,
47 public ground, market space, common, or land, contrary
48 to the provisions of this section, and his failure to do so
49 shall constitute a misdemeanor and a second offense
50 against the provisions of this section. The continued
51 failure or refusal of such convicted person to bury or
52 destroy such offensive materials and substances as pro-
53 vided herein shall constitute a separate, distinct and
54 additional offense for each successive twenty-four hour
55 period of such failure and refusal. Any person convicted
56 of any offense described in this paragraph shall be pun-
57 ished by a fine of not less than twenty dollars nor more
58 than five hundred dollars.

59 Justices of the peace shall have concurrent jurisdiction

60 with the circuit, criminal and intermediate courts of the
61 state for the enforcement of the criminal penalties of this
62 section.

CHAPTER 20. NATURAL RESOURCES.

Article 1. Organization and Administration.

Section 7. Additional Powers, Duties and Services of

2 **Director.**—In addition to all other powers, duties and re-
3 sponsibilities granted and assigned to the director in this
4 chapter and elsewhere by law, the director is hereby au-
5 thorized and empowered to:

6 (1) With the advice of the commission, prepare and
7 administer, through the various divisions created by this
8 chapter, a long-range comprehensive program for the
9 conservation of the natural resources of the state which
10 best effectuates the purpose of this chapter and which
11 makes adequate provisions for the natural resources laws
12 of the state;

13 (2) Sign and execute in the name of the state by the
14 “Department of Natural Resources” any contract or agree-
15 ment with the federal government or its departments or
16 agencies, subdivisions of the state, corporations, associa-
17 tions, partnerships or individuals;

18 (3) Conduct research in improved conservation meth-
19 ods and disseminate information matters to the residents
20 of the state;

21 (4) Conduct a continuous study and investigation of
22 the habits of wildlife, and for purposes of control and pro-
23 tection to classify by regulation the various species into
24 such categories as may be established as necessary;

25 (5) Prescribe the locality in which and the manner and
26 method by which the various species of wildlife may be
27 taken, or chased, unless otherwise specified by this
28 chapter;

29 (6) Fix by regulation the open seasons and the bag,
30 creel, size, age, weight and sex limits with respect to wild-
31 life in this state;

32 (7) Hold at least six meetings each year at such times
33 and at such points within the state, as in the discretion of
34 the director may appear to be necessary and proper for
35 the purpose of giving interested persons in the various
36 sections of the state an opportunity to be heard concerning
37 open seasons for their respective areas, before such sea-
38 sons and bag limits are fixed;

- 39 (8) Suspend open hunting seasons upon any or all
40 wildlife in any or all counties of the state with the prior
41 approval of the governor in case of an emergency such
42 as a drought, forest fire hazard or epizootic of disease
43 among wildlife. The suspension shall continue during the
44 existence of the emergency and until rescinded by the
45 director. Suspension, or reopening after such suspension,
46 of open seasons may be made upon twenty-four hours'
47 notice by delivery of a copy of the order of suspension
48 or reopening to the wire press agencies at the state capitol;
- 49 (9) Supervise the fiscal affairs and responsibilities of
50 the department;
- 51 (10) Designate such localities as he shall determine to
52 be necessary and desirable for the perpetuation of any
53 species of wildlife;
- 54 (11) Enter private lands to make surveys or inspec-
55 tions for conservation purposes, to investigate for viola-
56 tions of provisions of this chapter, to serve and execute
57 warrants and processes, to make arrests and to otherwise
58 effectively enforce the provisions of this chapter;
- 59 (12) Acquire for the state in the name of the "Depart-

60 ment of Natural Resources” by purchase, condemnation,
61 lease or agreement, or accept or reject for the state, in
62 the name of the department of natural resources, gifts,
63 donations, contributions, bequests or devises of money,
64 security or property, both real and personal, and any
65 interest in such property, including lands and waters,
66 which he deems suitable for the following purposes:

67 (a) For state forests for the purpose of growing timber,
68 demonstrating forestry, furnishing or protecting water-
69 sheds or providing public recreation;

70 (b) For state parks or recreation areas for the purpose
71 of preserving scenic, esthetic, scientific, cultural, archaeo-
72 logical or historical values or natural wonders, or pro-
73 viding public recreation;

74 (c) For public hunting, trapping, or fishing grounds or
75 waters for the purpose of providing areas in which the
76 public may hunt, trap or fish, as permitted by the pro-
77 visions of this chapter, and the rules and regulations
78 issued hereunder;

79 (d) For fish hatcheries, game farms, wildlife research
80 areas and feeding stations;

81 (e) For the extension and consolidation of lands or
82 waters suitable for the above purposes by exchange of
83 other lands or waters under his supervision;

84 (f) For such other purposes as may be necessary to
85 carry out the provisions of this chapter;

86 (13) Capture, propagate, transport, sell or exchange any
87 species of wildlife as may be necessary to carry out the
88 provisions of this chapter;

89 (14) Exercise the powers granted by this chapter for
90 the protection of forests, and regulate fires and smoking
91 in the woods or in their proximity at such times and in
92 such localities as may be necessary to reduce the danger
93 of forest fires;

94 (15) Cooperate with departments and agencies of state,
95 local and federal governments in the conservation of nat-
96 ural resources and the beautification of the state;

97 (16) Report to the governor each year all information
98 relative to the operation and functions of his department
99 and he shall make such other reports and recommenda-
100 tions as may be required by the governor, including an
101 annual financial report covering all receipts and disburse-

102 ments of the department for each fiscal year, and he shall
103 deliver such report to the governor on or before the first
104 day of December next after the end of the fiscal year so
105 covered. A copy of such report shall be delivered to each
106 house of the Legislature when convened in January next
107 following;

108 (17) Keep a complete and accurate record of all pro-
109 ceedings, record and file all bonds and contracts taken or
110 entered into, and assume responsibility for the custody
111 and preservation of all papers and documents pertaining
112 to his office, except as otherwise provided by law;

113 (18) Offer and pay, in his discretion, rewards for in-
114 formation respecting the violation, or for the apprehen-
115 sion and conviction of any violators, of any of the pro-
116 visions of this chapter;

117 (19) Require such reports as he may deem to be
118 necessary from any person issued a license or permit
119 under the provisions of this chapter, but no person shall
120 be required to disclose secret processes or confidential
121 data of competitive significance;

122 (20) Purchase as provided by law all equipment neces-
123 sary for the conduct of his department;

124 (21) Conduct and encourage research designed to fur-
125 ther new and more extensive uses of the natural resources
126 of this state and to publicize the findings of such research;

127 (22) Encourage and cooperate with other public and
128 private organizations or groups in their efforts to publi-
129 cize the attractions of the state;

130 (23) Accept and expend, without the necessity of ap-
131 propriation by the Legislature, any gift or grant of money
132 made to the department for any and all purposes specified
133 in this chapter, and he shall account for and report on all
134 such receipts and expenditures to the governor;

135 (24) Cooperate with the state historian and other ap-
136 propriate state agencies in conducting research with refer-
137 ence to the establishment of state parks and monuments
138 of historic, scenic and recreational value, and to take such
139 steps as may be necessary in establishing such monuments
140 or parks as he deems advisable.

141 (25) Maintain in his office at all times, properly in-
142 dexed by subject matter, and also in chronological se-
143 quence, all rules and regulations made or issued under
144 the authority of this chapter. Such records shall be avail-

145 able for public inspection on all business days during the
146 business hours of working days as prescribed by the state
147 board of public works.

148 (26) Delegate the powers and duties of his office, ex-
149 cept the power to execute contracts, to appointees and
150 employees of the department, who shall act under the di-
151 rection and supervision of the director and for whose acts
152 he shall be responsible;

153 (27) Conduct schools, institutes and other educational
154 programs, apart from or in cooperation with other gov-
155 ernmental agencies, for instruction and training in all
156 phases of the natural resources program of the state; and

157 (28) Promulgate rules and regulations, in accordance
158 with the provisions of chapter twenty-nine-a of this code,
159 to implement and make effective the powers and duties
160 vested in him by the provisions of this chapter and take
161 such other steps as may be necessary in his discretion for
162 the proper and effective enforcement of the provisions of
163 this chapter: *Provided*, That all rules and regulations re-
164 lating to articles five and five-a of this chapter shall be
165 promulgated by the water resources board.

Article 5. Water Resources.*Part I. General Provisions.***Section 1. Water Resources Board and Division of**

2 **Water Resources; Duties and Functions.**—The water re-
3 sources board shall have within its jurisdiction and super-
4 vision the Ohio river valley water sanitation commission
5 from the state of West Virginia and the interstate com-
6 mission on the Potomac river basin from the state of West
7 Virginia. The division of water resources, created and
8 established in article one of this chapter, shall have within
9 its jurisdiction and supervision the administration and
10 enforcement of all laws relating to slack-water dams,
11 stream and water areas beautification, and the conserva-
12 tion, development, protection, enjoyment and use of the
13 water resources of the state consistent with the provisions
14 of this chapter. The chief of the division shall be pri-
15 marily responsible for the execution and administration
16 of the provisions of this article and article five-a as an
17 integral part of the natural resources program of the state
18 and shall organize and staff his division so as to accom-
19 plish these ends in an orderly, efficient and economical

20 manner. The division chief shall give consideration to
21 other functions and services of the department and, wher-
22 ever practicable, shall coordinate the plans and programs
23 of his division with the functions and services of other
24 divisions, offices and activities of the department, and
25 other departments and agencies of state government.

Sec. 2. Definitions.—Unless the context in which used
2 clearly requires a different meaning, as used in this
3 article:

4 (a) “Director” shall mean the director of the depart-
5 ment of natural resources;

6 (b) “Board” shall mean the state water resources
7 board;

8 (c) “Chief” shall mean the chief of the division of water
9 resources of the department of natural resources;

10 (d) “Person,” “persons” or “applicant” shall mean any
11 public or private corporation, institution, association, firm
12 or company organized or existing under the laws of this
13 or any other state or country; the state of West Virginia;
14 governmental agency; political subdivision; county court;
15 municipal corporation; industry; sanitary district; public

16 service district; drainage district; soil conservation dis-
17 trict; watershed improvement district; partnership; trust;
18 estate; person or individual; group of persons or individ-
19 uals acting individually or as a group; or any other legal
20 entity whatever;

21 (e) "Water resources," "water" or "waters" shall
22 mean any and all water on or beneath the surface of the
23 ground, whether percolating, standing, diffused or flow-
24 ing, wholly or partially within this state, or bordering
25 this state and within its jurisdiction, and shall include,
26 without limiting the generality of the foregoing, natural
27 or artificial lakes, rivers, streams, creeks, branches, brooks,
28 ponds (except farm ponds, industrial settling basins and
29 ponds and waste treatment facilities), impounding reser-
30 voirs, springs, wells and watercourses;

31 (f) "Code" shall mean the code of West Virginia, one
32 thousand nine hundred thirty-one, as amended.

Sec. 3. Water Resources Board Created; Composition

2 **and Organization of Board; Others to Assist Board and**
3 **Division.**—The state water resources board heretofore
4 created and established as successor to the state water

5 commission and the state water resources commission is
6 hereby abolished. A new state water resources board is
7 hereby created and established as a public corporation.
8 As such the board may sue and be sued, plead and be
9 impleaded, contract and be contracted with, and shall
10 have and use a common seal.

11 The board shall be composed of five members who shall
12 be appointed by the governor with the advice and consent
13 of the senate. One member shall be truly representative
14 of the manufacturing industry of the state; one member
15 shall be truly representative of the mining industry of
16 the state; and three members shall be truly representative
17 of the public at large. The members of the board shall be
18 appointed for overlapping terms of five years, except that
19 the original appointments shall be for terms of one, two,
20 three, four and five years, respectively. Any member
21 whose term expires may be reappointed by the governor.
22 At its organizational meeting, one member of the board
23 shall be selected chairman to serve as chairman at the will
24 and pleasure of the members of the board. Members of the
25 board shall, before performing any duty, take and sub-

26 scribe to the oath required by article four, section five of
27 the Constitution of West Virginia. Members of the board
28 may be removed only for the same causes and in like
29 manner as elective state officers. Any vacancy in the
30 office of a member of the board shall be filled by appoint-
31 ment by the governor for the unexpired term of the mem-
32 ber whose office shall be vacant. Each vacancy occurring
33 in the office of a member of the board shall be filled by
34 appointment within sixty days after such vacancy occurs.
35 Each member of the board shall, out of moneys appro-
36 priated for such purposes, be paid as compensation for
37 attending meetings of the board and for necessary travel
38 to and from such meetings forty dollars per day. In addi-
39 tion to such compensation, each member of the board shall
40 be reimbursed, out of moneys appropriated for such pur-
41 poses, all sums which he necessarily shall expend in the
42 discharge of his duties as a member of such board. The
43 director of the division of sanitary engineering of the state
44 department of health shall perform such services as the
45 board and the chief of the division of water resources
46 may request of him in connection with the discharge of

47 their duties, and he shall be reimbursed, out of moneys
48 appropriated for such purposes, all sums which he neces-
49 sarily shall expend in the performance of such services.
50 Nothing contained in this article or in article five-a of this
51 chapter, however, shall be construed to limit or interfere
52 with the power of the state department of health to select,
53 employ and direct the director of the division of sanitary
54 engineering of said department, or any employee thereof
55 who in any way may perform any services for the board
56 or the division of water resources. The college of engi-
57 neering at West Virginia University, under the direction
58 of the dean thereof, shall, insofar as it can, without inter-
59 fering with its usual and regular activities, aid and assist
60 the board and the division of water resources in the study
61 and research of questions connected with water pollution
62 and the control and reduction thereof in accordance with
63 the provisions of article five-a of this chapter. The dean
64 of the college of engineering shall be reimbursed, out of
65 moneys appropriated for such purposes, all sums which
66 he necessarily shall expend in the performance of any
67 services he may render to the board and the division
68 under the provisions hereof.

69 A majority of the board shall constitute a quorum for
70 the transaction of business. The board shall meet at such
71 times and places as it may determine and shall meet on
72 call of the chairman. It shall be the duty of the chairman
73 to call a meeting of the board on the written request of
74 three members thereof. The board shall keep an accurate
75 record of all of its proceedings and maintain such board
76 records and make certificates thereof or therefrom as may
77 be required by law. The board shall employ a secretary
78 and necessary clerical assistance.

Sec. 4. Functions, Services and Reports of Chief of the
2 **Division of Water Resources.**—The chief of the division
3 of water resources shall make surveys and investigations
4 of the water resources of the state and, as soon as practi-
5 cable, shall inventory the water resources of the state
6 and to the extent practicable shall divide the state into
7 watershed drainage areas in making this inventory. The
8 chief shall investigate and study the problems of agri-
9 culture, industry, conservation, health, water pollution,
10 domestic and commercial uses and allied matters as they
11 relate to the water resources of the state, and shall make

12 and formulate comprehensive plans and recommenda-
13 tions for the further development, improvement, protec-
14 tion, preservation, regulation and use of such water re-
15 sources, giving proper consideration to the hydrologic
16 cycle in which water moves. Annually, not later than
17 the first of November, he shall prepare and publish a
18 full report on his work as to the collection and evalua-
19 tion of the information which has been obtained in ac-
20 cordance with the requirements of this section and shall
21 include in this report the plans and recommendations
22 which have been formulated pursuant to the requirements
23 of this section. The report shall include his reasons for
24 such plans and recommendations, as well as any changes
25 in the law which are deemed desirable to effectuate such
26 plans and recommendations. Such report shall be made
27 available to the public at a reasonable price to be deter-
28 mined by the chief and the director.

29 The chief may request, and, upon his request, shall be
30 entitled to receive from any agency of the state or any
31 political subdivision thereof, or from any other person
32 who engages in a commercial use or controls any of the

33 water resources of the state, such necessary information
34 and data as will assist him in obtaining a complete picture
35 of the water resources of the state and the existing con-
36 trol and commercial use thereof. The chief shall reim-
37 burse such agencies, political subdivisions and other per-
38 sons for any expenses, which would not otherwise have
39 been incurred, in making such information and data
40 available to him.

**Sec. 5. General Powers and Duties of Chief of Division
2 of Water Resources and Water Resources Board with Re-
3 spect to Water Resources.—(a)** In addition to all other
4 powers and duties of the chief of the department's di-
5 vision of water resources, as prescribed in this article or
6 elsewhere by law, the chief, under the supervision of
7 the director, shall have and may exercise the following
8 powers and authority and shall perform the following
9 duties:

10 (1) To conduct, or contract for the conducting of,
11 scientific investigations, experiments and research, and
12 to collect data, concerning the water resources of the
13 state; and

14 (2) To advise all users of water resources as to the
15 availability of water resources and the most practicable
16 method of water diversion, use, development and con-
17 servation.

18 (b) In addition to all other powers and duties of the
19 water resources board, as prescribed in this article or
20 elsewhere by law, the board shall have and may exercise
21 the following powers and authority and shall perform
22 the following duties:

23 (1) To enter into compacts and agreements concerning
24 this state's share of waters in watercourses where a por-
25 tion of such waters is contained within the territorial
26 limits of this state or of a neighboring state or states,
27 subject to the approval of the Legislature;

28 (2) To cooperate with federal officers and agencies,
29 other state agencies and officers, interstate agencies, and
30 other interested persons in the conservation, improve-
31 ment and development of water resources, and to this
32 end, the board may receive moneys from such agencies,
33 officers and persons on behalf of the state: *Provided,*
34 That the board shall pay all moneys so received into a

35 special fund hereby created in the state treasury, which
36 fund shall be expended under the direction of the board
37 solely for the purpose or purposes for which the grant,
38 gift or contribution shall have been made; and

39 (3) To promulgate rules and regulations, in accordance
40 with the provisions of chapter twenty-nine-a of this code,
41 to implement and make effective the powers, duties and
42 responsibilities vested in the board and the chief by the
43 provisions of this article and otherwise by law.

44 (c) The board, any member thereof and the chief, and
45 their duly authorized representatives shall have the
46 power and authority to enter at all reasonable times upon
47 any private or public property for the purpose of making
48 surveys, examinations, investigations and studies needed
49 in the gathering of facts concerning the water resources
50 of the state and their use, subject to responsibility for any
51 damage to the property entered. Upon entering, and
52 before making any survey, examination, investigation
53 and study, such person shall immediately present himself
54 to the occupant of the property. Upon entering property
55 used in any manufacturing, mining or other commercial

56 enterprise, or by any municipality or governmental
57 agency or subdivision, and before making any survey,
58 examination, investigation and study, such person shall
59 immediately present himself to the person in charge of
60 the operation, and if he is not available, to a managerial
61 employee. All persons shall cooperate fully with the
62 person entering such property for such purposes. Upon
63 refusal of the person owning or controlling such property
64 to permit such entrance or the making of such surveys,
65 examinations, investigations and studies, the board or the
66 chief may apply to the circuit court of the county in which
67 such property is located, or to the judge thereof in va-
68 cation, for an order permitting such entrance or the mak-
69 ing of such surveys, examinations, investigations and stud-
70 ies; and jurisdiction is hereby conferred upon such court
71 to enter such order upon a showing that the relief asked
72 is necessary for the proper enforcement of this article:
73 *Provided, however,* That a dwelling occupied for residen-
74 tial purposes shall not be entered without a search warrant.

75 (d) The board is hereby authorized to hire one or more
76 individuals to serve as hearing examiners on a full or

77 part time basis. Such individuals may be attorneys at
78 law admitted to practice before any circuit court of this
79 state. All such hearing examiners shall be individuals
80 authorized to take depositions under the laws of this state.

Part II. Slack-Water Dams.

Sec. 6. Location and Construction of Slack-Water Dams.

2 —The state road commissioner, in constructing public
3 highways, bridges and culverts, as provided by law, and
4 any municipal corporation constructing or improving
5 public streets, viaducts, bridges and culverts, either sev-
6 erally or jointly, upon request of the director of the de-
7 partment of natural resources and with the approval of
8 the state road commissioner, may construct and maintain
9 slack-water dams in connection with such public high-
10 ways, streets, bridges, culverts or viaducts so as to create
11 reservoirs, ponds, water parks, basins, lakes or other
12 incidental works to conserve the water supply of the
13 state.

Sec. 7. Dam Construction Initiated; Approval by Public

2 **Authority; Costs; Plans.**—The director may request the
3 public authority in charge of the construction of state

4 highways, highway bridges and culverts or municipal
5 streets, viaducts, bridges and culverts to construct slack-
6 water dams in connection with the construction of any
7 such public highway, street, bridge, viaduct, or culvert
8 whenever, in his opinion, the construction of such dams
9 is desirable and feasible for the economical creation and
10 construction of reservoirs, ponds, water parks, basins,
11 lakes or other incidental works for the conservation of
12 the water supply of the state.

13 The public authority in charge of such construction
14 may approve such request when, in its opinion, the
15 construction of such dams will not unnecessarily delay
16 or hinder the construction of the public highway, street,
17 bridge, viaduct or culvert, and will not interfere with
18 the value or use of such highway, street, bridge, viaduct
19 or culvert for highway purposes.

20 If such request is approved, the director, in cooperation
21 with the state road commissioner and the public authority
22 participating in the project, shall make a survey and
23 prepare plans, specifications and estimates for the con-
24 struction of such dams, reservoirs, ponds, water parks,

25 basins, lakes or other incidental works in connection
26 therewith.

27 Upon approval of the plans and specifications and the
28 determination to proceed with the project, the director
29 shall enter into an agreement with the public authority
30 on the distribution of the cost and expense of the con-
31 struction of such dams and incidental works in connection
32 therewith. The portion of the cost to be paid by the de-
33 partment shall be paid from any funds appropriated for
34 or paid into the department and available for such pur-
35 pose. No public authority shall proceed with the con-
36 struction of such a project until there is full compliance
37 with the other requirements of law relative to the con-
38 struction of dams and the director shall have satisfied
39 the public authority that sufficient funds are available
40 for the completion of the dam.

41 Such dams shall be constructed under and subject to
42 any and all laws governing the construction of state,
43 county or municipal highways, streets, viaducts, bridges
44 or culverts. Any public authority undertaking construc-
45 tion pursuant to this article shall proceed in the same

46 manner as provided for the construction of public high-
47 ways or street improvements.

48 Nothing herein contained shall require the public au-
49 thority so concerned to delay or postpone construction
50 of the principal public improvement, although approval
51 of the combined project may have been given.

Sec. 8. Requests to Director for Dam Construction;

2 **Costs; Procedure.**—Any department or division of the
3 state government, any county, municipal corporation,
4 park board, district, organization, club, corporation or
5 private person may petition the director for the construc-
6 tion of dams and reservoir projects in connection with
7 the construction of any public highway, bridge, culvert,
8 street or viaduct.

9 Upon receipt of such a petition and its approval by the
10 director, the director shall proceed as authorized by sec-
11 tion seven of this article. If the public authority in
12 charge of the construction of such public highway, street,
13 bridge, viaduct or culvert approves the request, then the
14 director shall enter into an agreement with the public
15 authority and those petitioning for the construction of

16 such dam or reservoir on the apportionment of the cost
17 and expense of construction. The cost and expense of
18 such dam project shall include the cost of clearing and
19 grubbing and the cost of property and the damages inci-
20 dental thereto. Such agreement shall also contain pro-
21 visions for the proper maintenance and repair of such
22 projects after completion, and shall apportion the reve-
23 nue derived therefrom between the department, the
24 public authority and the petitioner or petitioners.

Sec. 9. Payment of Dam Costs; Deficiencies and Re-
2 **funds.**—In all cases in which there is a petition for the
3 construction of a slack-water dam and reservoir project,
4 the director, as a condition precedent to the construction
5 of such project, shall require the petitioner or petitioners
6 to pay his or their share of the cost and expense of such
7 project into the hands of the treasurer of the state to be
8 kept in a separate account for each such project and to
9 be disbursed upon the order of the director.

10 If the estimated cost paid into the state treasury is
11 found to be insufficient, the deficiency shall be made up
12 by the parties bearing the cost before any further work

13 is done. If the deficiency is not made up within sixty
14 days after notice to such parties, the cost paid in, less
15 the amount of expense incurred by the director and the
16 cooperating public authorities, shall be refunded to the
17 donor. After completion of the work, any amount re-
18 maining in the state treasury to the credit of the project
19 shall likewise be refunded.

Sec. 10. Contracts for Dam Construction.—In the con-
2 struction of slack-water dams, reservoirs and other in-
3 cidental works, the state road commissioner and the pub-
4 lic authority of a municipality shall proceed as provided
5 by law and shall enter into contracts as provided by law.

Sec. 11. Dam Supervision, Maintenance and Manage-
2 **ment.**—The director shall have the supervision, care and
3 control of all slack-water dams, reservoirs, ponds, water
4 parks, basins, lakes or other incidental works constructed
5 pursuant to Part II (slack-water dams) of this article
6 and shall maintain and keep them in repair. The cost of
7 such maintenance and repair shall be paid from any funds
8 appropriated to the department for that purpose or paid
9 into the state treasury as agreed upon with the public

10 or contracting authorities cooperating in the construction
11 of such projects.

12 Such projects may also be maintained by any depart-
13 ment or division of state government or other public
14 authorities leasing or operating the projects, through
15 agreements made with said director. All rentals derived
16 from the lease of such projects shall be used by said
17 director in the maintenance or repair of all such projects.

18 The costs and expenses of the reconstruction of any such
19 projects shall be allocated, unless otherwise agreed, on
20 the same basis and in the same proportion as the costs
21 and expenses of the original project were allocated
22 among the contracting parties: *Provided*, That the state
23 road commission shall not be required to contribute any
24 portion of the cost of maintaining or repairing any slack-
25 water dam, reservoir, pond, water park, basin, lake or
26 other incidental work when the maintenance of the road,
27 bridge, or culvert would not have required such expendi-
28 ture had it not been for the installation of such slack-
29 water dam project or projects.

Sec. 12. Titles to and Leases of Lands; Management and
2 **Funds.**—The title to or lease of any such lands, waters or

3 riparian rights shall be taken by the department, subject
4 to the approval of the governor and the attorney general,
5 in the name of the state. The rentals required by any
6 such lease and the purchase price of any such lands,
7 waters or riparian rights, as well as the department's
8 share of the costs and expenses of constructing any such
9 slack-water dams, reservoirs, ponds, water parks, basins,
10 lakes or other incidental works on such lands, may be
11 paid for from any funds appropriated for the use of or
12 paid into the department and available for such purpose.
13 To effectuate the purposes of the sections of this article
14 dealing with slack-water dams, the director may accept
15 contributions to such funds from individuals, associa-
16 tions, clubs, organizations and corporations.

Sec. 13. Future Plans for Road and Other Construction;

2 **Coordination.**—Upon request by the director, the state
3 road commissioner or other public authority shall advise
4 the director of any planned or contemplated construction
5 of new public highways, bridges, culverts, viaducts, or
6 streets; and thereupon, it shall become the duty of the
7 director to coordinate the plans of the department, if any,

8 with the state road commission or other public authority
9 to the end that any such slack-water dam project shall
10 not cause a delay in or interfere with the construction of
11 the principal project, and to the end that such additional
12 project shall, in all respects, be in conformity with recog-
13 nized road construction standards and practices.

Part III. Husbandry of Water Areas.

Sec. 14. Water Areas Beautification; Investigations;

2 **Enforcement.**—The division of water resources shall be
3 responsible for the department's program and practices
4 in the husbandry of rivers, streams, creeks, branches,
5 brooks, lakes, industrial settling basins and ponds, waste
6 treatment facilities, and other water areas (except farm
7 ponds) and the lands immediately adjacent thereto.
8 The chief of the division shall make such investi-
9 gations and surveys, conduct such schools and public
10 meetings and take such other steps as may be expedient
11 in the conservation, beautification, improvement and use
12 of all such water areas of the state. He shall cooperate
13 with the department's chief law enforcement officer in
14 enforcing the provisions of law prohibiting the disposal
15 of litter in, along and near such water areas.

Sec. 15. Litter along Streams, etc.; Violations; Evi-

2 **dence; Penalties; Exception.**—It shall be unlawful to
3 place, deposit, dump or throw, or cause to be placed, de-
4 posited, dumped or thrown, any litter, garbage, refuse,
5 trash, cans, bottles, papers, ashes, carcass of any dead
6 animal or any part thereof, offal or any other offensive or
7 unsightly matter into any river, stream, creek, branch,
8 brook, lake or pond, or upon the surface of any land with-
9 in one hundred yards thereof, or in such location that
10 high water or normal drainage conditions will cause any
11 such materials or substances to be washed into any river,
12 stream, creek, branch, brook, lake or pond.

13 No portion of this section shall be construed to restrict
14 an owner, renter or lessee in the use of his own private
15 property or rented or leased property or to prohibit the
16 disposal of any industrial and other wastes into waters of
17 this state in a manner consistent with the provisions of
18 article five-a of this chapter. But if any owner, renter
19 or lessee, private or otherwise, knowingly permits any
20 such materials or substances to be placed, deposited,
21 dumped or thrown in such location that high water or

22 normal drainage conditions will cause any such mater-
23 ials or substances to wash into any river, stream, creek,
24 branch, brook, lake or pond, it shall be deemed prima
25 facie evidence that such owner, renter or lessee intended
26 to violate the provisions of this section.

27 In addition to enforcement by the director, the chief
28 of the division of water resources, and the department's
29 chief law enforcement officer, the provisions of this sec-
30 tion may be enforced by all other proper law enforce-
31 ment agencies.

32 Any person violating any provision of this section shall
33 be guilty of a misdemeanor, and, upon conviction thereof,
34 shall be punished by a fine of not less than twenty dollars
35 nor more than five hundred dollars, or by imprisonment
36 in the county jail for a period not to exceed six months,
37 or, in the discretion of the court, by both such fine and
38 imprisonment.

Part IV. Severability.

Sec. 16. Severability of Provisions.—If any provision of
2 this article or the application thereof to any person or
3 circumstance is held invalid, such invalidity shall not

4 affect other provisions or applications of the article which
5 can be given effect without the invalid provision or its
6 application, and to this end the provisions of this article
7 are declared to be severable.

Article 5-A. Water Pollution Control Act.

Part I. General Provisions and Public Policy.

Section 1. Declaration of Policy.—It is declared to be
2 the public policy of the state of West Virginia to maintain
3 reasonable standards of purity and quality of the waters
4 of the state consistent with (1) public health and public
5 enjoyment thereof; (2) the propagation and protection of
6 animal, bird, fish, aquatic and plant life; and (3) the at-
7 traction, development, maintenance and expansion of
8 mining, manufacturing and other business and industry,
9 and to that end to encourage by voluntary cooperation,
10 and to require when necessary, the use of available, rea-
11 sonable, practicable and economically feasible methods to
12 control and reduce the pollution of the waters of the state
13 of West Virginia.

Sec. 2. Definitions.—Unless the context in which used
2 clearly requires a different meaning, as used in this ar-
3 ticle:

- 4 (a) "Director" shall mean the director of the depart-
5 ment of natural resources;
- 6 (b) "Board" shall mean the state water resources
7 board;
- 8 (c) "Chief" shall mean the chief of the division of
9 water resources of the department of natural resources;
- 10 (d) "Person," "persons" or "applicant" shall mean any
11 public or private corporation, institution, association, firm
12 or company organized or existing under the laws of this
13 or any other state or country; state of West Virginia;
14 governmental agency; political subdivision; county court;
15 municipal corporation; industry; sanitary district; public
16 service district; drainage district; soil conservation dis-
17 trict; watershed improvement district; partnership; trust;
18 estate; person or individual; group of persons or individ-
19 uals acting individually or as a group; or any other legal
20 entity whatever;
- 21 (e) "Water resources," "water" or "waters" shall mean
22 any and all water on or beneath the surface of the ground,
23 whether percolating, standing, diffused or flowing, wholly
24 or partially within this state, or bordering this state and

25 within its jurisdiction, and shall include, without limiting
26 the generality of the foregoing, natural or artificial lakes,
27 rivers, streams, creeks, branches, brooks, ponds (except
28 farm ponds, industrial settling basins and ponds and water
29 treatment facilities), impounding reservoirs, springs,
30 wells and watercourses;

31 (f) "Pollution" shall mean the discharge or deposit,
32 directly or indirectly, of sewage, industrial wastes, or
33 other wastes, of whatever kind or character, in or near
34 any waters of the state, in such condition, manner or
35 quantity, as to (1) contaminate or substantially contribute
36 to the contamination of any of such waters, or (2) alter
37 or substantially contribute to the alteration of the physi-
38 cal, chemical or biological properties of any of such
39 waters, if such contamination or alteration, or the result-
40 ing contamination or alteration where a person only con-
41 tributes thereto, is to such an extent as to make any of
42 such waters (i) directly or indirectly detrimental to the
43 public health, or (ii) directly or indirectly and unreason-
44 ably detrimental to existing animal, bird, fish, ~~a~~ aquatic
45 or plant life, or (iii) unreasonably unsuitable for present

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46 or future domestic, commercial, industrial, agricultural,
47 recreational or other legitimate uses: *Provided*, That sew-
48 age, industrial wastes, or other wastes shall not include
49 animal or commercial fertilizer used or stored for use in
50 agriculture, horticulture or industry;

51 (g) "Sewage" shall mean water-carried human or ani-
52 mal wastes from residences, buildings, industrial estab-
53 lishments or other places, together with such ground
54 water infiltration and surface water as may be present;

55 (h) "Industrial wastes" shall mean any liquid, gaseous,
56 solid or other waste substance, or a combination thereof,
57 resulting from any process of industry, manufacturing,
58 trade or business, or from the development, processing or
59 recovery of any natural resources; and the admixture with
60 such industrial wastes of sewage, or other wastes, as
61 hereinafter defined, shall also be considered "industrial
62 wastes" within the meaning of this article;

63 (i) "Other wastes" shall mean garbage, refuse, decayed
64 wood, sawdust, shavings, bark, and other wood debris and
65 residues, sand, lime, cinders, ashes, offal, night soil, silt,
66 oil, tar, dye stuffs, acids, chemicals, and all other materials

67 and substances not sewage or industrial wastes which may
68 cause or might reasonably be expected to cause or to
69 contribute to the pollution of any of the waters of the
70 state;

71 (j) "Establishment" shall mean an industrial establish-
72 ment, mill, factory, tannery, paper or pulp mill, mine,
73 colliery, breaker or mineral processing operation, quarry,
74 refinery, and each and every industry or plant or works
75 in the operation of which industrial wastes, or other
76 wastes are produced;

77 (k) "Sewer system" shall mean pipe lines or conduits,
78 pumping stations, and force mains, and all other construc-
79 tions, facilities, devices and appliances appurtenant there-
80 to, used for collecting or conducting sewage, industrial
81 wastes, or other wastes to a point of disposal or treatment;

82 (l) "Treatment works" shall mean any plant, facility,
83 means, system, disposal field, lagoon, pumping station,
84 constructed drainage ditch or surface water intercepting
85 ditch, diversion ditch above or below the surface of the
86 ground, settling tank or pond, incinerator, area devoted
87 to sanitary landfills, or other works not specifically men-

88 tioned herein, installed for the purpose of treating, neu-
89 tralizing, stabilizing, holding or disposing of sewage, in-
90 dustrial wastes, or other wastes and/or for the purpose of
91 regulating or controlling the quantity and rate of flow
92 thereof;

93 (m) "Disposal system" shall mean a system for dis-
94 posing of sewage, industrial wastes, or other wastes, and
95 shall be construed to include sewer systems and treat-
96 ment works;

97 (n) "Outlet" shall mean the terminus of a sewer sys-
98 tem or the point of emergence of any water-carried sew-
99 age, industrial wastes, or other wastes, or the effluent
100 therefrom, into any of the waters of this state;

101 (o) "Activity" or "activities" shall mean any activity
102 or activities for which a permit is required by the pro-
103 visions of section five of this article; and

104 (p) "Code" shall mean the code of West Virginia, one
105 thousand nine hundred thirty-one, as amended.

*Part II. Chief of Division of Water Resources
and Water Resources Board.*

**Sec. 3. General Powers and Duties of Chief of Division
2 of Water Resources and Water Resources Board with Re-**

3 **spect to Water Pollution.**—(a) In addition to all other
4 powers and duties of the chief of the department's division
5 of water resources, as prescribed in this article or else-
6 where by law, the chief, under the supervision of the di-
7 rector, shall have and may exercise the following powers
8 and authority and shall perform the following duties:

9 (1) To encourage voluntary cooperation by all persons
10 in controlling and reducing the pollution of the waters
11 of this state, and to advise, consult and cooperate with all
12 persons, all agencies of this state, the federal government
13 or other states, and with interstate agencies in the further-
14 ance of the purposes of this article;

15 (2) To encourage the formulation and execution of
16 plans by cooperative groups or associations of municipal
17 corporations, industries, and other users of waters of the
18 state, who, jointly or severally, are or may be the source
19 of pollution of the same waters, for the control and reduc-
20 tion of pollution;

21 (3) To encourage, participate in, or conduct or cause
22 to be conducted studies, scientific or other investigations,
23 research, experiments and demonstrations relating to

24 water pollution, and the causes, control and reduction
25 thereof, and to collect data with respect thereto, all as
26 may be deemed advisable and necessary to carry out the
27 purposes of this article;

28 (4) To study and investigate all problems concerning
29 water flow, water pollution and the control and reduction
30 of such pollution, and to make reports and recommenda-
31 tions with respect thereto;

32 (5) To collect and disseminate information relating to
33 water pollution and the control and reduction thereof;

34 (6) To develop a public education and promotion pro-
35 gram to aid and assist in publicizing the need and securing
36 support for pollution control and abatement;

37 (7) To sample ground and surface water with sufficient
38 frequency to ascertain the standards of purity or quality
39 from time to time of the waters of the state;

40 (8) To develop programs for the control and reduction
41 of the pollution of the waters of the state; and

42 (9) To exercise general supervision over the adminis-
43 tration and enforcement of the provisions of this article,
44 and all orders issued pursuant to the provisions of this
45 article.

46 (b) In addition to all other powers and duties of the
47 water resources board, as prescribed in this article or else-
48 where by law, the board shall have and may exercise the
49 following powers and authority and shall perform the
50 following duties:

51 (1) To cooperate with federal officers and agencies,
52 other state agencies and officers, interstate agencies, and
53 other interested persons in the control and reduction of
54 water pollution, and to this end, and for the purpose of
55 studies, scientific or other investigations, research, experi-
56 ments and demonstrations pertaining thereto, the board
57 may receive moneys from such agencies, officers and per-
58 sons on behalf of the state: *Provided*, That the board
59 shall pay all moneys so received into a special fund hereby
60 created in the state treasury, which fund shall be ex-
61 pended under the direction of the board solely for the
62 purpose or purposes for which the grant, gift or contribu-
63 tion shall have been made;

64 (2) To cooperate with any interstate agencies for the
65 purpose of formulating, for submission to the Legislature,
66 interstate compacts and agreements relating to the con-
67 trol and reduction of water pollution;

68 (3) To promulgate rules and regulations, in accordance
69 with the provisions of chapter twenty-nine-a of this code,
70 to implement and make effective the powers, duties and
71 responsibilities vested in the board and the chief by the
72 provisions of this article and otherwise by law: *Provided,*
73 That all such rules and regulations shall be consistent
74 with the declaration of public policy set forth in section
75 one of this article;

76 (4) In cooperation with the college of engineering at
77 West Virginia University, to conduct studies, scientific or
78 other investigations, research, experiments and demon-
79 strations in an effort to discover economical and practical
80 methods for the elimination, disposal, control and treat-
81 ment of sewage, industrial wastes, and other wastes, and
82 the control and reduction of water pollution, and to this
83 end, the board may cooperate with any public or private
84 agency and receive therefrom, on behalf of the state and
85 for deposit in the state treasury, any moneys which such
86 agency may contribute as its part of the expenses thereof,
87 and all gifts, donations or contributions received as afore-
88 said may be expended according to the requirements or

89 directions of the donor or contributor without the neces-
90 sity of an appropriation therefor, except that an account-
91 ing thereof shall be made in the fiscal reports of the board.

92 (c) The board is hereby authorized to hire one or more
93 individuals to serve as hearing examiners on a full or
94 part time basis. Such individuals may be attorneys at law
95 admitted to practice before any circuit court of this state.
96 All such hearing examiners shall be individuals author-
97 ized to take depositions under the laws of this state.

98 (d) The board, any member thereof and the chief, and
99 their duly authorized representatives, shall have the
100 power and authority to make investigations, inspections
101 and inquiries concerning compliance with the provisions
102 of this article, any order made and entered in accordance
103 with the provisions of this article, any rule or regulation
104 promulgated by the board, and with the terms and condi-
105 tions of any permit issued in accordance with the pro-
106 visions of section seven of this article. In order to make
107 such investigations, inspections and inquiries, the board,
108 any member thereof and the chief, and their duly author-
109 ized representatives, shall have the power and authority

110 to enter at all reasonable times upon any private or public
111 property, subject to responsibility for any damage to the
112 property entered. Upon entering, and before making any
113 investigation, inspection and inquiry, such person shall
114 immediately present himself to the occupant of the prop-
115 erty. Upon entering property used in any manufacturing,
116 mining or other commercial enterprise, or by any munic-
117 ipality or governmental agency or subdivision, and be-
118 fore making any investigation, inspection and inquiry,
119 such person shall immediately present himself to the per-
120 son in charge of the operation, and if he is not available,
121 to a managerial employee. All persons shall cooperate
122 fully with the person entering such property for such
123 purposes. Upon refusal of the person owning or con-
124 trolling such property to permit such entrance or the mak-
125 ing of such inspections, investigations and inquiries, the
126 board or the chief may apply to the circuit court of the
127 county in which such property is located, or to the judge
128 thereof in vacation, for an order permitting such entrance
129 and the making of such inspections, investigations and
130 inquiries; and jurisdiction is hereby conferred upon such

131 court to enter such order upon a showing that the relief
132 asked is necessary for the proper enforcement of this
133 article: *Provided, however,* That a dwelling occupied for
134 residential purposes shall not be entered without a search
135 warrant.

136 (e) The board is hereby authorized and empowered to
137 investigate and ascertain the need and factual bases for
138 the establishment of public service districts as a means
139 of controlling and reducing pollution from unincorporated
140 communities and areas of the state, and to present reports
141 and recommendations thereon to the county court or
142 courts of the areas concerned, together with a request that
143 such county court or courts create a public service district
144 or districts, as therein shown to be needed and required
145 and as provided in article thirteen-a, chapter sixteen of
146 this code.

Sec. 4. Cooperation with Other Governments and

2 **Agencies.**—The board is hereby designated as the water
3 pollution control agency for this state for all purposes of
4 the Federal Water Pollution Control Act, Public Law
5 660, 84th Congress (70 Stat. 498), approved July ninth,

6 one thousand nine hundred fifty-six, as amended by Pub-
7 lic Law 87-88, 87th Congress (75 Stat. 204), approved
8 July twentieth, one thousand nine hundred sixty-one,
9 and subsequent amendatory provisions thereof, all here-
10 inafter called the "federal act," and is hereby authorized
11 to take all action necessary or appropriate to secure to
12 this state the benefits of said act. In carrying out the
13 purposes of this section, the board, in addition to any oth-
14 er action which may be necessary or appropriate, is here-
15 by authorized to cooperate with the surgeon general of
16 the United States public health service, other agencies
17 of the federal government, other states, interstate agen-
18 cies and other interested parties in all matters relating
19 to water pollution, including the development of programs
20 for controlling and reducing water pollution and im-
21 proving the sanitary conditions of waters; to apply for
22 and receive, on behalf of this state, funds made available
23 to the board under the aforesaid federal act by any agen-
24 cy of the federal government, on condition that all moneys
25 received from any federal agency as herein provided shall
26 be paid into the state treasury and shall be expended,

27 under the direction of the board, solely for the pur-
28 pose or purposes for which the grant or grants shall
29 have been made; to approve projects for which applica-
30 tion for loans or grants under the federal act is made
31 by any municipality (including any city, town, district
32 or other public body created by or pursuant to the laws
33 of this state and having jurisdiction over the disposal of
34 sewage, industrial wastes, or other wastes) or agency of
35 this state or by any interstate agency; and to participate
36 through its authorized representatives in proceedings un-
37 der the federal act to recommend measures for the abate-
38 ment of water pollution originating in this state. The
39 governor is hereby authorized, in his discretion, to give
40 consent on behalf of this state to requests by the secre-
41 tary of the United States department of health, education
42 and welfare to the attorney general of the United States
43 for the bringing of actions for the abatement of such pol-
44 lution. Whenever a federal law requires the approval
45 or recommendation of a state agency or any political sub-
46 division of the state in any matter relating to the water
47 resources of the state, the board, subject to approval of

48 the Legislature, is hereby designated as the sole agency
49 to give the approval or recommendation required by the
50 federal law, unless the federal law specifically requires
51 the approval or recommendation of some other state agen-
52 cy or political subdivision of the state.

Part III. Permits.

Sec. 5. When Permits Required.—(a) It shall be un-
2 lawful for any person, until the department's permit
3 therefor has been granted, to:

- 4 (1) Extend, modify or add to any industrial or com-
5 mercial establishment so as to result in or effect any sub-
6 stantial change in the kind, characteristics and rate of
7 flow of the sewage, industrial wastes, or other wastes or
8 the effluent therefrom, into the waters of this state;
- 9 (2) Make, cause or permit to be made any new outlet,
10 or substantially enlarge or add to the load of any exist-
11 ing outlet, emerging into the waters of this state, whether
12 operated by gravity flow or pump, or a combination there-
13 of, including, without limiting the generality of the fore-
14 going, outlets for mine water drainage, plant drainage,
15 institution drainage and commercial and industrial es-
16 tablishment drainage of whatever kind or character;

17 (3) Acquire, construct, install or operate a new dis-
18 posal system for the direct or indirect discharge or de-
19 posit of sewage, industrial wastes, or other wastes or the
20 effluent therefrom, into the waters of this state; or

21 (4) Substantially extend, modify or add to a new or
22 existing disposal system for the direct or indirect dis-
23 charge or deposit of sewage, industrial wastes, or other
24 wastes or the effluent therefrom, into the waters of this
25 state;

26 if any such activity will cause a material pollution of the
27 waters of the state.

28 (b) Where a person has a number of outlets emerging
29 into the waters of this state in close proximity to one an-
30 other, such outlets may be treated as a unit for the pur-
31 poses of this section, and only one permit issued for all of
32 such outlets.

33 (c) Unless such permit was obtained and remains in
34 full force and effect, it shall also be unlawful for any per-
35 son to operate or use such extension or modification of, or
36 addition to, such industrial or commercial establishment,
37 or to operate or use such new outlet or such existing out-

38 let with such enlarged or additional load, or to operate
39 or use such new disposal system, or to operate or use such
40 extension or modification of, or addition to, such new or
41 existing disposal system.

**Sec. 6. Application for Permit; Form of Application;
2 Information Required; Fees.**—The chief shall prescribe
3 a form of application for all permits for any activity spe-
4 cified in section five of this article relating other than
5 solely to sewage. The director of the division of sanitary
6 engineering of the state department of health, in coop-
7 eration with the chief, shall prescribe a form of applica-
8 tion for all permits for any activity relating solely to
9 sewage. All applications for permits for any activity re-
10 lating other than solely to sewage shall be submitted to
11 the division of water resources, and those applications for
12 permits for any activity relating solely to sewage shall
13 be submitted to the division of sanitary engineering of the
14 state department of health. All applications shall be
15 on the prescribed form. An applicant shall furnish all
16 information reasonably required by any such form, in-
17 cluding without limiting the generality of the forego-

18 ing, a plan of maintenance and proposed method of op-
19 eration of the activity or activities: *Provided*, That, not-
20 withstanding anything in this article to the contrary,
21 where the activity is an integral part of a secret operat-
22 ing process, the required information shall be limited
23 solely to data which will show the kind, characteristics,
24 amount and rate of flow of sewage, industrial wastes, or
25 other wastes or the effluent therefrom into the waters of
26 the state. Until all such required information is furnished,
27 an application shall not be considered a complete ap-
28 plication.

29 A permit fee of ten dollars shall accompany the appli-
30 cation when filed with the division of water resources or
31 the division of sanitary engineering, as the case may be.
32 The permit fee shall be deposited in the state treasury to
33 the credit of the state general fund.

Sec. 7. Procedure Concerning Permits Required by
2 **Section Five; Procedure as to Permits Incident to Reme-**
3 **dial Action; Transfer of Permits.**—(a) The director of
4 the division of sanitary engineering shall promptly make
5 his determination concerning the health aspects of any

6 proposed activity relating solely to sewage. If the plans
7 and specifications of the proposed activity are in accord
8 with all reasonable requirements of the department of
9 health, the director of the division of sanitary engineer-
10 ing shall approve the application and issue the depart-
11 ment of health's certificate or permit therefor. If the ap-
12 plication is approved, the director of the division of san-
13 itary engineering shall promptly forward his department's
14 certificate or permit, together with the application and
15 the information and data submitted therewith, to the di-
16 vision of water resources for the action of the chief there-
17 of. Any denial of the application by the director of the
18 division of sanitary engineering shall be governed by the
19 provisions of chapter sixteen of this code and not by the
20 provisions of this article.

21 (b) The chief and his duly authorized representatives
22 shall conduct such investigation as is deemed necessary
23 and proper in order to determine whether any such ap-
24 plication should be granted or denied.

25 (c) The department's permit shall be issued upon such
26 reasonable terms and conditions as the chief may direct

27 if (1) the certificate or permit of the department of health
28 was issued (in those cases where the director of the di-
29 vision of sanitary engineering was required to act as
30 aforesaid) and/or (2) the application, together with all
31 supporting information and data and other evidence, es-
32 tablishes that any and all discharges or deposits of sew-
33 age, industrial wastes, or other wastes or the effluent
34 therefrom resulting from such proposed activity will be
35 treated and/or the quantity and rate of flow thereof reg-
36 ulated or controlled to the fullest extent reasonably, eco-
37 nomically and practicably feasible in view of modern
38 technology and scientific methods for the treatment, reg-
39 ulation or control of sewage, industrial wastes, or other
40 wastes or the effluent therefrom.

41 (d) An application for a permit incident to remedial
42 action in accordance with the provisions of section eleven
43 of this article shall be processed and decided as any other
44 application for a permit to acquire, construct, install or
45 operate a new disposal system, or to extend, modify or
46 add to a new or existing disposal system.

47 (e) An application for any such permit shall be acted

48 upon by the chief (and by the director of the division of
49 sanitary engineering of the state department of health
50 in those cases in which such director is by this section
51 required to act) and the department's permit (and the
52 certificate or permit of the department of health where
53 the proposed activity relates solely to sewage) delivered
54 or mailed, or a copy of any order of the chief denying any
55 such application mailed as hereinafter specified, as the
56 case may be, to the applicant by the chief within forty-
57 five days after the date upon which such complete ap-
58 plication was received from the applicant by the division
59 of sanitary engineering or within thirty days after the
60 date upon which such complete application was received
61 from the applicant by the division of water resources.
62 Every effort shall be made by the division of sanitary
63 engineering and the division of water resources to ex-
64 pedite all applications.

65 (f) When it is established that an application for a
66 permit should be denied, the chief shall make and enter
67 an order to that effect, which order shall specify the rea-
68 sons for such denial, and shall cause a copy of such order

69 to be served on the applicant by registered or certified
70 mail. The chief shall also cause a notice to be served with
71 the copy of such order, which notice shall advise the ap-
72 plicant of his right to appeal to the board by filing a
73 notice of appeal, on the form prescribed by the board for
74 such purpose, with the board, in accordance with the
75 provisions of section fifteen of this article, within thirty
76 days after the date upon which the applicant received the
77 copy of such order. However, an applicant may alter the
78 plans and specifications for the proposed activity and
79 submit a new application for any such permit, in which
80 event the procedure hereinbefore outlined with respect
81 to an original application shall apply.

82 (g) Upon the sale of property which includes an ac-
83 tivity for which the department's permit was granted,
84 the permit shall be transferable to the new owner, but
85 the transfer shall not become effective until it is made in
86 the records of the division of water resources.

Sec. 8. Orders to Compel Compliance with Permits.—

2 After issuance of the department's permit for any such
3 activity, the chief and his duly authorized representatives

4 may make field inspections of the work on the activity,
5 and, after completion thereof, may inspect the completed
6 activity, and, from time to time, may inspect the main-
7 tenance and operation of such activity.

8 To compel compliance with the terms and conditions
9 of the department's permit for any such activity and with
10 the plans and specifications therefor and the plan of main-
11 tenance and method of operation thereof, the chief is
12 hereby authorized after reasonable notice to make and
13 enter an order revoking or suspending such permit and
14 directing the person to whom such permit was issued to
15 stop or suspend any and all work on such activity or, if
16 completed, to stop or suspend all discharges or deposits of
17 sewage, industrial wastes, or other wastes or the effluent
18 therefrom resulting from such activity, until such time
19 as the deficiencies specified in such order are fully and
20 completely corrected and there is full compliance with
21 the terms and conditions of such permit, and with the
22 plans and specifications for such activity and the plan
23 of maintenance and method of operation thereof. The
24 chief by such order may also direct such person to take

25 affirmative action to correct the deficiencies specified in
26 such order so there will be full compliance with the terms
27 and conditions of such permit and with the plans and
28 specifications therefor, and the plan of maintenance and
29 method of operation thereof.

30 The chief shall cause a copy of any such order to be
31 served by registered or certified mail or by a conservation
32 officer or other law enforcement officer upon the person
33 to whom any such permit was issued. The chief shall
34 also cause a notice to be served with the copy of such
35 order, which notice shall advise such person of his right
36 to appeal to the board by filing a notice of appeal, on the
37 form prescribed by the board for such purpose, with the
38 board, in accordance with the provisions of section fif-
39 teen of this article, within thirty days after the date upon
40 which such person received the copy of such order.

41 All permits for the discharge of sewage, industrial
42 wastes, or other wastes into any waters of the state issued
43 by the water resources board prior to the effective date
44 of this act and which have not been revoked prior to
45 the effective date of this act shall be enforced under the

46 terms and provisions of this act, and shall remain valid
47 unless and until revoked or suspended in accordance with
48 the terms and provisions of this act.

Part IV. Pollution Abatement and Control.

Sec. 9. Information Required.—Any and all persons di-
2 rectly or indirectly discharging or depositing sewage, in-
3 dustrial wastes, or other wastes or the effluent therefrom,
4 into or near any waters of the state shall file with the
5 division of water resources such information as the chief
6 thereof may reasonably require on forms prescribed by
7 him for such purpose, including but not limited to data
8 as to the kind, characteristics, amount and rate of flow
9 of such discharge or deposit.

Sec. 10. Orders of Chief to Stop or Prevent Discharges
2 **or Deposits or Take Remedial Action.**—If the chief, on the
3 basis of investigations, inspections and inquiries, deter-
4 mines that any person is causing the pollution of any of
5 the waters of the state, or does on occasions cause pollu-
6 tion by not regulating and controlling the quantity and
7 rate of flow of sewage, industrial wastes, or other wastes
8 or the effluent therefrom, or otherwise, and that the same

9 should be controlled or reduced, considering the public
10 policy set forth in section one of this article, existing
11 permits, the amount and effect of such pollution, the
12 practicality and physical and economic feasibility of con-
13 trolling or reducing such pollution, the health and wel-
14 fare of the public and other present and future uses of
15 the waters in question, he shall make and enter an order
16 directing such person in the alternative to either (1)
17 stop or prevent such discharges or deposits of sewage,
18 industrial wastes, or other wastes or the effluent there-
19 from determined to be causing such pollution, or (2)
20 take remedial action by acquiring, constructing or in-
21 stalling, and using and operating a new disposal system,
22 or extending, modifying or adding to an existing disposal
23 system so as to control or reduce such pollution, by treat-
24 ing and/or regulating or controlling the quantity and rate
25 of flow of any and all discharges or deposits of sewage,
26 industrial wastes, or other wastes or the effluent there-
27 from to the fullest extent reasonably, economically and
28 practicably feasible in view of modern technology and
29 scientific methods for the treatment, regulation or con-

30 trol of sewage, industrial wastes, or other wastes or the
31 effluent therefrom and with regard for the rights and in-
32 terests of all persons concerned. The chief shall fix a
33 reasonable time in such order by which any and all such
34 discharges or deposits must stop or be prevented or any
35 such remedial action must be completed. Such order shall
36 also direct such person to apply forthwith for a permit
37 in accordance with the provisions of sections five, six and
38 seven of this article, in the event such person elects to
39 comply with such order by taking such remedial action.
40 The order shall contain the findings of fact upon which
41 the chief determined to make and enter such order.

42 The chief shall cause a copy of any such order to be
43 served by registered or certified mail or by a conserva-
44 tion officer or other law enforcement officer upon such
45 person. The chief shall also cause a notice to be served
46 with the copy of such order, which notice shall advise
47 such person of his right to appeal to the board by filing
48 a notice of appeal, on the form prescribed by the board
49 for such purpose, with the board, in accordance with the
50 provisions of section fifteen of this article, within thirty

51 days after the date upon which such person received the
52 copy of such order.

53 In the sole discretion of the chief, he may postpone
54 issuing any such order if he feels such pollution can best
55 be controlled or reduced by cooperative efforts with the
56 person or persons responsible therefor.

Sec. 11. Compliance by Stopping or Preventing Dis-
2 **charges or Deposits or by Taking Remedial Action; Per-**
3 **mits.**—Any person upon whom any such final order of
4 the chief, or the board in accordance with the provisions
5 of section fifteen of this article, has been served shall
6 comply therewith by immediately stopping or preventing
7 any and all discharges or deposits of sewage, industrial
8 wastes, or other wastes or the effluent therefrom, deter-
9 mined to be causing such pollution, or by taking remedial
10 action as set forth in section ten of this article.

11 If such person elects to comply with any such final order
12 by taking remedial action, he shall forthwith apply for
13 a permit under and in accordance with the provisions of
14 sections five, six and seven of this article. No such reme-
15 dial action shall be taken until a permit therefor has been
16 issued.

Sec. 12. Duty to Proceed with Remedial Action Prompt-

2 **ly upon Receipt of Permit; Progress Reports Required;**
3 **Finances and Funds.**—When such person elects to comply
4 with such final order by taking remedial action, such
5 person shall, within thirty days after receipt of such per-
6 mit, take or begin appropriate steps or proceedings to
7 carry out such remedial action. In any such case it shall
8 be the duty of each individual offender, each member of
9 a partnership, each member of the governing body of a
10 municipal corporation and each member of the board of
11 directors or other governing body of a private corporation,
12 association or other legal entity whatever, upon receipt
13 of such permit by such individual, partnership, municipal
14 corporation, private corporation, association or other legal
15 entity whatever, to see that appropriate steps or proceed-
16 ings to comply with such order are taken or begun within
17 thirty days after such receipt. The chief may require
18 progress reports, not oftener than once a month, setting
19 forth the steps taken, the proceedings started and the
20 progress made toward completion of such remedial action.
21 All such remedial action shall be diligently prosecuted to
22 completion.

23 Failure of the governing body of a municipal corpora-
24 tion, or the board of directors or other governing body
25 of any private corporation, association or other legal
26 entity whatever, to provide for the financing and carry-
27 ing out of such remedial action, as may be necessary to
28 comply with said order, by appropriate ordinance or reso-
29 lution within such thirty-day period, shall constitute
30 failure to take or begin appropriate steps or proceedings
31 to comply with such order. If such person be a municipal
32 corporation, the cost of all such remedial action as may
33 be necessary to comply with said order shall be paid out
34 of funds on hand available for such purpose, or out of the
35 general funds of such municipal corporation, not other-
36 wise appropriated, and if there be not sufficient funds on
37 hand or unappropriated, then the necessary funds shall be
38 raised by the issuance of bonds, any direct general obli-
39 gation bond issue to be subject to the approval of the
40 state sinking fund commission and the attorney general
41 of the state of West Virginia.

42 If the estimated cost of the remedial action to be taken
43 by a municipal corporation to comply with such final

44 order is such that any bond issue necessary to finance
45 such action would not raise the total outstanding bonded
46 indebtedness of such municipal corporation in excess of
47 the constitutional limit imposed upon such indebtedness
48 by the constitution of this state, then and in that event
49 the necessary bonds may be issued as a direct obligation
50 of such municipal corporation, and retired by a general
51 tax levy to be levied against all property within the limit
52 of such municipal corporation listed and assessed for tax-
53 ation. If the amount of such bonds necessary to be issued
54 would raise the total outstanding bonded indebtedness
55 of such municipal corporation above said constitutional
56 limitation on such indebtedness, or if such municipal cor-
57 poration by its governing body shall decide against the
58 issuance of direct obligation bonds, then such municipal
59 corporation shall issue revenue bonds and provide for the
60 retirement thereof in the same manner and subject to
61 the same conditions as provided for the issuance and
62 retirement of bonds in chapter twenty-five, acts of the
63 Legislature, first extraordinary session, one thousand nine
64 hundred thirty-three, and any amendment thereof: *Pro-*

65 *vided*, That the provisions of section six of the above-
66 mentioned act, allowing objections to be filed with the
67 governing body, and providing that a written protest of
68 thirty percent or more of the owners of real estate shall
69 require a four-fifths vote of the governing body for the
70 issuance of said revenue bonds, shall not apply to bond
71 issues proposed by any municipal corporation to comply
72 with a final order made and entered under the authority
73 of this article, and such objections and submission of
74 written protest shall not be authorized, nor shall the same,
75 if made or had, operate to justify or excuse failure to
76 comply with such final order.

77 The funds made available by the issuance of either
78 direct obligation bonds or revenue bonds, as herein pro-
79 vided, shall constitute a "sanitary fund," and shall be used
80 for no other purpose than for carrying out such final order;
81 no public money so raised shall be expended by any mu-
82 nicipal corporation for any purpose enumerated in this
83 article, unless such expenditure and the amount thereof
84 have been approved by the board. The acquisition, con-
85 struction or installation, use and operation, repair, modi-

86 fication, alteration, extension, equipment, custody and
87 maintenance of any disposal system by any municipal
88 corporation, as herein provided, and the rights, powers
89 and duties with respect thereto, of such municipal cor-
90 poration and the respective officers and departments
91 thereof, whether the same shall be financed by the issu-
92 ance of revenue or direct obligation bonds, shall be gov-
93 erned by the provisions of said chapter twenty-five, acts
94 of the Legislature, first extraordinary session, one thou-
95 sand nine hundred thirty-three, and any amendments
96 thereof.

Sec. 13. Time Extensions.—The chief shall have the
2 authority, in his sole discretion, to extend the time fixed
3 in any final order made and entered by him, or the board
4 in accordance with the provisions of section fifteen of
5 this article, within which any person electing to comply
6 with such order by taking remedial action must complete
7 such action, upon written petition filed with him prior to
8 the time fixed in such order, when it shall appear that a
9 good faith effort to comply with said order is being made,
10 and that it shall be impossible for such person to com-

11 plete such remedial action within the time so fixed:
12 *Provided*, That when it shall appear from such petition
13 that due to wartime or other governmental restrictions
14 with respect to labor or material, or both, such compli-
15 ance with any such order would be impossible or would
16 place an undue burden upon such person, the chief shall
17 stay execution of any such order until such time as it may
18 satisfactorily appear that such wartime or other restric-
19 tions no longer exist. The chief may grant as many such
20 extensions as he finds to be warranted by the facts and
21 circumstances involved in any particular case.

Sec. 14. Control by State as to Pollution; Continuing
2 **Jurisdiction.**—No right to continue existing pollution of
3 any of the waters of the state shall exist nor shall such
4 right be or be deemed to have been acquired by virtue
5 of past or future pollution by any person. The right and
6 control of the state in and over all waters of the state are
7 hereby expressly reserved and reaffirmed. It is recognized
8 that with the passage of time, additional efforts may have
9 to be made by all persons toward control and reduction
10 of the pollution of the waters of the state, irrespective of

11 the fact that such persons may have previously complied
12 with all orders of the chief or board. However, it is also
13 recognized that there should be continuity and stability
14 respecting pollution control measures taken in coopera-
15 tion with, and with the approval of, the chief, or pur-
16 suant to orders of the chief or board. Therefore, and not-
17 withstanding any provision in this section to the contrary,
18 where a person is complying with the terms and condi-
19 tions of a permit granted pursuant to the provisions of
20 section seven of this article or where a person has com-
21 pleted remedial action pursuant to an order of the chief
22 or board, additional efforts may not be required until
23 such time as there has been a substantial and material
24 change in the facts and circumstances of the situation to
25 which the permit or remedial action pertains.

Part V. Appeal and Review Procedures.

Sec. 15. Appeal to Water Resources Board.—(a) Any
2 person adversely affected by an order made and entered
3 by the chief in accordance with the provisions of this
4 article, or aggrieved by failure or refusal of the chief to
5 act within the time required by section seven of this

6 article on an application for a permit or aggrieved by the
7 terms and conditions of a permit granted under the pro-
8 visions of this article, may appeal to the water resources
9 board for an order vacating or modifying such order, or
10 for such order, action or terms and conditions as the chief
11 should have entered, taken or imposed. The person so
12 appealing shall be known as the appellant and the chief
13 shall be known as the appellee.

14 (b) Such appeal shall be perfected by filing a notice
15 of appeal, on the form prescribed by the board for such
16 purpose, with the board within thirty days after the date
17 upon which the appellant received the copy of such order,
18 or received such permit, as the case may be. The filing
19 of the notice of appeal shall stay or suspend execution of
20 any order appealed from. The notice of appeal shall set
21 forth the order or terms and conditions complained of and
22 the grounds upon which the appeal is based. A copy of
23 the notice of appeal shall be filed by the board with the
24 chief within three days after the notice of appeal is filed
25 with the board.

26 (c) Within seven days after receipt of his copy of the
27 notice of appeal, the chief shall prepare and certify to

28 the board a complete record of the proceedings out of
29 which the appeal arises, including all documents and cor-
30 respondence in the chief's file relating to the matter in
31 question. With the consent of the board and upon such
32 terms and conditions as the board may prescribe, any
33 persons affected by any such activity or by such alleged
34 pollution may by petition intervene as a party appellant
35 or appellee. The board shall hear the appeal *de novo*, and
36 evidence may be offered on behalf of the appellant and
37 appellee, and, with the consent of the board, by any in-
38 tervenors.

39 (d) All of the pertinent provisions of article five, chap-
40 ter twenty-nine-a of this code shall apply to and govern
41 the hearing on appeal authorized by this section and the
42 administrative procedures in connection with and follow-
43 ing such hearing, with like effect as if the provisions of
44 said article five were set forth *in extenso* in this section,
45 with the following modifications or exceptions:

46 (1) Unless the board directs otherwise, the appeal
47 hearing shall be held in the city of Charleston, Kanawha
48 county, West Virginia; and

49 (2) In accordance with the provisions of section one,
50 article five of said chapter twenty-nine-a, all of the testi-
51 mony at any such hearing shall be recorded by steno-
52 graphic notes and characters or by mechanical means.
53 Such reported testimony shall in every appeal hearing
54 under this article be transcribed.

55 (e) Any such appeal hearing shall be conducted by a
56 quorum of the board, but the parties may by stipulation
57 agree to take evidence before a hearing examiner em-
58 ployed by the board. Upon request of any party to the
59 appeal, the evidence taken before a hearing examiner
60 shall be taken in the county in which the activity is pro-
61 posed to take place, or in which the activity is situate or
62 would be situate upon completion thereof, or in which
63 the pollution is alleged to have occurred or to be taking
64 place, as the case may be. For the purpose of conducting
65 such appeal hearing, any member of the board and the
66 secretary thereof shall have the power and authority to
67 issue subpoenas and subpoenas duces tecum in the name
68 of the board, in accordance with the provisions of section
69 one, article five, chapter twenty-nine-a of this code. All

70 subpoenas and subpoenas duces tecum shall be issued and
71 served within the time and for the fees and shall be en-
72 forced, as specified in section one, article five of said chap-
73 ter twenty-nine-a, and all of the said section one provi-
74 sions dealing with subpoenas and subpoenas duces tecum
75 shall apply to subpoenas and subpoenas duces tecum is-
76 sued for the purpose of an appeal hearing hereunder.

77 (f) Any such hearing shall be held within twenty days
78 after the date upon which the board received the timely
79 notice of appeal, unless there is a postponement or con-
80 tinuance. The board may postpone or continue any hear-
81 ing upon its own motion, or upon application of the ap-
82 pellant, the appellee or any intervenors for good cause
83 shown. The chief shall be represented at any such hear-
84 ing by the attorney general or his assistants. At any such
85 hearing the appellant and any intervenor may represent
86 himself or be represented by an attorney at law admitted
87 to practice before any circuit court of this state.

88 (g) After such hearing and consideration of all of the
89 testimony, evidence and record in the case, the board
90 shall make and enter an order affirming, modifying or

91 vacating the order of the chief, or shall make and enter
92 such order as the chief should have entered, or shall make
93 and enter an order approving or modifying the terms and
94 conditions of any permit issued. In determining its course
95 of action, the board shall take into consideration the fac-
96 tors which the chief had to consider in making his order,
97 and fixing the terms and conditions of such permit, as set
98 forth in sections seven, eight or ten of this article, as the
99 case may be.

100 (h) Such order shall be accompanied by findings of
101 fact and conclusions of law as specified in section three,
102 article five, chapter twenty-nine-a of this code, and a copy
103 of such order and accompanying findings and conclusions
104 shall be served upon the appellant, and any intervenors,
105 and their attorneys of record, if any, and upon the ap-
106 pellee in person or by registered or certified mail.

107 (i) The board shall also cause a notice to be served
108 with the copy of such order, which notice shall advise the
109 appellant, the appellee and any intervenors of their right
110 to judicial review, in accordance with the provisions of
111 section sixteen of this article. The order of the board shall

112 be final unless vacated or modified upon judicial review
113 thereof in accordance with the provisions of section six-
114 teen of this article.

Sec. 16. Judicial Review.—(a) Any person or the chief
2 adversely affected by a final order made and entered by
3 the board after such appeal hearing, held in accordance
4 with the provisions of section fifteen of this article, is
5 entitled to judicial review thereof. All of the pertinent
6 provisions of section four, article five, chapter twenty-
7 nine-a of this code shall apply to and govern such review
8 with like effect as if the provisions of said section four
9 were set forth in extenso in this section, with the follow-
10 ing modifications or exceptions:

11 (1) As to cases involving an order denying an appli-
12 cation for a permit, or approving or modifying the terms
13 and conditions of a permit, the petition shall be filed,
14 within the time specified in said section four, in the cir-
15 cuit court of the county in which such extension or modi-
16 fication of, or addition to, such industrial or commercial
17 establishment, or such new outlet or the enlargement of,
18 or addition to, the load of an existing outlet, or such ac-

19 quision, construction, installation or operation of a new
20 disposal system or the extension or modification of, or
21 addition to, a new or existing disposal system, is proposed
22 to take place;

23 (2) As to cases involving an order revoking or sus-
24 pending a permit and directing any and all work on any
25 such activity to stop or suspending such work, or directing
26 all discharges or deposits of sewage, industrial wastes, or
27 other wastes or the effluent therefrom resulting from any
28 such activity to stop or suspending such discharges or
29 deposits, or directing that affirmative action be taken
30 to correct alleged and specified deficiencies concerning
31 any such activity, the petition shall be filed, within the
32 time specified in said section four, in the circuit court of
33 the county in which such extension or modification of,
34 or addition to, such industrial or commercial establish-
35 ment, or such new outlet or the enlargement of, or addi-
36 tion to, the load of an existing outlet, or such acquisition,
37 construction, installation or operation of a new disposal
38 system or the extension or modification of, or addition to,
39 a new or existing disposal system, is situate or would be
40 situate upon completion thereof; and

41 (3) As to cases involving an order directing that any
42 and all discharges or deposits of sewage, industrial wastes,
43 or other wastes or the effluent therefrom determined to
44 be causing pollution be stopped or prevented or else that
45 remedial action be taken, the petition shall be filed, within
46 the time specified in said section four, in the circuit court
47 of the county in which the pollution is alleged to have oc-
48 curred or to be taking place.

49 (b) The judgment of the circuit court shall be final
50 unless reversed, vacated or modified on appeal to the su-
51 preme court of appeals in accordance with the provisions
52 of section one, article six, chapter twenty-nine-a of this
53 code, except that notwithstanding the provisions of said
54 section one the petition seeking such review must be filed
55 with said supreme court of appeals within ninety days
56 from the date of entry of the judgment of the circuit court.

57 (c) Legal counsel and services for the chief in all
58 appeal proceedings in the circuit courts and in the su-
59 preme court of appeals of this state shall be provided by
60 the attorney general or his assistants and in appeal pro-
61 ceedings in the circuit courts by the prosecuting attorneys

62 of the several counties as well, all without additional
63 compensation, or the board or chief, with the written
64 approval of the attorney general may employ special
65 counsel to represent the board or chief in a particular
66 proceeding.

Part VI. Actions.

Sec. 17. Actions to Abate Nuisances; Injunctive Relief.

2 —(a) Whether any violation of the provisions of this
3 article or any final order of the chief or the board shall
4 result in prosecution or conviction or not, any such vio-
5 lation shall be deemed a nuisance which may be abated
6 upon application by the chief to the circuit court of the
7 county in which such nuisance or any part thereof shall
8 exist, or to the judge thereof in vacation. Upon applica-
9 tion by the chief, the circuit courts of this state may by
10 mandatory or prohibitive injunction compel compliance
11 with all final orders of such chief or board. Any applica-
12 tion for an injunction to compel compliance with any
13 final order of the chief or board shall be made to the
14 circuit court of the county in which the activity to which
15 the order relates is proposed to take place, or in which

16 the activity to which the order relates is situate or would
17 be situate upon completion thereof, or in which the pol-
18 lution to which the order relates is alleged to have oc-
19 curred or to be taking place, as the case may be, or to the
20 judge thereof in vacation. Upon application by the chief
21 to the circuit court of the county in which a municipal
22 corporation is located, or in which any person resides or
23 does business, or to the judge thereof in vacation, such
24 court may by injunction require the performance of any
25 duty imposed upon such municipal corporation or person
26 by the provisions of this article. The court may issue a
27 temporary injunction in any case pending a decision on
28 the merits of any application filed.

29 In cases of aggravated pollution where irreparable
30 damage will result from any delay incident to the admini-
31 strative procedures set forth in this act, the chief, with
32 the consent of the director, may forthwith apply to the
33 circuit court of the county in which the pollution is taking
34 place for a temporary injunction. Such court may issue
35 a temporary injunction pending final disposition of the
36 case by the chief or the board, in the event an appeal is
37 taken to the board.

38 The judgment of the circuit court upon any application
39 permitted by the provisions of this section shall be final
40 unless reversed, vacated or modified on appeal to the
41 supreme court of appeals. Any such appeal shall be
42 sought in the manner provided by law for appeals from
43 circuit courts in other civil cases, except that the petition
44 seeking such review must be filed with said supreme court
45 of appeals within ninety days from the date of entry of
46 the judgment of the circuit court.

47 The chief shall be represented in all such proceedings
48 by the attorney general or his assistants and in such pro-
49 ceedings in the circuit courts by the prosecuting attorneys
50 of the several counties as well, all without additional
51 compensation.

Sec. 18. Priority of Actions.—All applications under
2 section seventeen of this article and all proceedings for
3 judicial review under section sixteen of this article shall
4 take priority on the docket of the circuit court in which
5 pending, and shall take precedence over all other civil
6 cases. Where such applications and proceedings for ju-
7 dicial review are pending in the same court at the same

8 time, such applications shall take priority on the docket
9 and shall take precedence over proceedings for judicial
10 review.

Part VII. Violations and Penalties.

Sec. 19. Violations; Criminal Penalties.—Any person
2 who fails or refuses to discharge any duty imposed upon
3 him by this article or by any final order of the chief or
4 board, or who fails or refuses to apply for and obtain a
5 permit as required by the provisions of this article, shall
6 be guilty of a misdemeanor, and, upon conviction thereof,
7 shall be punished for a first offense by a fine of not less
8 than twenty-five dollars nor more than one hundred dol-
9 lars, and for a second offense by a fine of not less than
10 two hundred dollars nor more than five hundred dollars,
11 and for a third and each subsequent offense by a fine of
12 not less than five hundred dollars nor more than one
13 thousand dollars or by imprisonment for a period not to
14 exceed six months, or in the discretion of the court by
15 both such fine and imprisonment.

Sec. 19-a. Civil Liability.—If any loss of game fish or
2 aquatic life results from a person^{3D} or persons² failure or

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3 refusal to discharge any duty imposed upon him by this
4 article, the West Virginia department of natural resources
5 shall have a cause of action on behalf of the state of West
6 Virginia to recover from such person or persons causing
7 such loss a sum equal to the cost of replacing such game
8 fish or aquatic life.

Sec. 20. Exceptions as to Criminal Liabilities.—The
2 criminal liabilities imposed by section nineteen of this
3 article shall not be construed to include any violation re-
4 sulting from accident or caused by an act of God, war,
5 strike, riot or other catastrophe as to which negligence or
6 wilful misconduct on the part of such person was not the
7 proximate cause.

Part VIII. Short Title; Construction and Severability.

Sec. 21. Short Title.—This article may be known and
2 cited as the “Water Pollution Control Act.”

Sec. 22. Article for Benefit of State Only.—The provi-
2 sions of this article inure solely to and are for the benefit
3 of the people generally of the state of West Virginia, and
4 this article is not intended to in any way create new, or
5 enlarge existing rights of riparian owners or others. A

6 final order of the chief or the board, the effect of which
7 is to find that pollution exists, or that any person is caus-
8 ing pollution, or any other final order, or any violation
9 of any of the provisions of this article shall give rise to
10 no presumptions of law or findings of fact inuring to or
11 for the benefit of persons other than the state of West
12 Virginia.

Sec. 23. Conflicting Provisions; Department of Health.

2 —In the event of any inconsistency or conflict between
3 any provision of this article and any provision of this
4 chapter, the provisions of this article shall control. This
5 article shall under no circumstances be construed as
6 limiting or repealing the powers, authority or duties of
7 the state department of health or the director thereof as
8 provided in chapter sixteen of this code or otherwise by
9 law.

Sec. 24. Severability of Provisions.—If any provision
2 of this article or the application thereof to any person or
3 circumstance is held invalid, such invalidity shall not
4 affect other provisions or applications of the article which
5 can be given effect without the invalid provision or its

6 application, and to this end the provisions of this article
7 are declared to be severable.

Article 7. Law Enforcement, Procedures and Penalties.

Section 4. Powers and Duties of Conservation Officers.

2 —Conservation officers and all other persons authorized
3 to enforce the provisions of this chapter shall be under
4 the supervision and direction of the director in the per-
5 formance of their duties as herein provided. The au-
6 thority, powers and duties of the conservation officers
7 shall be state-wide and they shall have authority to:

8 (1) Arrest on sight, without warrant or other court
9 process, any person or persons detected by them in the
10 violation of any of the provisions of this chapter, but no
11 such arrests shall be made where any form of adminis-
12 trative procedure is prescribed by this chapter for the
13 enforcement of any of the particular provisions contained
14 herein;

15 (2) Carry such arms and weapons as may be prescribed
16 by the director in the course and performance of their
17 duties, upon giving the bond required by the provisions
18 of section five, article seven, chapter sixty-one of this

19 code, but no license or other authorization shall be re-
20 quired of such officers for this privilege;

21 (3) Search and examine, in the manner provided by
22 law, any boat, vehicle, automobile, conveyance, express
23 or railroad car, fish box, fish bucket or creel, game bag or
24 game coat, or any other place in which hunting and fish-
25 ing paraphernalia, wild animals, wild birds, fish, am-
26 phibians or other forms of aquatic life could be concealed,
27 packed or conveyed whenever they have reason to be-
28 lieve that they would thereby secure or discover evidence
29 of the violation of any provision of this chapter;

30 (4) Execute and serve any search warrant, notice or
31 any process of law issued under the authority of this
32 chapter or any law relating to wildlife, forests, and all
33 other natural resources, by a justice of the peace or any
34 court having jurisdiction thereof, or copies of orders made
35 and entered by the chief of the division of water re-
36 sources, or, without fee, any subpoena or subpoena duces
37 tecum issued in accordance with the provisions of article
38 five-a of this chapter, in the same manner, with the same
39 authority, and with the same legal effect, as any constable

40 or sheriff can serve or execute such warrant, notice or
41 process;

42 (5) Require the operator of any motor vehicle or other
43 conveyance, on or about the public highways or roadways,
44 or in or near the fields and streams of this state, to stop
45 for the purpose of allowing such officers to conduct game-
46 kill surveys;

47 (6) Summon aid in making arrests or seizures or in
48 executing any warrants, notices or processes, and they
49 shall have the same rights and powers as sheriffs have in
50 their respective counties in so doing;

51 (7) Enter private lands or waters within the state while
52 engaged in the performance of their official duties here-
53 under: *Provided*, That in connection with all surveys,
54 examinations, inspections, inquiries, investigations and
55 studies needed in the gathering of facts concerning water
56 resources and their use or the pollution thereof under
57 article five or article five-a of this chapter, such conserva-
58 tion officers and all other persons authorized to enforce
59 the provisions of this chapter, shall act pursuant to and
60 under the direction of the chief of the division of water

61 resources or the state water resources board, and such
62 officers and other persons shall be subject to the provisions
63 of subparagraph (c) of section five, article five, and sub-
64 paragraph (d) of section three, article five-a of this chap-
65 ter; and

66 (8) Do all things necessary to carry into effect the pro-
67 visions of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

O. Roy Parker

Chairman Senate Committee,

Ettel L. Caudall

Chairman House Committee

Originated in the House.

Takes effect July 1, 1964. ~~passage.~~

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Barron
President of the Senate

Julius W. Singleton
Speaker House of Delegates

The within approved this the 11th
day of February, 1964.

Howard W. Barron
Governor

