WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

HOUSE BILL No. J

(By Mr. , Mr. , and )

Mr. Edgar

PASSED March 14, 1967

In Effect Ninety days from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-20-67
ENROLLED

Com. Sub. for House Bill No. 575

(By Mr. Speaker, Mr. White, and Mr. Edgar)

[Passed March 11, 1967; in effect ninety days from passage.]

AN ACT to amend article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, and to amend and reenact sections one, two, three, five, seven, ten, twelve, fifteen, sixteen, seventeen and nineteen, article five-a of said chapter, relating to water resources, the water pollution control act, and to a statement of the purpose of the act, definitions of terms used in the act, the general powers and duties of the chief of the division of water resources and the water resources board with respect to water pollution, requirements for permits for specified activities, applications for and forms of permits, permit fees, procedures con-
cerning permits, the transfer of permits, orders of the chief to stop or prevent discharges or deposits, orders of the chief to take remedial action, service of orders, duty to proceed with remedial action upon receipt of permit, progress reports, finances and funds, appeals to and review procedures before the water resources board, circuit courts and the supreme court of appeals, actions to abate nuisances, injunctive relief, violations, and criminal 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 amended by adding thereto a new section, designated section one-a, and that sections one, two, three, five, seven, ten, twelve, fifteen, sixteen, seventeen and nineteen, article five-a of said chapter be amended and reenacted, to read as follows:

ARTICLE 5. WATER RESOURCES.
§20-5-la. Declaration of policy.

1 It is declared to be the public policy of this state that
2 the water resources of this state with respect to the
3 quantity thereof shall be available for reasonable use
4 by all of the citizens of this state; and that such use
shall be subject to the provisions of article five-a of this chapter.

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-1. Declaration of policy.

It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the attraction, development, maintenance and expansion of agriculture, mining, manufacturing and other business and industry.

§20-5A-2. Definitions

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

(a) “Director” shall mean the director of the department of natural resources:

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

(c) “Chief” shall mean the chief of the division of water resources of the department of natural resources;
(d) "Person," "persons" or "applicant" shall mean any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency; political subdivision; county court; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever;

(e) "Water resources," "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and water-courses;
(f) "Pollution" shall mean the discharge or deposit, directly or indirectly, of sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational or other legitimate uses;

(g) "Sewage" shall mean water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground
water infiltration and surface water as may be present;

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

(i) "Other wastes" shall mean garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state;

(j) "Establishment" shall mean an industrial establishment, mill, factory, tannery, paper or pulp mill,
mine, colliery, breaker or mineral processing operation, quarry, refinery, and each and every industry or plant or works in the operation of which industrial wastes, or other wastes are produced;

(k) "Sewer system" shall mean pipelines or conduits, pumping stations, and force mains, and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes, or other wastes to a point of disposal or treatment;

(l) "Treatment works" shall mean any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes, or other wastes and/or for the purpose of regulating or controlling the quality and rate of flow thereof;
(m) "Disposal system" shall mean a system for disposing of sewage, industrial wastes, or other wastes, and shall be construed to include sewer systems and treatment works;

(n) "Outlet" shall mean the terminus of a sewer system or the point of emergence of any water-carried sewage, industrial wastes, or other wastes, or the effluent therefrom, into any of the waters of this state;

(o) "Activity" or "activities" shall mean any activity or activities for which a permit is required by the provisions of section five of this article; and

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

§20-5A-3. General powers and duties of chief of division and board with respect to water pollution.

(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:
(1) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may receive moneys from such agencies, officers and persons on behalf of the state: Provided, That the department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made;

(2) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, and other users of waters of the State, who, jointly or severally, are or may be the
(3) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to water pollution, and the causes, control and reduction thereof, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(4) To study and investigate all problems concerning water flow, water pollution and the control and reduction of such pollution, and to make reports and recommendations with respect thereto;

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

(6) To develop a public education and promotion program to aid and assist in publicizing the need and securing support for pollution control and abatement;

(7) To sample ground and surface water with sufficient frequency to ascertain the standards of purity
(8) To develop programs for the control and reduction of the pollution of the waters of the state;

(9) To exercise general supervision over the administration and enforcement of the provisions of this article, and all orders issued pursuant to the provisions of this article; and

(10) In cooperation with the college of engineering at West Virginia University, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the chief may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by
the chief according to the requirements or directions of
the donor or contributor without the necessity of an
appropriation therefor, except that an accounting thereof
shall be made in the fiscal reports of the department.

(b) In addition to all other powers and duties of the
water resources board, as prescribed in this article or
elsewhere by law, the board shall have and may exer-
cise the following powers and authority and shall perform
the following duties:

(1) To cooperate with any interstate agencies for
the purpose of formulating, for submission to the Legis-
lature, interstate compacts and agreements relating to
the control and reduction of water pollution; and

(2) To promulgate rules and regulations, in accor-
dance with the provisions of chapter twenty-nine-a of
this code, to implement and make effective the powers,
duties and responsibilities vested in the board and the
chief by the provisions of this article and otherwise by
law.

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

(d) The board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to make investigations, inspections and inquiries concerning compliance with the provisions of this article, any order made and entered in accordance with the provisions of this article, any rule or regulation promulgated by the board, and with the terms and conditions of any permit issued in accordance with the provisions of section seven of this article. In order to make such investigations, inspections and inquiries, the board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to enter at all reasonable times upon any private or public property, subject to responsibility for their own safety and for any damage to the property entered. All persons shall cooperate fully with
the person entering such property for such purposes.

Upon refusal of the person owning or controlling such property to permit such entrance or the making of such inspections, investigations and inquiries, the board or the chief may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance and the making of such inspections, investigations and inquiries; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: Provided, however, That a dwelling occupied for residential purposes shall not be entered without a search warrant.

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual bases for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, and to present reports and recommendations thereon to the county court or courts of the areas concerned, together with a re-
quest that such county court or courts create a public
service district, or districts, as therein shown to be needed
and required and as provided in article thirteen-a, chap-
ter sixteen of this code.

§20-5A-5. When permits required.

(a) It shall be unlawful for any person, until the
department's permit therefor has been granted, to:
(1) Allow sewage, industrial wastes, or other wastes,
or the effluent therefrom, produced by or emanating
from an establishment to flow into the waters of this
state;
(2) Make, cause or permit to be made any outlet,
or substantially enlarge or add to the load of any exist-
ing outlet, for the discharge of sewage, industrial wastes,
or other wastes, or the effluent therefrom, into the waters
of this state;
(3) Acquire, construct, install or operate a disposal
system for the direct or indirect discharge or deposit
of sewage, industrial wastes, or other wastes or the efflu-
ent therefrom, into the waters of this state, or;
(4) Substantially extend, modify or add to a new
or existing disposal system for the direct or indirect
18 discharge or deposit of sewage, industrial wastes, or other
19 wastes or the effluent therefrom, in the waters of this
20 state.
21 (b) Where a person has a number of outlets emerg-
22 ing into the waters of this state in close proximity to one
23 another, such outlets may be treated as a unit for the
24 purposes of this section, and only one permit issued for
25 all of such outlets.
26 (c) Unless such permit was obtained and remains
27 in full force and effect, it shall also be unlawful for any
28 person to operate or use any such outlet, or to operate
29 or use such disposal system, or to operate or use such
30 extension or modification of, or addition to, such new
31 or existing disposal system.

§20-5A-7. Procedure concerning permits required under arti-
cle; transfer of permits.

1 (a) The director of the division of sanitary engineer-
ing shall promptly make his determination concerning
2 the health aspects of any proposed activity relating solely
3 to sewage. If the plans and specifications of the pro-
4 posed activity are in accord with all reasonable require-
ments of the department of health, the director of the division of sanitary engineering shall approve the application and issue the department of health's certificate or permit therefor. If the application is approved, the director of the division of sanitary engineering shall promptly forward his department's certificate or permit, together with the application and the information and data submitted therewith, to the division of water resources for the action of the chief thereof. Any denial of the application by the director of the division of sanitary engineering shall be governed by the provisions of chapter sixteen of this code and not by the provisions of this article.

(b) The chief and his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied.

(c) The department's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the certificate or permit of the department of health was issued (in those cases where the
director of the division of sanitary engineering was re-
quired to act as aforesaid) and/or (2) the application,
together with all supporting information and data and
other evidence, establishes that any and all discharges
or deposits of sewage, industrial wastes, or other wastes
or the effluent therefrom resulting from such proposed
activity will be treated and the quality and rate of
flow thereof regulated or controlled to the fullest extent
technically feasible in view of modern technology and
scientific methods for the treatment, regulation or con-
trol of sewage, industrial wastes, or other wastes, or
the effluent therefrom.

(d) An application for a permit incident to remedial
action in accordance with the provisions of section
eleven of this article shall be processed and decided
as any other application for a permit to acquire, con-
struct, install or operate a disposal system, or to ex-
tend, modify or add to a new or existing disposal
system.

(e) An application for any such permit shall be
acted upon by the chief (and by the director of the
division of sanitary engineering of the state department of health in those cases in which such director is by this section required to act) and the department's permit (and the certificate or permit of the department of health where the proposed activity relates solely to sewage) delivered or mailed, or a copy of any order of the chief denying any such application mailed as hereinafter specified, as the case may be, to the applicant by the chief within forty-five days after the date upon which such complete application was received for the applicant by the division of sanitary engineering or within thirty days after the date upon which such complete application was received from the applicant by the division of water resources. Every effort shall be made by the division of sanitary engineering and the division of water resources to expedite all applications.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the

68 reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise the applicant of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which the applicant received the copy of such order. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure here-inbefore outlined with respect to an original application shall apply.

Upon the sale of property which includes an activity for which the department's permit was granted, the permit shall be transferable to the new owner, but the transfer shall not become effective until it is made in the records of the division of water resources.
§20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.

1. If the chief, on the basis of investigations, inspections and inquiries, determines that any person is causing the pollution of any of the waters of the state, or does on occasions cause pollution by not regulating and controlling the quality and rate of flow of sewage, industrial wastes, or other wastes or the effluent therefrom, or otherwise, and that the same should be controlled or reduced, considering existing permits, the amount and effect of such pollution, the technical feasibility of controlling or reducing such pollution, the health and welfare of the public and other present and future uses of the waters in question, he shall make and enter an order directing such person in the alternative to either (1) stop or prevent such discharges or deposits of sewage, industrial wastes, or other wastes or the effluent therefrom determined to be causing such pollution, or (2) take remedial action by acquiring, constructing or installing, and using and operating a new disposal system, or extending, modifying or adding to an existing
disposal system so as to control or reduce such pollution, by treating and/or regulating or controlling the quantity and rate of flow of any and all discharges or deposits of sewage, industrial waste, or other wastes or the effluent therefrom to the fullest extent technically feasible in view of modern technology and scientific methods for the treatment, regulation or control of sewage, industrial wastes, or other wastes or the effluent therefrom and with regard for the rights and interests of all persons concerned: Provided, That, if the chief shall find that such person has been convicted of two or more prior violations of the provisions of this article, the chief shall make and enter an order directing such person to stop or prevent such discharges or deposits of sewage, industrial wastes or other wastes or the effluent therefrom determined to be causing such pollution. The chief shall fix a reasonable time in such order by which any and all such discharges or deposits must stop or be prevented or any such remedial action must be completed. Such order shall also direct such person to apply forthwith for a permit in accordance
with the provisions of sections five, six, and seven of this article.

The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law enforcement officer upon such person. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article.

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

§20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

When such person elects to comply with such final order by taking remedial action, such person shall immediately after receipt of such permit, take or begin
appropriate steps or proceedings to carry out such remedial action. In any such case it shall be the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, upon receipt of such permit by such individual, partnership, municipal corporation, private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately after such receipt. The chief may require progress reports, at such time intervals as he deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligently prosecuted to completion.

Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association, or other legal entity whatever, to provide immediately for the financ-
ing and carrying out of such remedial action, as may be necessary to comply with said order, by appropriate ordinance or resolution shall constitute failure to take or begin appropriate steps or proceedings to comply with such order. If such person be a municipal corporation, the cost of all such remedial action as may be necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal corporation, not otherwise appropriated, and if there be not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds, any direct general obligation bond issue to be subject to the approval of the state sinking fund commission and the attorney general of the State of West Virginia.

If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such final order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebted-
ness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendment thereof: Provided, That the provisions of section six of the abovementioned act, allowing objections to be filed with the governing body, and providing that a written protest of thirty per cent
or more of the owners of real estate shall require a four-fifths vote of the governing body for the issuance of said revenue bonds, shall not apply to bond issues proposed by any municipal corporation to comply with a final order made and entered under the authority of this article, and such objections and submission of written protest shall not be authorized, nor shall the same, if made or had, operate to justify or excuse failure to comply with such final order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, shall constitute a "sanitary fund," and shall be used for no other purpose than for carrying out such final order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the board.

The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided,
and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same shall be financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of said chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendments thereof.

§20-5A-15. Appeal to water resources board.

(a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the time required by section seven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as
the appellant and the chief shall be known as the appellee.

(b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after the date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the order appealed from: Provided, That if it appears to the director or the board that an unjust hardship to the appellant will result from the execution of the chief's order pending determination of the appeal, the director or the board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order or terms and conditions complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the chief within three days after the notice of appeal is filed with the board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to
the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the chief's file relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any persons affected by any such activity or by such alleged pollution may by petition intervene as a party appellant or appellee. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee, and, with the consent of the board, by any intervenors.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing on appeal authorized by this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, with the following modifications or exceptions:

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

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

(e) Any such appeal hearing shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before a hearing examiner employed by the board. Upon request of any party to the appeal, the evidence taken before a hearing examiner shall be taken in the county in which the activity is proposed to take place, or in which the activity is situated or would be situated upon completion thereof, or in which the pollution is alleged to have occurred or to be taking place, as the case may be. For the purpose of conducting such appeal hearing, any member of the board and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces

tecum in the name of the board, in accordance with the
provisions of section one, article five, chapter twenty-
nine-a of this code. All subpoenas and subpoenas duces
tecum shall be issued and served within the time and
for the fees and shall be enforced, as specified in sec-
tion one, article five of said chapter twenty-nine-a, and
all of the said section one provisions dealing with sub-
poenas and subpoenas duces tecum shall apply to sub-
poenas and subpoenas duces tecum issued for the pur-
poses of an appeal hearing hereunder.

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

(g) After such hearing and consideration of all of the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the chief, or shall make and enter such order as the chief should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued. In determining its course of action, the board shall take into consideration not only the factors which the chief was authorized to consider in making his order and in fixing the terms and conditions of any permit, but also the economic feasibility of treating and/or controlling the sewage, industrial wastes or other wastes involved.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and
115 upon the appellee in person or by registered or certified
116 mail.
117 (i) The board shall also cause a notice to be served
118 with the copy of such order, which notice shall advise
119 the appellant, the appellee and any intervenors of their
120 right to judicial review, in accordance with the provi-
121 sions of section sixteen of this article. The order of the
122 board shall be final unless vacated or modified upon
123 judicial review thereof in accordance with the provisions
124 of section sixteen of this article.


1 (a) Any person or the chief adversely affected by a
2 final order made and entered by the board after such
3 appeal hearing, held in accordance with the provisions
4 of section fifteen of this article, is entitled to judicial
5 review thereof. All of the pertinent provisions of sec-
6 tion four, article five, chapter twenty-nine-a of this code
7 shall apply to and govern such review with like effect
8 as if the provisions of said section four were set forth
9 in extenso in this section, with the following modifica-
10 tions or exceptions:
(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of the county in which any activity or activities are proposed to take place;

(2) As to cases involving an order revoking or suspending a permit and directing any and all work on any such activity to stop or suspending such work, or directing all discharges or deposits of sewage, industrial wastes, or other wastes or the effluent therefrom resulting from any such activity to stop or suspending such discharges or deposits, or directing that affirmative action be taken to correct alleged and specified deficiencies concerning any such activity, the petition shall be filed, within the time specified in said section four, in the circuit court of the county in which any such activity or activities are situate or would be situate upon completion thereof; and

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

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

(c) Legal counsel and services for the chief in all appeal proceedings in the circuit courts and in the supreme court of appeals of this state shall be provided by the attorney general or his assistants and in appeal proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without
additional compensation, or the board or chief, with the
written approval of the attorney general may employ
special counsel to represent the board or chief in a par-
ticular proceeding.

§20-5A-17. Actions to abate nuisances; injunctive relief.

(a) Whether any violation of the provisions of this
article or the rules and regulations of the board, or any
final order of the chief or the board shall result in
prosecution or conviction or not, any such violation shall
be deemed a nuisance which may be abated upon appli-
cation by the chief to the circuit court of the county
in which such nuisance or any part thereof shall exist,
or to the judge thereof in vacation. Upon application
by the chief, the circuit courts of this state may by
mandatory or prohibitive injunction compel compliance
with the provisions of this article, the rules and regula-
tions of the board, or all final orders of such chief or
board. Any application for an injunction to compel
compliance with any final order of the chief or board
shall be made to the circuit court of the county in which
the activity to which the order relates is proposed to
take place, or in which the activity to which the order relates is situate or would be situate upon completion thereof, or in which the pollution to which the order relates is alleged to have occurred or to be taking place, as the case may be, or the judge thereof in vacation. Upon application by the chief to the circuit court of the county in which a municipal corporation is located, or in which any person resides or does business, or to the judge thereof in vacation, such court may by injunction require the performance of any duty imposed upon such municipal corporation or persons by the provisions of this article. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

In cases of aggravated pollution where irreparable damage will result from any delay incident to the administrative procedures set forth in this article, the chief, with the consent of the director, may forthwith apply to the circuit court of the county in which the pollution is taking place for a temporary injunction. Such court may issue a temporary injunction pending
final disposition of the case by the chief or the board, in
the event an appeal is taken to the board.

The judgment of the circuit court upon any applica-
tion permitted by the provisions of this section shall be
final unless reversed, vacated or modified on appeal to
the supreme court of appeals. Any such appeal shall be
sought in the manner provided by law for appeals from
circuit courts in other civil cases, except that the peti-
tion seeking such review must be filed with said supreme
court of appeals within ninety days from the date of
entry of the judgment of the circuit court.

The chief shall be represented in all such proceedings
by the attorney general or his assistants and in such
proceedings in the circuit courts by the prosecuting at-
torneys of the several counties as well, all without ad-
ditional compensation.


Any person who fails or refuses to discharge any duty
imposed upon him by this article or by any rules and
regulations of the board, or by any final order of the
chief or board, or who fails or refuses to apply for and
obtain a permit as required by the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for a second offense by a fine of not less than two hundred dollars nor more than five hundred dollars, and for a third and each subsequent offense by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment for a period not to exceed six months, or in the discretion of the court by both such fine and imprisonment. Each day upon which such failure continues shall constitute a separate offense.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within __________ approved this the __________
day of __________, 1967.

[Signature]
Governor
PRESENTED TO THE GOVERNOR

Date  3/17/67
Time  2:50 p.m.