WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
SENATE BILL NO. 200

(By Mr. [Signature] President)

PASSED March 1, 1967

In Effect [Signature] from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
This date 3-21-67
AN ACT to amend and reenact sections one, two, four, six, eight and nine, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to air pollution control, the declaration of policy and purpose, the definitions of certain terms used in the article, the composition of the air pollution control commission, the expenses and compensation of the members of said commission, certain functions of the commission, the appointment of a director of the commission and the compensation and expenses of such director; authorizing the director to make and enter cease and desist orders; authorizing an appeal from any such order to the commis-
sion; expressly making the administrative procedures act applicable; providing penalties; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, six, eight and nine, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.

§16-20-1. Declaration of policy and purpose.

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

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution.
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13 pollution not confined within single jurisdictions; and to
14 provide a framework within which all values may be
15 balanced in the public interest.

§16-20-2. Definitions.

The terms used in this article are defined as follows:

2 The term “person” shall mean any and all persons, nat-
3 ural or artificial, including any municipal, public or pri-
4 vate corporation organized or existing under the laws of
5 this or any other state or country, and any firm, partner-
6 ship or association of whatever nature.

7 The term “commission” shall mean the air pollution
8 control commission, and the term “commissioner” shall
9 mean a member of said commission.

10 The term “air pollutants” shall mean solids, liquids or
11 gases which, if discharged into the air, will result in a
12 statutory air pollution.

13 The term “discharge” shall refer to the release, escape
14 or emission of air pollutants into the air.

15 The term “statutory air pollution” shall mean and be
16 limited to the discharge into the air by the act of man of
17 substances (liquid, solid, gaseous, organic or inorganic)
in a locality, manner and amount as to be injurious to
human health or welfare, animal or plant life, or property,
or which would interfere with the enjoyment of life or
property.

The term "director" shall mean the director of the West
Virginia air pollution control commission appointed as
hereinafter provided.

§16-20-4. Air pollution control commission; composition; ap­
pointment and terms of members; vacancies; compensa­
tion and expenses of members; organization and per­
sonnel; appointment of director; records; meetings.

The “Air Pollution Control Commission”, heretofore
created, shall continue in existence as an agency of the
state but on and after the effective date of this act shall
consist of seven members, including the state director of
health and the commissioner of agriculture, who shall be
members ex officio, and five other members to be ap­
pointed by the governor with the advice and consent of
the Senate, two of whom shall be representative of indus­
tries engaged in business in this state, and three of whom
shall be representative of the public at large. The three
appointed members of the commission in office on the
effective date of this act shall, unless sooner removed, con-
tinue to serve until their terms expire and until their suc-
cessors have been appointed and have qualified. On or
before June fifteen, one thousand nine hundred sixty-
seven, the governor shall appoint one member to serve
until June thirty, one thousand nine hundred seventy, and
one member to serve until June thirty, one thousand nine
hundred seventy-one, or until their successors have been
appointed and have qualified. As the terms of the three
appointed members of the commission in office on the
effective date of this act expire and as the terms of the two
members to be appointed by the governor on or before
June fifteen, one thousand nine hundred sixty-seven, ex-
pire, members shall be appointed for overlapping terms
of five years, so that one term expires each year, or until
their successors have been appointed and have qualified.
Any vacancy in the office of an appointed member of the
commission shall be filled by appointment by the gover-
nor for the unexpired term of the appointed member
whose office shall be vacant.
The ex officio members of the commission shall receive no salary or remuneration for their services as such but they shall be reimbursed, out of moneys appropriated for such purpose, for all reasonable and necessary expenses actually incurred in the discharge of their duties as such.

As compensation for his services on the commission, each appointed member shall receive, out of moneys appropriated for such purpose, the sum of fifty dollars for each day or substantial portion thereof that he is actually engaged in the work of the commission. Each member shall also be entitled to be reimbursed, out of moneys appropriated for such purpose, for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the commission.

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

The commission may establish rules for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved. Copies of orders entered by the commission, as well as copies of papers or documents filed with it, or the records of proceedings before the commission, shall be attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two commissioners, all of which meetings shall be general meetings for the consideration of any and all matters which may properly come before the commission.
§16-20-6. Orders of the director; appeal therefrom to commission.

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

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

Any person upon whom a copy of such final order has been served may appeal such order to the air pollution control commission in the manner hereinafter provided.

The person so appealing shall be known as the appellant and the director shall be known as the appellee. Such appeal shall be perfected by filing a notice of appeal, on
the form prescribed by the commission for such purpose, with the commission within fifteen days after the date upon which the appellant received a copy of the order. The notice of appeal shall set forth the order complained of and the grounds upon which the appeal is based. The filing of such notice of appeal shall stay the effect of the order complained of until final determination thereof is made by the commission. A copy of the notice of appeal shall be filed by the commission with the director within eight days after the notice of appeal is filed with the commission.

Within seven days after receipt of his copy of the notice of appeal, the director shall prepare and certify to the commission a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the director's file relating to the matter in question. The commission shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee.

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 the provisions of 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, except that any such appeal hearing shall be held in the county wherein the alleged statutory air pollution complained of originated.

Any such appeal hearing shall be conducted by a quorum of the commission. For the purpose of conducting any such appeal hearing, any member of the commission and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the commission, 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 section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.
Any such hearing shall be held within twenty days after the date upon which the commission received the timely notice of appeal, unless there is a postponement or continuance. The commission may postpone or continue any hearing on its own motion, or upon application of the appellant or the appellee for good cause shown. The director shall be represented at any such hearing by the attorney general or his assistants. At any such hearing the appellant may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

After such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall make and enter an order affording, modifying or vacating the order of the director, or shall make and enter such order as the director should have entered.

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 his attorney of record, if
any, and upon the appellee in person or by registered or

certified mail. The order of the commission shall be final

unless vacated or modified upon judicial review thereof

in accordance with the provisions of section seven of this

article.

§16-20-8. Penalties.

Any person who shall fail or refuse to comply with any

final order made and entered hereunder to correct a statu-
tory air pollution within the time fixed by such order, or

any extension of time granted by the commission, shall

be subject to a penalty of not more than one thousand

dollars for each day that such failure or refusal continues

after such time has expired, which penalty may be re-
covered in a civil action brought by the commission in the

name of the state of West Virginia in the circuit court of

any county wherein such person resides or is engaged in

the activity complained of. The amount of the penalty

shall be fixed by the court without a jury. The amount

of any such penalties collected by the commission shall be

deposited in the general fund of the state treasury ac-
cording to law. Upon a request in writing from the com-
mission, it shall be the duty of the prosecuting attorney of
the county in which any such action for penalties accruing
under this section may be brought to institute and prose-
cute all such actions on behalf of the commission.
For the purpose of this section, violations on separate
days shall be considered separate offenses.

§16-20-9. Applications for injunctive relief.

In addition to the remedy provided for in section eight
of this article and in the absence of reasonable progress
toward correction of the statutory air pollution, the com-
mission may request the prosecuting attorney of the
county in which the person resides or is engaged in the
activity complained of to apply to the circuit court of such
county for an injunction to restrain all violations of any
final order entered pursuant to section six of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tampas
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard N. Remy
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

W. Lebaw White
Speaker House of Delegates

The within approved this the 17th day of March, 1967.

Hullie C. Smith
Governor
PRESENTED TO THE GOVERNOR

Date: 3/15/67
Time: 4:00 P.M.