WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 23

(By Mr. Jackson, Mr. President, and Mr. Gurney)

PASSED March 3, 1969

In Effect July 1, 1969

FILED IN THE OFFICE
JOHN D. ROCHEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-17-69
ENROLLED

Senate Bill No. 23

(By Mr. Jackson, Mr. President, and Mr. Gainer)

[Passed March 3, 1969; in effect July 1, 1969.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty-two, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections three-a, eight-b, eleven-a and twelve-a, all relating generally to water resources, the water pollution control act, and law enforcement, and more particularly to the definitions of the terms, the general powers and duties of the chief of the division of water resources and the water resources board with respect to
water pollution, cooperation with other governments and agencies, requirements for permits for specified activities, making pollution unlawful and declaring it to be a public nuisance, establishment of water quality standards, application for permits, permit fees, procedures concerning permits, providing for the appointment of a responsible agent as attorney in fact for holders of permits, the transfer of permits, orders to compel compliance with permits, information to be filed, orders of the chief to stop or prevent discharges or deposits, orders of the chief to take remedial action, service or orders, providing for discretion of chief to withhold issuance of order, duty to proceed with remedial action upon receipt of permit, emergency orders, progress reports, compliance with remedial orders, continuing jurisdiction, 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, the preservation of certain rights and remedies, and that said article five-a is for the benefit of the state only.
Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty-two, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections three-a, eight-b, eleven-a and twelve-a, all to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.


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

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

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

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

9 (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 dis-
trict; watershed improvement district; partnership; trust;
estate; person or individual; group of persons or in-
dividuals 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 flow-
ing, 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 reser-
voirs, springs, wells and watercourses;
(f) "Pollution" shall mean (1) the discharge, release, es-
cape, deposit or disposition, directly or indirectly, of treat-
ed or untreated 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 (A) contaminate or substantially contribute
to the contamination of any of such waters, or (B) 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 contami-
nation or alteration where a person only contributes there-
to, 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 in-
directly detrimental to existing animal, bird, fish, aquatic
or plant life, or (iii) unsuitable for present or future do-
mestic, commerical, industrial, agricultural, recreational,
scenic or other legitimate uses; and shall also mean (2) the
discharge, release, escape, deposit, or disposition, directly
or indirectly of treated or untreated 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 reduce the quality
of the waters of the state below the standards established
therefor in the rules and regulations of the board;
(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 waters as may be present;

(h) "Industrial wastes" shall mean any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to 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, well, and each and every industry or plant or works or activity in the operation or process of which industrial wastes, or other wastes are produced;

(k) "Sewer system" shall mean pipelines or conduits, pumping stations, 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, earthen pit, 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 or for the
96 purpose of regulating or controlling the quality and rate
97 of flow thereof;
98 (m) "Disposal system" shall mean a system for treating or disposing of sewage, industrial wastes, or other
99 wastes, or the effluent therefrom, either by surface or
100 underground methods, and shall be construed to include
101 sewer systems, the use of subterranean spaces, treatment
102 works, disposal wells and other systems;
104 (n) "Outlet" shall mean the terminus of a sewer system
105 or the point of emergence of any water-carried sewage, industrial wastes, or other wastes, or the effluent there-
107 from, into any of the waters of this state;
108 (o) "Activity" or "activities" shall mean any activity or
109 activities for which a permit is required by the provisions
110 of section five of this article;
111 (p) "Disposal well" shall mean any well drilled or used
112 for the injection or disposal of treated or untreated sew-
113 age, industrial wastes or other wastes into underground
114 strata;
115 (q) "Well" shall mean any shaft or hole sunk, drilled,
116 bored or dug into the earth or into underground strata
for the extraction or injection or placement of any liquid
or gas, or any shaft or hole sunk or used in conjunction
with such extraction or injection or placement. The term
"well" shall not have included within its meaning any
shaft or hole sunk, drilled, bored or dug into the earth
for the sole purpose of core drilling or pumping or ex-
tracting therefrom potable, fresh or usable water for
household, domestic, industrial, agricultural or public use;
and
(r) "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 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 per-
sons in controlling and reducing the pollution of the
9 waters of this state, and to advise, consult and cooperate
10 with all persons, all agencies of this state, the federal
11 government or other states, and with interstate agencies
12 in the furtherance of the purposes of this article, and
13 to this end and for the purpose of studies, scientific or
14 other investigations, research, experiments and demon-
15 strations pertaining thereto, the department may receive
16 moneys from such agencies, officers and persons on behalf
17 of the state. The department shall pay all moneys so
18 received into a special fund hereby created in the state
19 treasury, which fund shall be expended under the direc-
20 tion of the chief solely for the purpose or purposes for
21 which the grant, gift or contribution shall have been
22 made;
23 (2) To encourage the formulation and execution of
24 plans by cooperative groups or associations of municipal
25 corporations, industries, and other users of waters of
26 the state, who, jointly or severally, are or may be the
27 source of pollution of such waters, for the control and
28 reduction of pollution;
(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 pollution of the waters of the state, 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 of and securing support for pollution control and abatement;

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

(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 rules, regulations, permits and orders issued pursuant to the provisions of this article;

(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;
(11) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such permits as are required by this article, or as he deems necessary to carry out the provisions of this article or to carry out the rules and regulations adopted pursuant to the provisions of this article; and

(12) To require any and all persons directly or indirectly discharging, depositing or disposing of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes or the effluent therefrom, into or near any waters of the state or into any underground strata, to file with the division of water resources such information as the chief may require in a form or manner prescribed by
him for such purpose, including, but not limited to,
data as to the kind, characteristics, amount and rate
of flow of any such discharge, deposit, escape, release
or disposition.

(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
exercise 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 adopt, modify, repeal and enforce rules and
regulations, in accordance with the provisions of chapter
twenty-nine-a of this code, (A) implementing and mak-
ing effective the declaration of policy contained in section
one of this article and the powers, duties and responsi-
bilities vested in the board and the chief by the provisions
of this article and otherwise by law; (B) preventing,
controlling and abating pollution; and (C) establishing
114 standards of quality for the waters of the state under
115 such conditions as the board may prescribe for the pre-
116 vention, control and abatement of pollution.
117 (c) The board is hereby authorized to hire one or
118 more individuals to serve as hearing examiners on a
119 full or part-time basis. Such individuals may be at-
120 torneys at law admitted to practice before any circuit
121 court of this state. All such hearing examiners shall be
122 individuals authorized to take depositions under the
123 laws of this state.
124 (d) The board, or any member thereof, and the chief,
125 and their duly authorized representatives, shall have
126 the power and authority to make investigations, inspec-
127 tions and inquiries concerning compliance with the pro-
128 visions of this article, or any order made and entered
129 in accordance with the provisions of this article, or any
130 rule or regulation promulgated by the board, or with
131 the terms and conditions of any permit issued in accord-
132 ance with the provisions of section seven of this article.
133 In order to make such investigations, inspections and
134 inquiries, the board, or 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 any member thereof 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 authorizing such entrance and the making of such inspections, investigations and inquiries; and jurisdiction is hereby conferred upon such court or judge to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article. 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 courts of the areas concerned, together with a request that such county courts create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code. In the event a county court shall fail to act to establish a county-wide public service district, the board shall act jointly with the state director of health, the director of the department of natural resources and the chief of the division of water resources to order the county court to take action to establish such public service district or districts as may be necessary to control, reduce or abate the pollution, and when so ordered the county court members must act to establish such a county-wide public service district.


1 (a) In order to carry out the purposes of this article,
standards of water quality to be applicable to the waters of this state, which standards of quality shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such waters for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.

(b) In establishing, amending, revising or repealing rules and regulations relating to water quality standards, the board shall follow all relevant procedures provided by article three, chapter twenty-nine-a of the code.

(c) All persons affected by rules and regulations establishing water quality standards shall promptly comply therewith: Provided, That where necessary and proper, the chief may specify a reasonable time for persons not complying with such standards to comply with such standards, and upon the expiration of any such period of time, the chief shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduc-
tion of the quality of such waters below the standards established therefor by rules and regulations of the board.

§20-5A-4. Cooperation with other governments and agencies.  
1  The division of water resources is hereby designated as the water pollution control agency for this state for all purposes of federal legislation and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this section, the chief is hereby authorized to cooperate with the federal water pollution control administration of the United States department of interior, other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for controlling and reducing water pollution and improving the sanitary conditions of the waters of the state; to apply for and receive, on behalf of this state, funds made available under the aforesaid federal legislation on condition that all moneys received from any federal agency as herein provided shall be paid into the state treasury and shall be expended, under the direc-
19 tion of the chief, solely for purposes for which the grants
20 shall have been made; to approve projects for which
21 applications for loans or grants under the federal legis-
22 lation are made by any municipality (including any city,
23 town, district or other public body created by or pursuant
24 to the laws of this state and having jurisdiction over
25 the disposal of sewage, industrial wastes or other wastes)
26 or agency of this state or by any interstate agency; and to
27 participate through his authorized representatives in pro-
28 ceedings under the federal legislation to recommend mea-
29 sures for the abatement of water pollution originating in
30 this state. The governor is hereby authorized, in his dis-
31 cretion, to give consent on behalf of this state to requests
32 by the secretary of the United States department of in-
33 terior to the attorney general of the United States for the
34 bringing of actions for the abatement of such pollution.
35 Whenever a federal law requires the approval or recom-
36 mendation of a state agency or any political subdivision
37 of the state in any matter relating to the water resources
38 of the state, the director, subject to approval of the
39 Legislature, is hereby designated as the sole person to
give the approval or recommendation required by the federal law, unless the federal law specifically requires the approval or recommendation of some other state agency or political subdivision of the state.

§20-5A-5. Prohibitions; permits required.

(a) It shall be unlawful for any person, unless he holds a permit therefor from the department, which is in full force and effect, to:

(1) Allow sewage, industrial wastes, or other wastes, or the effluent therefrom, produced by or emanating from any 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 existing 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, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom,
into the waters of this state, or any extension to or addition to such disposal system;

(4) Increase in volume or concentration of any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any establishment, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the state;

(6) Open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant: Provided, That the department's permit shall only be required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state; or

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert...
any well into such a disposal well or plug or abandon any such disposal well.

(b) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all such outlets.

§20-5A-6. Form of application for permit; information required; fees.

1 The chief shall prescribe a form of application for all permits for any activity specified in section five of this article relating other than solely to sewage. The director of the division of sanitary engineering of the state department of health, in cooperation with the chief, shall prescribe a form of application for all permits for any activity relating solely to sewage. All applications for permits for any activity relating other than solely to sewage shall be submitted to the chief of the division of water resources, and those applications for permits for any activity relating solely to sewage shall be submitted
to the division of sanitary engineering of the state department of health. All applications must be submitted on a form as prescribed above. An applicant shall furnish all information reasonably required by any such form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Notwithstanding anything in this article to the contrary, where the activity is an integral part of a secret operating process, the required information shall be limited solely to data which will show the kind, characteristics, amount and rate of flow of sewage, industrial wastes, or other wastes, or the effluent therefrom, into the waters of the state. Until all such required information is furnished, an application shall not be considered a complete application.

A filing fee of ten dollars shall accompany the application when filed with the division of water resources. The filing fee shall be deposited in the state treasury to the credit of the state general fund. The filing fee shall not be returned to the applicant.
§20-5A-7. Procedure concerning permits required under article; transfer of permits.

1. (a) The director of the division of sanitary engineering shall promptly make his determination concerning the health aspects of any proposed activity relating solely to sewage. If the plans and specifications of the proposed activity are in accord with all reasonable requirements 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.

2. (b) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary
and proper in order to determine whether any such applica-
tion should be granted or denied. In making such in-
vestigation and determination as to any application per-
taining to any activity specified in subdivision (7) of
subsection (a) of section five of this article, the chief
shall consult with the director of the state geological and
economic survey and appropriate officials of the state de-
partment of health, and all such persons shall cooperate
with the chief and assist him in carrying out the duties
and responsibilities imposed upon him under the provi-
sions of this article and the rules and regulations of
the board; such cooperation shall include, but not be
limited to, a written recommendation approving or dis-
approving the granting of the permit and the reason or
reasons for such recommendation.

(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 required to act
as required in subsection (a) hereof); and (2) the appli-
cation, together with all supporting information and data and other evidence, establishes that any and all dis-
charges, or releases, escapes, deposits, disposition of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, resulting from the ac-
tivity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any rules and regulations of the board:

Provided, That the chief may issue a permit wherever in his judgment the water quality standards of the state may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the state; and (3) in cases wherein it is re-
quired such applicant shall include the name and address of the responsible agent as set forth in section eight-b of this article.

(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 required under the provisions of section five of this article.

(e) An application for any permit shall be acted upon by the chief, and the department's permit delivered or mailed, or a copy of any order of the chief denying any such application delivered or mailed to the applicant by the chief within forty-five days after the date upon which such application was received from the applicant by the division of sanitary engineering where the application relates solely to sewage or within thirty days after the date upon which such application was received from the applicant by the division of water resources in all other cases.

(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 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 hereinbefore outlined with respect to an original application shall apply.

(g) 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 the provisions of section eight-b of this article are fully complied with, and until such transfer is made in the records of the division of water resources.

§20-5A-8. Inspections; orders to compel compliance with permits; service of orders; prior permits.

After issuance of the department's permit for any activity, the chief or his duly authorized representatives may make field inspections of the work on the activity,
and, after completion thereof, may inspect the completed
activity, and, from time to time, may inspect the main-
tenance and operation of the activity.

To compel compliance with the terms and conditions
of the department's permit for any activity, the chief is
hereby authorized, after at least twenty days notice, to
make and enter an order revoking or suspending such
permit.

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 the person
to whom any such permit was issued. 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, within thirty days after the date
upon which such person received the copy of such order.

All permits for the discharge of sewage, industrial
wastes or other wastes into any waters of the state issued
by the water resources board prior to July one, one thou-
sand nine hundred sixty-four and which have not been
revoked prior to the effective date of this article shall
be enforced under the terms and provisions of this
article, and shall remain valid unless and until revoked
or suspended in accordance with the terms and provisions
of this article or in accordance with the terms and pro-
visions of any rules or regulations promulgated there-
under.

§20-5A-8b. Responsible agent; duties, notification of change.

It shall be the duty of every operator of a well, from
and after the effective date of this article, in cases wherein
such well operator is the holder of a permit issued pur-
suant to the provisions of this article to designate an
individual who is a resident of this state as a responsible
agent for such well. The responsible agent shall be the
attorney in fact for and in behalf of the operator, and
upon whom notices, orders or other communications
issued pursuant to this article may be served, and upon
whom process may be served. In cases wherein there
is a responsible agent designated under the provisions
of section one-k, article four, chapter twenty-two of this code, such responsible agent shall be deemed to be the responsible agent required by this section, and shall be so appointed by the operator. Every well operator so appointing an agent, shall within five days after the termination of such appointment, notify the department of such termination, and designate a new responsible agent.

§20-5A-9. Information to be filed by certain persons with division of water resources.

Any and all persons directly or indirectly discharging or depositing treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state shall file with the division of water resources such information as the chief thereof may reasonably require on forms prescribed by him for such purpose, including but not limited to, data as to the kind, characteristics, amount and rate of flow of such discharge or deposit. If the chief has reasonable cause to believe that any establishment is, or may be, polluting the waters of the state, he may require any person
owning, operating or maintaining such establishment to
furnish such information as may reasonably be required
to ascertain whether such establishment is, or may be
causing such pollution, and he may conduct any test or
tests that he may deem necessary or useful in making
his investigation and determination.

§20-5A-10. Orders of chief to stop or prevent discharges or
deposits or take remedial action; service of orders.

If the chief, on the basis of investigations, inspections
and inquiries, determines that any person who does not
have a valid permit issued pursuant to the provisions of
this article is causing the pollution of any of the waters
of the state, or does on occasions cause pollution or is
violating any rule or regulation of the board, he shall,
with the consent of the director, either make and enter
an order directing such person to stop such pollution or
the violation of the rule or regulation of the board, or
make and enter an order directing such person to take
corrective or remedial action. Such order shall also direct
such person to apply forthwith for a permit in accordance
13 with the provisions of sections five, six and seven of this
14 article. The chief shall fix a time limit for the completion
15 of such action. Whether the chief shall make and enter
16 an order to stop such pollution or shall make and enter an
17 order to take remedial action, in either case the person
18 so ordered may elect to cease operations of the establish-
19 ment deemed to be the source of such discharge or de-
20 posits causing pollution, if the pollution referred to in
21 the chief’s order shall be stopped thereby.
22 In the sole discretion of the chief, he may postpone
23 issuing any such order if he feels such pollution can best
24 be controlled or reduced by cooperative efforts with the
25 person or persons responsible therefor.
26 The chief shall cause a copy of any such order to be
27 served by registered or certified mail or by a conservation
28 officer or other law enforcement officer upon such person.
29 The chief shall also cause a notice to be served with the
30 copy of such order, which notice shall advise such person
31 of his right to appeal to the board by filing a notice of
32 appeal, on the form prescribed by the board for such

Any person upon whom any order of the chief or any order of the board in accordance with the provisions of sections ten and fifteen of this article, has been served shall fully comply therewith.

When such person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution, or when such ceasing does not stop the pollution, he shall forthwith apply for a permit under and in accordance with the provisions of sections five, six and seven of this article.

No such remedial action shall be taken until a permit therefor has been issued; however, receipt of a permit shall not in and of itself constitute remedial action.

§20-5A-11a. Power of eminent domain; procedures; legislative finding.

(a) When any person who is owner of an establishment is ordered by the chief to stop or prevent pollution or the violation of the rules and regulations of the board
or to take corrective or remedial action, compliance with which order will require the acquisition, construction or installation of a new treatment works or the extension or modification of or an addition to an existing treatment works, (which acquisition, construction, installation, extension, modification or addition of or to a treatment works pursuant to such order is referred to in this section as "such compliance") such person may exercise the power of eminent domain in the manner provided in chapter fifty-four of this code, to acquire such real property or interests in real property as may be determined by the chief to be reasonably necessary for such compliance.

(b) Upon application by such person and after twenty days written notice to all persons whose property may be affected, the chief shall make and enter an order determining the specific real property or interests in real property, if any, which are reasonably necessary for such compliance. In any proceeding under this section, the person seeking to exercise the right of eminent domain herein conferred shall establish the need for the
amount of land sought to be condemned and that such land is reasonably necessary for the most practical method for such compliance.

(c) The right of eminent domain herein conferred shall not apply to the taking of any dwelling house or for the taking of any land within five hundred feet of any such dwelling house.

(d) The Legislature hereby declares and finds that the taking and use of real property and interests in real property determined to be reasonably necessary for such compliance promotes the health, safety and general welfare of the citizens of this state by reducing and abating pollution in the waters of this state in which the public at large has an interest and otherwise; that such taking and use are necessary to provide and protect a safe, pure and adequate water supply to the municipalities and citizens of the state; that because of topography, patterns of land development and ownership and other factors it is impossible in many cases to effect such compliance without the exercise of the power of eminent domain and that the use of real property or interests in
§20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

When such person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution or when ceasing does not stop the pollution, such person shall immediately 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, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately. 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 to-
ward completion of such remedial action. All such reme-
derial action shall be diligently prosecuted to comple-
tion.

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 financing and carrying out of such remedial action, as may be necessary to comply with said order, 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 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 indebtedness 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 above-
mentioned act, allowing objections to be filed with the
governing body, and providing that a written protest of
thirty percent 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 an 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 com-
ply with such order.

The funds made available by the issuance of either
direct obligation bonds or revenue bonds, as herein pro-
vided, shall constitute a "sanitary fund," and shall be
used for no other purpose than for carrying out such
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 chief. 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.


1 Whenever the chief finds that any discharge, release, escape, deposit or disposition of treated or untreated sewage, industrial wastes or other wastes into any waters within this state, when considered alone or in conjunction with other discharges, releases, escapes, deposits or dispositions, constitutes a clear, present and immediate danger to the health of the public, or to the fitness of a private
or public water supply for drinking purposes, the chief
may, with the concurrence in writing of the director of the
department of natural resources and the director of the de-
partment of health, without notice or hearing, issue an
order or orders requiring the immediate cessation or
abatement of any such discharge, release, escape, deposit
or disposition, and the cessation of any drilling, redrilling,
deepening, casing, fracturing, pressuring, operating, plug-
ging, abandoning, converting or combining of any well,
or requiring such other action to be taken as the chief,
with the concurrences aforesaid, deems necessary to abate
such danger.

Notwithstanding the provisions of any other section of
this article, any order issued under the provisions of this
section shall be effective immediately and may be served
in the same manner as a notice may be served under the
provisions of section two, article seven, chapter twenty-
nine-a of the code. Any person to whom such order is
directed shall comply therewith immediately, but on
notice of appeal to the board shall be afforded a hearing
as promptly as possible, and not later than ten days after
the board receives such notice of appeal. On the basis of such hearing, and within five days thereafter, the board shall make and enter an order continuing the order of the chief in effect, revoking it, or modifying it. For the purpose of such appeal and judicial review of the order entered following an appeal hearing, all pertinent provisions of sections fifteen and sixteen of this article shall govern.


1 The chief shall have the authority, in his sole discretion, to extend the time fixed in any order made and entered by him, or the board in accordance with the provisions of section fifteen of this article, within which any person ordered to take remedial action who does not elect to cease the operation of the establishment deemed to be the source of said pollution, must complete such action, upon written petition filed with him prior to the time fixed in such order, when it shall appear that a good faith effort to comply with said order is being made, and that it shall be impossible for such person to complete such remedial action within the time so fixed. When it
shall appear from such petition that due to wartime or other governmental restrictions with respect to labor or material, or both, such compliance with any such order would be impossible or would place an undue burden upon such person, the chief shall stay execution of any such order until such time as it may satisfactorily appear that such wartime or other restrictions no longer exist. The chief may grant as many such extensions as he finds to be warranted by the facts and circumstances involved in any particular case.

§20-5A-14. Control by state as to pollution; continuing jurisdiction.

No right to violate the rules and regulations of the board or to continue existing pollution of any of the waters of the state shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future pollution by any person. The right and control of the state in and over the quality of all waters of the state are hereby expressly reserved and reaffirmed. It is recognized that with the passage of time, additional efforts may have to be made by all persons toward control and
10 reduction of the pollution of the waters of the state,

11 irrespective of the fact that such persons may have pre-

12 viously complied with all orders of the chief or board. It

13 is also recognized that there should be continuity and

14 stability respecting pollution control measures taken in

15 cooperation with, and with the approval of, the chief, or

16 pursuant to orders of the chief or board. When a person

17 is complying with the terms and conditions of a permit

18 granted pursuant to the provisions of section seven of

19 this article or when a person has completed remedial

20 action pursuant to an order of the chief or board, addi-

21 tional efforts may be required wherever and whenever

22 the rules and regulations of the board are violated or the

23 waters of the state are polluted by such person.

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

1 (a) Any person adversely affected by an order made

2 and entered by the chief in accordance with the provi-

3 sions of this article, or aggrieved by failure or refusal of

4 the chief to act within the time required by section seven

5 of this article on an application for a permit or aggrieved

6 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. If the chief denies a permit because of any disapproval of a permit application by one or more of the public officers required to review such application under the provisions of subsection (b), section seven of this article, such public officers shall be joined as a coappellee or coappellees with the chief in such appeal.

(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 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. 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 follow-
ing 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 hear-
ing 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 testi-
mony at any such hearing shall be recorded by steno-
graphic 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 stipula-
tion agree to take evidence before a hearing examiner
employed by the board. 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 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.

(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 hearing 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 upon the appellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served
with the copy of such order, which notice shall advise
the appellant, the appellee and any intervenors of their
right to judicial review, in accordance with the provi-
visions of section sixteen of this article. The order of the
board shall be final unless vacated or modified upon
judicial review thereof in accordance with the provisions
of section sixteen of this article.


(a) Any person or the chief adversely affected by
an order made and entered by the board after such
appeal hearing, held in accordance with the provisions
of section fifteen of this article, is entitled to judicial
review thereof. All of the pertinent provisions of section
four, article five, chapter twenty-nine-a of this code shall
apply to and govern such review with like effect as if
the provisions of said section four were set forth in
extenso in this section, with the following modifications
or exceptions:

(1) As to cases involving an order denying an appli-
cation 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 Kanawha county;

(2) As to cases involving an order revoking or suspending a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of Kanawha county; 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 establishment is located or in which the pollution occurs.

(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
35 days from the date of entry of the judgment of the circuit court.

37 (c) Legal counsel and services for the chief in all appeal proceedings in the circuit court 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 court by the prosecuting attorney of the county in which the appeal is taken, all without additional compensation.

§20-5A-17. Injunctive relief.

1 Upon application by the chief, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules and regulations of the board, the terms and conditions of any permit granted under the provisions of this article, or any order of the chief or board, and the venue of any such action shall be the county in which the violation or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in
vacation may issue a preliminary injunction in any case pending a decision on the merits of any application filed.

Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond as a prerequisite to obtaining injunctive relief under this article.

An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed under the provisions of this article 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 petition
33 seeking such review must be filed with said supreme
34 court of appeals within ninety days from the date of
35 entry of the judgment of the circuit court.
36 Legal counsel and services for the chief or the board
37 in all injunction proceedings in the circuit courts and in
38 the supreme court of appeals of this state shall be pro-
39 vided by the attorney general or his assistants and by the
40 prosecuting attorneys of the several counties as well; all
41 without additional compensation, or the chief or the
42 board, with the written approval of the attorney general,
43 may employ counsel to represent him or it in a particular
44 proceeding.


1 Any person who causes pollution or who fails or refuses
2 to discharge any duty imposed upon him by this article
3 or by any rule or regulation of the board, promulgated
4 pursuant to the provisions and intent of this article, or
5 by any order of the chief or board, or who fails or refuses
6 to apply for and obtain a permit as required by the pro-
7 visions of this article, or who fails or refuses to comply
8 with any term or condition of such permit, shall be
guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a period not exceeding six months, or by both such fine or imprisonment. Any person who wilfully violates any provision of this article, or any rule or regulation of the board, or any order of the chief or board, or any term or condition of a permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months or by both such fine and imprisonment. Each day upon which such failure continues shall constitute a separate offense.

Any person who fails or refuses to discharge any duty imposed upon him by this article, or by any rule or regulation of the board, or by an 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, or by any rule or regulation of the board or who fails or refuses to comply with any term or condition of such
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30 permit, may be prosecuted and convicted under the pro-
31 visions of this section notwithstanding that none of the
32 administrative remedies provided for in this article have
33 been pursued or invoked against said person and not-
34 withstanding that an application for an injunction under
35 the provisions of this article has not been filed against
36 such person.
37 Where a person holding a permit is carry,ing out a pro-
38 gram of pollution abatement or remedial action in com-
39 pliance with the conditions and terms of such permit, he
40 shall not be subject to criminal prosecution for pollution
41 recognized and authorized by such permit.

§20-5A-22. Existing rights and remedies preserved; article for

benefit of state only.

1 It is the purpose of this article to provide additional
2 and cumulative remedies to abate the pollution of the
3 waters of the state and nothing herein contained shall
4 abridge or alter rights of action or remedies now or here-
5 after existing, nor shall any provisions in this article, or
6 any act done by virtue of this article, be construed as
7 estopping the state, municipalities, public health offi-
cers, or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.

The provisions of this article inure solely to and are for the benefit of the people generally of the state of West Virginia, and this article is not intended to in any way create new, or enlarge existing rights of riparian owners or others. An order of the chief or of the board, the effect of which is to find that pollution exists, or that any person is causing pollution, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state of West Virginia.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompou
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1969.

Edward Murphy
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

Lee D. Johnson
President of the Senate

Joe F. Beasley
Speaker House of Delegates

The within _________________________________ approved this the _________________________________ day of _________________________________, 1969.

Anda Shuman Jr.
Governor