WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

HOUSE BILL No. 916

(By Mr. Speaker, Mr. Baine and Mr. Seibert)

PASSED March 13, 1971

In Effect Ninety days from Passage
ENROLLED

House Bill No. 916
(By Mr. Speaker, Mr. Boiarsky, and Mr. Steptoe)

[Passed March 13, 1971; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two and five, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and eleven-c, all relating to air pollution control; specifying a declaration of policy and purpose of the article; relating to the clean air amendments of one thousand nine hundred seventy; defining terms; relating to the powers and duties of the air pollution control commission; relating to the right to enter and inspect any property, premise or place in connection with air pollution abatement or control; relating to advisory councils; authorizing consent
orders; requiring emission reports and data; relating to the release of records, reports, data or information; relating to the confidentiality of certain matters and providing for a determination and review in connection therewith; requiring permits in connection with stationary sources of air pollutants; relating to rules and regulations of the air pollution control commission; relating to motor vehicle pollution; relating to prohibitions; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two and five, article twenty, chapter sixteen 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 three new sections, designated sections eleven-a, eleven-b and eleven-c, all to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.

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

1 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 not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the “Clean Air Amendments of 1970” act of the Congress of the United States. To that end it is the public policy of this state and the purpose of this article to provide priorities in the preparation and implementation of a plan for achieving and maintaining and enforcing national primary and secondary ambient air quality standards in the state.
§16-20-2. Definitions.

1. The terms used in this article are defined as follows:

2. The term “person” shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

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

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

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

6. The term “statutory air pollution” shall mean and be limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be 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.

§16-20-5. Air pollution control commission—Powers and duties; legal services; rules and regulations; public hearings.

The commission is hereby authorized and empowered:

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

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

(4) To adopt and to promulgate reasonable rules and regulations, not inconsistent with the provisions of this ar-
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15 ticle, relating to the control of air pollution: Provided,
16 That no rule or regulation of the commission shall specify
17 the design of equipment, type of construction, or par-
18 ticular method which a person shall use to reduce the
19 discharge of air pollutants, nor shall any such rule or
20 regulation apply to any aspect of an employer-employee
21 relationship;
22 (5) To enter orders requiring compliance with the
23 provisions of this article and the rules and regulations
24 lawfully promulgated hereunder;
25 (6) To consider complaints, subpoena witnesses, ad-
26 minister oaths, make investigations, and hold hearings
27 relevant to the promulgation of rules and regulations and
28 the entry of compliance orders hereunder;
29 (7) To encourage voluntary cooperation by munici-
30 palities, counties, industries and others in preserving the
31 purity of the air within the state;
32 (8) To employ personnel, including specialists and
33 consultants, purchase materials and supplies, and enter
34 into contracts necessary, incident or convenient to the
35 accomplishment of the purpose of this article;
(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, however, That nothing contained in this article shall be construed to allow a search of a private dwelling, including the curtilage thereof, without a proper warrant;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;
(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members appointed from the general public, for each area so designated. Such members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the commission such information as the director may require in a form or manner prescribed by him for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of
duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the commission.

(16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of each primary and secondary ambient air quality standard for any air pollutant established pursuant to the "Clean Air Amendments of 1970" act: Provided, That in preparing and submitting each such plan the commission shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: Pro-
vided further, That nothing herein contained shall be con-
strued to affect plans for achievement, maintenance and
enforcement of motor vehicle emission standards and of
standards for fuels used in dwellings; and

(17) Whenever the commission achieves informally,
by letter, or otherwise, an agreement with any person
that said person will cease and desist in any act resulting
in the discharge of pollutants or do any act to reduce or
eliminate such discharge, such agreement shall be em-
bodied in a consent order and entered as, and shall have
the same effect as, an order entered after a hearing as
provided in section six of this article.

The attorney general and his assistants and the prose-
cutting attorneys of the several counties shall render to
the commission without additional compensation such
legal services as the commission may require of them to
enforce the provisions of this article.

No rule and regulation of the commission pertaining to
the control, reduction or abatement of air pollution shall
become effective until after at least one public hearing
thereon shall have been held by the commission within
the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein such hearing is to be held. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule and regulation to the commission within thirty days after such hearing. After such thirty-day period, no views or comments shall be received in writing or otherwise, unless formally solicited by the commission. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party, in which event the prevailing rates for such transcripts will be required from such interested party.
§16-20-11a. Confidentiality of information.

1 All air quality data, emission data, permits, compliance
2 schedules, commission orders and any other information
3 required by a federal implementation program (all for
4 convenience hereinafter referred to in this section as
5 "records, reports, data or information") obtained under
6 this article shall be available to the public, except that
7 upon a showing satisfactory to the director, by any
8 person, that records, reports, data or information or
9 any particular part thereof, to which the director has
10 access under this article if made public, would divulge
11 methods or processes entitled to protection as trade se-
12crets of such person, the director shall consider such rec-
13ords, reports, data or information or such particular por-
14tion thereof confidential: Provided, That such confiden-
15tiality shall not apply to the types and amounts of air
16 pollutants discharged, and that such records, reports,
17 data or information may be disclosed to other officers
18 or employees of the state concerned with enforcing this
19 article when relevant to any official proceedings there-
20 under.
All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of such a request, the director or his designate shall: (a) advise the person making such request of the time and place at which he may inspect and copy the documents; or (b) deny the request, stating in writing the reasons for such denial. For purposes of judicial appeal, a written denial by the director or his designate shall be deemed an exhaustion of administrative remedies. Any person whose request for information is denied in whole or in part may appeal from such denial by filing with the director a notice of appeal. Such notice shall be filed within thirty days from the date the request for information was denied, and shall be signed by the person whose request was denied or his attorney. The appeal shall be taken to the circuit court of Kanawha county, where it shall be heard without a jury. The scope of review shall be limited to the question of whether the records, reports, data or other information, or any particular
part thereof (other than emission data), sought to be inspected or copied, would, if made public, divulge methods or processes entitled to protection as trade secrets. The said court shall make findings of fact and conclusions of law based upon the evidence and testimony. The director, the person whose request was denied, or any other person whose interest shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

§16-20-11b. Prohibitions; permits required.

1 No person shall construct or modify any stationary source of air pollutants without first obtaining a permit therefore as hereinafter provided.

4 The commission shall by rule and regulation specify the class or categories of stationary sources to which this section shall apply and compliance with this section shall be required only with respect to such sources as are specified in such rule and regulation. Application for permits shall be made upon such form, in such manner, and within such time as the rule regulation shall prescribe
and shall include such information, as in the judgment of
the director, will enable him to determine whether such
source will be so designed as to operate in conformance
with the provisions of this article or any rules and regula-
tions promulgated thereunder.
Within ninety days of the receipt of an application
required pursuant to this section the director shall issue
such permit unless he determines that the proposed
construction or modification will not be in accordance
with this article or rules and regulations promulgated
thereunder, in which case he shall issue an order for
the prevention of such construction or modification.
Failure to issue the permit or such order within the
time prescribed herein shall be deemed a determination
that such construction or modification may proceed:
Provided, That it is in accordance with the plans and
specifications or other information required to be sub-
mitted on the application required herein.
For the purposes of this section a modification is deemed
to be any physical change in, or change in the method
of operation of, a stationary source which increases the
amount of any air pollutant discharged by such source or which results in the emission of any air pollutant not previously discharged.

§16-20-11c. Motor vehicle pollution.

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this article, the commission may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any rules or regulations pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The commission shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such
feature or equipment has been certified, approved, or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules or regulations of the commission to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling, or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration for the vehicle by the department of motor vehicles. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The commission shall consult with the department of motor vehicles and furnish it with technical information, including testing techniques, standards and
instructions for emission control features and equipment.

(d) When the commission has issued rules and regulations requiring the maintenance of features or equipment in or on motor vehicles for the purpose of controlling emissions therefrom, no motor vehicle shall be issued an inspection sticker as required by article sixteen, chapter seventeen-c of this code, unless all such required features or equipment have been inspected in accordance with the standards, testing techniques and instructions furnished by the commission pursuant to this section eleven-c and have been found to meet those standards.

(e) The remedies and penalties provided in this section eleven-c shall apply to violations hereof, and no provisions of sections eight or nine of this article shall apply thereto.

(f) As used in this section “motor vehicle” shall have the same meaning as in chapter seventeen-c of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 1st day of April, 1971.

Governor