WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 232

(By Mr. Carrigan)

PASSED MARCH 11, 1971

In Effect Ninety Days From Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71.
AN ACT to amend and reenact section fifteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to subpoenas in appeal hearings before water resources board.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

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

1 (a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal
of the chief to act within the time required by section
seven of this article on an application for a permit or
aggrieved by the terms and conditions of a permit granted
under the provisions of this article, may appeal to the
water resources board for an order vacating or modify-
ing 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 ap-
pellee. If the chief denies a permit because of any dis-
approval 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 co-
appellee 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 appellee, and, with the consent of the board, by any intervenors.

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

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

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

(e) Any such appeal hearing shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before a hearing examiner em-
ployed by the board. For the purpose of conducting such
appeal hearing, any member of the board and the chair-
man 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 sub-
poenas 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 con-
clusions shall be served upon the appellant, and any inter-
venors, 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 pro-
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.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 1st

day of April, 1971.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR

Date 3/17/71
Time 11:50 A.M.

RECEIVED

Apr 2 11 59 PM '71

OFFICE OF SECRETARY
STATE OF WEST VIRGINIA