WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1974

ENROLLED
Committee Substitute for
SENATE BILL NO. 26

(By Mr. Hubbard)

PASSED July 3, 1974
90 days from
In Effect Passage

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 7/8/74
ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 26
(By Mr. HUBBARD, original sponsor)

[Passed July 3, 1974; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, three-a, four, five, six, seven, eight, eight-a, ten, fourteen, fifteen, seventeen, nineteen, twenty-three and twenty-four, article five-a of said chapter twenty, relating to water resources and water pollution generally; abolishing the water resources board and creating a new water resources board; relating to the composition of such board; establishing limitations as to individuals who may be appointed to or serve upon such board; defining terms and concepts in this regard; relating to the terms, oath, removal, compensation and expenses of the members of such board; vacancies on such board; meetings, officers and quorum of such board; others who are to work with such board and the chief of the water resources division of the department of natural resources; and the records of such board; defining terms used in the water pollution control act; relating to the general powers and duties of the chief of the division of water resources and the water resources board with respect to water pollution; implementation and enforcement of the federal water pollution control act and the state's participation in the national pollutant discharge elimination system; and rules and
regulations promulgated by the water resources board; establishing additional requirements as to records, reports, information, monitoring and sampling by owner or operator of any point source of water pollutants; granting to the chief of the division of water resources and his authorized representatives a right of entry and access; relating to water quality standards and effluent limitations; cooperation with other governments and agencies with respect to water pollution and the reduction thereof; and the procedures to be followed and the criteria to be considered in the granting or denial of water pollution control permits; specifying that other discharge permits or discharge authorization shall not be required, with certain exceptions; relating to confidential information; authorizing an increase in the required fee for a water pollution control permit; relating to the role of other agencies and individuals in the granting of water pollution control permits; requiring that all water pollution control permits have an expiration date not to exceed five years; relating to time standards for action upon an application for a water pollution control permit; the effect of act upon water pollution control permits previously issued and procedures in connection therewith; the revocation, suspension or modification of water pollution control permits; the reissuance of such permits; voluntary water quality monitors and the admissibility into evidence of water samples and analyses; enforcement orders under the water pollution control act; control by state as to pollution of waters; appeals to and before the water resources board; and administrative procedures; authorizing the imposition and collection of civil penalties; relating to injunctive enforcement; establishing prohibitions, criminal offenses and penalties; relating to conflicting provisions; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That section three, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three, three-a, four, five, six, seven, eight, eight-a, ten, fourteen, fifteen, seventeen, nineteen, twenty-three and twenty-four, article five-a of said chapter twenty be amended and reenacted, all to read as follows:
ARTICLE 5. WATER RESOURCES.
§20-5-3. Water resources board created; composition and organization; appointment, qualifications, terms, oaths, removal, compensation and expenses of members; others to assist board and division; vacancies; quorum; meetings; records.

(a) The state water resources board heretofore created and established as successor to the state water commission and the state water resources commission is hereby abolished. A new state water resources board is hereby created and established as a public corporation. As such the board may sue and be sued, plead and be impleaded, contract and be contracted with, and shall have and use a common seal.

(b) The board shall be composed of five members who shall be appointed by the governor with the advice and consent of the Senate. Not more than three members of the board shall be of the same political party. Individuals appointed to the board shall be persons who by reasons of previous training and experience are knowledgeable in the husbandry of the state’s water resources and with at least one member with experience in industrial pollution control: Provided, That no member of the board shall receive, or during the two years next preceding his appointment, shall have received a “significant portion of his income” directly or indirectly from a permit holder or an applicant for a permit issued under any of the provisions of this chapter. For the purposes of this subsection: (1) The term “significant portion of his income” shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement, a pension or similar arrangement; (2) the term “income” includes retirement benefits, consultant fees and stock dividends; (3) income is not received “directly or indirectly” from “permit holders” or “applicants for a permit” where it is derived from mutual-fund payments or from other diversified investments with respect to which the recipient does not know the identity of the primary sources of income; and
(4) the terms "permit holders" and "applicants for a
permit" shall not include any university or college oper-
ated by this state.

(c) The members of the board shall be appointed for
overlapping terms of five years, except that the original
appointments shall be for terms of one, two, three, four
and five years, respectively. Any member whose term
expires may be reappointed by the governor. At its organ-
izational meeting, one member of the board shall be
selected chairman to serve as chairman at the will and
pleasure of the members of the board. Members of the
board shall, before performing any duty, take and sub-
scribe to the oath required by section five, article four of
the constitution of West Virginia. Members of the board
may be removed only for the same causes and in like
manner as elective state officers. Any vacancy in the
office of a member of the board shall be filled by appoint-
ment by the governor for the unexpired term of the
member whose office shall be vacant. Each vacancy
occurring in the office of a member of the board shall be
filled by appointment within sixty days after such vacancy
occurs. Each member of the board shall, out of moneys
appropriated for such purposes, be paid as compensation
for attending meetings of the board and for necessary
travel to and from such meetings forty dollars per day.

In addition to such compensation, each member of the
board shall be reimbursed, out of moneys appropriated
for such purposes, all sums which he necessarily shall
expend in the discharge of his duties as a member of such
board. The director of the division of sanitary engineer-
ing of the state department of health shall perform such
services as the board and the chief of the division of
water resources may request of him in connection with
the discharge of their duties, and he shall be reimbursed,
out of moneys appropriated for such purposes, all sums
which he necessarily shall expend in the performance of
such service. Nothing contained in this article or in
article five-a of this chapter, however, shall be construed
to limit or interfere with the power of the state depart-
ment of health to select, employ and direct the director
of the division of sanitary engineering of said department,
or any employee thereof who in any way may perform
any services for the board or the division of water re-
sources. The college of engineering at West Virginia
University and the schools and departments of engineer-
ing at other institutions of higher education operated by
this state, under the direction of the dean or other head
thereof, shall, insofar as they can, without interfering
with their usual and regular activities, aid and assist the
board and the division of water resources in the study
and research of questions connected with water pollution
and the control and reduction thereof in accordance with
the provisions of article five-a of this chapter. Such dean
or other head shall be reimbursed, out of moneys approp-
riated for such purposes, all sums which he necessarily
shall expend in the performance of any services he may
render to the board and the division under the provisions
hereof.

A majority of the board shall constitute a quorum for
the transaction of business. The board shall meet at such
times and places as it may determine and shall meet on
call of the chairman. It shall be the duty of the chairman
to call a meeting of the board on the written request of
three members thereof. The board shall keep an accurate
record of all of its proceedings and maintain such board
records and make certificates thereof or therefrom as may
be required by law. The board shall employ a secretary
and necessary clerical assistance.

ARTICLE 5A. WATER POLLUTION CONTROL ACT.
1. Unless the context in which used clearly requires a
different meaning, as used in this article:
2. (a) "Director" shall mean the director of the depart-
ment of natural resources;
3. (b) "Board" shall mean the state water resources
board;
4. (c) "Chief" shall mean the chief of the division of
water resources of the department of natural resources;
5. (d) "Person," "persons" or "applicant" shall mean any
industrial user, 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 con-
servation district; watershed improvement district; part-
nership; trust; estate; person or individual; group of per-
sons or individuals acting individually or as a group; or
any other legal entity whatever.

(e) "Water resources," "water" or "waters" shall mean
any and all water on or beneath the surface of the ground,
whether percolating, standing, diffused or flowing, wholly
or partially within this state, or bordering this state and
within its jurisdiction, and shall include, without limiting
the generality of the foregoing, natural or artificial lakes,
rivers, streams, creeks, branches, brooks, ponds (except
farm ponds, industrial settling basins and ponds and water
treatment facilities), impounding reservoirs, springs, wells
and watercourses;

(f) "Pollution" shall mean (1) 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 (A) contaminate or substan-
tially contribute to the contamination of any such waters,
or (B) alter or substantially contribute to the alteration
of the physical, chemical or biological properties of any
such waters, if such contamination or alteration, or the
resulting contamination or alteration where a person only
contributes thereto, is to such an extent as to make any of
such waters (i) directly or indirectly harmful, detrimental
or injurious to the public health, safety and welfare, or
(ii) directly or indirectly detrimental to existing animal,
bird, fish, aquatic or plant life, or (iii) unsuitable for
present or future domestic, commercial, industrial, agri-
cultural, 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 state water quality standards or violate any applicable effluent limitations;

(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) "Industrial user" shall mean those industries identified in the standard industrial classification manual, United States bureau of the budget, 1967, as amended and supplemented, under the category "division d—manufacturing" and other classes of significant waste producers identified under regulations issued by the board or the administrator of the United States environmental protection agency;

(j) "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;

(k) "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;

(l) "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;

(m) "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 pur-
pose of regulating or controlling the quality and rate of
flow thereof;

(n) “Publicly owned treatment works” shall mean any
treatment works owned by the state or any political sub-
division thereof, any municipality or any other public
entity, for the treatment of pollutants;

(o) “Disposal system” shall mean a system for treating
or disposing of sewage, industrial wastes, or other wastes,
or the effluent therefrom, either by surface or under-
ground methods, and shall be construed to include sewer
systems, the use of subterranean spaces, treatment works,
disposal wells and other systems;

(p) “Outlet” shall mean the terminus of a sewer sys-
tem or the point of emergence of any water-carried sew-
age, industrial wastes, or other wastes, or the effluent
therefrom, into any of the waters of this state, and shall
include a point source;

(q) “Point source” shall mean any discernible, confined
and discrete conveyance, including, but not limited to,
any pipe, ditch, channel, tunnel, conduit, well, discrete
fissure, container, rolling stock, or vessel or other
floating craft, from which pollutants are or may be

discharged;

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

(s) “Disposal well” shall mean any well drilled or used
for the injection or disposal of treated or untreated
sewage, industrial wastes or other wastes into under-
ground strata;
(t) "Effluent limitation" shall mean any restriction established on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters of this state;
(u) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended;
(v) "Department" shall mean the department of natural resources; and
(w) "Well" shall mean any shaft or hole sunk, drilled, 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 extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

PART II. CHIEF OF DIVISION OF WATER RESOURCES AND WATER RESOURCES BOARD.

§20-5A-3. General powers and duties of chief 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 perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act Amendments of 1972," relating to this state's participation in the "National Pollutant Discharge Elimination System" established under that act;
(2) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the
furtherance of the purposes of this article, and to this
eend and for the purpose of studies, scientific or other
investigations, research, experiments and demonstrations
pertaining thereto, the department may receive moneys
from such agencies, officers and persons on behalf of the
state. The department shall pay all moneys so received
into a special fund hereby created in the state treasury,
which fund shall be expended under the direction of the
chief solely for the purpose or purposes for which the
grant, gift or contribution shall have been made;

(3) To encourage the formulation and execution of
plans by cooperative groups or associations of municipal
corporations, industries, industrial users, and other users
of waters of the state, who, jointly or severally, are or
may be the source of pollution of such waters, for the
control and reduction of pollution;

(4) 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;

(5) 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;

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

(7) To develop a public education and promotion pro-
gram to aid and assist in publicizing the need of and
securing support for pollution control and abatement;

(8) To sample ground and surface water with suf-
ficient frequency to ascertain the standards of purity or
quality from time to time of the waters of the state;

(9) To develop programs for the control and reduction
of the pollution of the waters of the state;

(10) To exercise general supervision over the admin-
istration and enforcement of the provisions of this article,
and all rules, regulations, permits and orders issued pursuant to the provisions of this article;

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, 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;

(12) 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 the rules and regulations promulgated hereunder; and

(13) 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 Legislature, interstate compacts and agreements re-
lating 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 making
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 pro-
visions of this article and otherwise by law; (B) pre-
venting, controlling and abating pollution; and (C) estab-
lishing standards of quality for the waters of the state
under such conditions as the board may prescribe for
the prevention, control and abatement of pollution: Pro-
vided, That no such rule and regulation shall specify the
design of equipment, type of construction or particular
method which a person shall use to reduce the discharge
of a pollutant.

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

(d) Whenever required to carry out the objectives of
this article: (A) The chief shall require the owner or
operator of any point source to (i) establish and maintain
such records, (ii) make such reports, (iii) install, use
and maintain such monitoring equipment or methods,
(iv) sample such effluents in accordance with such
methods, at such locations, at such intervals and in such manner as the chief shall prescribe and (v) provide such other information as he may reasonably require; and (B) the chief or his authorized representative upon presentation of credentials (i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under (A) of this subsection are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under (A) of this subsection and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under (A) of this subsection.

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, 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 there-in 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 or districts, 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 further investigate and ascertain the financial feasibility and projected financial capability and, subject to the approval of the public service commission, 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 or districts.
§20-5A-3a. Standards of water quality and effluent limitations.

(a) In order to carry out the purposes of this article, the board may promulgate rules and regulations setting standards of water quality and effluent limitations to be applicable to the waters of this state, which standards of quality and effluent limitations 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 and effluent limitations, 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 and effluent limitations shall promptly comply therewith: Provided, That where necessary and proper, the chief may specify a reasonable time for persons not complying with such standards and limitations to comply therewith, 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 reduction of the quality of such waters below the standards and limitations established therefor by rules and regulations of the board.

§20-5A-4. Cooperation with other governments and agencies.

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 United States environmental protection agency and 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 direction of the chief, solely for purposes for which the grants shall have been made; to approve projects for which applications for loans or grants under the federal legislation are made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this state and having jurisdiction over the disposal of sewage, industrial wastes or other wastes) or agency of this state or by any interstate agency; and to participate through his authorized representatives in proceedings under the federal legislation to recommend measures for the abatement of water pollution originating in this state. The governor is hereby authorized, in his discretion, to give consent on behalf of this state to requests by the administrator of the United States environmental protection agency to the attorney general of the United States for the bringing of actions for the abatement of such pollution. Whenever a federal law requires the approval or recommendation of a state agency or any political subdivision of the state in any matter relating to the water resources of the state, the director, subject to approval of the 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.

Part III. Permits.

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

(a) The chief may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article.
(b) 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 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: Provided, however, That unless waived in writing by the chief, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant shall contain a plan for abandonment of such facility or operation, which plan shall comply in all respects to the requirements of this article. Such plan of abandon-
ment shall be subject to modification or amendment upon
application by the permit holder to the chief and ap-
proval of such modification or amendment by the
chief;

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

(c) Where a person has a number of outlets emerg-
ing 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 re-
quired; fees.

1 The chief shall prescribe a form of appli-
cation for all
permits for any activity specified in section five of this
article and, notwithstanding any other provision of law
to the contrary, no other discharge permit or discharge au-
thorization from any other state department, agency, com-
mission, board or officer shall be required for such activity
except that which is required from the department of
mines by the provisions of chapter twenty-two of this code.
All applications must be submitted on a form as prescribed
above. An applicant shall furnish all information reason-
ably 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. Until all such required information is fur-
nished, an application shall not be considered a complete
application. The chief and board shall protect any infor-
mentation (other than effluent data) contained in such per-
mit application form, or other records, reports or plans
as confidential upon a showing by any person that such
information, if made public, would divulge methods or
processes entitled to protection as trade secrets of such
person. If, however, the information being considered
for confidential treatment is contained in a national pol-
lutant discharge elimination form, the chief or board
shall forward such information to the regional administrator of the United States environmental protection agency for his concurrence in any determination of confidentiality. A filing fee, as determined by rules and regulations of the board, but in no case in excess of fifty 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; prior permits.

(a) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the division of sanitary engineering of the state department of health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section five of this article, the chief shall consult with the director of the state geological and economic survey and the deputy director of the oil and gas division of the department of mines, and all such persons shall cooperate with the chief and assist him in carrying out the duties and responsibilities imposed upon him under the provisions 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 disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules and regulations of the board.

(b) The department's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that
any and all discharges or releases, escapes, deposits and
disposition of treated or untreated sewage, industrial
wastes, or other wastes, or the effluent therefrom, result-
ing from the activity or activities for which the applica-
tion for a permit was made will not cause pollution of
the waters of this state or violate any effluent limitations
or any rules and regulations of the board: Provided,
That the chief may issue a permit whenever in his judg-
ment 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 (2) in cases wherein it is
required, such applicant shall include the name and
address of the responsible agent as set forth in section
eight-b of this article.
(c) Each permit issued under this article shall have a
fixed term not to exceed five years. Upon expiration of
a permit, a new permit may be issued by the chief upon
condition that the discharges or releases, escapes, deposits
and disposition thereunder meet or will meet all applic-
cable state and federal water quality standards, effluent
limitations and all other requirements 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 the specified time period prescribed by
rules and regulations of the board, which time period
shall not exceed ninety days.
(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 cer-
tified 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.

(h) 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 thousand nine hundred sixty-four, and all permits heretofore issued under the provisions of this article, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules and regulations promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a copy of a notice of the right to appeal to the board as provided for in section eight of this article, to be served upon the permit holder as specified in said section eight.

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

1 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 maintenance 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, suspending or modifying such permit for cause including, but not limited to, the following:

(1) Violation of any term or condition of the permit;

(2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or

(3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, release, escape, deposit or disposition.

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.

§20-5A-8a. Voluntary water quality monitors; appointment; duties; compensation.

The chief is hereby authorized to appoint voluntary water quality monitors to serve at the will and pleasure of the chief. All such monitors appointed pursuant hereto shall be eighteen years of age or over and shall be bona fide residents of this state.

Such monitors are authorized to take water samples of the waters of this state at such times and at such places as the chief shall direct and to forward such water samples to the chief for analysis.

The chief is authorized to provide such monitors with such sampling materials and equipment as he deems
necessary: Provided, That such equipment and materials shall at all times remain the property of the state and shall be immediately returned to the chief upon his direction.

Such monitors shall not be construed to be employees of this state for any purpose except that the chief is hereby authorized to pay such monitors a fee not to exceed fifty cents for each sample properly taken and forwarded to him as hereinabove provided.

The chief shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training.

Upon a showing that any water sample as herein provided was taken and analyzed in conformity with standard and recognized procedures, such sample and analysis shall be admissible in any court of this state for the purpose of enforcing the provisions of this article.

§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 or effluent limitation 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 or effluent limitation of the board, or make and enter an order directing such person to take corrective or remedial action. Such order shall contain findings of fact upon which the chief based his determination to make and enter such order. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections five, six and seven of this article. The chief shall fix a time limit for the completion of such action. Whether the chief shall make and enter an order to stop such pollution or shall make and enter an order to take remedial action, in either case the person
so ordered may elect to cease operations of the establishment deemed to be the source of such discharge or deposits causing pollution, if the pollution referred to in the chief's order shall be stopped thereby.

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

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

§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 reduction of the pollution of the waters of the state, irrespective of the fact that such persons may have previously complied with all orders of the chief or board. It is also recognized that there should be continuity and stability respecting pollution control measures taken in cooperation with, and with the approval of, the chief, or pursuant to orders of the chief or board. When a person is complying with the terms and conditions of a permit granted pursuant to the provisions of section seven of this article or when a person has completed remedial action pursuant to an order of the chief or board, additional efforts may be required wherever and whenever the rules and regu-
lations of the board or effluent limitations are violated or
the waters of the state are polluted by such person.

PART V. APPEAL AND REVIEW PROCEDURES.

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

(a) Any person adversely affected by an order made
and entered by the chief in accordance with the pro-
visions of this article, or aggrieved by failure or refusal
of the chief to act within the specified time as provided
in subsection (e) of section seven of this article on an
application for a permit or aggrieved by the terms and
conditions of a permit granted under the provisions
of this article, may appeal to the water resources board
for an order vacating or modifying such order, or for
such order, action or terms and conditions as the chief
should have entered, taken or imposed. The person
so appealing shall be known as the appellant and the
chief shall be known as the appellee. If the chief denies
a permit because of any disapproval of a permit applica-
tion by one or more of the public officers required to
review such application under the provisions of subsec-
tion (a), 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.
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.

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.

Any such appeal hearing shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before a hearing examiner employed by the board. For the purpose of conducting such appeal hearing, any member of the board and the chairman 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 here-
under.

(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 con-
tinuance. The board may postpone or continue any hear-
ing 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 con-
trolling 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 provisions of
section sixteen of this article. The order of the board shall
be final unless vacated or modified upon judicial review therefor in accordance with the provisions of section sixteen of this article.

PART VI. ACTIONS.

§20-5A-17. Civil penalties and injunctive relief.

1 Any person who violates any provision of any permit issued under or subject to the provisions of this article shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation, and any person who violates any provision of this article or of any rule and regulation or who violates any standard or order promulgated or made and entered under the provisions of this article shall, after written notice of such violation from the chief and a reasonable period of time as fixed by the chief to achieve compliance, be subject to a civil penalty not to exceed one thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the chief in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

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, effluent limitations, 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 temporary or preliminary injunction in any case pending a decision on the merits of any injunctive 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 or in any civil action instituted under the provisions
of this section shall be final unless reversed, vacated or
modified on appeal to the supreme court of appeals. Any
such appeal shall be sought in the manner provided by
law for appeals from circuit courts in other civil cases,
except that the petition seeking review in any injunctive
proceeding must be filed with said supreme court of
appeals within ninety days from the date of entry of the
judgment of the circuit court.

Legal counsel and services for the chief or the board
in all civil penalty and injunctive proceedings in the
circuit courts and in the supreme court of appeals of this
state shall be provided by the attorney general or his
assistants and by the prosecuting attorneys of the several
counties as well, all without additional compensation, or
the chief or the board, with the written approval of the
attorney general, may employ counsel to represent him
or it in a particular proceeding.

PART VII. VIOLATIONS AND PENALTIES.

Any person who causes pollution or who fails or refuses
to discharge any duty imposed upon him by this article
or by any rule or regulation of the board, promulgated
pursuant to the provisions and intent of this article, or by
any 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 who fails or refuses to comply with any
term or condition of such permit, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be pun-
ished by a fine of not less than one hundred dollars nor
more than one thousand dollars, or by imprisonment in
the county jail for a period not exceeding six months, or
by both such fine and imprisonment.

Any person who shall intentionally misrepresent any
material fact in an application, record, report, plan or
other document filed or required to be maintained under
the provisions of this article or any rules and regulations
promulgated by the board thereunder shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be
punished by a fine of not more than ten thousand dollars
or by imprisonment in the county jail not exceeding six
months or by both such fine and imprisonment.

Any person who willfully or negligently violates any
provision of any permit issued under or subject to the
provisions of this article or who willfully violates any
provision of this article or any rule or regulation of the
board or any effluent limitation or any order of the chief
or board shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be punished by a fine of not less than
one thousand dollars nor more than twenty-five thousand
dollars per day of violation or by imprisonment in the
county jail not exceeding six months or by both such fine
and imprisonment.

Any such person may be prosecuted and convicted under
the provisions of this section notwithstanding that none
of the administrative remedies provided for in this article
have been pursued or invoked against said person and
notwithstanding that a civil action for the imposition and
collection of a civil penalty or an application for an injunc-
tion under the provisions of this article has not been filed
against such person.

Where a person holding a permit is carrying out a pro-
gram of pollution abatement or remedial action in com-
pliance with the conditions and terms of such permit, he
shall not be subject to criminal prosecution for pollution
recognized and authorized by such permit.


In the event of any inconsistency or conflict between
any provision of this article and any provision of this
chapter, the provisions of this article shall control.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

D. Harrel Waddy  
Chairman Senate Committee

Clarence C. Chuston Jr.  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Howard W. Garnon  
Clerk of the Senate

W. B. Rankenship  
Clerk of the House of Delegates

W. J. Brokhurst, Jr.  
President of the Senate

Lewis M. Manns  
Speaker House of Delegates

The within ___________ approved this the 16th ___________ day of July, 1974.  

And A. Shaver Jr.  
Governor