

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1974



ENROLLED
Committee Substitute for
SENATE BILL NO. 26

(By Mr. Hubbard)



PASSED July 3, 1974

In Effect 90 DAYS From ~~Passage~~ Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 7/18/74

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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.**

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

9 (b) The board shall be composed of five members who
10 shall be appointed by the governor with the advice and
11 consent of the Senate. Not more than three members
12 of the board shall be of the same political party. Indi-
13 viduals appointed to the board shall be persons who by
14 reasons of previous training and experience are knowl-
15 edgeable in the husbandry of the state's water resources
16 and with at least one member with experience in indus-
17 trial pollution control: *Provided*, That no member of the
18 board shall receive, or during the two years next pre-
19 ceding his appointment, shall have received a "significant
20 portion of his income" directly or indirectly from a per-
21 mit holder or an applicant for a permit issued under any
22 of the provisions of this chapter. For the purposes of
23 this subsection: (1) The term "significant portion of his
24 income" shall mean ten percent of gross personal income
25 for a calendar year, except that it shall mean fifty per-
26 cent of gross personal income for a calendar year if the
27 recipient is over sixty years of age and is receiving such
28 portion pursuant to retirement, a pension or similar ar-
29 rangement; (2) the term "income" includes retirement
30 benefits, consultant fees and stock dividends; (3) income
31 is not received "directly or indirectly" from "permit
32 holders" or "applicants for a permit" where it is derived
33 from mutual-fund payments or from other diversified
34 investments with respect to which the recipient does not
35 know the identity of the primary sources of income; and

36 (4) the terms "permit holders" and "applicants for a
37 permit" shall not include any university or college oper-
38 ated by this state.

39 (c) The members of the board shall be appointed for
40 overlapping terms of five years, except that the original
41 appointments shall be for terms of one, two, three, four
42 and five years, respectively. Any member whose term
43 expires may be reappointed by the governor. At its organ-
44 izational meeting, one member of the board shall be
45 selected chairman to serve as chairman at the will and
46 pleasure of the members of the board. Members of the
47 board shall, before performing any duty, take and sub-
48 scribe to the oath required by section five, article four of
49 the constitution of West Virginia. Members of the board
50 may be removed only for the same causes and in like
51 manner as elective state officers. Any vacancy in the
52 office of a member of the board shall be filled by appoint-
53 ment by the governor for the unexpired term of the
54 member whose office shall be vacant. Each vacancy
55 occurring in the office of a member of the board shall be
56 filled by appointment within sixty days after such vacancy
57 occurs. Each member of the board shall, out of moneys
58 appropriated for such purposes, be paid as compensation
59 for attending meetings of the board and for necessary
60 travel to and from such meetings forty dollars per day.
61 In addition to such compensation, each member of the
62 board shall be reimbursed, out of moneys appropriated
63 for such purposes, all sums which he necessarily shall
64 expend in the discharge of his duties as a member of such
65 board. The director of the division of sanitary engineer-
66 ing of the state department of health shall perform such
67 services as the board and the chief of the division of
68 water resources may request of him in connection with
69 the discharge of their duties, and he shall be reimbursed,
70 out of moneys appropriated for such purposes, all sums
71 which he necessarily shall expend in the performance of
72 such service. Nothing contained in this article or in
73 article five-a of this chapter, however, shall be construed
74 to limit or interfere with the power of the state depart-
75 ment of health to select, employ and direct the director
76 of the division of sanitary engineering of said department,

77 or any employee thereof who in any way may perform
 78 any services for the board or the division of water re-
 79 sources. The college of engineering at West Virginia
 80 University and the schools and departments of engineer-
 81 ing at other institutions of higher education operated by
 82 this state, under the direction of the dean or other head
 83 thereof, shall, insofar as they can, without interfering
 84 with their usual and regular activities, aid and assist the
 85 board and the division of water resources in the study
 86 and research of questions connected with water pollution
 87 and the control and reduction thereof in accordance with
 88 the provisions of article five-a of this chapter. Such dean
 89 or other head shall be reimbursed, out of moneys appro-
 90 priated for such purposes, all sums which he necessarily
 91 shall expend in the performance of any services he may
 92 render to the board and the division under the provisions
 93 hereof.

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

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-2. Definitions.

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

3 (a) "Director" shall mean the director of the depart-
 4 ment of natural resources;

5 (b) "Board" shall mean the state water resources
 6 board;

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

9 (d) "Person," "persons" or "applicant" shall mean any
 10 industrial user, public or private corporation, institution,
 11 association, firm or company organized or existing under

12 the laws of this or any other state or country; state of
13 West Virginia; governmental agency; political subdivision;
14 county court; municipal corporation; industry; sanitary
15 district; public service district; drainage district; soil con-
16 servation district; watershed improvement district; part-
17 nership; trust; estate; person or individual; group of per-
18 sons or individuals acting individually or as a group; or
19 any other legal entity whatever.

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

30 (f) "Pollution" shall mean (1) the discharge, release,
31 escape, deposit or disposition, directly or indirectly, of
32 treated or untreated sewage, industrial wastes, or other
33 wastes, of whatever kind or character, in or near any
34 waters of the state, in such condition, manner or quantity,
35 as does, will, or is likely to (A) contaminate or substan-
36 tially contribute to the contamination of any such waters,
37 or (B) alter or substantially contribute to the alteration
38 of the physical, chemical or biological properties of any
39 such waters, if such contamination or alteration, or the
40 resulting contamination or alteration where a person only
41 contributes thereto, is to such an extent as to make any of
42 such waters (i) directly or indirectly harmful, detrimental
43 or injurious to the public health, safety and welfare, or
44 (ii) directly or indirectly detrimental to existing animal,
45 bird, fish, aquatic or plant life, or (iii) unsuitable for
46 present or future domestic, commercial, industrial, agri-
47 cultural, recreational, scenic or other legitimate uses;
48 and shall also mean, (2) the discharge, release, escape,
49 deposit, or disposition, directly or indirectly of treated or
50 untreated sewage, industrial wastes or other wastes, of
51 whatever kind or character, in or near any waters of the
52 state in such condition, manner or quantity, as does, will

53 or is likely to reduce the quality of the waters of the state
54 below state water quality standards or violate any appli-
55 cable effluent limitations;

56 (g) "Sewage" shall mean water-carried human or
57 animal wastes from residences, buildings, industrial estab-
58 lishments or other places, together with such ground
59 water infiltration and surface waters as may be present;

60 (h) "Industrial wastes" shall mean any liquid, gaseous,
61 solid or other waste substance, or a combination thereof,
62 resulting from or incidental to any process of industry,
63 manufacturing, trade or business, or from or incidental to
64 the development, processing or recovery of any natural
65 resources; and the admixture with such industrial wastes
66 of sewage or other wastes, as hereinafter defined, shall
67 also be considered "industrial wastes" within the meaning
68 of this article;

69 (i) "Industrial user" shall mean those industries identi-
70 fied in the standard industrial classification manual, United
71 States bureau of the budget, 1967, as amended and supple-
72 mented, under the category "division d—manufacturing"
73 and other classes of significant waste producers identified
74 under regulations issued by the board or the administrator
75 of the United States environmental protection agency;

76 (j) "Other wastes" shall mean garbage, refuse, decayed
77 wood, sawdust, shavings, bark and other wood debris and
78 residues, sand, lime, cinders, ashes, offal, night soil, silt,
79 oil, tar, dyestuffs, acids, chemicals and all other materials
80 and substances not sewage or industrial wastes which
81 may cause or might reasonably be expected to cause or
82 to contribute to the pollution of any of the waters of the
83 state;

84 (k) "Establishment" shall mean an industrial estab-
85 lishment, mill, factory, tannery, paper or pulp mill, mine,
86 colliery, breaker or mineral processing operation, quarry,
87 refinery, well, and each and every industry or plant or
88 works or activity in the operation or process of which
89 industrial wastes, or other wastes are produced;

90 (l) "Sewer system" shall mean pipelines or conduits,
91 pumping stations, force mains and all other constructions,
92 facilities, devices and appliances appurtenant thereto,

93 used for collecting or conducting sewage, industrial wastes
94 or other wastes to a point of disposal or treatment;

95 (m) "Treatment works" shall mean any plant, facility,
96 means, system, disposal field, lagoon, pumping station,
97 constructed drainage ditch or surface water intercepting
98 ditch, diversion ditch above or below the surface of the
99 ground, settling tank or pond, earthen pit, incinerator,
100 area devoted to sanitary landfills, or other works not
101 specifically mentioned herein, installed for the purpose of
102 treating, neutralizing, stabilizing, holding or disposing of
103 sewage, industrial wastes or other wastes or for the pur-
104 pose of regulating or controlling the quality and rate of
105 flow thereof;

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

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

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

121 (q) "Point source" shall mean any discernible, confined
122 and discrete conveyance, including, but not limited to,
123 any pipe, ditch, channel, tunnel, conduit, well, discrete
124 fissure, container, rolling stock, or vessel or other
125 floating craft, from which pollutants are or may be
126 discharged;

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

130 (s) "Disposal well" shall mean any well drilled or used
131 for the injection or disposal of treated or untreated
132 sewage, industrial wastes or other wastes into under-
133 ground strata;

134 (t) "Effluent limitation" shall mean any restriction
135 established on quantities, rates and concentrations of
136 chemical, physical, biological and other constituents which
137 are discharged into the waters of this state;

138 (u) "Code" shall mean the code of West Virginia, one
139 thousand nine hundred thirty-one, as amended;

140 (v) "Department" shall mean the department of
141 natural resources; and

142 (w) "Well" shall mean any shaft or hole sunk, drilled,
143 bored or dug into the earth or into underground strata
144 for the extraction or injection or placement of any liquid
145 or gas, or any shaft or hole sunk or used in conjunction
146 with such extraction or injection or placement. The
147 term "well" shall not have included within its meaning
148 any shaft or hole sunk, drilled, bored or dug into the
149 earth for the sole purpose of core drilling or pumping or
150 extracting therefrom potable, fresh or usable water for
151 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.**

1 (a) In addition to all other powers and duties of the
2 chief of the department's division of water resources, as
3 prescribed in this article or elsewhere by law, the
4 chief, under the supervision of the director, shall have
5 and may exercise the following powers and authority and
6 shall perform the following duties:

7 (1) To perform any and all acts necessary to carry
8 out the purposes and requirements of this article and of
9 the "Federal Water Pollution Control Act Amendments
10 of 1972," relating to this state's participation in the "Na-
11 tional Pollutant Discharge Elimination System" estab-
12 lished under that act;

13 (2) To encourage voluntary cooperation by all persons
14 in controlling and reducing the pollution of the waters
15 of this state, and to advise, consult and cooperate with
16 all persons, all agencies of this state, the federal govern-
17 ment or other states, and with interstate agencies in the

18 furtherance of the purposes of this article, and to this
19 end and for the purpose of studies, scientific or other
20 investigations, research, experiments and demonstrations
21 pertaining thereto, the department may receive moneys
22 from such agencies, officers and persons on behalf of the
23 state. The department shall pay all moneys so received
24 into a special fund hereby created in the state treasury,
25 which fund shall be expended under the direction of the
26 chief solely for the purpose or purposes for which the
27 grant, gift or contribution shall have been made;

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

34 (4) To encourage, participate in, or conduct or cause
35 to be conducted studies, scientific or other investigations,
36 research, experiments and demonstrations relating to
37 water pollution, and the causes, control and reduction
38 thereof, and to collect data with respect thereto, all as
39 may be deemed advisable and necessary to carry out the
40 purposes of this article;

41 (5) To study and investigate all problems concerning
42 water flow, water pollution and the control and reduction
43 of pollution of the waters of the state, and to make
44 reports and recommendations with respect thereto;

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

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

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

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

55 (10) To exercise general supervision over the admin-
56 istration and enforcement of the provisions of this article,

57 and all rules, regulations, permits and orders issued pur-
58 suant to the provisions of this article;

59 (11) In cooperation with the college of engineering
60 at West Virginia University and the schools and depart-
61 ments of engineering at other institutions of higher edu-
62 cation operated by this state, to conduct studies, scientific
63 or other investigations, research, experiments and demon-
64 strations in an effort to discover economical and practical
65 methods for the elimination, disposal, control and treat-
66 ment of sewage, industrial wastes, and other wastes, and
67 the control and reduction of water pollution, and to this
68 end, the chief may cooperate with any public or private
69 agency and receive therefrom, on behalf of the state, and
70 for deposit in the state treasury, any moneys which such
71 agency may contribute as its part of the expenses thereof,
72 and all gifts, donations or contributions received as afore-
73 said shall be expended by the chief according to the
74 requirements or directions of the donor or contributor
75 without the necessity of an appropriation therefor, ex-
76 cept that an accounting thereof shall be made in the
77 fiscal reports of the department;

78 (12) To require the prior submission of plans, speci-
79 fications, and other data relative to, and to inspect the
80 construction and operation of, any activity or activities
81 in connection with the issuance and revocation of such
82 permits as are required by this article or the rules
83 and regulations promulgated hereunder; and

84 (13) To require any and all persons directly or in-
85 directly discharging, depositing or disposing of treated
86 or untreated sewage, industrial wastes, or other wastes,
87 or the effluent therefrom, into or near any waters of the
88 state or into any underground strata, and any and all
89 persons operating an establishment which produces or
90 which may produce or from which escapes, releases or
91 emanates or may escape, release or emanate treated or
92 untreated sewage, industrial wastes or other wastes
93 or the effluent therefrom, into or near any waters
94 of the state or into any underground strata, to file
95 with the division of water resources such informa-
96 tion as the chief may require in a form or manner
97 prescribed by him for such purpose, including, but

98 not limited to, data as to the kind, characteristics, amount
99 and rate of flow of any such discharge, deposit, es-
100 cape, release or disposition.

101 (b) In addition to all other powers and duties of the
102 water resources board, as prescribed in this article or
103 elsewhere by law, the board shall have and may exercise
104 the following powers and authority and shall perform
105 the following duties:

106 (1) To cooperate with any interstate agencies
107 for the purpose of formulating, for submission to
108 the Legislature, interstate compacts and agreements re-
109 lating to the control and reduction of water pollu-
110 tion; and

111 (2) To adopt, modify, repeal and enforce rules and
112 regulations, in accordance with the provisions of chapter
113 twenty-nine-a of this code, (A) implementing and making
114 effective the declaration of policy contained in section
115 one of this article and the powers, duties and responsi-
116 bilities vested in the board and the chief by the pro-
117 visions of this article and otherwise by law; (B) pre-
118 venting, controlling and abating pollution; and (C) estab-
119 lishing standards of quality for the waters of the state
120 under such conditions as the board may prescribe for
121 the prevention, control and abatement of pollution: *Pro-*
122 *vided*, That no such rule and regulation shall specify the
123 design of equipment, type of construction or particular
124 method which a person shall use to reduce the discharge
125 of a pollutant.

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

133 (d) Whenever required to carry out the objectives of
134 this article: (A) The chief shall require the owner or
135 operator of any point source to (i) establish and maintain
136 such records, (ii) make such reports, (iii) install, use
137 and maintain such monitoring equipment or methods,
138 (iv) sample such effluents in accordance with such

139 methods, at such locations, at such intervals and in such
140 manner as the chief shall prescribe and (v) provide such
141 other information as he may reasonably require; and
142 (B) the chief or his authorized representative upon
143 presentation of credentials (i) shall have a right of entry
144 to, upon, or through any premises in which an effluent
145 source is located or in which any records required to be
146 maintained under (A) of this subsection are located, and
147 (ii) may at reasonable times have access to and copy any
148 records, inspect any monitoring equipment or method
149 required under (A) of this subsection and sample any
150 streams in the area as well as sample any effluents which
151 the owner or operator of such source is required to
152 sample under (A) of this subsection.

153 (e) The board is hereby authorized and empowered
154 to investigate and ascertain the need and factual basis for
155 the establishment of public service districts as a means
156 of controlling and reducing pollution from unincorpo-
157 rated communities and areas of the state, investigate
158 and ascertain, with the assistance of the public service
159 commission, the financial feasibility and projected finan-
160 cial capability of the future operation of any such public
161 service district or districts, and to present reports and
162 recommendations thereon to the county courts of the
163 areas concerned, together with a request that such county
164 courts create a public service district or districts, as there-
165 in shown to be needed and required and as provided in
166 article thirteen-a, chapter sixteen of this code. In the
167 event a county court shall fail to act to establish a county-
168 wide public service district or districts, the board shall
169 act jointly with the state director of health, the director of
170 the department of natural resources and the chief of the
171 division of water resources to further investigate and
172 ascertain the financial feasibility and projected financial
173 capability and, subject to the approval of the public ser-
174 vice commission, order the county court to take action
175 to establish such public service district or districts as may
176 be necessary to control, reduce or abate the pollution,
177 and when so ordered the county court members must
178 act to establish such a county-wide public service district
179 or districts.

§20-5A-3a. Standards of water quality and effluent limitations.

1 (a) In order to carry out the purposes of this article,
2 the board may promulgate rules and regulations setting
3 standards of water quality and effluent limitations to be
4 applicable to the waters of this state, which standards of
5 quality and effluent limitations shall be such as to protect
6 the public health and welfare, wildlife, fish and aquatic
7 life, and the present and prospective future uses of such
8 waters for domestic, agricultural, industrial, recreational,
9 scenic and other legitimate beneficial uses thereof.

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

15 (c) All persons affected by rules and regulations estab-
16 lishing water quality standards and effluent limitations
17 shall promptly comply therewith: *Provided*, That where
18 necessary and proper, the chief may specify a reasonable
19 time for persons not complying with such standards and
20 limitations to comply therewith, and upon the expiration
21 of any such period of time, the chief shall revoke or modify
22 any permit previously issued which authorized the dis-
23 charge of treated or untreated sewage, industrial wastes
24 or other wastes into the waters of this state which result
25 in reduction of the quality of such waters below the
26 standards and limitations established therefor by rules
27 and regulations of the board.

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

1 The division of water resources is hereby designated as
2 the water pollution control agency for this state for all
3 purposes of federal legislation and is hereby authorized
4 to take all action necessary or appropriate to secure to
5 this state the benefits of said legislation. In carrying out
6 the purposes of this section, the chief is hereby authorized
7 to cooperate with the United States environmental pro-
8 tection agency and other agencies of the federal govern-
9 ment, other states, interstate agencies and other interested
10 parties in all matters relating to water pollution, including
11 the development of programs for controlling and reducing

12 water pollution and improving the sanitary conditions of
 13 the waters of the state; to apply for and receive, on behalf
 14 of this state, funds made available under the aforesaid
 15 federal legislation on condition that all moneys received
 16 from any federal agency as herein provided shall be paid
 17 into the state treasury and shall be expended, under the
 18 direction of the chief, solely for purposes for which the
 19 grants shall have been made; to approve projects for
 20 which applications for loans or grants under the federal
 21 legislation are made by any municipality (including any
 22 city, town, district or other public body created by or
 23 pursuant to the laws of this state and having jurisdiction
 24 over the disposal of sewage, industrial wastes or other
 25 wastes) or agency of this state or by any interstate agency;
 26 and to participate through his authorized representatives
 27 in proceedings under the federal legislation to recom-
 28 mend measures for the abatement of water pollution
 29 originating in this state. The governor is hereby author-
 30 ized, in his discretion, to give consent on behalf of this
 31 state to requests by the administrator of the United States
 32 environmental protection agency to the attorney general
 33 of the United States for the bringing of actions for the
 34 abatement of such pollution. Whenever a federal law
 35 requires the approval or recommendation of a state agency
 36 or any political subdivision of the state in any matter
 37 relating to the water resources of the state, the director,
 38 subject to approval of the Legislature, is hereby desig-
 39 nated as the sole person to give the approval or recom-
 40 mendation required by the federal law, unless the federal
 41 law specifically requires the approval or recommendation
 42 of some other state agency or political subdivision of
 43 the state.

PART III. PERMITS.

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

1 (a) The chief may, after public notice and opportunity
 2 for public hearing, issue a permit for the discharge or
 3 disposition of any pollutant or combination of pollutants
 4 into waters of this state upon condition that such discharge
 5 or disposition meets or will meet all applicable state and
 6 federal water quality standards and effluent limitations
 7 and all other requirements of this article.

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

11 (1) Allow sewage, industrial wastes, or other wastes,
12 or the effluent therefrom, produced by or emanating from
13 any establishment to flow into the waters of this state;

14 (2) Make, cause or permit to be made any outlet, or
15 substantially enlarge or add to the load of any existing
16 outlet, for the discharge of sewage, industrial wastes, or
17 other wastes, or the effluent therefrom, into the waters
18 of this state;

19 (3) Acquire, construct, install, modify or operate a
20 disposal system or part thereof for the direct or indirect
21 discharge or deposit of treated or untreated sewage, in-
22 dustrial wastes, or other wastes, or the effluent therefrom,
23 into the waters of this state, or any extension to or addi-
24 tion to such disposal system;

25 (4) Increase in volume or concentration any sewage,
26 industrial wastes or other wastes in excess of the dis-
27 charges or disposition specified or permitted under any
28 existing permit;

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

34 (6) Open, reopen, operate or abandon any mine, quarry
35 or preparation plant, or dispose of any refuse or industrial
36 wastes or other wastes from any such mine or quarry or
37 preparation plant: *Provided*, That the department's per-
38 mit shall only be required wherever the aforementioned
39 activities cause, may cause or might reasonably be ex-
40 pected to cause a discharge into or pollution of waters of
41 the state: *Provided, however*, That unless waived in writ-
42 ing by the chief, every application for a permit to open,
43 reopen or operate any mine, quarry or preparation plant
44 or to dispose of any refuse or industrial wastes or other
45 wastes from any such mine or quarry or preparation plant
46 shall contain a plan for abandonment of such facility
47 or operation, which plan shall comply in all respects to
48 the requirements of this article. Such plan of abandon-

49 ment shall be subject to modification or amendment upon
 50 application by the permit holder to the chief and ap-
 51 proval of such modification or amendment by the
 52 chief;

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

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

**§20-5A-6. Form of application for permit; information re-
 quired; fees.**

1 The chief shall prescribe a form of application for all
 2 permits for any activity specified in section five of this
 3 article and, notwithstanding any other provision of law
 4 to the contrary, no other discharge permit or discharge au-
 5 thorization from any other state department, agency, com-
 6 mission, board or officer shall be required for such activity
 7 except that which is required from the department of
 8 mines by the provisions of chapter twenty-two of this code.
 9 All applications must be submitted on a form as prescribed
 10 above. An applicant shall furnish all information reason-
 11 ably required by any such form, including without limiting
 12 the generality of the foregoing, a plan of maintenance
 13 and proposed method of operation of the activity or
 14 activities. Until all such required information is fur-
 15 nished, an application shall not be considered a complete
 16 application. The chief and board shall protect any infor-
 17 mation (other than effluent data) contained in such per-
 18 mit application form, or other records, reports or plans
 19 as confidential upon a showing by any person that such
 20 information, if made public, would divulge methods or
 21 processes entitled to protection as trade secrets of such
 22 person. If, however, the information being considered
 23 for confidential treatment is contained in a national pol-
 24 lutant discharge elimination form, the chief or board

25 shall forward such information to the regional adminis-
26 trator of the United States environmental protection
27 agency for his concurrence in any determination of con-
28 fidentiality. A filing fee, as determined by rules and regu-
29 lations of the board, but in no case in excess of
30 fifty dollars, shall accompany the application when
31 filed with the division of water resources. The filing fee
32 shall be deposited in the state treasury to the credit of
33 the state general fund. The filing fee shall not be re-
34 turned to the applicant.

**§20-5A-7. Procedure concerning permits required under arti-
cle; transfer of permits; prior permits.**

1 (a) The chief or his duly authorized representatives
2 shall conduct such investigation as is deemed necessary
3 and proper in order to determine whether any such appli-
4 cation should be granted or denied. In making such in-
5 vestigation and determination as to any application per-
6 taining solely to sewage, the chief shall consult with the
7 director of the division of sanitary engineering of the
8 state department of health, and in making such investi-
9 gation and determination as to any application pertaining
10 to any activity specified in subdivision (7), subsection
11 (b), section five of this article, the chief shall consult
12 with the director of the state geological and economic
13 survey and the deputy director of the oil and gas division
14 of the department of mines, and all such persons shall
15 cooperate with the chief and assist him in carrying out
16 the duties and responsibilities imposed upon him under
17 the provisions of this article and the rules and regulations
18 of the board; such cooperation shall include, but not be
19 limited to, a written recommendation approving or dis-
20 approving the granting of the permit and the reason or
21 reasons for such recommendation, which recommendation
22 and the reason or reasons therefor shall be submitted to
23 the chief within the specified time period prescribed by
24 rules and regulations of the board.

25 (b) The department's permit shall be issued upon
26 such reasonable terms and conditions as the chief may
27 direct if (1) the application, together with all supporting
28 information and data and other evidence, establishes that

29 any and all discharges or releases, escapes, deposits and
30 disposition of treated or untreated sewage, industrial
31 wastes, or other wastes, or the effluent therefrom, result-
32 ing from the activity or activities for which the applica-
33 tion for a permit was made will not cause pollution of
34 the waters of this state or violate any effluent limitations
35 or any rules and regulations of the board: *Provided*,
36 That the chief may issue a permit whenever in his judg-
37 ment the water quality standards of the state may be
38 best protected by the institution of a program of phased
39 pollution abatement which under the terms of the permit
40 may temporarily allow a limited degree of pollution of
41 the waters of the state; and (2) in cases wherein it is
42 required, such applicant shall include the name and
43 address of the responsible agent as set forth in section
44 eight-b of this article.

45 (c) Each permit issued under this article shall have a
46 fixed term not to exceed five years. Upon expiration of
47 a permit, a new permit may be issued by the chief upon
48 condition that the discharges or releases, escapes, deposits
49 and disposition thereunder meet or will meet all appli-
50 cable state and federal water quality standards, effluent
51 limitations and all other requirements of this article.

52 (d) An application for a permit incident to remedial
53 action in accordance with the provisions of section eleven
54 of this article shall be processed and decided as any other
55 application for a permit required under the provisions of
56 section five of this article.

57 (e) An application for any permit shall be acted upon
58 by the chief, and the department's permit delivered or
59 mailed, or a copy of any order of the chief denying any
60 such application delivered or mailed to the applicant by
61 the chief, within the specified time period prescribed by
62 rules and regulations of the board, which time period
63 shall not exceed ninety days.

64 (f) When it is established that an application for a
65 permit should be denied, the chief shall make and enter
66 an order to that effect, which order shall specify the
67 reasons for such denial, and shall cause a copy of such
68 order to be served on the applicant by registered or cer-

69 tified mail. The chief shall also cause a notice to be
70 served with the copy of such order, which notice shall
71 advise the applicant of his right to appeal to the board
72 by filing a notice of appeal on the form prescribed by
73 the board for such purpose, with the board, in accordance
74 with the provisions of section fifteen of this article,
75 within thirty days after the date upon which the appli-
76 cant received the copy of such order. However, an appli-
77 cant may alter the plans and specifications for the pro-
78 posed activity and submit a new application for any such
79 permit, in which event the procedure hereinbefore out-
80 lined with respect to an original application shall apply.

81 (g) Upon the sale of property which includes an
82 activity for which the department's permit was granted,
83 the permit shall be transferable to the new owner, but
84 the transfer shall not become effective until the provisions
85 of section eight-b of this article are fully complied with,
86 and until such transfer is made in the records of the
87 division of water resources.

88 (h) All permits for the discharge of sewage, industrial
89 wastes or other wastes into any waters of the state issued
90 by the water resources board prior to July one, one
91 thousand nine hundred sixty-four, and all permits here-
92 tofore issued under the provisions of this article, and
93 which have not been heretofore revoked, are subject to
94 review, revocation, suspension, modification and reissu-
95 ance in accordance with the terms and conditions of this
96 article and the rules and regulations promulgated there-
97 under. Any order of revocation, suspension or modifica-
98 tion made and entered pursuant to this subsection shall
99 be upon at least twenty days' notice and shall specify the
100 reasons for such revocation, suspension or modification
101 and the chief shall cause a copy of such order, together
102 with a copy of a notice of the right to appeal to the board
103 as provided for in section eight of this article, to be
104 served upon the permit holder as specified in said section
105 eight.

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

1 After issuance of the department's permit for any ac-
2 tivity, the chief or his duly authorized representatives

3 may make field inspections of the work on the activity,
 4 and, after completion thereof, may inspect the completed
 5 activity, and, from time to time, may inspect the mainte-
 6 nance and operation of the activity.

7 To compel compliance with the terms and conditions of
 8 the department's permit for any activity, the chief is
 9 hereby authorized, after at least twenty days' notice, to
 10 make and enter an order revoking, suspending or modify-
 11 ing such permit for cause including, but not limited to, the
 12 following:

- 13 (1) Violation of any term or condition of the permit;
- 14 (2) Obtaining a permit by misrepresentation, or failure
 15 to disclose fully all relevant facts; or
- 16 (3) Change in any condition that requires either a
 17 temporary or permanent reduction or elimination of the
 18 permitted discharge, release, escape, deposit or disposition.

19 The chief shall cause a copy of any such order to be
 20 served by registered or certified mail or by a conservation
 21 officer or other law-enforcement officer upon the person
 22 to whom any such permit was issued. The chief shall also
 23 cause a notice to be served with the copy of such order,
 24 which notice shall advise such person of his right to appeal
 25 to the board by filing a notice of appeal on the form
 26 prescribed by the board for such purpose, with the board,
 27 in accordance with the provisions of section fifteen of this
 28 article, within thirty days after the date upon which such
 29 person received the copy of such order.

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

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

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

10 The chief is authorized to provide such monitors with
 11 such sampling materials and equipment as he deems

12 necessary: *Provided*, That such equipment and materials
13 shall at all times remain the property of the state and
14 shall be immediately returned to the chief upon his direc-
15 tion.

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

21 The chief shall conduct schools to instruct said monitors
22 in the methods and techniques of water sample taking
23 and issue to said monitors an identification card or certifi-
24 cate showing their appointment and training.

25 Upon a showing that any water sample as herein pro-
26 vided was taken and analyzed in conformity with standard
27 and recognized procedures, such sample and analysis shall
28 be admissible in any court of this state for the purpose of
29 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.**

1 If the chief, on the basis of investigations, inspections
2 and inquiries, determines that any person who does not
3 have a valid permit issued pursuant to the provisions of
4 this article is causing the pollution of any of the waters of
5 the state, or does on occasions cause pollution or is violat-
6 ing any rule or regulation or effluent limitation of the
7 board, he shall, with the consent of the director, either
8 make and enter an order directing such person to stop
9 such pollution or the violation of the rule or regulation
10 or effluent limitation of the board, or make and enter an
11 order directing such person to take corrective or remedial
12 action. Such order shall contain findings of fact upon
13 which the chief based his determination to make and
14 enter such order. Such order shall also direct such person
15 to apply forthwith for a permit in accordance with the
16 provisions of sections five, six and seven of this article.
17 The chief shall fix a time limit for the completion of
18 such action. Whether the chief shall make and enter an
19 order to stop such pollution or shall make and enter an
20 order to take remedial action, in either case the person

21 so ordered may elect to cease operations of the establish-
22 ment deemed to be the source of such discharge or deposits
23 causing pollution, if the pollution referred to in the chief's
24 order shall be stopped thereby.

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

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

**§20-5A-14. Control by state as to pollution; continuing juris-
diction.**

1 No right to violate the rules and regulations of the
2 board or to continue existing pollution of any of the
3 waters of the state shall exist nor shall such right be or
4 be deemed to have been acquired by virtue of past or
5 future pollution by any person. The right and control of
6 the state in and over the quality of all waters of the state
7 are hereby expressly reserved and reaffirmed. It is recog-
8 nized that with the passage of time, additional efforts may
9 have to be made by all persons toward control and reduc-
10 tion of the pollution of the waters of the state, irrespective
11 of the fact that such persons may have previously com-
12 plied with all orders of the chief or board. It is also recog-
13 nized that there should be continuity and stability re-
14 specting pollution control measures taken in cooperation
15 with, and with the approval of, the chief, or pursuant to
16 orders of the chief or board. When a person is complying
17 with the terms and conditions of a permit granted pur-
18 suant to the provisions of section seven of this article or
19 when a person has completed remedial action pursuant
20 to an order of the chief or board, additional efforts may
21 be required wherever and whenever the rules and regu-

22 lations of the board or effluent limitations are violated or
23 the waters of the state are polluted by such person.

PART V. APPEAL AND REVIEW PROCEDURES.

§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 pro-
3 visions of this article, or aggrieved by failure or refusal
4 of the chief to act within the specified time as provided
5 in subsection (e) of section seven of this article on an
6 application for a permit or aggrieved by the terms and
7 conditions of a permit granted under the provisions
8 of this article, may appeal to the water resources board
9 for an order vacating or modifying such order, or for
10 such order, action or terms and conditions as the chief
11 should have entered, taken or imposed. The person
12 so appealing shall be known as the appellant and the
13 chief shall be known as the appellee. If the chief denies
14 a permit because of any disapproval of a permit applica-
15 tion by one or more of the public officers required to
16 review such application under the provisions of subsec-
17 tion (a), section seven of this article, such public officers
18 shall be joined as a coappellee or coappellees with the chief
19 in such appeal.

20 (b) Such appeal shall be perfected by filing a notice
21 of appeal, on the form prescribed by the board for such
22 purpose, with the board within thirty days after date upon
23 which the appellant received the copy of such order or
24 received such permit, as the case may be. The filing of the
25 notice of appeal shall not stay or suspend the execution
26 of the order appealed from. If it appears to the director
27 or the board that an unjust hardship to the appellant will
28 result from the execution of the chief's order pending
29 determination of the appeal, the director or the board
30 may grant a suspension of such order and fix its terms.
31 The notice of appeal shall set forth the order or terms
32 and conditions complained of and the grounds upon which
33 the appeal is based. A copy of the notice of appeal shall
34 be filed by the board with the chief within three days
35 after the notice of appeal is filed with the board.

36 (c) Within seven days after receipt of his copy of the
37 notice of appeal, the chief shall prepare and certify to
38 the board a complete record of the proceedings out of
39 which the appeal arises including all documents and
40 correspondence in the chief's file relating to the matter
41 in question. With the consent of the board and upon such
42 terms and conditions as the board may prescribe, any per-
43 sons affected by any such activity or by such alleged pollu-
44 tion may by petition intervene as a party appellant or
45 appellee. The board shall hear the appeal de novo, and
46 evidence may be offered on behalf of the appellant and
47 appellee, and, with the consent of the board, by any
48 intervenors.

49 (d) All of the pertinent provisions of article five, chap-
50 ter twenty-nine-a of this code shall apply to and govern
51 the hearing on appeal authorized by this section and the
52 administrative procedures in connection with and follow-
53 ing such hearing, with like effect as if the provisions
54 of said article five were set forth in extenso in this sec-
55 tion, with the following modifications or exceptions:

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

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

65 (e) Any such appeal hearing shall be conducted by a
66 quorum of the board, but the parties may by stipulation
67 agree to take evidence before a hearing examiner em-
68 ployed by the board. For the purpose of conducting such
69 appeal hearing, any member of the board and the chair-
70 man thereof shall have the power and authority to issue
71 subpoenas and subpoenas duces tecum in the name of
72 the board, in accordance with the provisions of section
73 one, article five, chapter twenty-nine-a of this code. All
74 subpoenas and subpoenas duces tecum shall be issued
75 and served within the time and for the fees and shall be
76 enforced, as specified in section one, article five of said

77 chapter twenty-nine-a, and all of the said section one
78 provisions dealing with subpoenas and subpoenas duces
79 tecum shall apply to subpoenas and subpoenas duces
80 tecum issued for the purpose of an appeal hearing here-
81 under.

82 (f) Any such hearing shall be held within twenty days
83 after the date upon which the board received the timely
84 notice of appeal, unless there is a postponement or con-
85 tinuance. The board may postpone or continue any hear-
86 ing upon its own motion, or upon application of the
87 appellant, the appellee or any intervenors for good cause
88 shown. The chief shall be represented at any such hearing
89 by the attorney general or his assistants. At any such
90 hearing the appellant and any intervenor may represent
91 himself or be represented by an attorney at law admitted
92 to practice before any circuit court of this state.

93 (g) After such hearing and consideration of all of the
94 testimony, evidence and record in the case, the board shall
95 make and enter an order affirming, modifying or vacating
96 the order of the chief, or shall make and enter such order
97 as the chief should have entered, or shall make and enter
98 an order approving or modifying the terms and conditions
99 of any permit issued. In determining its course of action,
100 the board shall take into consideration not only the factors
101 which the chief was authorized to consider in making his
102 order and in fixing the terms and conditions of any permit,
103 but also the economic feasibility of treating and/or con-
104 trolling the sewage, industrial wastes or other wastes
105 involved.

106 (h) Such order shall be accompanied by findings of
107 fact and conclusions of law as specified in section three,
108 article five, chapter twenty-nine-a of this code, and a
109 copy of such order and accompanying findings and con-
110 clusions shall be served upon the appellant, and any inter-
111 venors, and their attorneys of record, if any, and upon the
112 appellee in person or by registered or certified mail.

113 (i) The board shall also cause a notice to be served
114 with the copy of such order, which notice shall advise the
115 appellant, the appellee and any intervenors of their right
116 to judicial review, in accordance with the provisions of
117 section sixteen of this article. The order of the board shall

118 be final unless vacated or modified upon judicial review
119 thereof in accordance with the provisions of section six-
120 teen of this article.

PART VI. ACTIONS.

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

1 Any person who violates any provision of any permit
2 issued under or subject to the provisions of this article
3 shall be subject to a civil penalty not to exceed ten
4 thousand dollars per day of such violation, and any
5 person who violates any provision of this article or of
6 any rule and regulation or who violates any standard
7 or order promulgated or made and entered under the
8 provisions of this article shall, after written notice of
9 such violation from the chief and a reasonable period of
10 time as fixed by the chief to achieve compliance, be sub-
11 ject to a civil penalty not to exceed one thousand dollars
12 per day of such violation. Any such civil penalty may
13 be imposed and collected only by a civil action instituted
14 by the chief in the circuit court of the county in which
15 the violation occurred or is occurring or of the county
16 in which the waters thereof are polluted as the result
17 of such violation.

18 Upon application by the chief, the circuit courts of this
19 state or the judges thereof in vacation may by injunction
20 compel compliance with and enjoin violations of the
21 provisions of this article, the rules and regulations of the
22 board, effluent limitations, the terms and conditions of
23 any permit granted under the provisions of this article,
24 or any order of the chief or board, and the venue of any
25 such action shall be the county in which the violation
26 or noncompliance exists or is taking place or in any
27 county in which the waters thereof are polluted as the
28 result of such violation or noncompliance. The court or
29 the judge thereof in vacation may issue a temporary or
30 preliminary injunction in any case pending a decision on
31 the merits of any injunctive application filed. Any other
32 section of this code to the contrary notwithstanding, the
33 state shall not be required to furnish bond as a pre-
34 requisite to obtaining injunctive relief under this article.
35 An application for an injunction under the provisions

36 of this section may be filed and injunctive relief granted
37 notwithstanding that all of the administrative remedies
38 provided for in this article have not been pursued or
39 invoked against the person or persons against whom
40 such relief is sought and notwithstanding that the person
41 or persons against whom such relief is sought have not
42 been prosecuted or convicted under the provisions of
43 this article.

44 The judgment of the circuit court upon any application
45 filed or in any civil action instituted under the provisions
46 of this section shall be final unless reversed, vacated or
47 modified on appeal to the supreme court of appeals. Any
48 such appeal shall be sought in the manner provided by
49 law for appeals from circuit courts in other civil cases,
50 except that the petition seeking review in any injunctive
51 proceeding must be filed with said supreme court of
52 appeals within ninety days from the date of entry of the
53 judgment of the circuit court.

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

PART VII. VIOLATIONS AND PENALTIES.

§20-5A-19. Violations; criminal penalties.

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 by
5 any order of the chief or board, or who fails or refuses to
6 apply for and obtain a permit as required by the provisions
7 of this article, or who fails or refuses to comply with any
8 term or condition of such permit, shall be guilty of a
9 misdemeanor, and, upon conviction thereof, shall be pun-
10 ished by a fine of not less than one hundred dollars nor
11 more than one thousand dollars, or by imprisonment in

12 the county jail for a period not exceeding six months, or
13 by both such fine and imprisonment.

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

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

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

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

§20-5A-23. Conflicting provisions.

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

§20-5A-24. Severability of provisions.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the article, and to this end the provisions of this article
5 are declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Samuel Harby
Chairman Senate Committee

Clarence C. Christian Jr.
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Howard W. Garrison
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates

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

Louis A. McManus
Speaker House of Delegates

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

Arch A. Shaw Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 7/11/74

Time 3:40 p.m.