

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

SENATE BILL NO. 517

(By Mr. Beathelen, Mr. President & Mr. Givens)



PASSED March 12, 1978

In Effect from Passage



110: 517

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Senate Bill No. 517

(By MR. BROTHERTON, MR. PRESIDENT, and MR. GAINER)

[Passed March 12, 1978; in effect from passage.]

AN ACT to repeal section thirteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, three-a, five, six, seven, eight, ten, twelve, fifteen, sixteen, seventeen and nineteen, all of said article, all relating to the participation by the state in the "National Pollutant Discharge Elimination System", pursuant to the "Federal Water Pollution Control Act" as amended; providing a statement of the public policy of the state with respect to the control of water pollution; defining certain terms; delegating to the state water resources board certain powers and duties; standards of water quality and effluent limitations; specifying activities for which permits are required; providing for filing fees; providing for permit procedures; providing for orders to compel compliance with permits; providing for a duty to proceed with remedial action promptly upon receipt of a permit; authorizing the chief to employ legal counsel with the written approval of the attorney general; providing civil offenses and penalties for certain violations of the law relating to the control of water pollution; and providing criminal offenses and penalties for certain violations of the law relating to the control of water pollution.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, three-a, five, six, seven, eight, ten, twelve, fifteen, sixteen, seventeen and nineteen of said article be amended and re-enacted, all to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.**§20-5A-1. Declaration of policy.**

1 It is declared to be the public policy of the state of
2 West Virginia to maintain reasonable standards of purity
3 and quality of the water of the state consistent with (1)
4 public health and public enjoyment thereof; (2) the
5 propagation and protection of animal, bird, fish, aquatic
6 and plant life; and (3) the expansion of employment
7 opportunities and the provision of a permanent founda-
8 tion for healthy industrial development.

§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, including federal
14 facilities; political subdivision; county commission;
15 municipal corporation; industry; sanitary district; public
16 service district; drainage district; soil conservation dis-
17 trict; watershed improvement district; partnership; trust;
18 estate; person or individual; group of persons or individ-
19 uals acting individually or as a group; or any legal
20 entity whatever.

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

29 and water treatment facilities), impounding reservoirs,
30 springs, wells, watercourses, and wetlands;

31 (f) "Pollution" shall mean the man-made or man-
32 induced alteration of the chemical, physical, biological,
33 and radiological integrity of the waters of the state;

34 (g) "Sewage" shall mean water-carried human or
35 animal wastes from residences, buildings, industrial
36 establishments or other places, together with such ground
37 water infiltration and surface waters as may be present;

38 (h) "Industrial wastes" shall mean any liquid, gaseous,
39 solid or other waste substance, or a combination thereof,
40 resulting from or incidental to any process of industry,
41 manufacturing, trade or business, or from or incidental
42 to the development, processing or recovery of any natural
43 resources; and the admixture with such industrial wastes
44 of sewage or other wastes, as hereinafter defined, shall
45 also be considered "industrial wastes" within the mean-
46 ing of this article;

47 (i) "Industrial user" shall mean those industries in the
48 standard industrial classification manual, United States
49 Bureau of the Budget, 1967, as amended and supple-
50 mented, under the category "division d—manufacturing"
51 and other classes of significant waste producers identified
52 under regulations issued by the board or the adminis-
53 trator of the United States environmental protection
54 agency;

55 (j) "Other wastes" shall mean garbage, refuse, decayed
56 wood, sawdust, shavings, bark and other wood debris
57 and residues, sand, lime, cinders, ashes, offal, night soil,
58 silt, oil, tar, dyestuffs, acids, chemicals, heat, or all
59 other materials and substances not sewage or industrial
60 wastes which may cause or might reasonably be ex-
61 pected to cause or to contribute to the pollution of any
62 of the waters of the state;

63 (k) "Establishment" shall mean an industrial estab-
64 lishment, mill, factory, tannery, paper or pulp mill, mine,
65 colliery, breaker or mineral processing operation, quarry,
66 refinery, well, and each and every industry or plant or
67 works in the operation or process of which industrial
68 wastes, sewage or other wastes are produced;

69 (l) "Sewer system" shall mean pipelines or conduits,
70 pumping stations, force mains and all other construc-
71 tions, facilities, devices and appliances appurtenant there-
72 to, used for collecting or conducting sewage, industrial
73 wastes or other wastes to a point of disposal or treat-
74 ment;

75 (m) "Treatment works" shall mean any plant, facility,
76 means, system, disposal field, lagoon, pumping station,
77 constructed drainage ditch or surface water intercepting
78 ditch, diversion ditch above or below the surface of the
79 ground, settling tank or pond, earthen pit, incinerator,
80 area devoted to sanitary landfills, or other works not
81 specifically mentioned herein installed for the purpose
82 of treating, neutralizing, stabilizing, holding or disposing
83 of sewage, industrial wastes or other wastes or for the
84 purpose of regulating or controlling the quality and rate
85 of flow thereof;

86 (n) "Publicly owned treatment works" shall mean any
87 treatment works owned by the state or any political
88 subdivision thereof, any municipality or any other public
89 entity, for the treatment of pollutants;

90 (o) "Disposal system" shall mean a system for treat-
91 ing or disposing of sewage, industrial wastes, or other
92 wastes, or the effluent therefrom, either by surface or
93 underground methods, and shall be construed to include
94 sewer systems, the use of subterranean spaces, treatment
95 works, disposal wells and other systems;

96 (p) "Outlet" shall mean the terminus of a sewer
97 system or the point of emergence of any water-carried
98 sewage, industrial wastes, or other wastes, or the effluent
99 therefrom, into any of the waters of this state, and shall
100 include a point source;

101 (q) "Point source" shall mean any discernible, con-
102 fined and discrete conveyance, including, but not limited
103 to, any pipe, ditch, channel, tunnel, conduit, well, dis-
104 crete fissure, container, rolling stock, or vessel or other
105 floating craft, from which pollutants are or may be dis-
106 charged;

107 (r) "Activity" or "activities" shall mean any activity
108 or activities for which a permit is required by the pro-
109 visions of section five of this article;

110 (s) "Disposal well" shall mean any well drilled or
111 used for the injection or disposal of treated or untreated
112 sewage, industrial wastes or other wastes into under-
113 ground strata;

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

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

120 (v) "Department" shall mean the department of
121 natural resources;

122 (w) "Well" shall mean any shaft or hole sunk, drilled,
123 bored or dug into the earth or into underground strata
124 for the extraction or injection or placement of any liquid
125 or gas, or any shaft or hole sunk or used in conjunction
126 with such extraction or injection or placement. The term
127 "well" shall not have included within its meaning any
128 shaft or hole sunk, drilled, bored or dug into the earth
129 for the sole purpose of core drilling or pumping or
130 extracting therefrom potable, fresh or usable water for
131 household, domestic, industrial, agricultural or public
132 use; and

133 (x) "Pollutant" shall mean industrial wastes, sewage
134 or other wastes as defined in this section.

**§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
2 the chief of the department's division of water resources,
3 as 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
6 and 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
9 of the "Federal Water Pollution Control Act," as
10 amended, relating to this state's participation in the
11 "National Pollutant Discharge Elimination System" es-
12 tablished under that act;

13 (2) To encourage voluntary cooperation by all per-
14 sons in controlling and reducing the pollution of the
15 waters of this state, and to advise, consult and cooperate
16 with all persons, all agencies of this state, the federal
17 government or other states, and with interstate agencies
18 in the furtherance of the purposes of this article, and
19 to this end and for the purpose of studies, scientific or
20 other investigations, research, experiments and demon-
21 strations pertaining thereto, the department may re-
22 ceive moneys from such agencies, officers and persons
23 on behalf of the state. The department shall pay all
24 moneys so received into a special fund hereby created
25 in the state treasury, which fund shall be expended under
26 the direction of the chief solely for the purpose or pur-
27 poses for which the grant, gift or contribution shall have
28 been made;

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

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

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

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

49 (7) To develop a public education and promotion
50 program to aid and assist in publicizing the need of and
51 securing support for pollution control and abatement;

52 (8) To sample ground and surface water with suffi-

53 cient frequency to ascertain the standards of purity or
54 quality from time to time of the waters of the state;

55 (9) To develop programs for the control and reduc-
56 tion of the pollution of the waters of the state;

57 (10) To exercise general supervision over the admin-
58 istration and enforcement of the provisions of this ar-
59 ticle, and all rules, regulations, permits and orders is-
60 sued pursuant to the provisions of this article;

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

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

87 (13) To require any and all persons directly or in-
88 directly discharging, depositing or disposing of treated
89 or untreated sewage, industrial wastes, or other wastes,
90 or the effluent therefrom, into or near any waters of
91 the state or into any underground strata, and any and all
92 persons operating an establishment which produces or

93 which may produce or from which escapes, releases or
94 emanates or may escape, release or emanate treated
95 or untreated sewage, industrial wastes or other wastes
96 or the effluent therefrom, into or near any waters of
97 the state or into any underground strata, to file with
98 the division of water resources such information as
99 the chief may require in a form or manner prescribed
100 by him for such purpose, including, but not limited to,
101 data as to the kind, characteristics, amount and rate of
102 flow of any such discharge, deposit, escape, release or
103 disposition.

104 (b) In addition to all other powers and duties of the
105 water resources board, as prescribed in this article or
106 elsewhere by law, the board shall have and may exercise
107 the following powers and authority and shall per-
108 form the following duties:

109 (1) To cooperate with any interstate agencies for
110 the purpose of formulating, for submission to the
111 Legislature, interstate compacts and agreements relating
112 to the control and reduction of water pollution;

113 (2) To adopt, modify, repeal and enforce rules and
114 regulations, in accordance with the provisions of chapter
115 twenty-nine of this code, (A) implementing and making
116 effective the declaration of policy contained in section
117 one of this article and the powers, duties and respon-
118 sibilities vested in the board and the chief by the pro-
119 visions of this article and otherwise by law; (B) pre-
120 venting, controlling and abating pollution; (C) estab-
121 lishing standards of quality for the waters of the state
122 under such conditions as the board may prescribe for
123 the prevention, control and abatement of pollution;
124 and (D) to facilitate the state's participation in the
125 "National Pollutant Discharge Elimination System"
126 pursuant to the "Federal Water Pollution Control Act,"
127 as amended: *Provided*, That no such rule and regulation
128 adopted by the board shall specify the design of equip-
129 ment, type of construction or particular method which a
130 person shall use to reduce the discharge of a pollutant; and
131 (3) To make and enter a consent order which shall
132 have the same effect as an order entered after a hearing
133 as provided in section fifteen of this article.

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

141 (d) Whenever required to carry out the objectives
142 of this article: (A) The chief shall require the owner
143 or operator of any point source or establishment to (i)
144 establish and maintain such records, (ii) make such
145 reports, (iii) install, use and maintain such monitoring
146 equipment or methods, (iv) sample such effluents in
147 accordance with such methods, at such locations, at such
148 intervals and in such manner as the chief shall pre-
149 scribe, and (v) provide such other information as he
150 may reasonably require; and (B) the chief or his au-
151 thorized representative upon presentation of credentials
152 (i) shall have a right of entry to, upon, or through any
153 premises in which an effluent source is located or in
154 which any records required to be maintained under
155 (A) of this subsection are located, and (ii) may at
156 reasonable times have access to and copy any records,
157 inspect any monitoring equipment area as well as sample
158 any effluents which the owner or operator of such
159 source is required to sample under (A) of this sub-
160 section.

161 (e) The board is hereby authorized and empowered
162 to investigate and ascertain the need and factual basis
163 for the establishment of public service districts as a
164 means of controlling and reducing pollution from unin-
165 corporated communities and areas of the state, investi-
166 gate and ascertain, with the assistance of the public
167 service commission, the financial feasibility and pro-
168 jected financial capability of the future operation of any
169 such public service district or districts, and to present re-
170 ports and recommendations thereon to the county com-
171 missions of the areas concerned, together with a re-
172 quest that such county commissions create a public ser-
173 vice district or districts, as therein shown to be needed
174 and required and as provided in article thirteen-a, chap-

175 ter sixteen of this code. In the event a county com-
176 mission shall fail to act to establish a county-wide public
177 service district or districts, the board shall act jointly
178 with the state director of health, the director of the
179 department of natural resources and the chief of the
180 division of water resources to further investigate and
181 ascertain the financial and projected financial capability
182 and, subject to the approval of the public service com-
183 mission, order the county commission to take action to
184 establish such public service district or districts as may
185 be necessary to control, reduce or abate the pollution,
186 and when so ordered the county commission members
187 must act to establish such a county-wide public service
188 district 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 shall promulgate rules and regulations setting
3 standards of water quality and effluent limitations to
4 be applicable to the waters of this state, which standards
5 of quality and effluent limitations shall be such as to
6 protect the public health and welfare, wildlife, fish and
7 aquatic life, and the present and prospective future
8 uses of such waters for domestic, agricultural, industrial,
9 recreational, scenic and other legitimate beneficial uses
10 thereof.

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

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

26 result in reduction of the quality of such waters below
27 the standards and limitations established therefor by
28 rules and regulations of the board.

§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 dis-
5 charge or disposition meets or will meet all applicable
6 state and federal water quality standards and effluent
7 limitations 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
10 in full force and effect, to:

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

14 (2) Make, cause or permit to be made any outlet,
15 or substantially enlarge or add to the load of any exist-
16 ing outlet, for the discharge of sewage, industrial wastes,
17 or 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 in-
21 direct discharge or deposit of treated or untreated sewage,
22 industrial wastes, or other wastes, or the effluent there-
23 from, into the waters of this state, or any extension to
24 or addition 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 point source, 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
33 the state;

34 (6) Construct, install, modify, open, reopen, operate
35 or abandon any mine, quarry or preparation plant, or

36 dispose of any refuse or industrial wastes or other wastes
37 from any such mine or quarry or preparation plant:
38 *Provided*, That the department's permit shall only be
39 required wherever the aforementioned activities cause,
40 may cause or might reasonably be expected to cause a
41 discharge into or pollution of waters of the state, except
42 that a permit shall be required for any preparation plant:
43 *Provided, however*, That unless waived in writing by
44 the chief, every application for a permit to open, reopen
45 or operate any mine, quarry or preparation plant or to
46 dispose of any refuse or industrial wastes or other wastes
47 from any such mine or quarry or preparation plant shall
48 contain a plan for abandonment of such facility or opera-
49 tion, which plan shall comply in all respects to the re-
50 quirements of this article. Such plan of abandonment
51 shall be subject to modification or amendment upon ap-
52 plication by the permit holder to the chief and approval
53 of such modification or amendment by the chief;

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

59 (c) Where a person has a number of outlets emerging
60 into the waters of this state in close proximity to one
61 another, such outlets may be treated as a unit for the
62 purposes of this section, and only one permit issued for
63 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
5 authorization from any other state department, agency,
6 commission, board or officer shall be required for such
7 activity except that which is required from the depart-
8 ment of mines by the provisions of chapter twenty-two
9 of this code. All applications must be submitted on a
10 form as prescribed above. An applicant shall furnish all

11 information reasonably required by any such form, in-
12 cluding without limiting the generality of the foregoing,
13 a plan of maintenance and proposed method of operation
14 of the activity or activities. Until all such required in-
15 formation is furnished, an application shall not be con-
16 sidered a complete application. The chief and board shall
17 protect any information (other than effluent data) con-
18 tained in such permit application form, or other records,
19 reports or plans as confidential upon a showing by any
20 person that such information, if made public, would di-
21 vulge methods or processes entitled to protection as
22 trade secrets of such person. If, however, the information
23 being considered for confidential treatment is contained
24 in a national pollutant discharge elimination form, the
25 chief or board shall forward such information to the
26 regional administrator of the United States environmental
27 protection agency for his concurrence in any determina-
28 tion of confidentiality. A reasonable filing fee, as de-
29 termined by rules and regulations of the board, shall
30 accompany the application when filed with the division
31 of water resources. The filing fee shall be deposited in
32 the state treasury to the credit of the state general fund.
33 The filing fee shall not be returned to the applicant.

**§20-5A-7. Procedure concerning permits required under ar-
ticle; 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 ap-
4 plication 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 investiga-
9 tion and determination as to any application pertaining to
10 any activity specified in subdivision (7), subsection (b)
11 section five of this article, the chief shall consult with the
12 director of the state geological and economic survey and the
13 deputy director of the oil and gas division of the depart-
14 ment of mines, and all such persons shall cooperate with the
15 chief and assist him in carrying out the duties and respon-

16 sibilities imposed upon him under the provisions of this
17 article and the rules and regulations of the board; such
18 cooperation shall include, but not be limited to, a written
19 recommendation approving or disapproving the granting
20 of the permit and the reason or reasons for such recom-
21 mendation, which recommendation and the reason or
22 reasons therefor shall be submitted to the chief within the
23 specified time period prescribed by rules and regulations
24 of the board.

25 (b) The department's permit shall be issued upon such
26 reasonable terms and conditions as the chief may direct
27 if (1) the application, together with all supporting infor-
28 mation and data and other evidence, establishes that any
29 and all discharges or releases, escapes, deposits and dis-
30 position of treated or untreated sewage, industrial wastes,
31 or other wastes, or the effluent therefrom, resulting from
32 the activity or activities for which the application for a
33 permit was made will not cause pollution of the waters of
34 this state or violate any effluent limitations or any rules
35 and regulations of the board: *Provided*, That the chief
36 may issue a permit whenever in his judgment the water
37 quality standards of the state may be best protected by
38 the institution of a program of phased pollution abate-
39 ment which under the terms of the permit may temporar-
40 ily allow a limited degree of pollution of the waters of
41 the state; and (2) in cases wherein it is required, such
42 applicant shall include the name and address of the re-
43 sponsible agent as set forth in section eight-b of this
44 article.

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

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

56 application for a permit required under the provisions of
57 section five of this article.

58 (e) A complete application for any permit shall be
59 acted upon by the chief, and the department's permit
60 delivered or mailed, or a copy of any order of the chief
61 denying any such application delivered or mailed to the
62 applicant by the chief, within a reasonable time period
63 as prescribed by rules and regulations of the board.

64 (f) When it is established that an application for a per-
65 mit should be denied, the chief shall make and enter an
66 order to that effect, which order shall specify the reasons
67 for such denial, and shall cause a copy of such order to be
68 served on the applicant by registered or certified mail.
69 The chief shall also cause a notice to be served with a
70 copy of such order, which notice shall advise the appli-
71 cant of his right to appeal to the board by filing a notice of
72 appeal on the form prescribed by the board for such pur-
73 pose, with the board, in accordance with the provisions of
74 section fifteen of this article, within thirty days after the
75 date upon which the applicant received the copy of such
76 order. However, an applicant may alter the plans and
77 specifications for the proposed activity and submit a new
78 application for any such permit, in which event the
79 procedure hereinbefore outlined with respect to an orig-
80 inal 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 thou-
91 sand nine hundred sixty-four, and all permits heretofore
92 issued under the provisions of this article, and which have
93 not been heretofore revoked, are subject to review, revo-
94 cation, suspension, modification and reissuance in accor-
95 dance with the terms and conditions of this article and the

96 rules and regulations promulgated thereunder. Any order
97 of revocation, suspension or modification made and en-
98 tered pursuant to this subsection shall be upon at least
99 twenty days' notice and shall specify the reasons for such
100 revocation, suspension or modification and the chief shall
101 cause a copy of such order, together with a copy of a
102 notice of the right to appeal to the board as provided for
103 in section eight of this article, to be served upon the
104 permit holder as specified in said section 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 main-
6 tenance and operation of the activity.

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

- 13 (1) Violation of any term or condition of the permit;
- 14 (2) Obtaining a permit by misrepresentation, or fail-
15 ure 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 disposi-
19 tion.

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

29 fifteen of this article, within thirty days after the date
30 upon which such person received the copy of such order.

**§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
5 of the state, or does on occasions cause pollution or is
6 violating any rule or regulation or effluent limitation of
7 the board, he shall, with the consent of the director,
8 either make and enter an order directing such person
9 to stop such pollution or the violation of the rule or
10 regulation or effluent limitation of the board, or make
11 and enter an order directing such person to take correc-
12 tive or remedial action. Such order shall contain findings
13 of fact upon which the chief based his determination to
14 make and enter such order. Such order shall also direct
15 such person to apply forthwith for a permit in accordance
16 with the provisions of sections five, six and seven of this
17 article. The chief shall fix a time limit for the completion
18 of such action. Whether the chief shall make and enter
19 an order to stop such pollution or shall make and enter
20 an 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 de-
23 posits causing pollution, if the pollution referred to in
24 the chief's order shall be stopped thereby.

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

§20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

1 When such person is ordered to take remedial action
2 and does not elect to cease operation of the establish-
3 ment deemed to be the source of such pollution or when
4 ceasing does not stop the pollution, such person shall
5 immediately upon issuance of the permit required under
6 section eleven of this article take or begin appropriate
7 steps or proceedings to carry out such remedial action.
8 In any such case it shall be the duty of each individual
9 offender, each member of a partnership, each member
10 of the governing body of a municipal corporation and
11 each member of the board of directors or other govern-
12 ing body of a private corporation, association or other
13 legal entity whatever, to see that appropriate steps or
14 proceedings to comply with such order are taken or
15 begun immediately. The chief may require progress
16 reports, at such time intervals as he deems necessary,
17 setting forth the steps taken, the proceedings started
18 and the progress made toward completion of such remedial
19 action. All such remedial action shall be diligently pro-
20 secuted to completion.

21 Failure of the governing body of a municipal corpora-
22 tion, or the board of directors or other governing body
23 of any private corporation, association or other legal
24 entity whatever, to provide immediately for the financing
25 and carrying out of such remedial action, as may be
26 necessary to comply with said order, shall constitute
27 failure to take or begin appropriate steps or proceedings
28 to comply with such order. If such person be a municipal
29 corporation, the cost of all such remedial action as may
30 be necessary to comply with said order shall be paid
31 out of funds on hand available for such purpose, or out
32 of the general funds of such municipal corporation, not
33 otherwise appropriated, and if there be not sufficient
34 funds on hand or unappropriated, then the necessary
35 funds shall be raised by the issuance of bonds, any direct
36 general obligation bond issue to be subject to the ap-
37 proval of the state sinking fund commission and the at-
38 torney general of the state of West Virginia.

39 If the estimated cost of the remedial action to be taken
40 by a municipal corporation to comply with such order
41 is such that any bond issue necessary to finance such
42 action would not raise the total outstanding bonded
43 indebtedness of such municipal corporation in excess of
44 the constitutional limit imposed upon such indebted-
45 ness by the constitution of this state, then and in that
46 event the necessary bonds may be issued as a direct
47 obligation of such municipal corporation, and retired
48 by a general tax levy to be levied against all property
49 within the limit of such municipal corporation listed and
50 assessed for taxation. If the amount of such bonds
51 necessary to be issued would raise the total outstanding
52 bonded indebtedness of such municipal corporation above
53 said constitutional limitation on such indebtedness, or
54 if such municipal corporation by its governing body shall
55 decide against the issuance of direct obligation bonds,
56 then such municipal corporation shall issue revenue
57 bonds and provide for the retirement thereof in the
58 same manner and subject to the same conditions as pro-
59 vided for the issuance and retirement of bonds in chapter
60 twenty-five, acts of the Legislature, first extraordinary
61 session, one thousand nine hundred thirty-three, and any
62 amendment thereof: *Provided*, That the provisions of
63 section six of the above mentioned act, allowing ob-
64 jections to be filed with the governing body, and provid-
65 ing that a written protest of thirty percent or more of the
66 owners of real estate shall require a four-fifths vote of
67 the governing body for the issuance of said revenue
68 bonds, shall not apply to bond issues proposed by any
69 municipal corporation to comply with an order made
70 and entered under the authority of this article, and such
71 objections and submission of written protest shall not
72 be authorized, nor shall the same, if made or had, operate
73 to justify or excuse failure to comply with such order.

74 The funds made available by the issuance of either
75 direct obligation bonds or revenue bonds, as herein
76 provided, shall constitute a "sanitary fund," and shall be
77 used for no other purpose than for carrying out such
78 order; no public money so raised shall be expended by
79 any municipal corporation for any purpose enumerated

80 in this article, unless such expenditure and the amount
81 thereof have been approved by the chief. The acquisi-
82 tion, construction or installation, use and operation, re-
83 pair, modification, alteration, extension, equipment, cus-
84 tody and maintenance of any disposal system by any
85 municipal corporation, as herein provided, and the rights,
86 powers and duties with respect thereto, of such munic-
87 ipal corporation and the respective officers and depart-
88 ments thereof, whether the same shall be financed by
89 the issuance of revenue or direct obligation bonds, shall
90 be governed by the provisions of said chapter twenty-
91 five, acts of the Legislature, first extraordinary session,
92 one thousand nine hundred thirty-three, and any amend-
92 ments thereof.

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

1 (a) Any person adversely affected by an order made
2 and entered by the chief in accordance with the provi-
3 sions of this article, or aggrieved by failure or refusal of
4 the chief to act within the specified time as provided in
5 subsection (e) of section seven of this article on an applica-
6 tion for a permit or aggrieved by the terms and conditions
7 of a permit granted under the provisions of this article,
8 may appeal to the water resources board for an order va-
9 cating or modifying such order, or for such order, action
10 or terms and conditions as the chief should have entered,
11 taken or imposed. The person so appealing shall be known
12 as the appellant and the chief shall be known as the ap-
13 pellee. If the chief denies a permit because of any disap-
14 proval of a permit application by one or more of the public
15 officers required to review such applications under the
16 provisions of subsection (a), section seven of this article,
17 such public officers shall be joined as a coappellee or co-
18 appellees with the chief in such appeal.

19 (b) Such appeal shall be perfected by filing a notice of
20 appeal, on the form prescribed by the board for such
21 purpose with the board within thirty days after date upon
22 which the appellant received the copy of such order or
23 received such permit, as the case may be. The filing of the
24 notice of appeal shall not stay or suspend the execution of
25 the order appealed from. If it appears to the director or

26 the board that an unjust hardship to the appellant will
27 result from the execution of the chief's order pending
28 determination of the appeal, the director or the board
29 may grant a suspension of such order and fix its terms.
30 The notice of appeal shall set forth the order or terms
31 and conditions complained of and the grounds upon which
32 the appeal is based. A copy of the notice of appeal shall
33 be filed by the board with the chief within three days
34 after the notice of appeal is filed with the board.

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

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

54 (1) Unless the board directs otherwise, the appeal
55 hearing shall be held in the city of Charleston, Kanawha
56 County, West Virginia, and

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

63 (e) Any such appeal hearing shall be conducted by a
64 quorum of the board, but the parties may by stipulation
65 agree to take evidence before a hearing examiner em-

66 ployed by the board. For the purpose of conducting such
67 appeal hearing, any member of the board and the secre-
68 tary thereof shall have the power and authority to issue
69 subpoenas and subpoenas duces tecum in the name of
70 the board, in accordance with the provisions of section
71 one, article five, chapter twenty-nine-a of this code. All
72 subpoenas and subpoenas duces tecum shall be issued and
73 served within the time and for the fees and shall be en-
74 forced, as specified in section one, article five of said
75 chapter twenty-nine-a, and all of the said section one
76 provisions dealing with subpoenas and subpoenas duces
77 tecum shall apply to subpoenas and subpoenas duces te-
78 cum issued for the purpose of an appeal hearing here-
79 under.

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

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

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

113 (i) The board shall also cause a notice to be served with
114 the copy of such order, which notice shall advise the ap-
115 pellant, 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.

§20-5A-16. Judicial review.

1 (A) Any person or the chief adversely affected by an
2 order made and entered by the board after such appeal
3 hearing, held in accordance with the provisions of sec-
4 tion fifteen of this article, is entitled to judicial review
5 thereof. All of the provisions of section four, article
6 five, chapter twenty-nine-a of this code shall apply
7 to and govern such review with like effect as if the
8 provisions of said section four were set forth in ex-
9 tenso in this section, with the following modifications
10 or exceptions:

11 (1) As to cases involving an order denying an appli-
12 cation for a permit, or approving or modifying the terms
13 and conditions of a permit, the petition shall be filed,
14 within the time specified in said section four, in the
15 circuit court of Kanawha County;

16 (2) As to cases involving an order revoking or sus-
17 pending a permit, the petition shall be filed, within
18 the time specified in said section four, in the circuit
19 court of Kanawha County; and

20 (3) As to cases involving an order directing that any
21 and all discharges or deposits of sewage, industrial
22 wastes, or other wastes, or the effluent therefrom, deter-
23 mined to be causing pollution be stopped or prevented
24 or else that remedial action be taken, the petition shall

25 be filed, within the time specified in said section four, in
26 the circuit court of the county in which the establish-
27 ment is located or in which the pollution occurs.

28 (b) The judgment of the circuit court shall be final
29 unless reversed, vacated or modified on appeal to the
30 supreme court of appeals, in accordance with the provi-
31 sions of section one, article six, chapter twenty-nine-a
32 of this code, except that notwithstanding the provisions
33 of said section one the petition seeking such review must
34 be filed with said supreme court of appeals within ninety
35 days from the date of entry of the judgment of the
36 circuit court.

37 (c) Legal counsel and services for the chief in all
38 appeal proceedings in the circuit court and in the supreme
39 court of appeals of this state shall be provided by the
40 attorney general or his assistants and in appeal pro-
41 ceedings in the circuit court by the prosecuting attorney
42 of the county in which the appeal is taken, all without
43 additional compensation, or the chief, with the written
44 approval of the attorney general, may employ counsel
45 to represent him.

§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 be subject to a civil penalty
9 not to exceed ten thousand dollars per day of such vio-
10 lation. Any such civil penalty may be imposed and col-
11 lected only by a civil action instituted by the chief in
12 the circuit court of the county in which the violation oc-
13 curred or is occurring or of the county in which the
14 waters thereof are polluted as the result of such violation.

15 Upon application by the chief, the circuit courts of this
16 state or the judges thereof in vacation may by injunc-
17 tion compel compliance with and enjoin violations of
18 the provisions of this article, the rules and regulations

19 of the board, effluent limitations, the terms and condi-
20 tions of any permit granted under the provisions of
21 this article, or any order of the chief or board, and the
22 venue of any such action shall be the county in which
23 the violation or noncompliance exists or is taking place
24 or in any county in which the waters thereof are polluted
25 as the result of such violation or noncompliance. The
26 court of the judge thereof in vacation may issue a
27 a temporary or preliminary injunction in any case pend-
28 ing a decision on the merits of any injunctive applica-
29 tion filed. Any other section of this code to the contrary
30 notwithstanding, the state shall not be required to furnish
31 bond as a prerequisite to obtaining injunctive relief under
32 this article. An application for an injunction under
33 the provisions of this section may be filed and injunc-
34 tive relief granted notwithstanding that all of the ad-
35 ministrative remedies provided for in this article have
36 not been pursued or invoked against the person or
37 persons against such relief is sought and notwithstanding
38 that the person or persons against whom such relief is
39 sought have not been prosecuted or convicted under the
40 provisions of this article.

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

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

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

1 Any person who causes pollution or who fails or re-
2 fuses to discharge any duty imposed upon him by this
3 article or by any rule or regulation of the board, promul-
4 gated pursuant to the provisions and intent of this article,
5 or by an order of the chief or board, or who fails or re-
6 fuses to apply for and obtain a permit as required by the
7 provisions of this article, or who fails or refuses to comply
8 with any term or condition of such permit, shall be guilty
9 of a misdemeanor, and, upon conviction thereof, shall
10 be punished by a fine of not less than one hundred
11 dollars or more than one thousand dollars, or by im-
12 prisonment in the county jail for a period not exceeding
13 six months, or 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 less than one thousand dollars
21 nor more than ten thousand dollars or by imprisonment
22 in the county jail not exceeding six months or by both
23 such fine and imprisonment.

24 Any person who willfully or negligently violates any
25 provision of any permit issued under or subject to the
26 provisions of this article or who willfully or negligently
27 violates any provision of this article or any rule or regu-
28 lation of the board or any effluent limitation or any
29 order of the chief or board shall be guilty of a misde-
30 meanor, and, upon conviction thereof, shall be punished
31 by a fine of not less than two thousand five hundred dol-
32 lars nor more than twenty-five thousand dollars per
33 day of violation or by imprisonment in the county jail
34 not exceeding one year or by both such fine and im-
35 prisonment.

36 Any such person may be prosecuted and convicted
37 under the provisions of this section notwithstanding
38 that none of the administrative remedies provided for
39 in this article have been pursued or invoked against said

40 person and notwithstanding that a civil action for the
41 imposition and collection of a civil penalty or an appli-
42 cation for an injunction under the provisions of this ar-
43 ticle has not been filed against such person.

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

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

James L. Lewis
Chairman Senate Committee

Clarence C. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J. Dillon, Jr.
Clerk of the Senate

V. A. Blankenship
Clerk of the House of Delegates

W. T. Brathwaite Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 30
day of March, 1978.

John D. Rhyll
Governor



RECEIVED

MAR 21 9 37 AM '78

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date Mar. 30, 1978

Time 3:40 p.m.

RECEIVED

78 MAR 30 P 9:29

OFFICE
SECRETARY OF STATE