WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED

SENATE BILL NO. 517

(By Mr. )

PASSED [Signature] 1978

In Effect [Signature] from Passage
ENROLLED
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article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, three-a, five, six, seven, eight, ten, twelve, fifteen, sixteen, seventeen and nineteen of said article be amended and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 West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities and the provision of a permanent foundation for healthy industrial development.


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

(a) "Director" shall mean the director of the department of natural resources;

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

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

(d) "Person," "persons" or "applicant" shall mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(e) "Water resources," "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds
3

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

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

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

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

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

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

(k) "Establishment" shall mean an industrial establish-
ishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well, and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;
(l) "Sewer system" shall mean pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of disposal or treatment;

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

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

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

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

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

(r) "Activity" or "activities" shall mean any activity or activities for which a permit is required by the provisions of section five of this article;
(s) "Disposal well" shall mean any well drilled or used for the injection or disposal of treated or untreated sewage, industrial wastes or other wastes into underground strata;

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

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

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

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

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

§20-5A-3. General powers and duties of chief and board with respect to pollution.

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

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

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

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

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

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

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

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

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

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

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the chief may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by the chief according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the department;

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

(13) To require any and all persons directly or indirectly discharging, depositing or disposing of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or
which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes or the effluent therefrom, into or near any waters of the state or into any underground strata, to file with the division of water resources such information as the chief may require in a form or manner prescribed by him for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of any such discharge, deposit, escape, release or disposition.

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

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

(2) To adopt, modify, repeal and enforce rules and regulations, in accordance with the provisions of chapter twenty-nine of this code, (A) implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; (C) establishing standards of quality for the waters of the state under such conditions as the board may prescribe for the prevention, control and abatement of pollution; and (D) to facilitate the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no such rule and regulation adopted by the board shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(3) To make and enter a consent order which shall have the same effect as an order entered after a hearing as provided in section fifteen of this article.
(c) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

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

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chap-
In the event a county commission shall fail to act to establish a county-wide public service district or districts, the board shall act jointly with the state director of health, the director of the department of natural resources and the chief of the division of water resources to further investigate and ascertain the financial and projected financial capability and, subject to the approval of the public service commission, order the county commission to take action to establish such public service district or districts as may be necessary to control, reduce or abate the pollution, and when so ordered the county commission members must act to establish such a county-wide public service district or districts.

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

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

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

(c) All persons affected by rules and regulations establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, That where necessary and proper, the chief may specify a reasonable time for persons not complying with such standards and limitations to comply therewith, and upon the expiration of any such period of time, the chief shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which
result in reduction of the quality of such waters below the standards and limitations established therefor by rules and regulations of the board.

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

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

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

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

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

(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;

(4) Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the state;

(6) Construct, install, modify, open, reopen, operate 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
discharge into or pollution of waters of the state, except
41 that a permit shall be required for any preparation plant:
42 Provided, however, That unless waived in writing by
43 the chief, every application for a permit to open, reopen
44 or operate any mine, quarry or preparation plant or to
45 dispose of any refuse or industrial wastes or other wastes
46 from any such mine or quarry or preparation plant shall
47 contain a plan for abandonment of such facility or opera-
48 tion, which plan shall comply in all respects to the re-
49 quirements of this article. Such plan of abandonment
50 shall be subject to modification or amendment upon ap-
51 plication by the permit holder to the chief and approval
52 of such modification or amendment by the chief;
53 (7) Operate any disposal well for the injection or re-
54 injection underground of any industrial wastes, in-
55 cluding, but not limited to, liquids or gases, or convert
56 any well into such a disposal well or plug or abandon
57 any such 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
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
information reasonably required by any such form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Until all such required information is furnished, an application shall not be considered a complete application. The chief and board shall protect any information (other than effluent data) contained in such permit application form, or other records, reports or plans as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in a national pollutant discharge elimination form, the chief or board shall forward such information to the regional administrator of the United States environmental protection agency for his concurrence in any determination of confidentiality. A reasonable filing fee, as determined by rules and regulations of the board, shall accompany the application when filed with the division of water resources. The filing fee shall be deposited in the state treasury to the credit of the state general fund. The filing fee shall not be returned to the applicant.

§20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.
1 (a) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the division of sanitary engineering of the state department of health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b) section five of this article, the chief shall consult with the director of the state geological and economic survey and the deputy director of the oil and gas division of the department of mines, and all such persons shall cooperate with the chief and assist him in carrying out the duties and respon-
sibilities imposed upon him under the provisions of this article and the rules and regulations of the board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules and regulations of the board.

(b) The department's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits and disposition of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any effluent limitations or any rules and regulations of the board: Provided, That the chief may issue a permit whenever in his judgment the water quality standards of the state may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the state; and (2) in cases wherein it is required, such applicant shall include the name and address of the responsible agent as set forth in section eight-b of this article.

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

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

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

(f) When it is established that an application for a per-
mit should be denied, the chief shall make and enter an
order to that effect, which order shall specify the reasons
for such denial, and shall cause a copy of such order to be
served on the applicant by registered or certified mail.
The chief shall also cause a notice to be served with a
copy of such order, which notice shall advise the appli-
cant of his right to appeal to the board by filing a notice of
appeal on the form prescribed by the board for such pur-
pose, with the board, in accordance with the provisions of
section fifteen of this article, within thirty days after the
date upon which the applicant received the copy of such
order. However, an applicant may alter the plans and
specifications for the proposed activity and submit a new
application for any such permit, in which event the
procedure hereinbefore outlined with respect to an origi-
nal application shall apply.

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

(h) All permits for the discharge of sewage, industrial
wastes or other wastes into any waters of the state issued
by the water resources board prior to July one, one thou-
sand nine hundred sixty-four, and all permits heretofore
issued under the provisions of this article, and which have
not been heretofore revoked, are subject to review, revoc-
ation, suspension, modification and reissuance in accor-
dance with the terms and conditions of this article and the
rules and regulations promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a copy of a notice of the right to appeal to the board as provided for in section eight of this article, to be served upon the permit holder as specified in said section eight.

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

After issuance of the department's permit for any activity the chief or his duly authorized representatives may make field inspections of the work on the activity, and, after completion thereof, may inspect the completed activity, and, from time to time, may inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions of the department's permit for any activity, the chief is hereby authorized, after at least twenty days' notice, to make and enter an order revoking, suspending or modifying in whole or in part such permit for cause including,

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

The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon the person to whom any such permit was issued. The chief shall also cause a notice to be served with a copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section
§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 and inquiries, determines that any person who does not have a valid permit issued pursuant to the provisions of this article is causing the pollution of any of the waters of the state, or does on occasions cause pollution or is violating any rule or regulation or effluent limitation of the board, he shall, with the consent of the director, either make and enter an order directing such person to stop such pollution or the violation of the rule or regulation or effluent limitation of the board, or make and enter an order directing such person to take corrective or remedial action. Such order shall contain findings of fact upon which the chief based his determination to make and enter such order. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections five, six and seven of this article. The chief shall fix a time limit for the completion of such action. Whether the chief shall make and enter an order to stop such pollution or shall make and enter an order to take remedial action, in either case the person so ordered may elect to cease operations of the establishment deemed to be the source of such discharge or deposits causing pollution, if the pollution referred to in the chief's order shall be stopped thereby.

25 The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon such person. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article.
§20-5A-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 and does not elect to cease operation of the establishment deemed to be the source of such pollution or when ceasing does not stop the pollution, such person shall immediately upon issuance of the permit required under section eleven of this article take or begin appropriate steps or proceedings to carry out such remedial action.

2 In any such case it shall be the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately. The chief may require progress reports, at such time intervals as he deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligently prosecuted to completion.

3 Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association or other legal entity whatever, to provide immediately for the financing and carrying out of such remedial action, as may be necessary to comply with said order, shall constitute failure to take or begin appropriate steps or proceedings to comply with such order. If such person be a municipal corporation, the cost of all such remedial action as may be necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal corporation, not otherwise appropriated, and if there be not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds, any direct general obligation bond issue to be subject to the approval of the state sinking fund commission and the attorney general of the state of West Virginia.
If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendment thereof. Provided, That the provisions of section six of the above mentioned act, allowing objections to be filed with the governing body, and providing that a written protest of thirty percent or more of the owners of real estate shall require a four-fifths vote of the governing body for the issuance of said revenue bonds, shall not apply to bond issues proposed by any municipal corporation to comply with an order made and entered under the authority of this article, and such objections and submission of written protest shall not be authorized, nor shall the same, if made or had, operate to justify or excuse failure to comply with such order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, shall constitute a “sanitary fund,” and shall be used for no other purpose than for carrying out such order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated
in this article, unless such expenditure and the amount thereof have been approved by the chief. The acquisi-
tion, construction or installation, use and operation, re-
pair, modification, alteration, extension, equipment, cus-
tody and maintenance of any disposal system by any
municipal corporation, as herein provided, and the rights,
powers and duties with respect thereto, of such munici-
pal corporation and the respective officers and depart-
ments thereof, whether the same shall be financed by
the issuance of revenue or direct obligation bonds, shall
be governed by the provisions of said chapter twenty-
five, acts of the Legislature, first extraordinary session,
one thousand nine hundred thirty-three, and any amend-
ments thereof.

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

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

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

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

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

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

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

(e) Any such appeal hearing shall be conducted by a
quorum of the board, but the parties may by stipulation
agree to take evidence before a hearing examiner em-
ployed by the board. For the purpose of conducting such
appeal hearing, any member of the board and the secre-
tary thereof shall have the power and authority to issue
subpoenas and subpoenas duces tecum in the name of
the board, in accordance with the provisions of section
one, article five, chapter twenty-nine-a of this code. All
subpoenas and subpoenas duces tecum shall be issued and
served within the time and for the fees and shall be en-
forced, as specified in section one, article five of said
chapter twenty-nine-a, and all of the said section one
provisions dealing with subpoenas and subpoenas duces
tecum shall apply to subpoenas and subpoenas duces
tecum issued for the purpose of an appeal hearing here-
under.

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

(g) After such hearing and consideration of all the
testimony, evidence and record in the case, the board
shall make and enter an order affirming, modifying or
vacating the order of the chief, or shall make and enter
such order as the chief should have entered, or shall make
and enter an order approving or modifying the terms and
conditions of any permit issued. In determining its course
of action, the board shall take into consideration not only
the factors which the chief was authorized to consider in
making his order and in fixing the terms and conditions
of any permit, but also the economic feasibility of treat-
ing and/or controlling the sewage, industrial wastes or
other wastes involved.
Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of section sixteen of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article.


(A) Any person or the chief adversely affected by an order made and entered by the board after such appeal hearing, held in accordance with the provisions of section fifteen of this article, is entitled to judicial review thereof. All of the provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section, with the following modifications:

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

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

(3) As to cases involving an order directing that any and all discharges or deposits of sewage, industrial wastes, or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall
be filed, within the time specified in said section four, in
the circuit court of the county in which the establish-
ment is located or in which the pollution occurs.

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

(c) Legal counsel and services for the chief in all
appeal proceedings in the circuit court and in the supreme
court of appeals of this state shall be provided by the
attorney general or his assistants and in appeal pro-
ceedings in the circuit court by the prosecuting attorney
of the county in which the appeal is taken, all without
additional compensation, or the chief, with the written
approval of the attorney general, may employ counsel
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
of the board, effluent limitations, the terms and condi-
tions of any permit granted under the provisions of
this article, or any order of the chief or board, and the
venue of any such action shall be the county in which
the violation or noncompliance exists or is taking place
or in any county in which the waters thereof are polluted
as the result of such violation or noncompliance. The
court of the judge thereof in vacation may issue a
temporary or preliminary injunction in any case pend-
ing a decision on the merits of any injunctive applica-
tion filed. Any other section of this code to the contrary
notwithstanding, the state shall not be required to furnish
bond as a prerequisite to obtaining injunctive relief under
this article. An application for an injunction under
the provisions of this section may be filed and injunc-
tive relief granted notwithstanding that all of the ad-
ministrative remedies provided for in this article have
not been pursued or invoked against the person or
persons against such relief is sought and notwithstanding
that the person or persons against whom such relief is
sought have not been prosecuted or convicted under the
provisions of this article.

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

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

1 Any person who causes pollution or who fails or refuses to discharge any duty imposed upon him by this article or by any rule or regulation of the board, promulgated pursuant to the provisions and intent of this article, or by an order of the chief or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of such permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

2 Any person who shall intentionally misrepresent any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules and regulations promulgated by the board thereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or by imprisonment in the county jail not exceeding six months or by both such fine and imprisonment.

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

4 Any such person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided for in this article have been pursued or invoked against said
person and notwithstanding that a civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person. Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of such permit, he shall not be subject to criminal prosecution for pollution recognized and authorized by such permit.
Enr. S. B. No. 517]

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

James L. Lewis
Chairman Senate Committee

Clarence L. Christiansen
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J. C. Beecum, Jr.
Clerk of the Senate

William Blankenship
Clerk of the House of Delegates

W. T. Battle
President of the Senate

Donald L. Hipp
Speaker House of Delegates

The within ________ approved ________ this the ________ day of ________, 1978.

John D. Bolender
Governor