

APPROVED AND SIGNED BY THE GOVERNOR

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Time \_\_\_\_\_

No: 1479

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1479

(By Mr. Stephens & Mr. Riffle)



Passed April 10, 1981

In Effect Ninety Days From Passage



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 1479**

(By MR. STEPHENS and MR. RIFFLE)

[Passed April 10, 1981; in effect ninety days from passage.]

**AN ACT** to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-e, relating to storage, transportation, treatment or disposal of hazardous waste and a declaration of state policy with respect thereto; providing for a short title by which the article may be known; providing for definition of certain terms used with respect thereto; designating the department of natural resources as the lead agency for this state for purposes of Subtitle C of the federal Solid Waste Disposal Act; the powers and duties of the director of natural resources with respect thereto; the powers and duties of the chief of the water resources division, and the department of highways, public service commission, the department of health, the air pollution control commission, the office of oil and gas and the shallow gas-well review board with respect thereto; providing for the promulgation of rules and regulations by such director and chief as well as by such agencies with respect to the transportation, treatment, storage and disposal of such waste in this state; requiring written comments on rules and regulations promulgated under this article by the director of the department of natural resources to the legislative rule-making review committee; providing for certain permits for such pur-

poses and applications therefor; the content and form of such applications providing for hearings with respect to such applications and certain notices to be given with respect thereto and affording the right of public participation in such hearings; providing for the operation by existing facilities during the transition period applicable under this article; securing the confidentiality of certain trade secrets and other information with respect to the storage, treatment, transportation and disposal of such waste; granting unto the chief or the director or to other persons the right of entry to hazardous waste treatment or disposal sites and the right to take samples thereon; requiring certain reports and analyses with respect to such samples and the disposition of such reports; granting certain powers of subpoena and subpoena duces tecum with respect to the enforcement of this article; allowing monitoring of such sites; providing certain criminal and civil penalties for the violation of this article and of the rules and regulations promulgated pursuant thereto; providing for injunctive relief in certain instances; procedures relating to imminent and substantial hazards created by such waste and the duties of the chief in connection therewith; providing for certain duties of the attorney general and of the prosecuting attorneys with respect to the enforcement of this article; the right of the public to maintain suits and to seek damages arising from the transportation, storage, treatment or disposal of hazardous waste; requiring certain disclosures in deeds and leases; requiring the equivalence of this state's program with respect to hazardous waste with the federal program relating thereto; and providing for certain rules of construction with respect to conflicting provisions of this code.

*Be it enacted by the Legislature of West Virginia:*

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-e, to read as follows:

**ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.**

**§20-5E-1. Short title.**

- 1 This article may be known and cited as the "Hazardous
- 2 Waste Management Act."

**§20-5E-2. Declaration of policy.**

1 (a) The Legislature finds that:

2 (1) Continuing technological progress and increases in the  
3 amount of manufacture and the abatement of air and water  
4 pollution have resulted in ever increasing quantities of haz-  
5 arduous wastes;

6 (2) The public health and safety and the environment are  
7 threatened where hazardous wastes are not managed in an  
8 environmentally sound manner;

9 (3) The knowledge and technology necessary for alleviat-  
10 ing adverse health, environmental and aesthetic impacts re-  
11 sulting from current hazardous waste management and dis-  
12 posal practices are generally available;

13 (4) The manufacture, refinement, processing, treatment and  
14 use of coal, raw chemicals, ores, petroleum, gas and other  
15 natural and synthetic products are activities that make a sig-  
16 nificant contribution to the economy of this state; and

17 (5) The problem of managing hazardous wastes has be-  
18 come a matter of statewide concern.

19 (b) Therefore, it is hereby declared that the purposes of  
20 this article are:

21 (1) To protect the public health and safety, and the en-  
22 vironment from the effects of the improper, inadequate or  
23 unsound management of hazardous wastes;

24 (2) To establish a program of regulation over the storage,  
25 transportation, treatment and disposal of hazardous wastes;

26 (3) To assure the safe and adequate management of hazard-  
27 ous wastes within this state; and

28 (4) To assume regulatory primacy through Subtitle C of  
29 the federal Solid Waste Disposal Act, as amended.

**§20-5E-3. Definitions.**

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

3 (1) "Chief" means the chief of the division of water re-  
4 sources of the department of natural resources;

5 (2) "Director" means the director of the department of  
6 natural resources;

7 (3) "Disposal" means the discharge, deposit, injection,  
8 dumping, spilling, leaking or placing of any hazardous waste  
9 into or on any land or water so that such hazardous waste or  
10 any constituent thereof may enter the environment or be  
11 emitted into the air, or discharged into any waters, including  
12 ground waters;

13 (4) "Division" means the division of water resources of  
14 the department of natural resources;

15 (5) "Generation" means the act or process of producing  
16 hazardous waste materials;

17 (6) "Hazardous waste" means a waste or combination of  
18 wastes, which because of its quantity, concentration or physi-  
19 cal, chemical or infectious characteristics, may (A) cause, or  
20 significantly contribute to, an increase in mortality or an in-  
21 crease in serious irreversible, or incapacitating reversible,  
22 illness; or (B) pose a substantial present or potential hazard  
23 to human health or the environment when improperly treated,  
24 stored, transported, disposed of or otherwise managed;

25 (7) "Hazardous waste management" means the systematic  
26 control of the collection, source separation, storage, trans-  
27 portation, processing, treatment, recovery and disposal of  
28 hazardous wastes;

29 (8) "Manifest" means the form used for identifying the  
30 quantity, composition and the origin, routing and destination  
31 of hazardous waste during its transportation from the point of  
32 generation to the point of disposal, treatment or storage;

33 (9) "Person" means any individual, trust, firm, joint stock  
34 company, public, private or government corporation, part-  
35 nership, association, state or federal agency, the United States  
36 government, this state or any other state, municipality, county  
37 commission or any other political subdivision of a state or any  
38 interstate body;

39 (10) "Storage" means the containment of hazardous waste,  
40 either on a temporary basis or for a period of years, in such  
41 a manner as not to constitute disposal of such hazardous  
42 waste;

43 (11) "Treatment" means any method, technique or process  
44 including neutralization, designed to change the physical,  
45 chemical or biological character or composition of any haz-  
46 ardous waste so as to neutralize such waste or so as to render  
47 such waste nonhazardous, safer for transport, amenable to  
48 recovery, amenable to storage or reduced in volume. Such  
49 term includes any activity or processing designed to change  
50 the physical form or chemical composition of hazardous waste  
51 so as to render it nonhazardous;

52 (12) "Waste" means any garbage, refuse, sludge from a  
53 waste treatment plant, water supply treatment plant or air  
54 pollution control facility and other discarded material in-  
55 cluding solid, liquid, semisolid or contained gaseous material  
56 resulting from industrial, commercial, mining and agricultural  
57 operations, and from community activities, but does not in-  
58 clude solid or dissolved material in domestic sewage, or solid  
59 or dissolved materials in irrigation return flows or industrial  
60 discharges which are point sources subject to permits under  
61 section 402 of the federal Water Pollution Control Act, as  
62 amended, or source, special nuclear or byproduct material as  
63 defined by the federal Atomic Energy Act of 1954, as amend-  
64 ed.

**§20-5E-4. Designation of department of natural resources as the  
state hazardous waste management lead agency.**

1 The department of natural resources is hereby designated  
2 as the hazardous waste management lead agency for this state  
3 for purposes of Subtitle C of the federal Solid Waste Dis-  
4 posal Act as amended, and is hereby authorized to take all  
5 action necessary or appropriate to secure to this state the  
6 benefits of said legislation. In carrying out the purposes of  
7 this article, the director is hereby authorized to cooperate  
8 with the federal environmental protection agency and other  
9 agencies of the federal government, this state and other states,

10 and other interested persons in all matters relating to hazardous  
11 waste management.

**§20-5E-5. Powers and duties of director; integration with other acts;  
establishment of study of hazardous waste manage-  
ment.**

1 (a) In addition to all other powers and duties prescribed  
2 in this article or otherwise by law, and unless otherwise speci-  
3 fically set forth in this article, the director shall perform any  
4 and all acts necessary to carry out the purposes and require-  
5 ments of Subtitle C of the federal Solid Waste Disposal Act, as  
6 amended as of the effective date of this article.

7 (b) The director shall integrate all provisions of this article  
8 for purposes of administration and enforcement and shall  
9 avoid duplication to the maximum extent practicable, with  
10 the appropriate provisions of the water pollution control act,  
11 article five-a of this chapter; the surface mining and recla-  
12 mation act, article six of this chapter; the coal refuse disposal  
13 control act, article six-c of this chapter; the air pollution con-  
14 trol act, article twenty, chapter sixteen of this code; the oil  
15 and gas laws of article four chapter twenty-two of this code;  
16 the public health laws, chapter sixteen of this code; the dam  
17 control act, article five-d of this chapter; the pesticide use and  
18 application act of 1975, article sixteen-b, chapter nineteen  
19 of this code; and the pesticide act of 1961, article sixteen-a,  
20 chapter nineteen of this code.

21 (c) The director may enter into any agreements, including  
22 reimbursement for services rendered, contracts or cooperative  
23 arrangements, under such terms and conditions as he deems  
24 appropriate, with other state agencies, educational institutions  
25 or other organizations and individuals as necessary to imple-  
26 ment the provisions of this article.

27 (d) The director shall cooperate with and may receive and  
28 expend money from the federal government and other sources.

29 (e) Within twelve months after the effective date of this  
30 article, the director, or upon designation by the director, the  
31 chief, shall conduct and publish a study of hazardous waste  
32 management in this state which shall include, but not be  
33 limited to:

34 (1) A description of the sources of hazardous waste gen-  
35 eration within the state, including the types and quantities of  
36 such wastes;

37 (2) A description of current hazardous waste management  
38 practices and costs, including treatment, storage and disposal  
39 within the state; and

40 (3) An inventory of existing and abandoned hazardous  
41 waste treatment, storage and disposal sites.

42 (f) The director, or upon designation by the director, the  
43 chief, in preparing the study provided for in subsection (e)  
44 of this section may (1) require any owner or operator of  
45 a storage, treatment or disposal facility, or site, or any trans-  
46 porter or generator of hazardous wastes to furnish or permit  
47 access to any and all information that may reasonably be re-  
48 quired to fulfill the duty imposed upon him in subsection (e)  
49 of this section, and (2) may issue subpoenas or subpoena  
50 duces tecum to compel the production of information regarding  
51 the location of any existing or abandoned hazardous waste  
52 treatment, disposal or storage site as well as production of  
53 information regarding quantity, quality and hazardous waste  
54 management practices from any generator or transporter of  
55 hazardous waste or any owner or operator of an existing or  
56 abandoned hazardous waste treatment, storage or disposal site.

57 (g) The director, or upon designation by the director, the  
58 chief, shall (1) encourage, participate in and conduct an on-  
59 going investigation and analysis of methods, incentives, tech-  
60 nologies of source reduction, reuse, recycling or recovery of  
61 potentially hazardous waste and a strategy for encouraging the  
62 utilization or reduction of hazardous waste, and (2) investi-  
63 gate the feasibility of operating an information clearinghouse  
64 for hazardous wastes.

65 (h) The director, or upon designation by the director, the  
66 chief, shall provide for the continuing education and training  
67 of appropriate department personnel in matters of hazardous  
68 waste management.

**§20-5E-6. Promulgation of regulations by director.**

1 (a) The director has overall responsibility for the promul-

2 gation of rules and regulations under this article. Within six  
3 months of the effective date of this article the director shall  
4 promulgate the following rules and regulations; in consultation  
5 with the department of health, the air pollution control com-  
6 mission, the office of emergency services, the public service  
7 commission, the state fire marshal, the department of public  
8 safety, the department of highways, the department of agri-  
9 culture, the water resources board and the department of mines  
10 office of oil and gas. In promulgating and revising such rules  
11 and regulations the director shall comply with the provisions  
12 of chapter twenty-nine-a of this code, shall avoid duplication  
13 to the maximum extent practicable with the appropriate pro-  
14 visions of the acts and laws set out in subsection (b), section  
15 five of this article and shall be consistent with the rules and  
16 regulations promulgated by the federal environmental pro-  
17 tection agency pursuant to the federal Solid Waste Disposal  
18 Act, as amended:

19 (1) Rules and regulations establishing a plan for the safe  
20 and effective management of hazardous wastes within the  
21 state;

22 (2) Rules and regulations establishing criteria for identifying  
23 the characteristics of hazardous waste, identifying the char-  
24 acteristics of hazardous waste and listing particular hazardous  
25 wastes which are subject to the provisions of this article:  
26 *Provided, That:*

27 (A) Each waste listed below shall, except as provided in  
28 subparagraph (B) of this subdivision, be subject only to  
29 regulation under other applicable provisions of federal or  
30 state law in lieu of this article until proclamation by the  
31 governor finding that at least six months have elapsed since  
32 the date of submission of the applicable study required to  
33 be conducted under section 8002 of the federal Solid Waste  
34 Disposal Act, as amended, and that regulations have been  
35 promulgated with respect to such wastes in accordance with  
36 section 3001 (b) (3) (C) of the federal Solid Waste Disposal  
37 Act, as amended, and finding in the case of the wastes identi-  
38 fied in paragraph (iv) of this subparagraph that the regula-  
39 tion of such wastes have been authorized by an act of Con-

40 gress in accordance with section 3001 (b) (2) of the federal  
41 Solid Waste Disposal Act, as amended:

42 (i) Fly ash waste, bottom ash waste, slag waste and flue  
43 gas emission control waste generated primarily from the com-  
44 bustion of coal or other fossil fuels;

45 (ii) Solid waste from the extraction, beneficiation and pro-  
46 cessing of ores and minerals, including phosphate rock and  
47 overburden from the mining of uranium ore;

48 (iii) Cement kiln dust waste; and

49 (iv) Drilling fluids, produced waters and other wastes asso-  
50 ciated with the exploration, development or production of  
51 crude oil or natural gas or geothermal energy.

52 (B) Owners and operators of disposal sites for wastes listed  
53 in subparagraph (A) of this subdivision may be required by  
54 the director of the department of natural resources through  
55 regulation prescribed under authority of this section;

56 (i) As to disposal sites for such wastes which are to be  
57 closed, to identify the locations of such sites through sur-  
58 veying, platting or other measures, together with recordation  
59 of such information on the public record, to assure that the  
60 locations where such wastes are disposed of are known and  
61 can be located in the future; and

62 (ii) To provide chemical and physical analysis and com-  
63 position of such wastes, based on available information, to be  
64 placed on the public record.

65 (3) Rules and regulations establishing such standards appli-  
66 cable to generators of hazardous waste identified or listed  
67 under this article as may be necessary to protect public health  
68 and safety and the environment, which standards shall es-  
69 tablish requirements respecting (A) record keeping practices  
70 that accurately identify the quantities of such hazardous waste  
71 generated, the constituents thereof which are significant in  
72 quantity or in potential harm to human health or the environ-  
73 ment and the disposition of such wastes, (B) labeling practices  
74 for any containers used for the storage, transport or disposal  
75 of such hazardous waste such as will identify accurately such

76 waste, (C) use of appropriate containers for such hazardous  
77 waste, (D) furnishing of information on the general chemical  
78 composition of such hazardous wastes to persons transporting,  
79 treating, storing or disposing of such wastes, (E) use of a  
80 manifest system and any other reasonable means necessary  
81 to assure that all such hazardous waste generated is desig-  
82 nated for treatment storage or disposal in, and arrives at treat-  
83 ment, storage or disposal facilities (other than facilities on the  
84 premises where the waste is generated) with respect to which  
85 permits have been issued which are required (1) by this article  
86 or any rule and regulation required by this article to be prom-  
87 ulgated, (2) by Subtitle C of the federal Solid Waste Disposal  
88 Act, as amended, (3) by the laws of any other state which has  
89 an authorized hazardous waste program pursuant to section  
90 3006 of the federal Solid Waste Disposal Act, as amended,  
91 or (4) by title I of the federal Marine Protection, Research  
92 and Sanctuaries Act and (F) the submission of reports to the  
93 director at such times as the director deems necessary setting  
94 out the quantities of hazardous wastes identified or listed  
95 under this article that the generator has generated during a  
96 particular time period, and the disposition of all such haz-  
97 arduous waste;

98 (4) Rules and regulations establishing such performance  
99 standards applicable to owners and operators of facilities for  
100 the treatment, storage or disposal of hazardous waste identi-  
101 fied or listed under this article as may be necessary to pro-  
102 tect public health and safety and the environment, which  
103 standards shall, where appropriate, distinguish in such stan-  
104 dards between requirements appropriate for new facilities and  
105 for facilities in existence on the date of promulgation of such  
106 rules and regulations and shall include, but need not be limited  
107 to, requirements respecting: (A) Maintaining records of all  
108 hazardous wastes identified or listed under this article which  
109 are treated, stored or disposed of, as the case may be, and the  
110 manner in which such wastes were treated, stored or disposed  
111 of; (B) satisfactory reporting, monitoring and inspection and  
112 compliance with the manifest system referred to in subdivision  
113 (3), subsection (a) of this section; (C) treatment storage or  
114 disposal of all such waste received by the facility pursuant to  
115 such operating methods, techniques and practices as may be

116 satisfactory to the directors; (D) the location, design and  
117 construction of such hazardous waste treatment, disposal or  
118 storage facilities; (E) contingency plans for effective action to  
119 minimize unanticipated damage from any treatment, storage  
120 or disposal of any such hazardous waste; (F) the maintenance  
121 of operation of such facilities and requiring such additional  
122 qualifications as to ownership, continuity of operation, train-  
123 ing for personnel and financial responsibility as may be neces-  
124 sary or desirable; however no private entity may be precluded  
125 by reason of criteria established under this subsection from  
126 the ownership or operation of facilities providing hazardous  
127 waste treatment, storage or disposal services where such entity  
128 can provide assurances of financial responsibility and con-  
129 tinuity of operation consistent with the degree and duration of  
130 risks associated with the treatment, storage or disposal of  
131 specified hazardous waste; and (G) compliance with the re-  
132 quirements of section eight of this article respecting permits  
133 for treatment, storage or disposal;

134 (5) Rules and regulations specifying the terms and condi-  
135 tions under which the chief shall issue, modify, suspend,  
136 revoke or deny such permits as may be required by this  
137 article;

138 (6) Rules and regulations for the establishment and main-  
139 tenance of records; the making of reports; the taking of samp-  
140 les and the performing of tests and analyses; the installing,  
141 calibrating, operating and maintaining of monitoring equip-  
142 ment or methods; and the providing of any other information  
143 as may be necessary to achieve the purposes of this article;

144 (7) Rules and regulations establishing standards and pro-  
145 cedures for the certification of personnel at hazardous waste  
146 treatment, storage or disposal facilities or sites;

147 (8) Rules and regulations for public participation in the  
148 implementation of this article;

149 (9) Rules and regulations establishing procedures and re-  
150 quirements for the use of a manifest during the transport of  
151 hazardous wastes;

152 (10) Rules and regulations establishing procedures and

153 requirements for the submission and approval of a plan, appli-  
154 cable to owners or operators of hazardous waste storage,  
155 treatment and disposal facilities, as necessary or desirable for  
156 closure of the facility, post-closure monitoring and mainte-  
157 nance, sudden and accidental occurrences and nonsudden and  
158 accidental occurrences;

159 (11) Rules and regulations establishing a schedule of fees  
160 to recover the costs of processing permit applications and  
161 permit renewals; and

162 (12) Such other rules and regulations as are necessary  
163 to effectuate the purposes of this article.

164 (b) The rules and regulations required by this article to  
165 be promulgated shall be reviewed and where necessary, revised  
166 not less frequently than every three years. Additionally, the  
167 rules and regulations required to be promulgated by this  
168 article shall be revised, as necessary, within six months of the  
169 effective date of any amendment of the federal Solid Waste  
170 Disposal Act and within six months of the effective date of  
171 any adoption or revision of rules and regulations required to  
172 be promulgated by the federal Solid Waste Disposal Act,  
173 as amended.

174 (c) Notwithstanding any other provision in this article the  
175 director shall not promulgate rules and regulations which are  
176 more properly within the jurisdiction and expertise of any of  
177 the agencies empowered with rule-making authority pursuant  
178 to section seven of this article.

**§20-5E-7. Rule making, permitting and enforcement authority and jurisdiction of other state agencies.**

1 (a) The commissioner of highways, in consultation with the  
2 director, and avoiding inconsistencies with and avoiding dupli-  
3 cation to the maximum extent practicable with rules and regula-  
4 tions required to be promulgated pursuant to this article  
5 by the director or any other rule-making authority, and in  
6 accordance with the provisions of chapter twenty-nine-a of  
7 this code, shall promulgate, as necessary, rules and regulations  
8 governing the transportation of hazardous wastes by vehicle  
9 upon the roads and highways of this state. Such rules and

10 regulations shall be consistent with applicable rules and regula-  
11 tions issued by the federal department of transportation and  
12 consistent with this article: *Provided*, That such rules and  
13 regulations shall apply to the interstate transportation of  
14 hazardous wastes as well as the intrastate transportation of  
15 such waste within the boundaries of this state. Such rules and  
16 regulations shall be promulgated within six months of the  
17 effective date of this article.

18 In lieu of those enforcement and inspection powers con-  
19 ferred upon the commissioner of highways elsewhere by law  
20 with respect to the transportation of hazardous waste, the  
21 commissioner of highways has the same enforcement and  
22 inspection powers as those granted to the chief, his authorized  
23 representative or agent, or any authorized employee or agent  
24 of the department of natural resources, as the case may  
25 be, under sections eleven, twelve, thirteen, fourteen, fif-  
26 teen, sixteen and seventeen of this article. The limitations of  
27 this subsection shall not effect in any way the powers of the  
28 department of highways with respect to weight enforce-  
29 ment.

30 (b) The public service commission, in consultation with  
31 the director, and avoiding inconsistencies with and avoid-  
32 ing duplication to the maximum extent practicable with  
33 rules and regulations required to be promulgated pur-  
34 suant to this article by the director or any other rule-  
35 making authority, and in accordance with the provisions  
36 of chapter twenty-nine-a of this code, shall promulgate, as  
37 necessary, rules and regulations governing the transporta-  
38 tion of hazardous wastes by railroad in this state. Such  
39 rules and regulations shall be consistent with applicable  
40 rules and regulations issued by the federal department of  
41 transportation and consistent with this article: *Provided*,  
42 That such rules and regulations apply to the interstate  
43 transportation of hazardous wastes as well as the intra-  
44 state transportation of such wastes within the bound-  
45 aries of this state. Such rules and regulations shall be  
46 promulgated within six months of the effective date of this  
47 article.

48 In lieu of those enforcement and inspection powers con-

49 ferred upon the public service commission elsewhere by law  
50 with respect to the transportation of hazardous waste, the  
51 public service commission has the same enforcement and  
52 inspection powers as those granted to the chief, his authorized  
53 representative or agent or any authorized employee or agent of  
54 the department of natural resources, as the case may be, under  
55 sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and  
56 seventeen of this article.

57 (c) The rules and regulations required to be promulgated  
58 pursuant to subsections (a) and (b) of this section shall  
59 apply equally to those persons transporting hazardous wastes  
60 generated by others and to those transporting hazardous  
61 wastes they have generated themselves or combinations there-  
62 of. Such rules and regulations shall establish such standards,  
63 applicable to transporters of hazardous waste identified or  
64 listed under this article, as may be necessary to protect  
65 public health, safety and the environment. Such standards  
66 shall include, but need not be limited to, requirements respect-  
67 ing (A) recordkeeping concerning such hazardous waste trans-  
68 ported, and their source and delivery points, (B) transporta-  
69 tion of such waste only if properly labeled, (C) compliance  
70 with the manifest system referred to in subdivision (3),  
71 subsection (a), section six of this article and (D) trans-  
72 portation of all such hazardous waste only to the hazardous  
73 waste treatment, storage or disposal facilities which the shipper  
74 designates on the manifest form to be a facility holding a per-  
75 mit issued under (1) this article or any rule and regulation re-  
76 quired by this article to be promulgated; (2) Subtitle C of  
77 the federal Solid Waste Disposal Act, as amended; (3) the  
78 laws of any other state which has an authorized hazardous  
79 waste program pursuant to section 3006 of the federal Solid  
80 Waste Disposal Act, as amended; or (4) Title I of the federal  
81 Marine Protection, Research and Sanctuaries Act.

82 (d) The state director of health has jurisdiction over the  
83 enforcement of regulations pertaining to hazardous wastes  
84 with infectious characteristics and the permitting and licensing  
85 of facilities that treat, store or dispose of such hazardous  
86 wastes: *Provided*, That the state board of health, in con-  
87 sultation with the director of the department of natural re-

88 sources and avoiding inconsistencies with, and avoiding dupli-  
89 cation to the maximum extent practicable with rules and  
90 regulations required to be promulgated pursuant to this article  
91 by the director of the department of natural resources or any  
92 other rule-making authority, shall promulgate such rules and  
93 regulations as may be necessary to comply with the require-  
94 ments of this article: *Provided, however,* That nothing in this  
95 subsection shall be construed to diminish or alter the autho-  
96 rity of the air pollution control commission or its director  
97 under this article or article twenty, chapter sixteen of this  
98 code: *Provided further,* That such permitting or licensing  
99 shall be in addition to those permits required by section eight  
100 of this article. Such rules and regulations shall be consistent  
101 with this article. Such rules and regulations shall be promul-  
102 gated within six months of the effective date of this article.

103 Any person aggrieved or adversely affected by an order  
104 of the state director of health pursuant to this article, or  
105 the denial or issuance of a permit, or the failure or refusal  
106 of said director to act within a reasonable time on an  
107 application for a permit or the terms or conditions of a  
108 permit granted under the provisions of this article, may  
109 appeal to a special hearing examiner appointed to hear con-  
110 tested cases in accordance with provisions of chapter  
111 twenty-nine-a of this code. All procedures for appeal  
112 and conduct of hearings shall comply with rules and regula-  
113 tions promulgated by the state board of health. Unless the  
114 board of health directs otherwise, the appeal hearing shall be  
115 held in the city of Charleston, Kanawha County.

116 In lieu of those enforcement and inspection powers con-  
117 ferred upon the state director of health elsewhere by law with  
118 respect to hazardous waste with infectious characteristics, the  
119 state director of health shall have the same enforcement  
120 and inspection powers as those granted to the chief, his  
121 authorized representative or agent or any authorized em-  
122 ployee or agent of the department of natural resources, as  
123 the case may be, under sections eleven, twelve, thirteen, four-  
124 teen, fifteen, sixteen and seventeen of this article.

125 (e) The director shall rely, to the maximum extent practi-

126 cable, on the department of health for expertise on the  
127 adverse effects of toxic hazardous waste on human health.

128 (f) The air pollution control commission, in consultation  
129 with the director, and avoiding inconsistencies with and avoid-  
130 ing duplication to the maximum extent practicable with rules  
131 and regulations required to be promulgated pursuant to this  
132 article by the director or any other rule-making authority,  
133 and in accordance with the provisions of article twenty, chapter  
134 sixteen and chapter twenty-nine-a of this code, shall promulgate  
135 such rules and regulations establishing air pollution perform-  
136 ance standards and permit requirements and procedures as may  
137 be necessary to comply with the requirements of this article.  
138 Such permits as such regulations may require shall be in  
139 addition to those permits required by section eight of this  
140 article. All rules and regulations promulgated pursuant to this  
141 subsection shall be consistent with this article and shall be  
142 promulgated within six months of the effective date of this  
143 article.

144 With respect to this article, and any rules or regulations  
145 promulgated pursuant hereto, the director of the air pollu-  
146 tion control commission has the same enforcement and in-  
147 spection powers as those of the chief under sections eleven,  
148 twelve, thirteen, fourteen, fifteen, sixteen and seventeen of  
149 this article: *Provided*, That no action for penalties may be  
150 initiated by the director of the air pollution control commission  
151 without the approval of that commission. Any person aggrieved  
152 or adversely affected by an order of the director of the air pol-  
153 lution control commission made and entered in accordance with  
154 the provisions of this article, or by the failure or refusal of said  
155 director to act within a reasonable time on an application  
156 for a permit or by the issuance or denial of or by the terms  
157 and conditions of a permit granted under the provisions of  
158 this article, may appeal to the air pollution control commission  
159 in accordance with the procedure set forth in section six,  
160 article twenty, chapter sixteen of this code, and orders made  
161 and entered by said commission shall be subject to judicial  
162 review in accordance with the procedures set forth in section  
163 seven, article twenty, chapter sixteen of this code, except that  
164 as to cases involving an order granting or denying an applica-

165 tion for a permit, revoking or suspending a permit or approving  
166 or modifying the terms and conditions of a permit or the  
167 failure to act within a reasonable time on an application for a  
168 permit, the petition for judicial review shall be filed in the  
169 circuit court of Kanawha County.

170 (g) The director of the department of natural resources  
171 has exclusive responsibility for carrying out any require-  
172 ment of this article with respect to coal mining wastes or  
173 overburden for which a permit is issued under the Surface Coal  
174 Mining and Reclamation Act of 1980, article six of this  
175 chapter.

176 (h) To the extent that this article relates to activities with  
177 respect to oil and gas wells, liquid injection wells and waste  
178 disposal wells now regulated by articles four, four-b and seven,  
179 chapter twenty-two of the code, the administrator of the office  
180 of oil and gas and the shallow gas-well review board has the  
181 jurisdiction with respect to the regulation of such activities and  
182 shall promulgate such rules and regulations as may be neces-  
183 sary to comply with the requirements of this article: *Pro-*  
184 *vided*, That nothing in this subsection may be construed to  
185 diminish or alter the authority and responsibility of the chief  
186 or the water resources board under articles five and five-a,  
187 chapter twenty of this code.

188 In lieu of those enforcement and inspection powers con-  
189 ferred upon the administrator of the office of oil and gas and  
190 the shallow gas-well review board elsewhere by law, with  
191 respect to hazardous wastes, the administrator of the office  
192 of oil and gas and the shallow gas-well review board have the  
193 same enforcement and inspection powers as those granted to the  
194 chief, his authorized representative or agent or any authorized  
195 employee or agent of the department of natural resources, as  
196 the case may be, under sections eleven, twelve, thirteen, four-  
197 teen, fifteen, sixteen and seventeen of this article.

198 (i) The water resources board, within six months of the  
199 effective date of this article, in consultation with the director,  
200 and avoiding inconsistency with and avoiding duplication to  
201 the maximum extent practicable with rules and regulations  
202 required to be promulgated pursuant to this article by the

203 director or any other rule-making authority, and in accord-  
204 ance with the provisions of chapter twenty-nine-a of this code,  
205 shall, as necessary, promulgate rules and regulations govern-  
206 ing discharges into the waters of this state of hazardous waste  
207 resulting from the treatment, storage or disposal of hazardous  
208 waste and rules and regulations governing the issuance, modi-  
209 fication, suspension, revocation or denial of such permits re-  
210 lating to such discharges from the treatment, storage or dis-  
211 posal of hazardous waste, as may be required by this article.  
212 Such rules and regulations shall be consistent with this article.

213 (j) All rules and regulations promulgated pursuant to this  
214 section shall be consistent with rules and regulations pro-  
215 mulgated by the federal environmental protection agency pur-  
216 suant to the federal Solid Waste Disposal Act, as amended.

217 (k) The director shall submit his written comments to the  
218 legislative rule-making review committee regarding all rules  
219 and regulations promulgated pursuant to this article.

**§20-5E-8. Permits; application; denial; undertaking activities with-  
out a permit.**

1 (a) No person may construct, modify, operate or close  
2 any facility or site for the treatment, storage or disposal  
3 of hazardous waste identified or listed under this article,  
4 nor shall any person store, treat or dispose of any such  
5 hazardous waste without first obtaining a permit from the  
6 chief for such facility, site or activity and all other permits  
7 as required by law. Such permit shall be issued, after public  
8 notice and opportunity for public hearing, upon such reason-  
9 able terms and conditions as the chief may direct if the  
10 application, together with all supporting information and data  
11 and other evidence establishes that the construction modifica-  
12 tion, operation or closure, as the case may be, of the hazardous  
13 waste facility, site or activity will not violate any provisions  
14 of this article or any of the rules and regulations promulgated  
15 by the director as required by this article: *Provided, That* in  
16 issuing the permits required by this subsection, the chief shall  
17 not regulate those aspects of a hazardous waste treatment,  
18 storage or disposal facility which are the subject of the per-  
19 mitting or licensing requirements of section seven of this

20 article and which need not be regulated in order for the chief  
21 to perform his duties under this article.

22 (b) The chief shall prescribe a form of application for  
23 all permits issued by the chief.

24 (c) The chief may require a plan for the closure of such  
25 facility or site to be submitted along with an application for  
26 a permit which plan for closure shall comply in all respects  
27 with the requirements of this article and any rules and  
28 regulations promulgated hereunder. Such plan of closure  
29 shall be subject to modification upon application by the  
30 permit holder to the chief and approval of such modification  
31 by the chief.

32 (d) An environmental analysis shall be submitted with the  
33 permit application for all hazardous waste treatment, storage  
34 or disposal facilities which are major facilities as that term may  
35 be defined by rules and regulations promulgated by the direc-  
36 tor: *Provided*, That facilities in existence on the nineteenth  
37 day of November, one thousand nine hundred eighty, need not  
38 comply with this subsection. Such environmental analysis shall  
39 contain information of the type, quality and detail that will  
40 permit adequate consideration of the environmental, tech-  
41 nical and economic factors involved in the establishment and  
42 operation of such facilities:

43 (1) The portion of the applicant's environmental analysis  
44 dealing with environmental assessments shall contain, but not  
45 be limited to:

46 (A) The potential impact of the method and route of  
47 transportation of hazardous waste to the site and the potential  
48 impact of the establishment and operation of such facilities  
49 on air and water quality, existing land use, transportation and  
50 natural resources in the area affected by such facilities;

51 (B) A description of the expected effect of such facilities;  
52 and

53 (C) Recommendations for minimizing any adverse impact.

54 (2) The portion of the applicant's environmental analysis  
55 dealing with technical and economic assessments shall contain,  
56 but not be limited to:

57 (A) Detailed descriptions of the proposed site and facility,  
58 including site location and boundaries and facility purpose,  
59 type, size, capacity and location on the site and estimates  
60 of the cost and charges to be made for material accepted, if  
61 any;

62 (B) Provisions for managing the site following cessation  
63 of operation of the facility; and

64 (C) Qualifications of owner and operation, including a  
65 description of the applicant's prior experience in hazardous  
66 waste management operations.

67 (e) Any person undertaking, without a permit, any of the  
68 activities for which a permit is required under this section  
69 or under section seven of this article, or any person violating  
70 any term or condition under which a permit has been issued  
71 pursuant to this section or pursuant to section seven of this  
72 article, shall be subject to the enforcement procedures of  
73 this article.

74 (f) Notwithstanding any provision to the contrary in sub-  
75 sections (a) through (e) of this section or section seven of this  
76 article, any surface coal mining and reclamation permit cover-  
77 ing any coal mining wastes or overburden which has been issued  
78 or approved under the Surface Coal Mining and Reclamation  
79 Act of 1980, article six of this chapter, shall be considered to  
80 have all necessary permits issued pursuant to this article with  
81 respect to the treatment, storage or disposal of such wastes or  
82 overburden. Rules and regulations promulgated under this art-  
83 icle are not applicable to treatment, storage or disposal or coal  
84 mining wastes and overburden which are covered by such  
85 permit.

**§20-5E-9. Public participation.**

1 Before the issuing of a permit to any person with re-  
2 spect to any facility for the treatment, storage or disposal  
3 of hazardous waste under sections seven or eight of this article,  
4 the chief or other permit issuing authority shall:

5 (a) Cause to be published as a Class I-0 legal advertise-  
6 ment in a newspaper of general circulation and the pub-  
7 lication area shall be the county wherein the real estate or great-

8 er portion thereof is situate and broadcast over local radio sta-  
9 tions notice of the chief's or other permit issuing authority's in-  
10 tention to issue such permit; and

11 (b) Transmit written notice of the chief's or other permit  
12 issuing authority's intention to issue such permit to each unit of  
13 local government having jurisdiction over the area in which such  
14 facility is proposed to be located and to each state agency  
15 having any authority under state law with respect to the con-  
16 struction or operation of such facility.

17 If within forty-five days the chief or other permit issuing  
18 authority receives written notice of opposition to the chief's  
19 or other permit issuing authority's intention to issue such  
20 permit and a request for a hearing, or if the chief or other  
21 permit issuing authority determines on his own initiative,  
22 to have a hearing he shall hold an informal public hearing  
23 (including an opportunity for presentation of written and oral  
24 views) on whether he should issue a permit for the proposed  
25 facility. Whenever possible the chief or other permit issuing  
26 authority shall schedule such hearing at a location convenient  
27 to the nearest population center to such proposed facility and  
28 give notice in the aforementioned manner of the date, time and  
29 subject matter of such hearing.

**§20-5E-10. Transition program for existing facilities.**

1 Any person who owns or operates a facility required to  
2 have any permit under this article, which facility is in  
3 existence on the effective date of this article, shall be  
4 treated as having been issued such permit until such time as  
5 final administrative disposition is made with respect to an  
6 application for such permit: *Provided*, That on the effective  
7 date of this article such facility is operating and continues  
8 to operate in compliance with the interim status requirement  
9 of the federal environmental protection agency established  
10 pursuant to section 3005 of the federal Solid Waste Disposal  
11 Act, as amended, if applicable, and in such a manner as  
12 will not cause or create a substantial risk of a health hazard  
13 or public nuisance or a significant adverse effect upon the  
14 environment: *Provided, however*, That the owner or operator  
15 of such facility shall make a timely and complete application

16 for such permit in accordance with rules and regulations  
17 promulgated pursuant to this article specifying procedures and  
18 requirements for obtaining such permit.

**§20-5E-11. Confidential information.**

1 Information obtained by any agency under this article shall  
2 be available to the public unless the chief certifies such informa-  
3 tion to be confidential. The chief may make such certification  
4 where any person shows, to the satisfaction of the chief,  
5 that the information or parts thereof, if made public, would  
6 divulge methods, processes or activities entitled to protection  
7 as trade secrets. Nothing in this section may be construed  
8 as limiting the disclosure of information by the division to  
9 any officer, employee or authorized representative of the  
10 state or federal government concerned with effecting the  
11 purposes of this article.

12 Any person who knowingly and willfully divulges or dis-  
13 closes any information entitled to protection under this section  
14 is guilty of a misdemeanor, and, upon conviction thereof,  
15 shall be fined not more than five thousand dollars, or im-  
16 prisoned in the county jail for not more than six months,  
17 or both fined and imprisoned.

**§20-5E-12. Inspections; right of entry; sampling; reports and analyses; subpoenas.**

1 (a) The chief or any authorized representative, employee  
2 or agent of the division, upon the presentation of proper  
3 credentials and at reasonable times, may enter any building,  
4 property, premises, place, vehicle or permitted facility where  
5 hazardous wastes are or have been generated, treated, stored,  
6 transported or disposed of for the purpose of making an  
7 investigation with reasonable promptness to ascertain the  
8 compliance by any person with the provisions of this article  
9 or the rules and regulations promulgated by the director or  
10 permits issued by the chief hereunder.

11 (b) The chief or his authorized representative, employee  
12 or agent shall make periodic inspections at every permitted  
13 facility as necessary to effectively implement and enforce  
14 the requirements of this article or the rules and regulations

15 promulgated by the director or permits issued by the chief  
16 hereunder. After an inspection is made, a report shall be  
17 prepared and filed with the chief and a copy of such inspec-  
18 tion report shall be promptly furnished to the person in  
19 charge of such building, property, premises, place, vehicle  
20 or facility. Such inspection reports shall be available to the  
21 public in accordance with the provisions of article one,  
22 chapter twenty-nine-b of this code.

23 (c) Whenever the chief has cause to believe that any  
24 person is in violation of any provision of this article, any  
25 condition of a permit issued by the chief, any order or any  
26 regulation promulgated by the director under this article, he  
27 shall immediately order an inspection of the building, property,  
28 premises, place, vehicle or permitted facility at which the  
29 alleged violation is occurring.

30 (d) The chief or any authorized representative, employee  
31 or agent of the division may, upon presentation of proper  
32 credentials and at reasonable times, enter any establishment  
33 or other place maintained by any person where hazardous  
34 wastes are or have been stored, treated or disposed of to  
35 inspect and take samples of wastes, soils, air, surface water  
36 and ground water and samples of any containers or labelings  
37 for such wastes. In taking such samples, the division may  
38 utilize such sampling methods as it determines to be necessary,  
39 including, but not limited to, soil borings and monitoring  
40 wells. If the representative, employee or agent obtains any  
41 such samples, prior to leaving the premises, he shall give  
42 to the owner, operator or agent in charge a receipt describing  
43 the sample obtained and, if requested, a portion of each  
44 such sample equal in volume or weight to the portion retained.  
45 The division shall promptly provide a copy of any analysis  
46 made to the owner, operator or agent in charge.

47 (e) Upon presentation of proper credentials and at reason-  
48 able times, the chief or any authorized representative, em-  
49 ployee or agent of the division shall be given access to all  
50 records relating to the storage, treatment or disposal of  
51 hazardous waste in the possession of any person who gener-  
52 ates, stores, treats, transports, disposes of, or otherwise  
53 handles or has handled such waste, the chief or an autho-

54 rized representative, employee or agent shall be furnished  
55 with copies of all such records or given the records for the  
56 purpose of making copies. If the chief, upon inspection,  
57 investigation or through other means, observes or learns of a  
58 violation or probable violation of this article, he is authorized  
59 to issue subpoenas and subpoenas duces tecum and to order  
60 the attendance and testimony of witnesses and to compel the  
61 production of any books, papers, documents, manifests and  
62 other physical evidence pertinent to such investigation or  
63 inspection.

**§20-5E-13. Monitoring, analysis, and testing.**

1 (a) If the chief determines, upon receipt of any information,  
2 that (1) the presence of any hazardous waste at a facility or  
3 site at which hazardous waste is, or has been, stored, treated  
4 or disposed of, or (2) the release of any such waste from such  
5 facility or site may present a substantial hazard to human  
6 health or the environment, he may issue an order requiring  
7 the owner or operator of such facility or site to conduct such  
8 monitoring, testing, analysis and reporting with respect to such  
9 facility or site as the chief deems reasonable to ascertain the  
10 nature and extent of such hazard.

11 (b) In the case of any facility or site not in operation at  
12 the time a determination is made under subsection (a) of this  
13 section with respect to the facility or site, if the chief finds that  
14 the owner of such facility or site could not reasonably be  
15 expected to have actual knowledge of the presence of hazardous  
16 waste at such facility or site and of its potential for release, he  
17 may issue an order requiring the most recent previous owner  
18 or operator of such facility or site who could reasonably be  
19 expected to have such actual knowledge to carry out the ac-  
20 tions referred to in subsection (a) of this section.

21 (c) An order under subsection (a) or (b) of this section  
22 shall require the person to whom such order is issued to sub-  
23 mit to the chief within thirty days from the issuance of such  
24 order a proposal for carrying out the required monitoring, test-  
25 ing, analysis and reporting. The chief may, after providing such  
26 person with an opportunity to confer with the chief respecting  
27 such proposal, require such person to carry out such monitor-

28 ing, testing, analysis and reporting in accordance with such  
29 proposal, and such modifications in such proposal as the  
30 chief deems reasonable to ascertain the nature and extent of the  
31 hazard.

32 (d) The following duties shall be carried out by the chief:

33 (1) If the chief determines that no owner or operator re-  
34 ferred to in subsection (a) or (b) of this section is able to con-  
35 duct monitoring, testing, analysis or reporting satisfactory to the  
36 chief, if the chief deems any such action carried out by an  
37 owner or operator to be unsatisfactory or if the chief cannot  
38 initially determine that there is an owner or operator referred  
39 to in subsection (a) or (b) of this section who is able to con-  
40 duct such monitoring, testing, analysis or reporting, he may  
41 conduct monitoring, testing or analysis (or any combination  
42 thereof) which he deems reasonable to ascertain the nature  
43 and extent of the hazard associated with the site concerned, or  
44 authorized a state or local authority or other person to carry  
45 out any such action, and require, by order, the owner or oper-  
46 ator referred to in subsection (a) or (b) of this section to re-  
47 imburse the chief or other authority or person for the costs  
48 of such activity.

49 (2) No order may be issued under this subsection requiring  
50 reimbursement of the costs of any action carried out by the  
51 chief which confirms the results of the order issued under  
52 subsection (a) or (b) of this section.

53 (e) The chief may commence a civil action against any  
54 person who fails or refuses to comply with any order issued  
55 under this section. Such action shall be brought in the cir-  
56 cuit court in which the defendant is located, resides or is doing  
57 business. Such court has jurisdiction to require compliance  
58 with such order and to assess a civil penalty of not to exceed  
59 five thousand dollars for each day during which such failure  
60 or refusal occurs.

**§20-5E-14. Enforcement orders; hearings.**

1 (a) If the chief, upon inspection, investigation or through  
2 other means observes, discovers or learns of a violation of the  
3 provisions of this article, any permit, order or rules or regu-

4 lations issued or promulgated hereunder, he may issue an order  
5 stating with reasonable specificity the nature of the violation  
6 and requiring compliance immediately or within a specified  
7 time. An order under this section includes, but is not limited  
8 to, any or all of the following: Orders suspending, revoking or  
9 modifying permits, orders requiring a person to take remedial  
10 action or cease and desist orders.

11 (b) Any person issued a cease and desist order may file  
12 a notice of request for reconsideration with the chief not more  
13 than seven days from the issuance of such order and shall have  
14 a hearing before the chief contesting the terms and conditions  
15 of such order within ten days of the filing of such notice of a  
16 request for reconsideration. The filing of a notice of request  
17 for reconsideration shall not stay or suspend the execution or  
18 enforcement of such cease and desist order.

**§20-5E-15. Criminal penalties.**

1 (a) If any person knowingly (1) transports any hazardous  
2 waste identified or listed under this article to a facility which  
3 does not have a permit required by this article, section 3005  
4 of the federal Solid Waste Disposal Act, as amended, the laws  
5 of any other state which has an authorized hazardous waste  
6 program pursuant to section 3006 of the federal Solid Waste  
7 Disposal Act, as amended, or Title I of the federal Marine  
8 Protection, Research and Sanctuaries Act; (2) treats, stores  
9 or disposes of any such hazardous waste either (A) without  
10 hav'ng obtained a permit required by this article, or by Title  
11 I of the federal Marine Protection, Research and Sanctuaries  
12 Act, or by section 3005 or 3006 of the federal Solid Waste  
13 Disposal Act, as amended, or (B) in knowing violation of a ma-  
14 terial condition or requirement of such permit he shall be guilty  
15 of a felony, and, upon conviction thereof, shall be fined not to  
16 exceed fifty thousand dollars for each day of violation or con-  
17 fined in the penitentiary not less than one nor more than two  
18 years, or both such fine and imprisonment or, in the discre-  
19 tion of the court, be confined in jail not more than one year in  
20 addition to the above fine.

21 (b) If any person knowingly (1) makes any false material  
22 statement or representation in any application, label, manifest,

23 record, report, permit or other document filed, maintained or  
24 used for purposes of compliance with this article; or (2) gener-  
25 ates, stores, treats, transports, disposes of or otherwise handles  
26 any hazardous waste identified or listed under this article  
27 (whether such activity took place before or takes place after the  
28 effective date of this article) and who knowingly destroys, alters  
29 or conceals any record required to be maintained under regula-  
30 tions promulgated by the director pursuant to this article, he  
31 shall be guilty of a misdemeanor, and, upon conviction thereof,  
32 shall be fined not to exceed twenty-five thousand dollars.

33 (c) Any person convicted of a second or subsequent vio-  
34 lation of subsections (a) and (b) of this section shall be guilty  
35 of a felony, and, upon such conviction, shall be confined in the  
36 penitentiary not less than one nor more than three years or  
37 fined not more than fifty thousand dollars for each day of  
38 violation or both such fine and imprisonment.

39 (d) Any person who knowingly transports, treats, stores or  
40 disposes of any hazardous waste identified or listed pursuant  
41 to this article in violation of subsection (a) of this section,  
42 or having applied for a permit pursuant to sections seven and  
43 eight of this article, and knowingly either (1) fails to include  
44 in a permit application any material information required  
45 pursuant to this article, or rules and regulations promulgated  
46 hereunder, or (2) fails to comply with applicable interim status  
47 requirements as provided in section ten of this article and who  
48 thereby exhibits an unjustified and inexcusable disregard for  
49 human life or the safety of others and he thereby places  
50 another person in imminent danger of death or serious bodily  
51 injury, shall be guilty of a felony, and, upon conviction thereof,  
52 shall be fined not more than two hundred fifty thousand  
53 dollars or imprisoned not less than one year nor more than  
54 four years or both such fine and imprisonment.

55 (e) As used in subsection (d) of this section, the term  
56 "serious bodily injury" means:

- 57 (1) Bodily injury which involves a substantial risk of death;
- 58 (2) Unconsciousness;
- 59 (3) Extreme physical pain;

60 (4) Protracted and obvious disfigurement; or

61 (5) Protracted loss or impairment of the function of a  
62 bodily member, organ or mental faculty.

**§20-5E-16. Civil penalties and injunctive relief.**

1 Any person who violates any provision of this article,  
2 any permit or any rule, regulation or order issued pursuant  
3 to this article shall be subject to a civil penalty not to  
4 exceed twenty-five thousand dollars for each day of such  
5 violation, which penalty shall be recovered in a civil action  
6 in the circuit court of the appropriate county.

7 The chief may seek an injunction, or may institute a civil  
8 action against any person in violation of any provisions of  
9 this article or any permit, rule, regulation or order issued  
10 pursuant to this article. In seeking an injunction, it is not  
11 necessary for the chief to post bond nor to allege or prove  
12 at any stage of the proceeding that irreparable damage will  
13 occur if the injunction is not issued or that the remedy at  
14 law is inadequate. An application for injunctive relief or a  
15 civil penalty action under this section may be filed and relief  
16 granted notwithstanding the fact that all administrative reme-  
17 dies provided for in this article have not been exhausted or  
18 invoked against the person or persons against whom such relief  
19 is sought.

20 Upon request of the chief, the attorney general, or the  
21 prosecuting attorney of the county in which the violation  
22 occurs, shall assist the chief in any civil action under this  
23 section.

24 In any action brought pursuant to the provisions of this  
25 section, the state, or any agency of the state which prevails,  
26 may be awarded costs and reasonable attorney's fees.

**§20-5E-17. Imminent and substantial hazards; orders; penalties;  
hearings.**

1 (a) Notwithstanding any provision of this article to the con-  
2 trary, the chief, upon receipt of information, or upon observa-  
3 tion or discovery that the handling, storage, transportation,  
4 treatment or disposal of any hazardous waste may present an

5 imminent and substantial endangerment to public health, safety  
6 or the environment, may:

7 (1) Request the attorney general or the appropriate prose-  
8 cuting attorney to commence an action in the circuit court  
9 of the county in which the hazardous condition exists to  
10 immediately restrain any person contributing to such handling,  
11 storage, transportation, treatment or disposal to stop such  
12 handling, storage, transportation, treatment or disposal or to  
13 take such other action as may be necessary; or

14 (2) Take other action under this section including, but  
15 not limited to, issuing such orders as may be necessary to  
16 protect public health and the environment.

17 (b) Any person who willfully violates, or fails or refuses  
18 to comply with, any order of the chief under subsection (a)  
19 of this section may, in an action brought in the appropriate  
20 circuit court to enforce such orders, be fined not more than  
21 five thousand dollars for each day in which such violation  
22 occurs or such failure to comply continues.

**§20-5E-18. Citizen suits; petitions for rule making; intervention.**

1 (a) Any person may commence a civil action on his own  
2 behalf against any person who is alleged to be in violation  
3 of any provision of this article or any condition of a permit  
4 issued or rules and regulations promulgated hereunder, except  
5 that no action may be commenced under this section prior  
6 to sixty days after the plaintiff has given notice to the appro-  
7 priate enforcement, permit issuing or rule-making authority  
8 and to the person against whom the action will be commenced,  
9 or if the state has commenced and is diligently prosecuting a  
10 civil or criminal action pursuant to this article: *Provided,*  
11 That such person may commence a civil action immediately  
12 upon notification in the case of an action under subsection  
13 (b) of this section. Such actions may be brought in the  
14 circuit court in the county in which the alleged violation occurs  
15 or in the circuit court of Kanawha County.

16 (b) Any person may commence a civil action against the  
17 appropriate enforcement, permit issuing or rule-making au-  
18 thority where there is alleged a failure of such authority to

19 perform any nondiscretionary duty or act under this article.  
20 Such actions may be brought only in the circuit court of  
21 Kanawha County.

22 (c) Any person may petition the appropriate rule-making  
23 authority for rule-making on an issue arising under this  
24 article. The appropriate rule-making authority, if it believes  
25 such issue to merit rule-making, may commence any studies  
26 and investigations necessary to issue rules and regulations.  
27 A decision by the appropriate rule-making authority not to  
28 pursue rule-making must be set forth in writing with sub-  
29 stantial reasons for refusing to do so.

30 (d) Nothing in this article may be construed to restrict  
31 any rights of any person or class of persons under statute  
32 or common law.

33 (e) In issuing any final order in any action brought  
34 pursuant to this section any court with jurisdiction may  
35 award costs of litigation, including reasonable attorney's fees  
36 and expert witnesses fees, to any party whenever the court  
37 determines such award to be appropriate.

38 (f) Any enforcement, permit issuing or rule-making au-  
39 thority may intervene as a matter of right in any suit brought  
40 under this section.

41 (g) Any person may intervene as a matter of right in any  
42 civil action or administrative action instituted under this  
43 article.

44 (h) Notwithstanding any provision of this article to the  
45 contrary, any person may maintain an action to enjoin  
46 a nuisance against any permit holder or other person sub-  
47 ject to the provisions of this article and may seek damages  
48 in said action, all to the same extent and for all intents and  
49 purposes as if this article were not enacted, if such person  
50 maintaining such action and seeking such damages would  
51 otherwise have standing to maintain such action and be  
52 entitled to damages by any other rule of law.

**§20-5E-19. Appeal to water resources board; notice; hearings;  
orders.**

1 (a) Any person aggrieved or adversely affected by an order

2 of the chief made and entered in accordance with the pro-  
3 visions of this article, or by the failure or refusal of the chief  
4 to act within a reasonable time on an application for a permit  
5 or by the issuance or denial of or by the terms and conditions  
6 of a permit granted by the chief under the provisions of this  
7 article, may appeal to the water resources board for an order  
8 vacating or modifying such order, or for such order, action or  
9 terms and conditions as such person believes that the chief  
10 should have entered, taken or imposed. The person so appeal-  
11 ing shall be known as the appellant and the chief shall be  
12 known as the appellee.

13 (b) An appeal shall be perfected by filing a notice of ap-  
14 peal, on the form prescribed by the water resources board for  
15 such purpose, with such board within thirty days after date  
16 upon which the appellant received the copy of such order or  
17 received such permit, as the case may be. The filing of the  
18 notice of appeal shall not stay or suspend the execution of  
19 the order appealed from. If it appears to the water resources  
20 board that an unjust hardship to the appellant will result from  
21 the execution of the chief's order pending determination of the  
22 appeal, the chief or such board may grant a suspension of such  
23 order and fix its terms. The notice of appeal shall set forth  
24 the order, action or terms and conditions complained of, the  
25 grounds upon which the appeal is based and the action sought  
26 by the appellant. A copy of the notice of appeal shall be  
27 filed by the water resources board with the chief within three  
28 days after the notice of appeal is filed with such board.

29 (c) Within seven days after receipt of his copy of the  
30 notice of appeal, the chief shall prepare and certify to the  
31 water resources board a complete record of the proceedings out  
32 of which the appeal arises, including all documents and cor-  
33 respondence in the possession of the chief relating to the mat-  
34 ter in question. With the consent of such board and upon such  
35 terms and conditions as such board may prescribe, any per-  
36 sons affected by any such activity may by petition intervene  
37 as a party appellant or appellee. The board shall hear the  
38 appeal de novo and evidence may be offered on behalf of the  
39 appellant, the appellee and by any intervenors.

40 (d) All of the pertinent provisions of article five, chapter

41 twenty-nine-a of this code apply to and govern the hearing on  
42 appeal authorized by this section and the administrative pro-  
43 cedures in connection with and following such hearing, with like  
44 effect as if the provisions of article five were set forth in ex-  
45 tenso in this section, with the following modifications or ex-  
46 ceptions:

47 (1) Unless the board directs otherwise, the appeal hearing  
48 shall be held in the city of Charleston, Kanawha County;  
49 and

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

55 (e) Any such appeal hearing shall be conducted by a quorum  
56 of the board but the parties by stipulation may agree to take  
57 evidence before a hearing examiner employed by the board.  
58 For the purpose of conducting such appeal hearing, any mem-  
59 ber of the board and the secretary thereof may issue sub-  
60 poenas and subpoenas duces tecum in the name of the board,  
61 in accordance with the provisions of section one, article five,  
62 chapter twenty-nine-a of this code. All subpoenas and sub-  
63 poenas duces tecum shall be issued and served within the time  
64 and for the fees and shall be enforced as specified in section  
65 one, article five of chapter twenty-nine-a and all of the pro-  
66 visions of section one dealing with subpoenas and subpoenas  
67 duces tecum shall apply to subpoenas and subpoenas duces  
68 tecum issued for the purpose of an appeal hearing hereunder.

69 (f) Any such hearing shall be held within twenty days after  
70 the date upon which the board received the notice of appeal  
71 unless there is a postponement or continuance. The board may  
72 postpone or continue any hearing upon its own motion or upon  
73 application of the appellant, the appellee or any intervenors for  
74 good cause shown. The chief shall be represented at any such  
75 hearing by the attorney general or his assistants, or the chief,  
76 with the written approval of the attorney general, may em-  
77 ploy counsel to represent him. At any such hearing the appel-  
78 lant and any intervenor may represent himself or be represented

79 by an attorney at law admitted to practice before any circuit  
80 court of this state.

81 (g) After such hearing and consideration of all the testi-  
82 mony, evidence and record in the case, the board shall make  
83 and enter an order affirming, modifying or vacating the order  
84 of the chief, or shall make and enter such order as the chief  
85 should have entered, or shall make and enter an order ap-  
86 proving or modifying the terms and conditions of any permit  
87 issued or shall make and enter an order taking such action as  
88 the chief should have taken.

89 (h) Such order shall be accompanied by findings of fact  
90 and conclusions of law as specified in section three, article  
91 five, chapter twenty-nine-a of this code, and a copy of such  
92 order and accompanying findings and conclusions shall be  
93 served upon the appelliant, the appellee, any intervenors and  
94 their attorneys of record, if any, in person or by regist-  
95 ered or certified mail.

96 (i) The board shall also cause a notice to be served with  
97 the copy of such order, which notice shall advise the appelliant,  
98 the appellee and any intervenors of their right to judicial re-  
99 view. The order of the board is final unless vacated or modi-  
100 fied upon judicial review thereof.

**§20-5E-20. Disclosures required in deeds and leases.**

1 (a) The grantor in any deed or other instrument of  
2 conveyance or any lessor in any lease or other instrument  
3 whereby any real property is let for a period of time shall  
4 disclose in such deed, lease or other instrument the fact  
5 that such property or the subsurface of such property, (whether  
6 or not the grantor or lessor is at the time of such con-  
7 veyance or lease the owner of such subsurface) was used  
8 for the storage, treatment or disposal of hazardous waste.  
9 The provisions of this subsection shall only apply to those  
10 grantors or lessors who owned or had an interest in the real  
11 property when the same or the subsurface thereof was used for  
12 the purpose of storage, treatment or disposal of hazardous  
13 waste or who have actual knowledge that such real property or

14 the subsurface thereof was used for such purpose or purposes  
15 at any time prior thereto.

16 (b) Any grantee of real estate or of any substrata under-  
17 lying said real estate or any lessee for a term who intends  
18 to use the real estate conveyed or let or any substrata under-  
19 lying the same for the purpose of storing, treating or disposing  
20 of hazardous waste shall disclose in writing at the time of such  
21 conveyance or lease or within thirty days prior thereto such  
22 fact to the grantor or lessor of such real estate or substrata.  
23 Such disclosure shall describe the proposed location upon said  
24 property of the site to be used for the storage, treatment or  
25 disposal of hazardous waste, the identity of such waste, the  
26 proposed method of storage, treatment or disposal to be used  
27 with respect to such waste and any and all other information  
28 required by rules and regulations of the director.

**§20-5E-21. Appropriation of funds; hazardous waste management fund created.**

1 The net proceeds of all fines, penalties and bond forfeitures  
2 collected under this article shall be appropriated as directed  
3 by Article XII, Section 5 of the Constitution of West Virginia.  
4 For the purposes of this section the net proceeds of such  
5 fines, penalties and forfeitures shall be deemed the proceeds  
6 remaining after deducting therefrom those sums appropriated  
7 by the Legislature for defraying the cost of administering  
8 this article. All permit application fees collected under this  
9 article shall be paid into the state treasury into a special  
10 fund designated "The Hazardous Waste Management Fund."  
11 In making the appropriation for defraying the cost of ad-  
12 ministering this article, the Legislature shall first take into  
13 account the sums included in such special fund prior to de-  
14 ducting such additional sums as may be needed from the fines,  
15 penalties and forfeitures collected pursuant to this article.

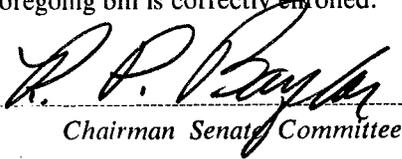
**§20-5E-22. State program to be consistent with and equivalent to federal program.**

1 The program for the management of hazardous waste pur-  
2 suant to this article shall be equivalent to and consistent with  
3 the federal program established pursuant to Subtitle C of the  
4 federal Solid Waste Disposal Act, as amended.

**§20-5E-23. Conflicting provisions.**

1 This article is intended to supplement existing law and  
2 it is not the intention of the Legislature in enacting this  
3 article to repeal, expressly or by implication, any other pro-  
4 vision of this code. In the event that some provision herein  
5 is inconsistent with any other provisions of the code, making  
6 it impossible to comply with both, the provisions of this  
7 article shall control: *Provided*, That no enforcement proceed-  
8 ing brought pursuant to this article may be duplicated by an  
9 enforcement proceeding subsequently commenced under some  
10 other article of this code with respect to the same transac-  
11 tion or event unless such subsequent proceeding involves the  
12 violation of a permit or permitting requirement of such other  
13 article.

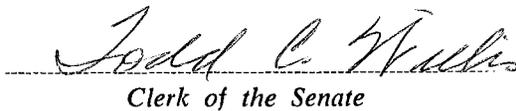
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

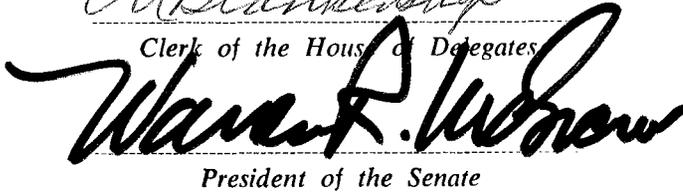
  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is approved this the 28  
day of April, 1981.

  
Governor

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SECY. OF STATE