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 Waste Management Act."
§20-5E-2. Declaration of policy.

(a) The Legislature finds that:

(1) Continuing technological progress and increases in the amount of manufacture and the abatement of air and water pollution have resulted in ever increasing quantities of hazardous wastes;

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

(3) The knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available;

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

(5) The problem of managing hazardous wastes has become a matter of statewide concern.

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

(1) To protect the public health and safety, and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

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

(3) To assure the safe and adequate management of hazardous wastes within this state; and

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


Unless the context in which used clearly requires a different meaning, as used in this article:
(1) "Chief" means the chief of the division of water resources of the department of natural resources;

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

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

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

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

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

(7) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

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

(9) "Person" means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this state or any other state, municipality, county commission or any other political subdivision of a state or any interstate body;
(10) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

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

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

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

The department of natural resources is hereby designated as the hazardous waste management lead agency for this state for purposes of Subtitle C of the federal Solid Waste Disposal Act as amended, and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the federal environmental protection agency and other agencies of the federal government, this state and other states,
and other interested persons in all matters relating to hazardous waste management.

§20-SE-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the federal Solid Waste Disposal Act, as amended as of the effective date of this article.

(b) The director shall integrate all provisions of this article for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with the appropriate provisions of the water pollution control act, article five-a of this chapter; the surface mining and reclamation act, article six of this chapter; the coal refuse disposal control act, article six-c of this chapter; the air pollution control act, article twenty, chapter sixteen of this code; the oil and gas laws of article four chapter twenty-two of this code; the public health laws, chapter sixteen of this code; the dam control act, article five-d of this chapter; the pesticide use and application act of 1975, article sixteen-b, chapter nineteen of this code; and the pesticide act of 1961, article sixteen-a, chapter nineteen of this code.

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

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

(e) Within twelve months after the effective date of this article, the director, or upon designation by the director, the chief, shall conduct and publish a study of hazardous waste management in this state which shall include, but not be 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 subpoenas
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-
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gation of rules and regulations under this article. Within six
months of the effective date of this article the director shall
promulgate the following rules and regulations; in consultation
with the department of health, the air pollution control com-
mission, the office of emergency services, the public service
commission, the state fire marshal, the department of public
safety, the department of highways, the department of agri-
culture, the water resources board and the department of mines
office of oil and gas. In promulgating and revising such rules
and regulations the director shall comply with the provisions
of chapter twenty-nine-a of this code, shall avoid duplication
to the maximum extent practicable with the appropriate pro-
visions of the acts and laws set out in subsection (b), section
five of this article and shall be consistent with the rules and
regulations promulgated by the federal environmental pro-
tection agency pursuant to the federal Solid Waste Disposal
Act, as amended:

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

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

(A) Each waste listed below shall, except as provided in
subparagraph (B) of this subdivision, be subject only to
regulation under other applicable provisions of federal or
state law in lieu of this article until proclamation by the
governor finding that at least six months have elapsed since
the date of submission of the applicable study required to
be conducted under section 8002 of the federal Solid Waste
Disposal Act, as amended, and that regulations have been
promulgated with respect to such wastes in accordance with
section 3001 (b) (3) (C) of the federal Solid Waste Disposal
Act, as amended, and finding in the case of the wastes identi-
fied in paragraph (iv) of this subparagraph that the regula-
tion of such wastes have been authorized by an act of Con-
progress in accordance with section 3001 (b) (2) of the federal Solid Waste Disposal Act, as amended:

(i) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

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

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

(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(3) Rules and regulations establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting (A) record keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment and the disposition of such wastes, (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such
waste, (C) use of appropriate containers for such hazardous waste, (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting, treating, storing or disposing of such wastes, (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) with respect to which permits have been issued which are required (1) by this article or any rule and regulation required by this article to be promulgated, (2) by Subtitle C of the federal Solid Waste Disposal Act, as amended, (3) by the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the federal Solid Waste Disposal Act, as amended, or (4) by title I of the federal Marine Protection, Research and Sanctuaries Act and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules and regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such rules and regulations and shall include, but need not be limited to, requirements respecting: (A) Maintaining records of all hazardous wastes identified or listed under this article which are treated, stored or disposed of, as the case may be, and the manner in which such wastes were treated, stored or disposed of; (B) satisfactory reporting, monitoring and inspection and compliance with the manifest system referred to in subdivision (3), subsection (a) of this section; (C) treatment storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques and practices as may be
satisfactory to the directors; (D) the location, design and
construction of such hazardous waste treatment, disposal or
storage facilities; (E) contingency plans for effective action to
minimize unanticipated damage from any treatment, storage
or disposal of any such hazardous waste; (F) the maintenance
of operation of such facilities and requiring such additional
qualifications as to ownership, continuity of operation, train-
ing for personnel and financial responsibility as may be neces-
sary or desirable; however no private entity may be precluded
by reason of criteria established under this subsection from
the ownership or operation of facilities providing hazardous
waste treatment, storage or disposal services where such entity
can provide assurances of financial responsibility and con-
tinuity of operation consistent with the degree and duration of
risks associated with the treatment, storage or disposal of
specified hazardous waste; and (G) compliance with the re-
quirements of section eight of this article respecting permits
for treatment, storage or disposal;

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

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

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

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

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

(10) Rules and regulations establishing procedures and
requirements for the submission and approval of a plan, applicable to owners or operators of hazardous waste storage, treatment and disposal facilities, as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences and nonsudden and accidental occurrences;

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

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

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

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

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

(a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules and regulations governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such rules and
regulations shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such rules and regulations shall apply to the interstate transportation of hazardous wastes as well as the intrastate transportation of such waste within the boundaries of this state. Such rules and regulations shall be promulgated within six months of the effective date of this article.

In lieu of those enforcement and inspection powers conferred upon the commissioner of highways elsewhere by law with respect to the transportation of hazardous waste, the commissioner of highways has the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent, or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article. The limitations of this subsection shall not effect in any way the powers of the department of highways with respect to weight enforcement.

(b) The public service commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules and regulations governing the transportation of hazardous wastes by railroad in this state. Such rules and regulations shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such rules and regulations apply to the interstate transportation of hazardous wastes as well as the intrastate transportation of such wastes within the boundaries of this state. Such rules and regulations shall be promulgated within six months of the effective date of this article.

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

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

(d) The state director of health has jurisdiction over the
enforcement of regulations pertaining to hazardous wastes
with infectious characteristics and the permitting and licensing
of facilities that treat, store or dispose of such hazardous
wastes: Provided, That the state board of health, in con-
sultation with the director of the department of natural re-
sources and avoiding inconsistencies with, and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director of the department of natural resources or any other rule-making authority, shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article: Provided, however, That nothing in this subsection shall be construed to diminish or alter the authority of the air pollution control commission or its director under this article or article twenty, chapter sixteen of this code: Provided further, That such permitting or licensing shall be in addition to those permits required by section eight of this article. Such rules and regulations shall be consistent with this article. Such rules and regulations shall be promulgated within six months of the effective date of this article.

Any person aggrieved or adversely affected by an order of the state director of health pursuant to this article, or the denial or issuance of a permit, or the failure or refusal of said director to act within a reasonable time on an application for a permit or the terms or conditions of a permit granted under the provisions of this article, may appeal to a special hearing examiner appointed to hear contested cases in accordance with provisions of chapter twenty-nine-a of this code. All procedures for appeal and conduct of hearings shall comply with rules and regulations promulgated by the state board of health. Unless the board of health directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha County.

In lieu of those enforcement and inspection powers conferred upon the state director of health elsewhere by law with respect to hazardous waste with infectious characteristics, the state director of health shall have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(e) The director shall rely, to the maximum extent practi-
cable, on the department of health for expertise on the adverse effects of toxic hazardous waste on human health.

(f) The air pollution control commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of article twenty, chapter sixteen and chapter twenty-nine-a of this code, shall promulgate such rules and regulations establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article. Such permits as such regulations may require shall be in addition to those permits required by section eight of this article. All rules and regulations promulgated pursuant to this subsection shall be consistent with this article and shall be promulgated within six months of the effective date of this article.

With respect to this article, and any rules or regulations promulgated pursuant hereto, the director of the air pollution control commission has the same enforcement and inspection powers as those of the chief under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article: Provided, That no action for penalties may be initiated by the director of the air pollution control commission without the approval of that commission. Any person aggrieved or adversely affected by an order of the director of the air pollution control commission made and entered in accordance with the provisions of this article, or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of this article, may appeal to the air pollution control commission in accordance with the procedure set forth in section six, article twenty, chapter sixteen of this code, and orders made and entered by said commission shall be subject to judicial review in accordance with the procedures set forth in section seven, article twenty, chapter sixteen of this code, except that as to cases involving an order granting or denying an applica-
tion for a permit, revoking or suspending a permit or approving
or modifying the terms and conditions of a permit or the
failure to act within a reasonable time on an application for a
permit, the petition for judicial review shall be filed in the
circuit court of Kanawha County.

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

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

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

(i) The water resources board, within six months of the
effective date of this article, in consultation with the director,
and avoiding inconsistency with and avoiding duplication to
the maximum extent practicable with rules and regulations
required to be promulgated pursuant to this article by the
director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate rules and regulations governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of hazardous waste and rules and regulations governing the issuance, modification, suspension, revocation or denial of such permits relating to such discharges from the treatment, storage or disposal of hazardous waste, as may be required by this article. Such rules and regulations shall be consistent with this article.

(j) All rules and regulations promulgated pursuant to this section shall be consistent with rules and regulations promulgated by the federal environmental protection agency pursuant to the federal Solid Waste Disposal Act, as amended.

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

§20-SE-8. Permits; application; denial; undertaking activities without a permit.

(a) No person may construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste identified or listed under this article, nor shall any person store, treat or dispose of any such hazardous waste without first obtaining a permit from the chief for such facility, site or activity and all other permits as required by law. Such permit shall be issued, after public notice and opportunity for public hearing, upon such reasonable terms and conditions as the chief may direct if the application, together with all supporting information and data and other evidence establishes that the construction modification, operation or closure, as the case may be, of the hazardous waste facility, site or activity will not violate any provisions of this article or any of the rules and regulations promulgated by the director as required by this article: Provided, That in issuing the permits required by this subsection, the chief shall not regulate those aspects of a hazardous waste treatment, storage or disposal facility which are subject of the permitting or licensing requirements of section seven of this
article and which need not be regulated in order for the chief
to perform his duties under this article.

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

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

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

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

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

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

(C) Recommendations for minimizing any adverse impact.

(2) The portion of the applicant's environmental analysis
dealing with technical and economic assessments shall contain,
but not be limited to:
(A) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity and location on the site and estimates of the cost and charges to be made for material accepted, if any;

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

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

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

(f) Notwithstanding any provision to the contrary in subsections (a) through (e) of this section or section seven of this article, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Coal Mining and Reclamation Act of 1980, article six of this chapter, shall be considered to have all necessary permits issued pursuant to this article with respect to the treatment, storage or disposal of such wastes or overburden. Rules and regulations promulgated under this article are not applicable to treatment, storage or disposal or coal mining wastes and overburden which are covered by such permit.


Before the issuing of a permit to any person with respect to any facility for the treatment, storage or disposal of hazardous waste under sections seven or eight of this article, the chief or other permit issuing authority shall:

(a) Cause to be published as a Class I-0 legal advertisement in a newspaper of general circulation and the publication area shall be the county wherein the real estate or great-
er portion thereof is situate and broadcast over local radio sta-
tions notice of the chief's or other permit issuing authority's in-
tention to issue such permit; and

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

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

§20-SE-10. Transition program for existing facilities.

Any person who owns or operates a facility required to
have any permit under this article, which facility is in
existence on the effective date of this article, shall be
treated as having been issued such permit until such time as
final administrative disposition is made with respect to an
application for such permit: Provided, That on the effective
date of this article such facility is operating and continues
to operate in compliance with the interim status requirement
of the federal environmental protection agency established
pursuant to section 3005 of the federal Solid Waste Disposal
Act, as amended, if applicable, and in such a manner as
will not cause or create a substantial risk of a health hazard
or public nuisance or a significant adverse effect upon the
environment: Provided, however, That the owner or operator
of such facility shall make a timely and complete application
for such permit in accordance with rules and regulations promulgated pursuant to this article specifying procedures and requirements for obtaining such permit.


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

Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

§20-SE-12. Inspections; right of entry; sampling; reports and analyses; subpoenas.

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

(b) The chief or his authorized representative, employee or agent shall make periodic inspections at every permitted facility as necessary to effectively implement and enforce the requirements of this article or the rules and regulations
promulgated by the director or permits issued by the chief hereunder. After an inspection is made, a report shall be prepared and filed with the chief and a copy of such inspection report shall be promptly furnished to the person in charge of such building, property, premises, place, vehicle or facility. Such inspection reports shall be available to the public in accordance with the provisions of article one, chapter twenty-nine-b of this code.

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

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

(e) Upon presentation of proper credentials and at reasonable times, the chief or any authorized representative, employee or agent of the division shall be given access to all records relating to the storage, treatment or disposal of hazardous waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the chief or an autho-
rized representative, employee or agent shall be furnished
with copies of all such records or given the records for the
purpose of making copies. If the chief, upon inspection,
investigation or through other means, observes or learns of a
violation or probable violation of this article, he is authorized
to issue subpoenas and subpoenas duces tecum and to order
the attendance and testimony of witnesses and to compel the
production of any books, papers, documents, manifests and
other physical evidence pertinent to such investigation or
inspection.


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

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

(c) An order under subsection (a) or (b) of this section
shall require the person to whom such order is issued to sub-
mit to the chief within thirty days from the issuance of such
order a proposal for carrying out the required monitoring, test-
ing, analysis and reporting. The chief may, after providing such
person with an opportunity to confer with the chief respecting
such proposal, require such person to carry out such monitor-
ing, testing, analysis and reporting in accordance with such proposal, and such modifications in such proposal as the chief deems reasonable to ascertain the nature and extent of the hazard.

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

(1) If the chief determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the chief, if the chief deems any such action carried out by an owner or operator to be unsatisfactory or if the chief cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis or reporting, he may conduct monitoring, testing or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or authorized a state or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the chief or other authority or person for the costs of such activity.

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

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

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

(a) If the chief, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or rules or regu-
lations issued or promulgated hereunder, he may issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders.

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


(a) If any person knowingly (1) transports any hazardous waste identified or listed under this article to a facility which does not have a permit required by this article, section 3005 of the federal Solid Waste Disposal Act, as amended, the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the federal Solid Waste Disposal Act, as amended, or Title I of the federal Marine Protection, Research and Sanctuaries Act; (2) treats, stores or disposes of any such hazardous waste either (A) without having obtained a permit required by this article, or by Title I of the federal Marine Protection, Research and Sanctuaries Act, or by section 3005 or 3006 of the federal Solid Waste Disposal Act, as amended, or (B) in knowing violation of a material condition or requirement of such permit he shall be guilty of a felony, and, upon conviction thereof, shall be fined not to exceed fifty thousand dollars for each day of violation or confined in the penitentiary not less than one nor more than two years, or both such fine and imprisonment or, in the discretion of the court, be confined in jail not more than one year in addition to the above fine.

(b) If any person knowingly (1) makes any false material statement or representation in any application, label, manifest,
record, report, permit or other document filed, maintained or used for purposes of compliance with this article; or (2) generates, stores, treats, transports, disposes of or otherwise handles any hazardous waste identified or listed under this article (whether such activity took place before or takes place after the effective date of this article) and who knowingly destroys, alters or conceals any record required to be maintained under regulations promulgated by the director pursuant to this article, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed twenty-five thousand dollars.

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

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

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

1. Bodily injury which involves a substantial risk of death;
2. Unconsciousness;
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, any permit or any rule, regulation or order issued pursuant to this article shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action in the circuit court of the appropriate county.

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

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

24 In any action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, 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 contrary, the chief, upon receipt of information, or upon observation or discovery that the handling, storage, transportation, treatment or disposal of any hazardous waste may present an
imminent and substantial endangerment to public health, safety
or the environment, may:

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

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

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

§20-SE-18. Citizen suits; petitions for rule making; intervention.

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

(b) Any person may commence a civil action against the
appropriate enforcement, permit issuing or rule-making au-
thority where there is alleged a failure of such authority to
perform any nondiscretionary duty or act under this article. Such actions may be brought only in the circuit court of Kanawha County.

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

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

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

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

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

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

§20-SE-19. Appeal to water resources board; notice; hearings; orders.

(a) Any person aggrieved or adversely affected by an order
of the chief made and entered in accordance with the provisions of this article, or by the failure or refusal of the chief to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the chief under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as such person believes that the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee.

(b) An appeal shall be perfected by filing a notice of appeal, on the form prescribed by the water resources board for such purpose, with such 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 water resources board that an unjust hardship to the appellant will result from the execution of the chief's order pending determination of the appeal, the chief or such board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the grounds upon which the appeal is based and the action sought by the appellant. A copy of the notice of appeal shall be filed by the water resources board with the chief within three days after the notice of appeal is filed with such board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the water resources board a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the possession of the chief relating to the matter in question. With the consent of such board and upon such terms and conditions as such board may prescribe, any persons affected by any such activity 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, the appellee and by any intervenors.

(d) All of the pertinent provisions of article five, chapter
twenty-nine-a of this code apply to and govern the hearing on
appeal authorized by this section and the administrative pro-
cedures in connection with and following such hearing, with like
effect as if the provisions of article five were set forth in ex-
tenso in this section, with the following modifications or ex-
ceptions:

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

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

(e) Any such appeal hearing shall be conducted by a quorum
of the board but the parties by stipulation may agree to take
evidence before a hearing examiner employed by the board.
For the purpose of conducting such appeal hearing, any mem-
ber of the board and the secretary thereof may issue sub-
poenas 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 sub-
poenas duces tecum shall be issued and served within the time
and for the fees and shall be enforced as specified in section
one, article five of chapter twenty-nine-a and all of the pro-
visions of section one dealing with subpoenas and subpoenas
duces tecum shall apply to subpoenas and subpoenas duces
tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after
the date upon which the board received the notice of appeal
unless there is a postponement or continuance. The board may
postpone or continue any hearing 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 em-
ploy counsel to represent him. At any such hearing the appel-
lant 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 or shall make and enter an order taking such action as the chief should have taken.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appeallant, the appellee, any intervenors and their attorneys of record, if any, 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 appeallant, the appellee and any intervenors of their right to judicial review. The order of the board is final unless vacated or modified upon judicial review thereof.


(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property or the subsurface of such property, (whether or not the grantor or lessor is at the time of such conveyance or lease the owner of such subsurface) was used for the storage, treatment or disposal of hazardous waste. The provisions of this subsection shall only apply to those grantors or lessors who owned or had an interest in the real property when the same or the subsurface thereof was used for the purpose of storage, treatment or disposal of hazardous waste or who have actual knowledge that such real property or
the subsurface thereof was used for such purpose or purposes
at any time prior thereto.

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

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

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

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

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

1 This article is intended to supplement existing law and it is not the intention of the Legislature in enacting this article to repeal, expressly or by implication, any other provision of this code. In the event that some provision herein is inconsistent with any other provisions of the code, making it impossible to comply with both, the provisions of this article shall control: Provided, That no enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event unless such subsequent proceeding involves the violation of a permit or permitting requirement of such other 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 __________ day of _______________, 1981.

Governor