WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
SENATE BILL NO. 525

PASSED March 12, 1983
In Effect ninety days from Passage
ENROLLED

Senate Bill No. 525

(BY MR. WILLIAMS)

[Passed March 12, 1983; in effect ninety days from passage]

AN ACT to amend and reenact section three, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revisions of the water pollution control act; providing the chief of the division of water resources with the authority to promulgate rules and regulations; and imposing restrictions upon the water resources board concerning the rules and regulations promulgated by the chief.

Be it enacted by the Legislature of West Virginia:

That section three, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

PART II. CHIEF OF DIVISION OF WATER RESOURCES AND WATER RESOURCES BOARD

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

1 (a) In addition to all other powers and duties of the chief prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:
(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System" established under that act;

(2) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may receive moneys from such agencies, officers and persons on behalf of the state. The department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made;

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

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

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

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

(7) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for pollution control and abatement;
(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

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

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

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

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

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

(14) To adopt, modify, or repeal procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code administering and implementing the powers, duties and responsibilities vested in the chief by the provisions of this article.

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

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

(2) To adopt, modify, repeal and enforce rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, (A) implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; (C) establishing standards of quality for the waters of the state under such conditions as the board may prescribe for the prevention, control and abatement of pollution; and (D) to facilitate the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no such rule and regulation adopted by the board shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant: Provided further, That the board may not modify or repeal by rule making procedural rules and interpretive rules promulgated by the chief in accordance with the provisions of chapter twenty-nine-a of this code.
administering and implementing the powers, duties and responsibilities vested in the chief by the provisions of this article; and

(3) To make and enter a consent order which shall have the same effect as an order entered after a hearing as provided in section fifteen of this article.

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

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

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

[Signature]
Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

[Signature]
Governor

The within is approved this the 26 day of March, 1983.