

NO: 525

APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983



ENROLLED

SENATE BILL NO. 525

(By Mr. Hillman)



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
- 2 *chief of the department's division of water resources, as* prescribed in this article or elsewhere by law, the chief,
- 3 under the supervision of the director, shall have and may
- 4 exercise the following powers and authority and shall
- 5 perform the following duties:

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6 (1) To perform any and all acts necessary to carry out
7 the purposes and requirements of this article and of the
8 "Federal Water Pollution Control Act," as amended,
9 relating to this state's participation in the "National
10 Pollutant Discharge Elimination System" established
11 under that act;

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

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

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

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

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

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

49 (8) To sample ground and surface water with sufficient
50 frequency to ascertain the standards of purity or quality
51 from time to time of the waters of the state;

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

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

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

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

83 (13) To require any and all persons directly or indirectly
84 discharging, depositing or disposing of treated or untreated
85 sewage, industrial wastes, or other wastes, or the effluent
86 therefrom, into or near any waters of the state or into any
87 underground strata, and any and all persons operating an
88 establishment which produces or which may produce or
89 from which escapes, releases or emanates or may escape,
90 release or emanate treated or untreated sewage, industrial

91 wastes or other wastes or the effluent therefrom, into or
92 near any waters of the state or into any underground strata,
93 to file with the division of water resources such information
94 as the chief may require in a form or manner prescribed by
95 him for such purpose, including, but not limited to, data as
96 to the kind, characteristics, amount and rate of flow of any
97 such discharge, deposit, escape, release or disposition; and

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

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

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

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

133 administering and implementing the powers, duties and
134 responsibilities vested in the chief by the provisions of this
135 article; and

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

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

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

164 (e) The board is hereby authorized and empowered to
165 investigate and ascertain the need and factual basis for the
166 establishment of public service districts as a means of
167 controlling and reducing pollution from unincorporated
168 communities and areas of the state, investigate and
169 ascertain, with the assistance of the public service
170 commission, the financial feasibility and projected
171 financial capability of the future operation of any such
172 public service district or districts, and to present reports
173 and recommendations thereon to the county commissions of
174 the areas concerned, together with a request that such

175 county commissions create a public service district or
176 districts, as therein shown to be needed and required and as
177 provided in article thirteen-a, chapter sixteen of this code.
178 In the event a county commission shall fail to act to
179 establish a county-wide public service district or districts,
180 the board shall act jointly with the state director of health,
181 the director of the department of natural resources and the
182 chief of the division of water resources to further
183 investigate and ascertain the financial feasibility and
184 projected financial capability and, subject to the approval
185 of the public service commission, order the county
186 commission to take action to establish such public service
187 district or districts as may be necessary to control, reduce or
188 abate the pollution, and when so ordered the county
189 commission members must act to establish such a county-
190 wide public service district or districts.

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

[Signature]
.....
~~Chairman~~ Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
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Clerk of the Senate

[Signature]
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Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

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

..... *[Signature]*
Governor



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SECY. OF STATE