

No. 262

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SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
REGULAR SESSION, 1989



**ENROLLED**  
*Committee Substitute for*  
**SENATE BILL NO. 262**

(By Senator *Tucker, Mr. President, et al*)



**PASSED April 18, 1989**  
In Effect *90 days from* Passage

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 262**

(BY SENATORS TUCKER, MR. PRESIDENT, AND HARMAN,

BY REQUEST OF THE EXECUTIVE)

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[Passed April 8, 1989; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, three, four, five, six, seven, fourteen and sixteen, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article five-e by adding thereto two new sections, designated sections eight-a and twenty-four; and to amend and reenact sections two and six, article five-f of said chapter twenty, all relating to solid and hazardous waste management generally; declaration of hazardous waste management policy; legislative findings and purposes; definitions; designation of department of natural resources as the state hazardous waste management lead agency; powers and duties of director, department of natural resources; integration with other acts; establishment of study of hazardous waste management; promulgation of regulations by director, department of natural resources; authority and jurisdiction of other state agencies; corrective action; enforcement orders; hearings; civil penalties and injunctive relief; financial responsibility provisions;

solid waste management definitions; order, inspections and enforcement; and civil and criminal penalties.

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

That sections two, three, four, five, six, seven, fourteen and sixteen, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article five-e be further amended by adding thereto two new sections, designated sections eight-a and twenty-four; and that sections two and six, article five-f of said chapter twenty be amended and reenacted, all to read as follows:

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

**§20-5E-2. Declaration of policy.**

1 (a) The Legislature finds that:

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

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

9 (3) The knowledge and technology necessary for  
10 alleviating adverse health, environmental and aes-  
11 thetic impacts resulting from current hazardous waste  
12 management and disposal practices are generally  
13 available;

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

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

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

23 (1) To protect the public health and safety, and the

24 environment from the effects of the improper, inade-  
25 quate or unsound management of hazardous wastes;

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

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

31 (4) To assume regulatory primacy through Subtitle  
32 C of the Resource Conservation and Recovery Act.

**§20-5E-3. Definitions.**

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

3 (1) "Chief" means the chief of the division of waste  
4 management of the department of natural resources;

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

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

13 (4) "Division" means the division of waste manage-  
14 ment of the department of natural resources;

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

17 (6) "Hazardous and Solid Waste Amendments of  
18 1984" means the federal Hazardous and Solid Waste  
19 Amendments of 1984 (P.L. 98-616) amending the  
20 Resource Conservation and Recovery Act;

21 (7) "Hazardous waste" means a waste or combina-  
22 tion of wastes, which because of its quantity, concen-  
23 tration or physical, chemical or infectious characteris-  
24 tics, may (A) cause, or significantly contribute to, an  
25 increase in mortality or an increase in serious irre-  
26 versible, or incapacitating reversible, illness; or (B)

27 pose a substantial present or potential hazard to  
28 human health or the environment when improperly  
29 treated, stored, transported, disposed of or otherwise  
30 managed;

31 (8) "Hazardous waste fuel" means fuel produced  
32 from any hazardous waste identified or listed pursuant  
33 to subdivision two, subsection (a), section six of this  
34 article, or produced from any hazardous waste identi-  
35 fied or listed pursuant to section six;

36 (9) "Hazardous waste management" means the  
37 systematic control of the collection, source separation,  
38 storage, transportation, processing, treatment, recov-  
39 ery and disposal of hazardous wastes;

40 (10) "Land disposal" means any placement of haz-  
41 ardous waste in a landfill, surface impoundment,  
42 waste pile, injection well, land treatment facility, salt  
43 dome formation, salt bed formation, or underground  
44 mine or cave;

45 (11) "Manifest" means the form used for identifying  
46 the quantity, composition and the origin, routing and  
47 destination of hazardous waste during its transporta-  
48 tion from the point of generation to the point of  
49 disposal, treatment or storage;

50 (12) "Person" means any individual, trust, firm,  
51 joint stock company, public, private or government  
52 corporation, partnership, association, state or federal  
53 agency, the United States government, this state or  
54 any other state, municipality, county commission or  
55 any other political subdivision of a state or any  
56 interstate body;

57 (13) "Resource Conservation and Recovery Act"  
58 means the federal Resource Conservation and Recov-  
59 ery Act of 1976, 90 Stat. 2806, as amended;

60 (14) "Storage" means the containment of hazardous  
61 waste, either on a temporary basis or for a period of  
62 years, in such a manner as not to constitute disposal of  
63 such hazardous waste;

64 (15) "Subtitle C" means Subtitle C of the Resource

65 Conservation and Recovery Act;

66 (16) "Treatment" means any method, technique or  
67 process, including neutralization, designed to change  
68 the physical, chemical or biological character or  
69 composition of any hazardous waste so as to neutralize  
70 such waste or so as to render such waste nonhazard-  
71 ous, safer for transport, amenable to recovery, amena-  
72 ble to storage or reduced in volume. Such term  
73 includes any activity or processing designed to change  
74 the physical form or chemical composition of hazard-  
75 ous waste so as to render it nonhazardous;

76 (17) "Waste" means any garbage, refuse, sludge from  
77 a waste treatment plant, water supply treatment plant  
78 or air pollution control facility and other discarded  
79 material including solid, liquid, semisolid or contained  
80 gaseous material resulting from industrial, commer-  
81 cial, mining and agricultural operations, and from  
82 community activities, but does not include solid or  
83 dissolved material in domestic sewage, or solid or  
84 dissolved materials in irrigation return flows or  
85 industrial discharges which are point sources subject  
86 to permits under section 402 of the federal Water  
87 Pollution Control Act, as amended, or source, special  
88 nuclear or by-product material as defined by the  
89 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.**

1 The department of natural resources is hereby  
2 designated as the hazardous waste management lead  
3 agency for this state for purposes of Subtitle C of the  
4 Resource Conservation and Recovery Act, and is  
5 hereby authorized to take all action necessary or  
6 appropriate to secure to this state the benefits of said  
7 legislation. In carrying out the purposes of this article,  
8 the director is hereby authorized to cooperate with the  
9 federal environmental protection agency and other  
10 agencies of the federal government, this state and  
11 other states, and other interested persons in all  
12 matters relating to hazardous waste management.

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

1 (a) In addition to all other powers and duties  
2 prescribed in this article or otherwise by law, and  
3 unless otherwise specifically set forth in this article,  
4 the director shall perform any and all acts necessary  
5 to carry out the purposes and requirements of Subtitle  
6 C of the Resource Conservation and Recovery Act as  
7 of the effective date of this article.

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

24 (c) The director may enter into any agreements,  
25 including reimbursement for services rendered, con-  
26 tracts or cooperative arrangements, under such terms  
27 and conditions as he deems appropriate, with other  
28 state agencies, educational institutions or other organ-  
29 izations and individuals as necessary to implement the  
30 provisions of this article.

31 (d) The director shall cooperate with and may  
32 receive and expend money from the federal govern-  
33 ment and other sources.

34 (e) Within twelve months after the effective date of  
35 this article, the director, or upon designation by the  
36 director, the chief, shall conduct and publish a study of  
37 hazardous waste management in this state which shall  
38 include, but not be limited to:

39 (1) A description of the sources of hazardous waste  
40 generation within the state, including the types and  
41 quantities of such wastes;

42 (2) A description of current hazardous waste man-  
43 agement practices and costs, including treatment,  
44 storage and disposal within the state; and

45 (3) An inventory of existing and abandoned hazard-  
46 ous waste treatment, storage and disposal sites.

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

65 (g) The director, or upon designation by the director,  
66 the chief, shall (1) encourage, participate in and  
67 conduct an ongoing investigation and analysis of  
68 methods, incentives, technologies of source reduction,  
69 reuse, recycling or recovery of potentially hazardous  
70 waste and a strategy for encouraging the utilization or  
71 reduction of hazardous waste, and (2) investigate the  
72 feasibility of operating an information clearinghouse  
73 for hazardous wastes.

74 (h) The director, or upon designation by the director,  
75 the chief, shall provide for the continuing education  
76 and training of appropriate department personnel in  
77 matters of hazardous waste management.



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

1 (a) The director has overall responsibility for the  
2 promulgation of rules and regulations under this  
3 article. Within six months of the effective date of this  
4 article the director shall promulgate the following  
5 rules and regulations, in consultation with the depart-  
6 ment of health, the air pollution control commission,  
7 the office of emergency services, the public service  
8 commission, the state fire marshal, the department of  
9 public safety, the department of highways, the depart-  
10 ment of agriculture, the water resources board and the  
11 department of mines office of oil and gas. In promul-  
12 gating and revising such rules and regulations the  
13 director shall comply with the provisions of chapter  
14 twenty-nine-a of this code, shall avoid duplication to  
15 the maximum extent practicable with the appropriate  
16 provisions of the acts and laws set out in subsection  
17 (b), section five of this article and shall be consistent  
18 with but no more expansive in coverage nor more  
19 stringent in effect than the rules and regulations  
20 promulgated by the federal environmental protection  
21 agency pursuant to the Resource Conservation and  
22 Recovery Act:

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

26 (2) Rules and regulations establishing criteria for  
27 identifying the characteristics of hazardous waste,  
28 identifying the characteristics of hazardous waste and  
29 listing particular hazardous wastes which are subject  
30 to the provisions of this article: *Provided, That:*

31 (A) Each waste listed below shall, except as provided  
32 in subparagraph (B) of this subdivision, be subject  
33 only to regulation under other applicable provisions of  
34 federal or state law in lieu of this article until  
35 proclamation by the governor finding that at least six  
36 months have elapsed since the date of submission of  
37 the applicable study required to be conducted under  
38 section 8002 of the federal Solid Waste Disposal Act, as  
39 amended, and that regulations have been promulgated

40 with respect to such wastes in accordance with section  
41 3001(b)(3)(C) of the Resource Conservation and Recov-  
42 ery Act, and finding in the case of the wastes identi-  
43 fied in paragraph (iv) of this subparagraph that the  
44 regulation of such wastes have been authorized by an  
45 act of Congress in accordance with section 3001 (b)(2)  
46 of the Resource Conservation and Recovery Act:

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

50 (ii) Solid waste from the extraction, beneficiation  
51 and processing of ores and minerals, including phos-  
52 phate rock and overburden from the mining of ura-  
53 nium ore;

54 (iii) Cement kiln dust waste; and

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

59 (B) Owners and operators of disposal sites for wastes  
60 listed in subparagraph (A) of this subdivision may be  
61 required by the director of the department of natural  
62 resources through regulation prescribed under author-  
63 ity of this section:

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

71 (ii) To provide chemical and physical analysis and  
72 composition of such wastes, based on available infor-  
73 mation, to be placed on the public record;

74 (3) Rules and regulations establishing such standards  
75 applicable to generators of hazardous waste identified  
76 or listed under this article as may be necessary to  
77 protect public health and safety and the environment,

78 which standards shall establish requirements respect-  
79 ing (A) record keeping practices that accurately  
80 identify the quantities of such hazardous waste gener-  
81 ated, the constituents thereof which are significant in  
82 quantity or in potential harm to human health or the  
83 environment and the disposition of such wastes, (B)  
84 labeling practices for any containers used for the  
85 storage, transport or disposal of such hazardous waste  
86 such as will identify accurately such waste, (C) use of  
87 appropriate containers for such hazardous waste, (D)  
88 furnishing of information on the general chemical  
89 composition of such hazardous wastes to persons  
90 transporting, treating, storing or disposing of such  
91 wastes, (E) use of a manifest system and any other  
92 reasonable means necessary to assure that all such  
93 hazardous waste generated is designated for treat-  
94 ment, storage or disposal in, and arrives at treatment,  
95 storage or disposal facilities (other than facilities on  
96 the premises where the waste is generated) with  
97 respect to which permits have been issued which are  
98 required (1) by this article or any rule and regulation  
99 required by this article to be promulgated, (2) by  
100 Subtitle C of the Resource Conservation and Recovery  
101 Act; (3) by the laws of any other state which has an  
102 authorized hazardous waste program pursuant to  
103 section 3006 of the Resource Conservation and Recov-  
104 ery Act; or (4) by Title I of the federal Marine  
105 Protection, Research and Sanctuaries Act and (F) the  
106 submission of reports to the director at such times as  
107 the director deems necessary setting out the quantities  
108 of hazardous wastes identified or listed under this  
109 article that the generator has generated during a  
110 particular time period, and the disposition of all such  
111 hazardous waste;

112 (4) Rules and regulations establishing such perfor-  
113 mance standards applicable to owners and operators of  
114 facilities for the treatment, storage or disposal of  
115 hazardous waste identified or listed under this article  
116 as may be necessary to protect public health and  
117 safety and the environment, which standards shall,  
118 where appropriate, distinguish in such standards  
119 between requirements appropriate for new facilities

120 and for facilities in existence on the date of promulga-  
121 tion of such rules and regulations and shall include,  
122 but need not be limited to, requirements respecting:  
123 (A) Maintaining records of all hazardous wastes  
124 identified or listed under this article which are  
125 treated, stored or disposed of, as the case may be, and  
126 the manner in which such wastes were treated, stored  
127 or disposed of; (B) satisfactory reporting, monitoring  
128 and inspection and compliance with the manifest  
129 system referred to in subdivision (3) of subsection (a)  
130 of this section; (C) treatment, storage or disposal of all  
131 such waste received by the facility pursuant to such  
132 operating methods, techniques and practices as may be  
133 satisfactory to the director; (D) the location, design and  
134 construction of such hazardous waste treatment,  
135 disposal or storage facilities; (E) contingency plans for  
136 effective action to minimize unanticipated damage  
137 from any treatment, storage or disposal of any such  
138 hazardous waste; (F) the maintenance of operation of  
139 such facilities and requiring such additional qualifica-  
140 tions as to ownership, continuity of operation, training  
141 for personnel and financial responsibility as may be  
142 necessary or desirable; however no private entity may  
143 be precluded by reason of criteria established under  
144 this subsection from the ownership or operation of  
145 facilities providing hazardous waste treatment, storage  
146 or disposal services where such entity can provide  
147 assurances of financial responsibility and continuity of  
148 operation consistent with the degree and duration of  
149 risks associated with the treatment, storage or disposal  
150 of specified hazardous waste; and (G) compliance with  
151 the requirements of section eight of this article  
152 respecting permits for treatment, storage or disposal;

153 (5) Rules and regulations specifying the terms and  
154 conditions under which the chief shall issue, modify,  
155 suspend, revoke or deny such permits as may be  
156 required by this article;

157 (6) Rules and regulations for the establishment and  
158 maintenance of records; the making of reports; the  
159 taking of samples and the performing of tests and  
160 analyses; the installing, calibrating, operating and

161 maintaining of monitoring equipment or methods; and  
162 the providing of any other information as may be  
163 necessary to achieve the purposes of this article;

164 (7) Rules and regulations establishing standards and  
165 procedures for the certification of personnel at hazard-  
166 ous waste treatment, storage or disposal facilities or  
167 sites;

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

170 (9) Rules and regulations establishing procedures  
171 and requirements for the use of a manifest during the  
172 transport of hazardous wastes;

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

181 (11) Rules and regulations establishing a schedule of  
182 fees to recover the costs of processing permit applica-  
183 tions and permit renewals;

184 (12) Rules and regulations, including exemptions and  
185 variances, as appropriate, (A) establishing standards  
186 and prohibitions relating to the management of haz-  
187 ardous waste by land disposal methods; (B) establish-  
188 ing standards and prohibitions relating to the land  
189 disposal of liquid hazardous wastes or free liquids  
190 contained in hazardous wastes and any other liquids  
191 which are not hazardous wastes; (C) establishing  
192 standards applicable to producers, distributors, or  
193 marketers of hazardous waste fuels; (D) establishing  
194 such standards relating to the management of used oil  
195 as may be necessary to protect human health and the  
196 environment; (E) establishing such standards relating  
197 to the management of recycled oil as may be necessary  
198 to protect human health and the environment; and (F)  
199 as are otherwise necessary to allow the state to assume

200 primacy for the administration of the federal hazard-  
201 ous waste management program under the Resource  
202 Conservation and Recovery Act and in particular, the  
203 Hazardous and Solid Waste Amendments of 1984:  
204 *Provided*, That such rules and regulations authorized  
205 by this subdivision shall be consistent with but no  
206 more expansive in coverage nor more stringent in  
207 effect than rules and regulations promulgated by the  
208 federal environmental protection agency under Subti-  
209 tle C; and

210 (13) Such other rules and regulations as are neces-  
211 sary to effectuate the purposes of this article.

212 (b) The rules and regulations required by this article  
213 to be promulgated shall be reviewed and, where  
214 necessary, revised not less frequently than every three  
215 years. Additionally, the rules and regulations required  
216 to be promulgated by this article shall be revised, as  
217 necessary, within six months of the effective date of  
218 any amendment of the Resource Conservation and  
219 Recovery Act and within six months of the effective  
220 date of any adoption or revision of rules and regula-  
221 tions required to be promulgated by the Resource  
222 Conservation and Recovery Act.

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

229 **§20-5E-7. Authority and jurisdiction of other state**  
230 **agencies.**

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

10 by vehicle upon the roads and highways of this state.  
11 Such rules and regulations shall be consistent with  
12 applicable rules and regulations issued by the federal  
13 department of transportation and consistent with this  
14 article: *Provided*, That such rules and regulations shall  
15 apply to the interstate transportation of hazardous  
16 wastes as well as the intrastate transportation of such  
17 waste within the boundaries of this state.

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

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

48 In lieu of those enforcement and inspection powers  
49 conferred upon the public service commission else-  
50 where by law with respect to the transportation of

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

58 (c) The rules and regulations required to be promul-  
59 gated pursuant to subsections (a) and (b) of this section  
60 shall apply equally to those persons transporting  
61 hazardous wastes generated by others and to those  
62 transporting hazardous wastes they have generated  
63 themselves or combinations thereof. Such rules and  
64 regulations shall establish such standards, applicable to  
65 transporters of hazardous waste identified or listed  
66 under this article, as may be necessary to protect  
67 public health, safety and the environment. Such  
68 standards shall include, but need not be limited to,  
69 requirements respecting (A) record keeping concern-  
70 ing such hazardous waste transported, and their  
71 source and delivery points, (B) transportation of such  
72 waste only if properly labeled, (C) compliance with the  
73 manifest system referred to in subdivision (3), subsec-  
74 tion (a), section six of this article; and (D) transporta-  
75 tion of all such hazardous waste only to the hazardous  
76 waste treatment, storage or disposal facilities which  
77 the shipper designates on the manifest form to be a  
78 facility holding a permit issued under: (1) This article  
79 or any rule and regulation required by this article to  
80 be promulgated; (2) Subtitle C; (3) the laws of any  
81 other state which has an authorized hazardous waste  
82 program pursuant to Section 3006 of the Resource  
83 Conservation and Recovery Act; or (4) Title I of the  
84 federal Marine Protection, Research and Sanctuaries  
85 Act.

86 (d) The state board of health of the state department  
87 of health, in consultation with the director of the  
88 department of natural resources, and avoiding incon-  
89 sistencies with, and avoiding duplication to the maxi-  
90 mum extent practicable with rules and regulations  
91 required to be promulgated pursuant to this article by



92 the director of the department of natural resources or  
93 any other rule-making authority, shall promulgate  
94 rules and regulations establishing standards applicable  
95 to generators and to permitting, licensing and opera-  
96 tion of facilities that treat, store or dispose of hazard-  
97 ous wastes with infectious characteristics. Such rules  
98 and regulations shall specify the terms, conditions and  
99 procedures under which the state director of health or  
100 his authorized representative shall issue, modify,  
101 suspend, revoke or deny such permits required pursu-  
102 ant to those regulations. Such permits as the board of  
103 health regulations may require shall be issued by the  
104 state director of health or his authorized representa-  
105 tive. All rules and regulations promulgated under this  
106 subsection shall be promulgated in accordance with  
107 the provisions of chapter twenty-nine-a of this code.  
108 Nothing in this subsection shall be construed to  
109 diminish or alter the authority of the air pollution  
110 control commission or its director under this article or  
111 article twenty, chapter sixteen of this code: *Provided*,  
112 That such permitting or licensing required by this  
113 subsection shall be in addition to those permits  
114 required by section eight of this article. Such rules and  
115 regulations shall be consistent with this article and  
116 shall be promulgated within six months of the effec-  
117 tive date of this article.

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

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

143 (e) The director shall rely, to the maximum extent  
144 practicable, on the department of health for expertise  
145 on the adverse effects of toxic hazardous waste on  
146 human health.

147 (f) The air pollution control commission, in consul-  
148 tation with the director, and avoiding inconsistencies  
149 with and avoiding duplication to the maximum extent  
150 practicable with rules and regulations required to be  
151 promulgated pursuant to this article by the director or  
152 any other rule-making authority, and in accordance  
153 with the provisions of article twenty, chapter sixteen  
154 and chapter twenty-nine-a of this code, shall promul-  
155 gate such rules and regulations establishing air pollu-  
156 tion performance standards and permit requirements  
157 and procedures as may be necessary to comply with  
158 the requirements of this article. Such permits shall be  
159 in addition to those permits required by section eight  
160 of this article. All rules and regulations promulgated  
161 pursuant to this subsection shall be consistent with  
162 this article.

163 The commission shall adopt regulations for the  
164 monitoring and control of air emissions at hazardous  
165 waste treatment storage and disposal facilities, includ-  
166 ing, but not limited to, open tanks, surface impound-  
167 ments and landfills, as may be necessary to protect  
168 human health and the environment.

169 The commission shall promulgate rules and regula-  
170 tions establishing standards applicable to the owners  
171 and operators of facilities which burn, for purposes of  
172 energy recovery, and fuel produced from any hazard-

173 ous waste identified or listed pursuant to subdivision  
174 two, subsection (a), section six of this article or which  
175 is produced from any hazardous waste identified or  
176 listed pursuant to subdivision two, subsection (a),  
177 section six of this article and any other material, as  
178 may be necessary to protect human health and the  
179 environment: *Provided*, That such rules and regula-  
180 tions shall be consistent with Subtitle C.

181 With respect to this article, and any rules or regula-  
182 tions promulgated pursuant thereto, the director of the  
183 air pollution control commission has the same enforce-  
184 ment and inspection powers as those of the chief  
185 under sections eleven, twelve, thirteen, fourteen,  
186 fifteen, sixteen and seventeen of this article: *Provided*,  
187 That no action for penalties may be initiated by the  
188 director of the air pollution control commission  
189 without the approval of that commission. Any person  
190 aggrieved or adversely affected by an order of the  
191 director of the air pollution control commission made  
192 and entered in accordance with the provisions of this  
193 article, or by the failure or refusal of said director to  
194 act within a reasonable time on an application for a  
195 permit or by the issuance or denial of or by the terms  
196 and conditions of a permit granted under the provi-  
197 sions of this article, may appeal to the air pollution  
198 control commission in accordance with the procedure  
199 set forth in section six, article twenty, chapter sixteen  
200 of this code, and orders made and entered by said  
201 commission shall be subject to judicial review in  
202 accordance with the procedures set forth in section  
203 seven, article twenty, chapter sixteen of this code,  
204 except that as to cases involving an order granting or  
205 denying an application for a permit, revoking or  
206 suspending a permit or approving or modifying the  
207 terms and conditions of a permit or the failure to act  
208 within a reasonable time on an application for a  
209 permit, the petition for judicial review shall be filed in  
210 the circuit court of Kanawha County.

211 (g) The director of the department of natural resour-  
212 ces has exclusive responsibility for carrying out any  
213 requirement of this article with respect to coal mining

214 wastes or overburden for which a permit is issued  
215 under the surface coal mining and reclamation act of  
216 1980, article six of this chapter.

217 (h) To the extent that this article relates to activities  
218 with respect to oil and gas wells, liquid injection wells  
219 and waste disposal wells now regulated by articles  
220 four, four-b and seven, chapter twenty-two of this  
221 code, the administrator of the office of oil and gas and  
222 the shallow gas-well review board has the jurisdiction  
223 with respect to the regulation of such activities and  
224 shall promulgate such rules and regulations as may be  
225 necessary to comply with the requirements of this  
226 article: *Provided*, That nothing in this subsection may  
227 be construed to diminish or alter the authority and  
228 responsibility of the chief or the water resources board  
229 under articles five and five-a, chapter twenty of this  
230 code.

231 In lieu of those enforcement and inspection powers  
232 conferred upon the administrator of the office of oil  
233 and gas and the shallow gas-well review board else-  
234 where by law, with respect to hazardous wastes, the  
235 administrator of the office of oil and gas and the  
236 shallow gas-well review board have the same enforce-  
237 ment and inspection powers as those granted to the  
238 chief, his authorized representative or agent or any  
239 authorized employee or agent of the department of  
240 natural resources, as the case may be, under sections  
241 eleven, twelve, thirteen, fourteen, fifteen, sixteen and  
242 seventeen of this article.

243 (i) The water resources board, in consultation with  
244 the director, and avoiding inconsistency with and  
245 avoiding duplication to the maximum extent practica-  
246 ble with rules and regulations required to be promul-  
247 gated pursuant to this article by the director or any  
248 other rule-making authority, and in accordance with  
249 the provisions of chapter twenty-nine-a of this code,  
250 shall, as necessary, promulgate rules and regulations  
251 governing discharges into the waters of this state of  
252 hazardous waste resulting from the treatment, storage  
253 or disposal of hazardous waste as may be required by  
254 this article. Such rules and regulations shall be

255 consistent with this article.

256 (j) All rules and regulations promulgated pursuant  
257 to this section shall be consistent with rules and  
258 regulations promulgated by the federal environmental  
259 protection agency pursuant to the Resource Conserva-  
260 tion and Recovery Act.

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

**§20-5E-8a. Corrective action.**

1 (a) All permits issued after the date the state is  
2 delegated authority by the federal environmental  
3 protection agency to administer the portion of the  
4 federal hazardous waste program covered under the  
5 Hazardous and Solid Waste Amendments of 1984 shall  
6 contain conditions requiring corrective action for all  
7 releases of hazardous waste or constituents from any  
8 solid waste management unit at a treatment, storage  
9 or disposal facility seeking a permit under this article  
10 regardless of the time at which waste was placed in  
11 such unit. Permits issued under this article shall  
12 contain schedules of compliance for such corrective  
13 action (where such corrective action cannot be com-  
14 pleted prior to issuance of the permit) and assurances  
15 of financial responsibility for completing such correc-  
16 tive action.

17 (b) The director shall amend the standards under  
18 subdivision four, subsection (a), section six, of this  
19 article, regarding corrective action required at facili-  
20 ties for the treatment, storage, or disposal of hazardous  
21 waste listed or identified in rules and regulations  
22 promulgated pursuant to subdivision two, subsection  
23 (a), section six, of this article, to require that correc-  
24 tive action be taken beyond the facility boundary  
25 where necessary to protect human health and the  
26 environment unless the owner or operator of the  
27 facility concerned demonstrates to the satisfaction of  
28 the director that, despite the owner or operator's best  
29 efforts, the owner or operator was unable to obtain the

30 necessary permission to undertake such action. Such  
31 regulations shall take effect immediately upon pro-  
32 mulgation, and shall apply to:

33 (1) All facilities operating under permits issued  
34 under subdivision four, subsection (a), section six of  
35 this article; and

36 (2) All landfills, surface impoundments and waste  
37 pile units (including any new units, replacement of  
38 existing units or lateral expansions of existing units)  
39 which receive hazardous waste after the twenty-sixth  
40 day of July, one thousand nine hundred eighty-two.  
41 Pending promulgation of such regulations the director  
42 shall issue corrective action orders for facilities  
43 referred to in subdivisions (1) and (2) above on a case-  
44 by-case basis consistent with the purposes of this  
45 subsection.

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

1 (a) If the chief, upon inspection, investigation or  
2 through other means observes, discovers or learns of a  
3 violation of the provisions of this article, any permit,  
4 order or rules or regulations issued or promulgated  
5 hereunder, he may:

6 (1) issue an order stating with reasonable specificity  
7 the nature of the violation and requiring compliance  
8 immediately or within a specified time. An order  
9 under this section includes, but is not limited to, any  
10 or all of the following: Orders suspending, revoking or  
11 modifying permits, orders requiring a person to take  
12 remedial action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection  
14 (c) of section sixteen of this article;

15 (3) Institute a civil action in accordance with subsec-  
16 tion (c) of section sixteen of this article; or

17 (4) Request the attorney general, or the prosecuting  
18 attorney of the county in which the alleged violation  
19 occurred to bring a criminal action in accordance with  
20 section fifteen of this article.

21 (b) Any person issued a cease and desist order may

22 file a notice of request for reconsideration with the  
23 chief not more than seven days from the issuance of  
24 such order and shall have a hearing before the chief  
25 contesting the terms and conditions of such order  
26 within ten days of the filing of such notice of a request  
27 for reconsideration. The filing of a notice of request  
28 for reconsideration shall not stay or suspend the  
29 execution or enforcement of such cease and desist  
30 order.

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

1 (a) (1) Any person who violates any provision of this  
2 article, any permit or any rule, regulation or order  
3 issued pursuant to this article shall be subject to an  
4 civil administrative penalty, to be levied by the  
5 director, of not more than seventy-five hundred  
6 dollars for each day of such violation, not to exceed a  
7 maximum of twenty-two thousand five hundred  
8 dollars. In assessing any such penalty, the director  
9 shall take into account the seriousness of the violation  
10 and any good faith efforts to comply with applicable  
11 requirements as well as any other appropriate factors  
12 as may be established by the director by rules and  
13 regulations promulgated pursuant to this article and  
14 article three, chapter twenty-nine-a of this code. No  
15 assessment shall be levied pursuant to this subsection  
16 until after the alleged violator has been notified by  
17 certified mail or personal service. The notice shall  
18 include a reference to the section of the statute, rule,  
19 regulation, order or statement of permit conditions  
20 that was allegedly violated, a concise statement of the  
21 facts alleged to constitute the violation, a statement of  
22 the amount of the administrative penalty to be  
23 imposed and a statement of the alleged violator's right  
24 to an informal hearing. The alleged violator shall have  
25 twenty calendar days from receipt of the notice within  
26 which to deliver to the director a written request for  
27 an informal hearing. If no hearing is requested, the  
28 notice shall become a final order after the expiration  
29 of the twenty-day period. If a hearing is requested, the  
30 director shall inform the alleged violator of the time  
31 and place of the hearing. The director may appoint an

32 assessment officer to conduct the informal hearing and  
33 then make a written recommendation to the director  
34 concerning the assessment of a civil administrative  
35 penalty. Within thirty days following the informal  
36 hearing, the director shall issue and furnish to the  
37 violator a written decision, and the reasons therefore,  
38 concerning the assessment of a civil administrative  
39 penalty. Within thirty days after notification of the  
40 director's decision, the alleged violator may request a  
41 formal hearing before the water resources board in  
42 accordance with the provisions of section nineteen of  
43 this article. The authority to levy an administrative  
44 penalty shall be in addition to all other enforcement  
45 provisions of this article and the payment of any  
46 assessment shall not be deemed to affect the availabil-  
47 ity of any other enforcement provision in connection  
48 with the violation for which the assessment is levied:  
49 *Provided*, That no combination of assessments against  
50 a violator under this section shall exceed twenty-five  
51 thousand dollars per day of each such violation:  
52 *Provided, however*, That any violation for which the  
53 violator has paid a civil administrative penalty  
54 assessed under this section shall not be the subject of  
55 a separate civil penalty action under this article to the  
56 extent of the amount of the civil administrative  
57 penalty paid. All administrative penalties shall be  
58 levied in accordance with rules and regulations issued  
59 pursuant to subsection (a) of section six of this article.  
60 The net proceeds of assessments collected pursuant to  
61 this subsection shall be deposited in the Hazardous  
62 Waste Emergency Response Fund established pursuant  
63 to section three, article five-g of this chapter.

64 (2) No assessment levied pursuant to subsection (a)  
65 (1) above shall become due and payable until the  
66 procedures for review of such assessment as set out in  
67 said subsection have been completed.

68 (b) Any person who violates any provision of this  
69 article, any permit or any rule, regulation or order  
70 issued pursuant to this article shall be subject to a civil  
71 penalty not to exceed twenty-five thousand dollars for  
72 each day of such violation, which penalty shall be



73 recovered in a civil action either in the circuit court  
74 wherein the violation occurs or in the circuit court of  
75 Kanawha County.

76 (c) The chief may seek an injunction, or may  
77 institute a civil action against any person in violation  
78 of any provisions of this article or any permit, rule,  
79 regulation or order issued pursuant to this article. In  
80 seeking an injunction, it is not necessary for the chief  
81 to post bond nor to allege or prove at any stage of the  
82 proceeding that irreparable damage will occur if the  
83 injunction is not issued or that the remedy at law is  
84 inadequate. An application for injunctive relief or a  
85 civil penalty action under this section may be filed and  
86 relief granted notwithstanding the fact that all admin-  
87 istrative remedies provided for in this article have not  
88 been exhausted or invoked against the person or  
89 persons against whom such relief is sought.

90 (d) Upon request of the chief, the attorney general,  
91 or the prosecuting attorney of the county in which the  
92 violation occurs shall assist the chief in any civil action  
93 under this section.

94 (e) In any action brought pursuant to the provisions  
95 of this section, the state, or any agency of the state  
96 which prevails, may be awarded costs and reasonable  
97 attorney's fees.

**§20-5E-24. Financial responsibility provisions.**

1 (1) Financial responsibility required by subdivision  
2 four, subsection (a), section six of this article may be  
3 established in accordance with regulations promul-  
4 gated by the director by any one, or any combination,  
5 of the following: Insurance, guarantee, surety bond,  
6 letter of credit or qualification as a self-insurer. In  
7 promulgating requirements under this section, the  
8 director is authorized to specify policy or other  
9 contractual terms, conditions or defenses which are  
10 necessary or are unacceptable in establishing such  
11 evidence of financial responsibility in order to effectu-  
12 ate the purposes of this act.

13 (2) In any case where the owner or operator is in

14 bankruptcy reorganization, or arrangement pursuant  
15 to the federal bankruptcy code or where (with reason-  
16 able diligence) jurisdiction in any state court or any  
17 federal court cannot be obtained over an owner or  
18 operator likely to be solvent at the time or judgment,  
19 any claim arising from conduct for which evidence of  
20 financial responsibility must be provided under this  
21 section may be asserted directly against the guarantor  
22 providing such evidence of financial responsibility. In  
23 the case of any action pursuant to this subsection, such  
24 guarantor shall be entitled to invoke all rights and  
25 defenses which would have been available to the  
26 owner or operator if any action had been brought  
27 against the owner or operator by the claimant and  
28 which would have been available to the guarantor if  
29 an action had been brought against the guarantor by  
30 the owner or operator.

31 (3) The total liability of any guarantor shall be  
32 limited to the aggregate amount which the guarantor  
33 has provided as evidence of financial responsibility to  
34 the owner or operator under this act. Nothing in this  
35 subsection shall be construed to limit any other state  
36 or federal statutory contractual or common law  
37 liability of a guarantor to its owner or operator  
38 including, but not limited to, the liability of such  
39 guarantor for bad faith either in negotiating or in  
40 failing to negotiate the settlement of any claim.  
41 Nothing in this subsection shall be construed to  
42 diminish the liability of any person under section 107  
43 or 111 of the comprehensive environmental response  
44 compensation and liability act of 1980 or other applica-  
45 ble law.

46 (4) For the purposes of this section, the term "guar-  
47 antor" means any person other than the owner or  
48 operator, who provides evidence of financial responsi-  
49 bility for an owner or operator under this section.

#### **ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.**

##### **§20-5F-2. Definitions.**

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

3 (a) "Approved solid waste facility" means a solid  
4 waste facility or practice which has a valid permit  
5 under this article;

6 (b) "Chief" shall mean the chief of the division of  
7 waste management of the department of natural  
8 resources;

9 (c) "Commercial solid waste facility" means any  
10 solid waste facility which accepts solid waste generated  
11 by sources other than the owner or operator of the  
12 facility and shall not include an approved solid waste  
13 facility owned and operated by a person for the sole  
14 purpose of disposing of solid wastes created by that  
15 person or such person and other persons on a cost-  
16 sharing or non-profit basis;

17 (d) "Department" shall mean the department of  
18 natural resources;

19 (e) "Director" shall mean the director of the depart-  
20 ment of natural resources;

21 (f) "Open dump" means any solid waste disposal  
22 which does not have a permit under this article, or is  
23 in violation of state law, or where solid waste is  
24 disposed in a manner that does not protect the  
25 environment;

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

38 (h) "Sludge" means any solid, semisolid, residue or  
39 precipitate, separated from or created by a municipal,  
40 commercial or industrial waste treatment plant, water  
41 supply treatment plant or air pollution control facility

42 or any other such waste having similar origin;

43 (i) "Solid waste" means any garbage, paper, litter,  
44 refuse, cans, bottles, sludge from a waste treatment  
45 plant, water supply treatment plant or air pollution  
46 control facility, other discarded material, including  
47 carcasses of any dead animal or any other offensive or  
48 unsightly matter, solid, liquid, semisolid or contained  
49 liquid or gaseous material resulting from industrial,  
50 commercial, mining or from community activities but  
51 does not include solid or dissolved material in sewage,  
52 or solid or dissolved materials in irrigation return  
53 flows or industrial discharges which are point sources  
54 and have permits under article five-a, chapter twenty  
55 of the code, or source, special nuclear or by-product  
56 material as defined by the Atomic Energy Act of 1954,  
57 as amended, or a hazardous waste either identified or  
58 listed under article five-e, chapter twenty of the code  
59 or refuse, slurry, overburden or other wastes or  
60 material resulting from coal-fired electric power  
61 generation, the exploration, development, production,  
62 storage and recovery of coal, oil and gas, and other  
63 mineral resources placed or disposed of at a facility  
64 which is regulated under chapter twenty-two, twenty-  
65 two-a, or twenty-two-b, of the code, so long as such  
66 placement or disposal is in conformance with a permit  
67 issued pursuant to such chapters; "solid waste" shall  
68 not include materials which are recycled by being  
69 used or reused in an industrial process to make a  
70 product, as effective substitutes for commercial pro-  
71 ducts, or are returned to the original process as a  
72 substitute for raw material feed stock;

73 (j) "Solid waste disposal" means the practice of  
74 disposing solid waste including placing, depositing,  
75 dumping or throwing or causing to be placed, depos-  
76 ited, dumped or thrown any solid waste;

77 (k) "Solid waste disposal shed" means the geograph-  
78 ical area which the resource recovery—solid waste  
79 disposal authority designates and files in the state  
80 register pursuant to section eight, article twenty-six,  
81 chapter sixteen of this code; and

82 (1) "Solid waste facility" means any system, facility,  
83 land, contiguous land, improvements on the land,  
84 structures or other appurtenances or methods used for  
85 processing, recycling or disposing of solid waste,  
86 including landfills, transfer stations, resource recovery  
87 facilities and other such facilities not herein specified.

**§20-5F-6. Orders, inspections and enforcement; civil and  
criminal penalties.**

1 (a) If the director or chief, upon inspection, investi-  
2 gation or through other means observes, discovers or  
3 learns of a violation of this article, its rules, article  
4 five-a of this chapter or its rules, or any permit or  
5 order issued under this article, he may:

6 (1) Issue an order stating with reasonable specificity  
7 the nature of the alleged violation and requiring  
8 compliance immediately or within a specified time. An  
9 order under this section includes, but is not limited to,  
10 any or all of the following: Orders suspending, revok-  
11 ing or modifying permits, orders requiring a person to  
12 make remedial action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection  
14 (e) of this section;

15 (3) Institute a civil action in accordance with subsec-  
16 tion (e) of this section; or

17 (4) Request the attorney general, or the prosecuting  
18 attorney of the county wherein the alleged violation  
19 occurred, to bring a criminal action in accordance with  
20 subsection (b) of this section.

21 (b) Any person who willfully or negligently violates  
22 the provisions of this article, any permit or any rule,  
23 regulation or order issued pursuant to this article shall  
24 be subject to the same criminal penalties as set forth  
25 in section nineteen, article five-a, chapter twenty of  
26 the code.

27 (c) (1) Any person who violates any provision of this  
28 article, any permit or any rule, regulation or order  
29 issued pursuant to this article shall be subject to civil  
30 administrative penalty, to be levied by the director, of

31 not more than five thousand dollars for each day of  
32 such violation, not to exceed a maximum of twenty  
33 thousand dollars. In assessing any such penalty, the  
34 director shall take into account the seriousness of the  
35 violation and any good faith efforts to comply with the  
36 applicable requirements as well as any other appropri-  
37 ate factors as may be established by the director by  
38 rules and regulations promulgated pursuant to this  
39 article and article three, chapter twenty-nine-a of the  
40 code. No assessment shall be levied pursuant to this  
41 subsection until after the alleged violator has been  
42 notified by certified mail or personal service. The  
43 notice shall include a reference to the section of the  
44 statute, rule, regulation, order or statement of permit  
45 conditions that was allegedly violated, a concise  
46 statement of the facts alleged to constitute the viola-  
47 tion, a statement of the amount of the administrative  
48 penalty to be imposed and a statement of the alleged  
49 violator's right to an informal hearing. The alleged  
50 violator shall have twenty calendar days from receipt  
51 of the notice within which to deliver to the director a  
52 written request for an informal hearing. If no hearing  
53 is requested, the notice shall become a final order  
54 after the expiration of the twenty-day period. If a  
55 hearing is requested, the director shall inform the  
56 alleged violator of the time and place of the hearing.  
57 The director may appoint an assessment officer to  
58 conduct the informal hearing and then make a written  
59 recommendation to the director concerning the assess-  
60 ment of a civil administrative penalty. Within thirty  
61 days following the informal hearing, the director shall  
62 issue and furnish to the alleged violator a written  
63 decision, and the reasons therefor, concerning the  
64 assessment of a civil administrative penalty. Within  
65 thirty days after notification of the director's decision,  
66 the alleged violator may request a formal hearing  
67 before the water resources board in accordance with  
68 the provisions of section seven of this article. The  
69 authority to levy a civil administrative penalty shall be  
70 in addition to all other enforcement provisions of this  
71 article and the payment of any assessment shall not be  
72 deemed to affect the availability of any other enforce-

73 ment provision in connection with the violation for  
74 which the assessment is levied: *Provided*, That no  
75 combination of assessments against a violator under  
76 this section shall exceed twenty-five thousand dollars  
77 per day of each such violation: *Provided, however*,  
78 That any violation for which the violator has paid a  
79 civil administrative penalty assessed under this section  
80 shall not be the subject of a separate civil penalty  
81 action under this article to the extent of the amount  
82 of the civil administrative penalty paid. All adminis-  
83 trative penalties shall be levied in accordance with  
84 rules and regulations issued pursuant to subsection (a)  
85 of section four of this article. The net proceeds of  
86 assessments collected pursuant to this subsection shall  
87 be deposited in the Solid Waste Reclamation and  
88 Environmental Response Fund established in subsec-  
89 tion (h) (3), section five-a of this article.

90 (2) No assessment levied pursuant to subsection (c)  
91 (1) above shall become due and payable until the  
92 procedures for review of such assessment as set out in  
93 said subsection have been completed.

94 (d) Any person who violates any provision of this  
95 article, any permit or any rule, regulation or order  
96 issued pursuant to this article shall be subject to a civil  
97 penalty not to exceed twenty-five thousand dollars for  
98 each day of such violation, which penalty shall be  
99 recovered in a civil action either in the circuit court  
100 wherein the violation occurs or in the circuit court of  
101 Kanawha County.

102 (e) The director or chief may seek an injunction, or  
103 may institute a civil action against any person in  
104 violation of any provisions of this article or any  
105 permit, rule, regulation or order issued pursuant to  
106 this article. In seeking an injunction, it is not neces-  
107 sary for the director or chief to post bond nor to allege  
108 or prove at any state of the proceeding that irrepara-  
109 ble damage will occur if the injunction is not issued or  
110 that the remedy at law is inadequate. An application  
111 for injunctive relief or a civil penalty action under this  
112 section may be filed and relief granted notwithstanding  
113 the fact that all administrative remedies provided

114 for in this article have not been exhausted or invoked  
115 against the person or persons against whom such relief  
116 is sought.

117 (f) Upon request of the director or chief, the attor-  
118 ney general or the prosecuting attorney of the county  
119 in which the violation occurs shall assist the director  
120 in any civil action under this section.

121 (g) In any civil action brought pursuant to the  
122 provisions of this section, the state, or any agency of  
123 the state which prevails, may be awarded costs and  
124 reasonable attorney's fees.



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

*Frederick L. Perry*  
.....  
Chairman Senate Committee

*L. L. Satter*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Josiah C. Willis*  
.....  
Clerk of the Senate

*Donald G. Kipp*  
.....  
Clerk of the House of Delegates

*Samuel T. Tucker*  
.....  
President of the Senate

*B. Stoddard*  
.....  
Speaker House of Delegates

The within *is* approved this the *27th*  
day of *April* 1889.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

©

®

Date 4/25/89

Time 2:20