WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Committee Substitute for
SENATE BILL NO. 2612

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

PASSED ______ April 19, 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)
[Passed April 8, 1989; in effect ninety days from passage.]

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; declara-
tion 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 in the amount of manufacture and the abatement of air and water pollution have resulted in ever increasing quantities of hazardous wastes;

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

4 (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;

5 (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

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

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

8 (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 Resource Conservation and Recovery Act.


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 waste management 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 waste management of the department of natural resources;

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


(7) “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;

(8) "Hazardous waste fuel" means fuel produced from any hazardous waste identified or listed pursuant to subdivision two, subsection (a), section six of this article, or produced from any hazardous waste identified or listed pursuant to section six;

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

(10) "Land disposal" means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;

(11) "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;

(12) "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;


(14) "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;

(15) "Subtitle C" means Subtitle C of the Resource
Conservation and Recovery Act;

(16) "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;

(17) "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 by-product 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.

1 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 Resource Conservation and Recovery Act, 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.
§20-5E-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 Resource Conservation and Recovery Act 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:
(1) A description of the sources of hazardous waste
generation within the state, including the types and
quantities of such wastes;

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

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

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

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

(h) The director, or upon designation by the director,
the chief, shall provide for the continuing education
and training of appropriate department personnel in
matters of hazardous waste management.
§20-5E-6. Promulgation of regulations by director.

1 (a) The director has overall responsibility for the promulgation 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 commission, 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 agriculture, 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 provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

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

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

31 (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 Resource Conservation and Recovery Act, and finding in the case of the wastes identified in paragraph (iv) of this subparagraph that the regulation of such wastes have been authorized by an act of Congress in accordance with section 3001 (b)(2) of the Resource Conservation and Recovery Act:

(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 Resource Conservation and Recovery Act; (3) by the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the Resource Conservation and Recovery Act; 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) of 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 director; (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, training for personnel and financial responsibility as may be necessary 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 continuity 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 requirements of section eight of this article respecting permits for treatment, storage or disposal;

(5) Rules and regulations specifying the terms and conditions 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 maintenance of records; the making of reports; the taking of samples and the performing of tests and analyses; the installing, calibrating, operating and
(7) Rules and regulations establishing standards and procedures 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 requirements 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;
(12) Rules and regulations, including exemptions and variances, as appropriate, (A) establishing standards and prohibitions relating to the management of hazardous waste by land disposal methods; (B) establishing standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids which are not hazardous wastes; (C) establishing standards applicable to producers, distributors, or marketers of hazardous waste fuels; (D) establishing such standards relating to the management of used oil as may be necessary to protect human health and the environment; (E) establishing such standards relating to the management of recycled oil as may be necessary to protect human health and the environment; and (F) as are otherwise necessary to allow the state to assume
primacy for the administration of the federal hazardous waste management program under the Resource Conservation and Recovery Act and in particular, the Hazardous and Solid Waste Amendments of 1984:

Provided, That such rules and regulations authorized by this subdivision shall be consistent with but no more expansive in coverage nor more stringent in effect than rules and regulations promulgated by the federal environmental protection agency under Subtitle C; and

(13) 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 Resource Conservation and Recovery Act and within six months of the effective date of any adoption or revision of rules and regulations required to be promulgated by the Resource Conservation and Recovery Act.

(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. 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.

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 affect 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.

In lieu of those enforcement and inspection powers conferred 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 promul-
gated 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 thereof. 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 respecting (A) record keeping concern-
ing such hazardous waste transported, and their
source and delivery points, (B) transportation of such
waste only if properly labeled, (C) compliance with the
manifest system referred to in subdivision (3), subsec-
tion (a), section six of this article; and (D) transporta-
tion 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 permit issued under: (1) This article
or any rule and regulation required by this article to
be promulgated; (2) Subtitle C; (3) the laws of any
other state which has an authorized hazardous waste
program pursuant to Section 3006 of the Resource
Conservation and Recovery Act; or (4) Title I of the
federal Marine Protection, Research and Sanctuaries
Act.

(d) The state board of health of the state department
of health, in consultation with the director of the
department of natural resources, and avoiding incon-
sistencies with, and avoiding duplication to the maxi-
imum 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
rules and regulations establishing standards applicable
to generators and to permitting, licensing and opera-
tion of facilities that treat, store or dispose of hazard-
ous wastes with infectious characteristics. Such rules
and regulations shall specify the terms, conditions and
procedures under which the state director of health or
his authorized representative shall issue, modify,
suspend, revoke or deny such permits required pursu-
ant to those regulations. Such permits as the board of
health regulations may require shall be issued by the
state director of health or his authorized representa-
tive. All rules and regulations promulgated under this
subsection shall be promulgated in accordance with
the provisions of chapter twenty-nine-a of this code.
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,
That such permitting or licensing required by this
subsection shall be in addition to those permits
required by section eight of this article. Such rules and
regulations shall be consistent with this article and
shall be promulgated within six months of the effec-
tive 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 the 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 practicable, 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 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.

The commission shall adopt regulations for the monitoring and control of air emissions at hazardous waste treatment storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment.

The commission shall promulgate rules and regulations establishing standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, and fuel produced from any hazard-
ous waste identified or listed pursuant to subdivision two, subsection (a), section six of this article or which is produced from any hazardous waste identified or listed pursuant to subdivision two, subsection (a), section six of this article and any other material, as may be necessary to protect human health and the environment: Provided, That such rules and regulations shall be consistent with Subtitle C.

With respect to this article, and any rules or regulations promulgated pursuant thereto, 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 application 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 requirement 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 this 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 necessary to comply with the requirements of this article: Provided, 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 conferred 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, fourteen, fifteen, sixteen and seventeen of this article.

(i) The water resources board, 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 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 Resource Conservation and Recovery Act.

(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.

§20-5E-8a. Corrective action.

(a) All permits issued after the date the state is delegated authority by the federal environmental protection agency to administer the portion of the federal hazardous waste program covered under the Hazardous and Solid Waste Amendments of 1984 shall contain conditions requiring corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this article regardless of the time at which waste was placed in such unit. Permits issued under this article shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(b) The director shall amend the standards under subdivision four, subsection (a), section six, of this article, regarding corrective action required at facilities for the treatment, storage, or disposal of hazardous waste listed or identified in rules and regulations promulgated pursuant to subdivision two, subsection (a), section six, of this article, to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the director that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the
necessary permission to undertake such action. Such
regulations shall take effect immediately upon pro-
mulgation, and shall apply to:

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

(2) All landfills, surface impoundments and waste
pile units (including any new units, replacement of
existing units or lateral expansions of existing units)
which receive hazardous waste after the twenty-sixth
day of July, one thousand nine hundred eighty-two.

Pending promulgation of such regulations the director
shall issue corrective action orders for facilities
referred to in subdivisions (1) and (2) above on a case­
by-case basis consistent with the purposes of this
subsection.

§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 regulations issued or promulgated
hereunder, he may:

(1) 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;

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

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

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

(b) Any person issued a cease and desist order may
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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
assessment officer to conduct the informal hearing and
then make a written recommendation to the director
concerning the assessment of a civil administrative
penalty. Within thirty days following the informal
hearing, the director shall issue and furnish to the
violator a written decision, and the reasons therefore,
concerning the assessment of a civil administrative
penalty. Within thirty days after notification of the
director's decision, the alleged violator may request a
formal hearing before the water resources board in
accordance with the provisions of section nineteen of
this article. The authority to levy an administrative
penalty shall be in addition to all other enforcement
provisions of this article and the payment of any
assessment shall not be deemed to affect the availabil-
ity of any other enforcement provision in connection
with the violation for which the assessment is levied:
Provided, That no combination of assessments against
a violator under this section shall exceed twenty-five
thousand dollars per day of each such violation:
Provided, however, That any violation for which the
violator has paid a civil administrative penalty
assessed under this section shall not be the subject of
a separate civil penalty action under this article to the
extent of the amount of the civil administrative
penalty paid. All administrative penalties shall be
levied in accordance with rules and regulations issued
pursuant to subsection (a) of section six of this article.
The net proceeds of assessments collected pursuant to
this subsection shall be deposited in the Hazardous
Waste Emergency Response Fund established pursuant
to section three, article five-g of this chapter.

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

(b) 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
(c) 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.

(d) 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.

(e) 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.


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

(2) In any case where the owner or operator is in
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bankruptcy reorganization, or arrangement pursuant to the federal bankruptcy code or where (with reasonable diligence) jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time or judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this act. Nothing in this subsection shall be construed to limit any other state or federal statutory contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 107 or 111 of the comprehensive environmental response compensation and liability act of 1980 or other applicable law.

(4) For the purposes of this section, the term "guarantor" means any person other than the owner or operator, who provides evidence of financial responsibility 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 meaning, as used in this article the terms:
(a) "Approved solid waste facility" means a solid waste facility or practice which has a valid permit under this article;

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

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

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

(e) "Director" shall mean the director of the department of natural resources;

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

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

(h) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility.
or any other such waste having similar origin;

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

(j) "Solid waste disposal" means the practice of disposing solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste;

(k) "Solid waste disposal shed" means the geographical area which the resource recovery—solid waste disposal authority designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code; and
(1) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified.

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

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

(1) Issue an order stating with reasonable specificity the nature of the alleged 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 make remedial action or cease and desist orders;

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

(3) Institute a civil action in accordance with subsection (e) of this section; or

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

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

(c) (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 civil administrative penalty, to be levied by the director, of
not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars. In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the director by rules and regulations promulgated pursuant to this article and article three, chapter twenty-nine-a of the code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator’s right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice shall become a final order after the expiration of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing. The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director’s decision, the alleged violator may request a formal hearing before the water resources board in accordance with the provisions of section seven of this article. The authority to levy a civil administrative penalty shall be in addition to all other enforcement provisions of this article and the payment of any assessment shall not be deemed to affect the availability of any other enforce-
ment provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed twenty-five thousand dollars per day of each such violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules and regulations issued pursuant to subsection (a) of section four of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the Solid Waste Reclamation and Environmental Response Fund established in subsection (h) (3), section five-a of this article.

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

(d) 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 either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The director or 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 director or chief to post bond nor to allege or prove at any state 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.

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

(g) In any civil 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.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In 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 April 1989.

Governor