

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2813

(By Mr. Speaker, Mr. Chandler)

— ● —

Passed March 9, 1990

In Effect 90 Days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2813
(By MR. SPEAKER, MR. CHAMBERS)

[Passed March 9, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections five, eight and nine, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to air pollution control; eliminating the requirement that state controls be no more stringent than federal controls; allowing the air pollution control commission to establish permit and operating fees to be applied to paying salaries and expenses of the commission; increasing civil penalties and providing criminal penalties for violations of the article; requiring the attorney general to bring actions on behalf of the commission; and authorizing the director of the air pollution control commission to seek injunctive relief for violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. AIR POLLUTION CONTROL.

§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation and
3 control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other
5 agencies of the state, political subdivisions of the state,
6 other states, agencies of the federal government,
7 industries, and with affected groups in furtherance of
8 the declared purposes of this article;

9 (3) To encourage and conduct such studies and
10 research relating to air pollution and its control and
11 abatement as the commission may deem advisable and
12 necessary;

13 (4) To promulgate legislative rules in accordance with
14 the provisions of chapter twenty-nine-a of this code not
15 inconsistent with the provisions of this article, relating
16 to the control of air pollution: *Provided*, That no rule of
17 the commission shall specify a particular manufacturer
18 of equipment nor a single specific type of construction
19 nor a particular method of compliance except as
20 specifically required by the "Federal Clean Air Act," as
21 amended, nor shall any such rule apply to any aspect
22 of an employer-employee relationship: *Provided, how-*
23 *ever*, That no rule or program of the commission shall
24 be any more stringent than any federal rule or program
25 except to the limited extent that the commission first
26 makes a specific written finding for any such departure
27 that there exists scientifically supportable evidence for
28 such rule or program reflecting factors unique to West
29 Virginia or some area thereof.

30 (5) To enter orders requiring compliance with the
31 provisions of this article and the rules lawfully promul-
32 gated hereunder;

33 (6) To consider complaints, subpoena witnesses,
34 administer oaths, make investigations and hold hearings
35 relevant to the promulgation of rules and the entry of
36 compliance orders hereunder;

37 (7) To encourage voluntary cooperation by municipal-
38 ities, counties, industries and others in preserving the
39 purity of the air within the state;

40 (8) To employ personnel, including specialists and
41 consultants, purchase materials and supplies, and enter
42 into contracts necessary, incident or convenient to the
43 accomplishment of the purpose of this article;

44 (9) To enter and inspect any property, premise or
45 place on or at which a source of air pollutants is located
46 or is being constructed, installed or established at any
47 reasonable time for the purpose of ascertaining the state
48 of compliance with this article and rules in force
49 pursuant thereto. No person shall refuse entry or access
50 to any authorized representative of the commission who
51 requests entry for purposes of inspection, and who
52 presents appropriate credentials; nor shall any person
53 obstruct, hamper or interfere with any such inspection:
54 *Provided*, That nothing contained in this article shall be
55 construed to allow a search of a private dwelling,
56 including the curtilage thereof, without a proper
57 warrant;

58 (10) Upon reasonable evidence of a violation of this
59 article, which presents an imminent and serious hazard
60 to public health, to give notice to the public or to that
61 portion of the public which is in danger by any and all
62 appropriate means;

63 (11) To cooperate with, receive and expend money
64 from the federal government and other sources;

65 (12) To represent the state in any and all matters
66 pertaining to plans, procedures and negotiations for
67 interstate compacts in relation to the control of air
68 pollution;

69 (13) To appoint advisory councils from such areas of
70 the state as it may determine. Each such council so
71 appointed shall consist of not more than five members
72 appointed from the general public, for each area so
73 designated. Such members shall possess some knowl-
74 edge and interest in matters pertaining to the regula-
75 tion, control and abatement of air pollution. The council
76 may advise and consult with the commission about all
77 matters pertaining to the regulation, control and
78 abatement of air pollution within such area;

79 (14) To require any and all persons who are directly
80 or indirectly discharging air pollutants into the air to
81 file with the commission such information as the
82 director may require in a form or manner prescribed
83 by him for such purpose, including, but not limited to,
84 location, size and height of discharge outlets, processes
85 employed, fuels used and the nature and time periods
86 of duration of discharges. Such information shall be
87 filed with the director, when and in such reasonable
88 time, and in such manner as the director may prescribe;

89 (15) To require the owner or operator of any station-
90 ary source discharging air pollutants to install such
91 monitoring equipment or devices as the director may
92 prescribe and to submit periodic reports on the nature
93 and amount of such discharges to the commission;

94 (16) To do all things necessary and convenient to
95 prepare and submit a plan or plans for the implemen-
96 tation, maintenance and enforcement of the "Federal
97 Clean Air Act," as amended: *Provided*, That in prepar-
98 ing and submitting each such plan the commission shall
99 establish in such plan that such standard shall be first
100 achieved, maintained and enforced by limiting and
101 controlling emissions of pollutants from commercial and
102 industrial sources and locations and shall only provide
103 in such plans for limiting and controlling emissions of
104 pollutants from private dwellings and the curtilage
105 thereof as a last resort: *Provided, however*, That nothing
106 herein contained shall be construed to affect plans for
107 achievement, maintenance and enforcement of motor
108 vehicle emission standards and of standards for fuels
109 used in dwellings;

110 (17) Whenever the commission achieves informally,
111 by letter, or otherwise, an agreement with any person
112 that said person will cease and desist in any act
113 resulting in the discharge of pollutants or do any act to
114 reduce or eliminate such discharge, such agreement
115 shall be embodied in a consent order and entered as, and
116 shall have the same effect as, an order entered after a
117 hearing as provided in section six of this article; and

118 (18) To establish by rule, permit and operating fees

119 and penalties for nonpayment thereof. Such fees shall be
120 deposited in a special fund in the state treasury
121 designated "Air Pollution Control Commission Fund," to
122 be appropriated as provided by law for the purpose of
123 paying salaries and expenses of the commission. Any
124 balance remaining in the fund at the end of any fiscal
125 year shall not revert to the treasury but shall remain
126 in the fund and may be appropriated and used as
127 provided above in the ensuing fiscal years.

128 The attorney general and his assistants and the
129 prosecuting attorneys of the several counties shall
130 render to the commission without additional compensa-
131 tion such legal services as the commission may require
132 of them to enforce the provisions of this article.

133 No rule of the commission pertaining to the control,
134 reduction or abatement of air pollution shall become
135 effective until after at least one public hearing thereon
136 shall have been held by the commission within the state.
137 Notice to the public of the time and place of any such
138 hearing shall be given by the commission at least thirty
139 days prior to the scheduled date of such hearing by
140 advertisement published as a Class II legal advertise-
141 ment in compliance with the provisions of article three,
142 chapter fifty-nine of this code, and the publication area
143 for such publication shall be in at least one county in
144 each affected air quality control region defined by the
145 commission. A copy of any proposed rule of the commis-
146 sion shall be filed in the office of the secretary of state
147 at least sixty days prior to the scheduled date of any
148 such hearing. Full opportunity to be heard shall be
149 accorded to all persons in attendance and any person,
150 whether or not in attendance at such hearing, may
151 submit in writing his views with respect to any such
152 rule to the commission within thirty days after such
153 hearing. After such thirty-day period, no views or
154 comments shall be received in writing or otherwise,
155 unless formally solicited by the commission. The
156 proceedings at the hearing before the commission shall
157 be recorded by mechanical means or otherwise as may
158 be prescribed by the commission. Such record of
159 proceedings need not be transcribed unless requested by

160 an interested party in which event the prevailing rates
161 for such transcripts will be required from such inter-
162 ested party.

**§16-20-8. Penalties; recovery and disposition; duties of
prosecuting attorneys.**

1 (a) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant
3 to this article shall be subject to a civil penalty not to
4 exceed ten thousand dollars for each day of such
5 violation, which penalty shall be recovered in a civil
6 action brought by the commission in the name of the
7 state of West Virginia in the circuit court of any county
8 wherein such person resides or is engaged in the activity
9 complained of or in the circuit court of Kanawha
10 County. The amount of the penalty shall be fixed by the
11 court without a jury: *Provided*, That any such person
12 shall not be subject to such civil penalties unless such
13 person shall have first failed to correct such violation
14 after being given written notice thereof by the director
15 and within such time as is specified in the notice of
16 violation issued by the director, such time period to
17 begin upon receipt of said notice. The amount of any
18 such penalty collected by the commission shall be
19 deposited in the general revenue of the state treasury,
20 according to law.

21 (b)(1) Any person who knowingly misrepresents any
22 material fact in an application, record, report, plan or
23 other document filed or required to be maintained under
24 the provisions of this article or any rules promulgated
25 by the commission thereunder is guilty of a misdemea-
26 nor, and, upon conviction thereof, shall be fined not
27 more than twenty-five thousand dollars or imprisoned in
28 the county jail not more than six months or both fined
29 and imprisoned.

30 (2) Any person who knowingly violates any provision
31 of this article, any permit or any rule or order issued
32 pursuant to this article is guilty of a misdemeanor, and,
33 upon conviction thereof, shall be fined not more than
34 twenty-five thousand dollars or imprisoned in the county
35 jail not more than one year or both fined and

36 imprisoned.

37 (c) Upon a request in writing from the commission,
38 it shall be the duty of the attorney general and the
39 prosecuting attorney of the county in which any such
40 action for penalties accruing under this section or
41 section nine of this article may be brought to institute
42 and prosecute all such actions on behalf of the
43 commission.

44 (d) For the purpose of this section, violations on
45 separate days shall be considered separate offenses.

§16-20-9. Applications for injunctive relief.

1 The director may seek an injunction against any
2 person in violation of any provision of this article or any
3 permit, rule or order issued pursuant to this article. In
4 seeking an injunction, it is not necessary for the director
5 to post bond nor to allege or prove at any stage of the
6 proceeding that irreparable damage will occur if the
7 injunction is not issued or that the remedy at law is
8 inadequate. An application for injunctive relief brought
9 under this section or for civil penalty brought under
10 section eight of this article may be filed and relief
11 granted notwithstanding the fact that all administrative
12 remedies provided in this article have not been ex-
13 hausted or invoked against the person or persons against
14 whom such relief is sought.

15 In any action brought pursuant to the provisions of
16 section eight or of this section, the state, or any agency
17 of the state which prevails, may be awarded costs and
18 reasonable attorney's fees.

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Adams
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Kurt Sundt
President of the Senate

BRACCO
Speaker of the House of Delegates

The within *is approved* this the *28th*
day of *March*, 1990.

Jason Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date

3/19/90

Time

4:12 pm

RECEIVED

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OFFICE OF THE
SHERIFF
CHICAGO, ILL.