WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2813

(By Mr. Speaker, Mr. Chambers)

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Passed March 9, 1990

In Effect 90 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.
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The commission is hereby authorized and empowered:

1. To develop ways and means for the regulation and control of pollution of the air of the state;

2. To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

3. To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

4. To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the commission shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the “Federal Clean Air Act,” as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no rule or program of the commission shall be any more stringent than any federal rule or program except to the limited extent that the commission first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof.

5. To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;

6. To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

7. To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;
(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

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

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

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

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

(13) To appoint advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members appointed from the general public, for each area so designated. Such members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area;
(14) To require any and all persons who are directly
or indirectly discharging air pollutants into the air to
file with the commission such information as the
director may require in a form or manner prescribed
by him for such purpose, including, but not limited to,
location, size and height of discharge outlets, processes
employed, fuels used and the nature and time periods
of duration of discharges. Such information shall be
filed with the director, when and in such reasonable
time, and in such manner as the director may prescribe;

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

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

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

(18) To establish by rule, permit and operating fees
and penalties for nonpayment thereof. Such fees shall be deposited in a special fund in the state treasury designated “Air Pollution Control Commission Fund,” to be appropriated as provided by law for the purpose of paying salaries and expenses of the commission. Any balance remaining in the fund at the end of any fiscal year shall not revert to the treasury but shall remain in the fund and may be appropriated and used as provided above in the ensuing fiscal years.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be in at least one county in each affected air quality control region defined by the commission. A copy of any proposed rule of the commission shall be filed in the office of the secretary of state at least sixty days prior to the scheduled date of any such hearing. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule to the commission within thirty days after such hearing. After such thirty-day period, no views or comments shall be received in writing or otherwise, unless formally solicited by the commission. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by

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

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

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

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

(2) Any person who knowingly violates any provision
of this article, any permit or any rule or order issued
pursuant to this article is guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not more than
twenty-five thousand dollars or imprisoned in the county
jail not more than one year or both fined and
836 imprisoned.
837 (c) Upon a request in writing from the commission, it shall be the duty of the attorney general and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section nine of this article may be brought to institute and prosecute all such actions on behalf of the commission.
838 (d) For the purpose of this section, violations on separate days shall be considered separate offenses.

§16-20-9. Applications for injunctive relief.
1 The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director 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 brought under this section or for civil penalty brought under section eight of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section eight or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor