WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1991

ENROLLED
Com. Sel. for
HOUSE BILL No. 2371

(By Mr. Speaker, Mr. Chambers; and)
Delegate Burke
[By Request of the Executive]

Passed March 8, 1991

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2377
(By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 8, 1991; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-m, relating to the West Virginia groundwater protection act; short title; legislative findings, public policy, and purposes; definitions; authority and duties of water resources board; standards of purity and quality; promulgation of such standards; effectiveness of current standards; authority and duties of other agencies; rules; action required to protect existing quality of groundwater; deviations from existing quality; inapplicability of certain provisions to certain activities; effectiveness of current rules, permits, policies, directives and orders; designation of lead agency; authority and duties of lead agency; additional authority of agencies; authority and duties of groundwater coordinating committee; authority and duties of director of division of natural resources; groundwater certification; groundwater protection fees; groundwater remediation fees; dedication of fee proceeds; creation of groundwater protection fund; creation of groundwater remediation fund; sources of funding; expenditures from funds; civil and criminal penalties; civil administrati
penalties and procedures for review of imposition thereof; dedication of penalty proceeds; injunctive relief; enforcement orders; administrative appeal and judicial review; rulemaking petition; existing rights and remedies; exemption from criminal prosecution; conflicting provisions; effective date of provisions subject to federal approval; and severability.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-m, to read as follows:

ARTICLE 5M. WEST VIRGINIA GROUNDWATER PROTECTION ACT.

§20-5M-1. Short title.

This article may be known and cited as the “Groundwater Protection Act.”

§20-5M-2. Legislative findings, public policy and purposes.

(a) The Legislature finds that:

(1) West Virginia has relatively pure groundwater resources which are abundant and readily available;

(2) Over fifty percent of West Virginia's overall population, and over ninety percent of the state's rural population, depend on groundwater for drinking water;

(3) A rural lifestyle has created a quality of life in many parts of West Virginia which is highly valued. Maintaining this lifestyle depends upon protecting groundwater to avoid increased expenses associated with providing treated drinking water supplies to rural households;

(4) West Virginia's groundwater resources are geologically complex, with the nature and vulnerability of groundwater aquifers and recharge areas not fully known;

(5) Contamination of groundwater is generally much more difficult and expensive to clean up than is the case
with surface water;

(6) Groundwaters and surface waters can be highly interconnected. The quality of any given groundwater can have a significant impact on the quality of groundwaters and surface waters to which it is hydrologically connected;

(7) A diverse array of human activities can adversely impact groundwater, making it necessary to develop regulatory programs that utilize a variety of approaches;

(8) Various agencies of state government currently exercise regulatory control over activities which may impact on groundwater. Coordination and streamlining of the regulatory activities of these agencies is necessary to assure that the state's groundwater is maintained and protected through an appropriate groundwater protection program;

(9) Disruption of existing state regulatory programs should be avoided to the maximum extent practical;

(10) The maintenance and protection of the state's groundwater resources can be achieved consistent with the maintenance and expansion of employment opportunities, agriculture, and industrial development; and

(11) A state groundwater management program will provide economic, social, and environmental benefits for the citizens of West Virginia now and in the future.

(b) Therefore, the Legislature establishes that it is the public policy of the state of West Virginia to maintain and protect the state's groundwater so as to support the present and future beneficial uses and further to maintain and protect groundwater at existing quality where the existing quality is better than that required to maintain and protect the present and future beneficial uses. Such existing quality shall be maintained and protected unless it is established that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives. Such a change shall maintain and
58 protect groundwater quality so as to support the present
59 and future beneficial uses of such groundwater.
60 (c) The purposes of this article are to:
61 (1) Maintain and protect the state’s groundwater
62 resources consistent with this article to protect the
63 present and future beneficial uses of the groundwater:
64 (2) Provide for the establishment of a state ground-
65 water management program which will:
66 (i) Define the roles of agencies of the state and
67 political subdivisions with respect to the maintenance
68 and protection of groundwater, and designate a lead
69 agency for groundwater management;
70 (ii) Designate a state agency responsible for establish-
71 ment of groundwater quality standards;
72 (iii) Provide for the establishment of standards of
73 purity and quality for all groundwater;
74 (iv) Provide for the establishment of groundwater
75 protection programs consistent with this article;
76 (v) Establish groundwater protection and ground-
77 water remediation funds;
78 (vi) Provide for the mapping and analysis of the
79 state’s groundwater resources and coordination of the
80 agencies involved; and
81 (vii) Provide for public education on groundwater
82 resources and methods for preventing contamination.
83 (3) Provide such enforcement and compliance mech-
84 anisms as will assure the implementation of the state’s
85 groundwater management program.
86 (4) Assure that actions taken to implement this article
87 are consistent with the policies set forth in section one,
88 article five-a of this chapter.
§20-5M-3. Definitions.
1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
3 (a) “Agency action” means the issuance, renewal or
denial of any permit, license or other required agency
approval, or any terms or conditions thereof, or any
order or other directive issued by the division of natural
resources, division of health, division of energy, depart-
ment of agriculture or any other agency of the state or
a political subdivision to the extent that such action
relates directly to the implementation, administration or
enforcement of this article.

(b) “Beneficial uses” means those uses which are
protective of human health and welfare and the
environment. Pollution of groundwater shall not be
considered a beneficial use.

(c) “Board” means the state water resources board.

(d) “Constituent” means any chemical or biological
substance found in groundwater due to either natural
or man-made conditions.

(e) “Director” means the director of the division of
natural resources of the department of commerce, labor
and environmental resources.

(f) “Groundwater” means the water occurring in the
zone of saturation beneath the seasonal high water table,
or any perched water zones.

(g) “Groundwater certification” means an assurance
issued by the director of the division of natural resources
that a permit or other approval issued by a state, county
or local government body regarding an activity that
affects or is reasonably anticipated to affect ground-
water complies with all requirements of this chapter,
the legislative rules promulgated pursuant to this
chapter in accordance with chapter twenty-nine-a of this
code and any other requirements of state law, regula-
tions or agreements regarding groundwater.

(h) “Person” means 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; 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.

(i) "Pollution" shall mean the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of the groundwater;

(j) "Preventative action limit" means a numerical value expressing the concentration of a substance in groundwater that, if exceeded, shall cause action to be taken to assure that standards of purity and quality of groundwater are not violated.

(k) "Water" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands.

§20-5M-4. Authority of state water resources board; standards of purity and quality.

(a) The state water resources board shall have the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state and shall promulgate such standards following a public hearing within one year from the effective date of this article, by legislative rules in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Such standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall such standards allow contaminant levels in groundwater to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. The board may set standards more restrictive than the maximum contaminant levels where
it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the federal Safe Drinking Water Act, standards for such contaminants shall be established by the board to be no less stringent than may be reasonable and prudent to protect drinking water or any other beneficial use.

Where the concentration of a certain constituent exceeds such standards due to natural conditions, the natural concentration shall be the standard for that constituent. Where the concentration of a certain constituent exceeds such standard due to human-induced contamination, no further contamination by that constituent shall be allowed, and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination, and to strive where practical to reduce the level of contamination over time to support drinking water use.

(d) The standards of purity and quality for groundwater promulgated by the board shall recognize the degree to which groundwater is hydrologically connected with surface water and other groundwater and such standards shall provide protection for such surface water and other groundwater.

(e) In the promulgation of such standards the board shall consult with the division of natural resources, department of agriculture, division of energy, and division of health, as appropriate.

(f) Any groundwater standard of the board that is in effect on the effective date of this article shall remain in effect until modified by the board. Notwithstanding any other provisions of this code to the contrary, the authority of the board to adopt standards of purity and quality for groundwater granted by the provisions of this article is exclusive, and to the extent that any other provisions of this code grant such authority to any person, body, agency or entity other than the board, those other provisions shall be void.
§20-5M-5. Authority of other agencies; applicability.

(a) Notwithstanding any other provision of this code to the contrary, no agency of state government or any political subdivision may regulate any facility or activities for the purpose of maintaining and protecting the groundwater except as expressly authorized pursuant to this article.

(b) To the extent that such agencies have the authority pursuant to any provision of this code, other than this article, to regulate facilities or activities, the division of natural resources, the department of agriculture, the division of energy, the division of health, and such agencies of the state or any political subdivision as may be specifically designated by the director with the concurrence of such designated agencies or political subdivisions, as appropriate, are hereby authorized to be groundwater regulatory agencies for purposes of regulating such facilities or activities to satisfy the requirements of this article. In addition, the department of agriculture is hereby authorized to be the groundwater regulatory agency for purposes of regulating the use or application of pesticides and fertilizers. Where the authority to regulate facilities or activities which may adversely impact groundwater is not otherwise assigned to the division of natural resources, the department of agriculture, the division of energy, the division of health or such other specifically designated agency pursuant to any other provision of this code, the division of natural resources is hereby authorized to be the groundwater regulatory agency with respect to such unassigned facilities or activities. The division of natural resources shall cooperate with the department of agriculture, division of energy, and division of health, as appropriate, in the regulation of such unassigned facilities or activities.

(c) Within one year of the effective date of this article, the department of agriculture, division of energy, division of health, and division of natural resources shall promulgate in accordance with the provisions of chapter twenty-nine-a of this code such legislative rules as may be necessary to implement the authority granted them.
by this article.

(d) Groundwater regulatory agencies shall develop groundwater protection practices to prevent groundwater contamination from facilities and activities within their respective jurisdictions consistent with this article. Such practices shall include, but not be limited to, criteria related to facility design, operational management, closure, remediation and monitoring. Such agencies shall issue such rules, permits, policies, directives or any other appropriate regulatory devices, as necessary, to implement the requirements of this article.

(e) Groundwater regulatory agencies shall take such action as may be necessary to assure that facilities or activities within their respective jurisdictions maintain and protect groundwater at existing quality, where the existing quality is better than that required to maintain and protect the standards of purity and quality promulgated by the board to support the present and future beneficial uses of the state's groundwater.

(f) Where a person establishes to the director that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives, the director may allow a deviation from such existing quality. Upon the director's finding of (1) and (2) above, the director may grant or deny such a deviation for a specific site, activity or facility or for a class of activities or facilities which have impacts which are substantially similar and exist in a defined geographic area. The director's reasons for granting or denying such a deviation shall be set forth in writing and the director shall have the exclusive authority to determine the terms and conditions of such a deviation. To insure that groundwater standards promulgated by the board are not violated and that the present and future beneficial uses of groundwater are maintained and protected, the director shall evaluate the cumulative impacts of all facilities and activities on the groundwater resources in question prior to any granting of such deviation from existing quality. The
director shall consult with the department of agriculture, division of health and division of energy, as appropriate in the implementation of this subsection. The director or the chief of the water resources section of the division of natural resources shall, upon a written request for such information, provide notice of any deviations from existing quality granted pursuant to this subsection.

(g) Should the approval required in subsection (f) of this section be granted allowing for a deviation from existing quality, the groundwater regulatory agencies shall take such alternative action as may be necessary to assure that facilities and activities within their respective jurisdictions maintain and protect the standards of purity and quality promulgated by the board to support the present and future beneficial uses for that groundwater. In maintaining and protecting such standards of the board, such agencies shall establish preventative action limits which, once reached, shall require action to control a source of contamination to assure that such standards are not violated. The director shall provide guidelines to the groundwater regulatory agencies with respect to the establishment of such preventative action limits.

(h) Subsections (e), (f) and (g) of this section shall not apply to coal extraction and earth disturbing activities directly involved in coal extraction that are subject to either or both article three, chapter twenty-two-a of this code and article five-a of this chapter. Such activities shall be subject to all other provisions of this article.

(i) This article shall not be applicable to groundwater within areas of geologic formations which are site specific to:

1. The production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to chapter twenty-two-b of this code; and

2. The injection zones of Class II or III wells permitted pursuant to the statutes and regulations
governing the underground injection control program.

All groundwater outside such areas shall remain subject to the provisions of this article. Groundwater regulatory agencies shall have the right to require the submission of data with respect to the nature of the activities subject to this subsection.

(j) Those agencies regulating the activities specified in subsections (h) and (i), of this section shall retain their groundwater regulatory authority as provided for in the relevant statutes and regulations governing such activities, other than this article.

(k) The director shall have authority to modify the requirements of subsection (g) of this section with respect to non-coal mining activities subject to article four, chapter twenty-two-a of this code. Such modification shall assure protection of human health and the environment. Those agencies regulating such non-coal mining activities shall retain their groundwater regulatory authority as provided for in the relevant statutes and regulations governing such activities other than this article.

(l) If the director proposes a need for a variance for classes of activities which by their nature cannot be conducted in compliance with the requirements of subsection (g) of this section, then the director shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code, following public hearing on the record. The rules so promulgated shall set forth the director’s findings to substantiate such need and the criteria by which such variances shall be granted or denied. Should any person petition or request the director to undertake such a determination, that person will give contemporaneous notice of such petition or request by Class I advertisement in a newspaper of general circulation in the area to be affected by the request.

(m) All rules, permits, policies, directives and orders of the department of agriculture, the division of health, the division of energy and division of natural resources, in effect on the effective date of this article and which
are consistent with this article shall remain in full force
and effect as if they were issued pursuant to this article
unless and until modified pursuant to this article.

§20-5M-6. Lead agency designation; additional powers
and duties.

1 (a) The division of natural resources is hereby
designated to be the lead agency for groundwater and
is authorized and shall perform the following additional
powers and duties:

5 (1) To maintain the state groundwater management
strategy;

7 (2) To develop, as soon as practical, a central ground-
water data management system for the purpose of
providing information needed to manage the state's
groundwater program;

11 (3) To provide a biannual report to the Legislature on
the status of the state's groundwater and groundwater
management program, including detailed reports from
each groundwater regulatory agency;

15 (4) To coordinate with other agencies to develop a
uniform groundwater program;

17 (5) To perform any and all acts necessary to obtain the
benefits to the state of any federal program related to
groundwater;

20 (6) To receive grants, gifts or contributions for
purposes of implementing this article from federal
agencies, state agencies or any other persons interested
in the management of groundwater resources; and

24 (7) To promulgate legislative rules implementing this
subsection in accordance with the provisions of chapter
twenty-nine-a of this code, including rules relating to
monitoring and analysis of groundwater.

28 (b) The division of natural resources, division of
energy, division of health, and department of agricul-
ture shall participate in the data management system
developed by the division of natural resources pursuant
to subsection (a) of this section and shall provide the
director with such information as the director shall
reasonably request in support of his or her promulgation
of rules pursuant to this article.

(c) The division of natural resources, division of
energy, division of health, and department of agricul-
ture are hereby authorized:

(1) To engage the voluntary cooperation of all persons
in the maintenance and protection of groundwater, and
to advise, consult and cooperate with all persons, all
agencies of this state, universities and colleges, the
federal government or other states, and with interstate
agencies in the furtherance of the purposes of this
article, and to this end and for the purposes of studies,
scientific or other investigations, research, experiments
and demonstrations pertaining thereto, receive and
spend funds as appropriated by the Legislature, and
from such agencies and other officers and persons on
behalf of the state;

(2) To encourage the formulation and execution of
plans to maintain and protect groundwater by cooper-
ative groups or associations of municipal corporations,
industries, industrial users and other users of ground-
waters of the state, who, jointly or severally, are or may
be impacting on the maintenance and protection of
groundwater;

(3) To encourage, participate in, or conduct or cause
to be conducted studies, scientific or other investiga-
tions, research, experiments and demonstrations relating
to the maintenance and protection of groundwater,
and to collect data with respect thereto, all as may be
deemed advisable and necessary to carry out the
purposes of this article, and to make reports and
recommendations with respect thereto;

(4) To conduct groundwater sampling, data collection,
analyses and evaluation with sufficient frequency so as
to ascertain the characteristics and quality of ground-
water, and the sufficiency of the groundwater protection
programs established pursuant to this article;

(5) To develop a public education and promotion
program to aid and assist in publicizing the need of and
securing support for the maintenance and protection of
groundwater.

§20-5M-7. Groundwater coordinating committee; creation.

(a) There is hereby created a state groundwater
coordinating committee which shall consist of the
director of the division of health, the commissioner of
the division of energy, the commissioner of agriculture,
the chairperson of the water resources board, the chief
of the water resources section of the division of natural
resources and the director of the division of natural
resources who shall serve as its chairperson.

(b) The groundwater coordinating committee shall
consult, review and make recommendations on the
implementation of this article by each of the ground-
water regulatory agencies. Such committee shall
require the periodic submittal to it of the groundwater
protection programs of each groundwater regulatory
agency including all rules, permits, policies, directives
and any other regulatory devices employed to imple-
ment this article.

(c) Upon a review of such programs, the groundwater
coordinating committee shall recommend to the director
approval of such programs, in whole or in part, and
identify in writing any aspect of such programs that are
not sufficient to satisfy the requirements of this article
and specify a reasonable time period for correcting those
portions of the program that are found not to be
sufficient.

(d) The director may accept the recommendation of
the committee, in whole or in part and identify in
writing any additional aspects of such programs that
are not sufficient to satisfy the requirements of this
article and specify a time period for correcting those
portions of the program that are found not to be
sufficient.

(e) In the biennial report to the Legislature required
by this article, the director shall identify all portions of
groundwater protection programs which have been
determined not to be sufficient to satisfy the require-
ments of this article and which have not been adequately
addressed within the time period specified by the
director.

(f) No agency shall modify any aspect of its ground-
water protection program as approved by the director
without the prior written approval of the director of
such modification. This requirement does not relieve
such agency of any other requirements of law that may
be applicable to such a modification.

(g) The groundwater coordinating committee is
authorized and empowered to promulgate such legisla-
tive rules as may be necessary to implement this section
in accordance with the provisions of chapter twenty-
nine-a of this code.


(a) To ensure a comprehensive, consistent and unfrag-
mented approach to the management and protection of
groundwater, including evaluation of the cumulative
effects of all activities that have the potential to impact
on groundwater, the director shall oversee and coordi-
nate the implementation of this article by each of the
groundwater regulatory agencies through a ground-
water certification program as hereby established.

(b) Every state, county or local government body
which reviews or issues permits, licenses, registrations,
certificates of other forms of approval, or renewal
thereof, for activities or practices which may affect
groundwater quality shall first submit to the director of
the division of natural resources for review and approval
an application for certification. Such application shall
include a copy of the approval proposed by such body,
including any terms and conditions which have been
imposed by it. Upon receipt of this application, the
director shall act within thirty days to determine
whether to waive or exercise his or her certification
powers. If no decision is made or communicated by the
director within said thirty day period, groundwater
certification shall be deemed approved. If the director
decides to exercise his or her certification powers, he or
she may utilize additional time, not to exceed an
additional sixty days, to further review the materials
submitted or to conduct such investigations as he or she
deems necessary.

(c) The director may waive, grant, grant with condi-
tions, or deny groundwater certification. Groundwater
certification, and all conditions required under such
certification, shall become a condition on any permit,
approval, or renewal thereof, issued by any state, county
or local government body. Where appropriate, the
director may provide general groundwater certification
for or may waive certification for classes or categories
of activities or approvals.

§20-5M-9. Groundwater protection fees authorized;
director to promulgate rules; dedication of
fee proceeds; groundwater protection fund
established; groundwater remediation
fund established.

(a) The director of the division of natural resources
shall promulgate legislative rules in accordance with the
provisions of chapter twenty-nine-a of this code estab-
lishing a schedule of groundwater protection fees
applicable to persons who own or operate facilities or
conduct activities subject to the provisions of this article.
The schedule of fees shall be calculated by the director
to recover the reasonable and necessary costs of
implementing the provisions of this article as it relates
to a particular facility or activity. In addition, the fee
may include an appropriate assessment of other pro-
gram costs not otherwise attributable to any particular
facility or activity. Such fees in the aggregate shall not
exceed one million dollars per year and shall be
deposited into the groundwater protection fund estab-
lished pursuant to this article: Provided, That any
unexpended balance in the groundwater protection fund
at the end of each fiscal year may, by an act of the
Legislature, be transferred to the groundwater remedi-
ation fund created by this article: Provided, however,
That if no action is taken to transfer the unexpended
balance to the remediation fund, such moneys shall not
be transferred to the general revenue fund, but shall
remain in the groundwater protection fund. Such fees
imposed by this section are in addition to all other fees
and taxes levied by law. The director shall require such
fees to be paid at the time of certification pursuant to
section eight of this article, or at such more frequent
time as the director may deem to be appropriate. The
director may withhold certification pursuant to section
eight of this article where such fees have not been timely
paid.

(b) The director of the division of natural resources
shall also promulgate legislative rules in accordance
with the provisions of chapter twenty-nine-a of this code
establishing a schedule of groundwater remediation fees
which in the aggregate shall not exceed two hundred
fifty thousand dollars. Such groundwater remediation
fees shall be assessed over a time period not to exceed
two years from the effective date of such rules and shall
be deposited into the groundwater remediation fund
established pursuant to this article. Such fees shall be
assessed against persons who own or operate facilities
or conduct activities subject to the provisions of this
article in proportion to the groundwater protection fees
assessed pursuant to subsection (a) of this section for the
year in which such groundwater remediation fees, or
any portion thereof, are assessed.

(c) There are hereby created and established in the
state treasury two special revenue accounts:

(1) The "Groundwater Protection Fund", the moneys
of which shall be expended by the director in the
administration, certification, enforcement, inspection,
monitoring, planning, research, and other activities of
the state water resources board, division of natural
resources, division of energy, division of health and
department of agriculture in accordance with legislative
rules promulgated pursuant to the provisions of chapter
twenty-nine-a of this code. The moneys, including the
interest thereon, in said fund shall be kept and main-
tained by the director and expended without appropri-
ation by the Legislature for the purpose of implement-
ing the provisions of this article. The director may
withhold the payment of any such moneys to any agency
whose groundwater protection program has been
determined by the director, in consultation with the
groundwater coordinating committee, not to be suffi-
cient to satisfy the requirements of this article and
where such agency has failed to adequately address such
determination within the time period specified by the
director. At the end of each fiscal year, any unexpended
balance of said fund may not be transferred to the
general revenue fund, but shall remain in the ground-
water protection fund.

(2) The “Groundwater Remediation Fund”, the mo-
neys of which, to the extent that moneys are available,
shall be expended by the director for the purposes of
investigation, clean-up and remedial action intended to
identify, minimize or mitigate damage to the environ-
ment, natural resources, public and private water
supplies, surface waters and groundwaters and the
public health, safety and general welfare which may
result from contamination of groundwater or the related
environment. The director or other authorized agency
officials are authorized to recover through civil action
or cooperative agreements with responsible persons the
full amount of any and all groundwater remediation
fund moneys expended pursuant to this article. All
moneys expended from such fund which are so recov-
ered shall be deposited in such fund. The director may
expend moneys from said fund and the interest thereon
without necessity of appropriation by the Legislature.

All civil penalties and assessments of civil administra-
tive penalties collected pursuant to this article shall be
deposited into the said fund. In addition, said fund may
receive proceeds from any gifts, grants, contributions or
other moneys accruing to the state which are specifically
designated for inclusion in the fund.

§20-5M-10. Civil and criminal penalties; civil administra-
tive penalties; dedication of penalty pro-
cceeds; injunctive relief; enforcement
orders; hearings.

(a) Any person who violates any provision of this
article, or any permit or agency approval, rule or order
issued to implement this article, shall be subject to civil penalties in accordance with the provisions of section seventeen, article five-a of this chapter: Provided, That such penalties shall be in lieu of civil penalties which may be imposed under other provisions of this code for the same violation.

(b) Any person who willfully or negligently violates any provision of this article, or any provision of a permit or agency approval, rule or order issued to implement this article, shall be subject to criminal penalties in accordance with the provisions of section nineteen, article five-a of this chapter: Provided, That such penalties shall be in lieu of other criminal penalties which may be imposed under other provisions of this code for the same violation.

(c) Any person who violates any provision of this article, or any permit or rule or order issued to implement this article, shall be subject to a civil administrative penalty to be levied by the director of the division of natural resources, the commissioner of agriculture, the director of the division of health or the commissioner of the division of energy, as appropriate, 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, any such official shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by such official by legislative rules promulgated pursuant to this article and the provisions of chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by such official by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, 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 such official a written request for an informal
hearing. If no hearing is requested, the notice becomes
a final order after the expiration of the twenty-day
period. If a hearing is requested, such official shall
inform the alleged violator of the time and place of the
hearing. Such official may appoint an assessment officer
to conduct the informal hearing who shall make a
written recommendation to such official concerning the
assessment of a civil administrative penalty. Within
thirty days following the informal hearing, such official
shall issue and furnish to the violator a written decision,
and the reasons therefor, concerning the assessment of
a civil administrative penalty. Within thirty days after
notification of such official's decision, the alleged
violator may request a formal hearing before the board
in accordance with the provisions of section eleven of
this article. Any administrative civil penalty assessed
pursuant to this section shall be in lieu of any other civil
penalty which may be assessed under any provision of
this code for the same violation. No combination of
assessments against any violator under this section may
exceed twenty-five thousand dollars per day of each such
violation. All administrative penalties shall be levied in
accordance with legislative rules promulgated by such
official in accordance with the provisions of chapter
twenty-nine-a of this code.

(d) The net proceeds of all civil penalties collected
pursuant to subsection (a) of this section and all
assessments of any civil administrative penalties
collected pursuant to subsection (c) of this section shall
be deposited into the groundwater remediation fund
established pursuant to this article.

(e) Any such official may seek an injunction, or may
institute a civil action against any person in violation of
any provision of this article or any permit, agency
approval, rule or order issued to implement this article.
In seeking an injunction, it is not necessary for such
official to post bond nor to allege or prove at any point
in 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 adminis-
trative remedies provided for in this article have not
been exhausted or invoked against the person or persons
against whom such relief is sought.

(f) If any such official upon inspection, investigation
or through other means observes, discovers or learns of
a violation of the provisions of this article, or any permit,
order or rules issued to implement the provisions of this
article, he or she may 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 implement-
ing this article which (1) suspend, revoke or modify
permits; (2) require a person to take remedial action; or
(3) are cease and desist orders.

(g) Any person issued a cease and desist order under
subsection (f) of this section may file a notice of request
for reconsideration with such official not more than
seven days from the issuance of such order and shall
have a hearing before such official to contest the terms
and conditions of such order within ten days after filing
such notice of a request for reconsideration. The filing
of a notice of request for reconsideration does not stay
or suspend the execution or enforcement of such cease
and desist order.


(a) Any person having an interest which is or may be
adversely affected, or who is aggrieved by an order of
the director or any public official authorized to take or
implement an agency action, or by the issuance or denial
of a permit issued to implement this article or by such
permit’s term or conditions, or by the failure or refusal
to act within a reasonable time, may appeal to the water
resources board in the same manner as appeals are
taken under section fifteen, article five-a of this chapter.

(b) Any person, the director or any public official
adversely affected by an order made and entered by the
water resources board may obtain judicial review thereof in the same manner as provided for under section sixteen, article five-a of this chapter.

§20-5M-12. Rulemaking petition.

Any person may petition the appropriate rulemaking agency for rulemaking on an issue arising under this article. The appropriate rulemaking agency, if it believes such issue to merit rulemaking, may initiate rulemaking in accordance with the provisions of chapter twenty-nine-a of this code. A decision by the appropriate rulemaking agency not to pursue rulemaking must set forth in writing reasons for refusing to do so. Any person may petition an agency to issue a declaratory ruling pursuant to section one, article four, chapter twenty-nine-a of this code with respect to the applicability to any person, property or state of facts of any rules promulgated by that agency pursuant to this article.


(a) It is the purpose of this article to provide additional and cumulative remedies to address the quality of the groundwater of the state. This article shall not be interpreted to alter the authority of any agency with respect to water other than groundwater. Except as expressly stated in this article, it is not the intention of the Legislature in enacting this article to repeal any other provision of this code.

(b) Nothing contained in this article shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.

(c) Where a person is operating a source or conducting an activity in compliance with the terms and

1 In the event that any provision of this article is inconsistent or in conflict with any other provisions of this code, making it impossible to comply with both, the provisions of this article shall control.

§20-5M-15. Effective dates of provisions subject to federal approval.

To the extent that this article modifies any powers, duties, functions and responsibilities of any state agency that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of federal regulatory programs by the state, any such modifications shall become effective upon a proclamation by the governor stating either that final approval of such modifications has been given by the appropriate federal agency or official or that final approval of such modification is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.


If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of the article are declared severable.
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 3rd day of , 1991.

Governor