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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2377

(By Mr. Speaker Mr. Chambers, and
Delegats Burk
[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 administrative

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.

1 This article may be known and cited as the “Ground-
2 water Protection Act.”

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

1 (a) The Legislature finds that:

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

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

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

13 (4) West Virginia’s groundwater resources are geolog-
14 ically complex, with the nature and vulnerability of
15 groundwater aquifers and recharge areas not fully
16 known;

17 (5) Contamination of groundwater is generally much
18 more difficult and expensive to clean up than is the case

19 with surface water;

20 (6) Groundwaters and surface waters can be highly
21 interconnected. The quality of any given groundwater
22 can have a significant impact on the quality of ground-
23 waters and surface waters to which it is hydrologically
24 connected;

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

29 (8) Various agencies of state government currently
30 exercise regulatory control over activities which may
31 impact on groundwater. Coordination and streamlining
32 of the regulatory activities of these agencies is necessary
33 to assure that the state's groundwater is maintained and
34 protected through an appropriate groundwater protec-
35 tion program;

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

38 (10) The maintenance and protection of the state's
39 groundwater resources can be achieved consistent with
40 the maintenance and expansion of employment oppor-
41 tunities, agriculture, and industrial development; and

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

45 (b) Therefore, the Legislature establishes that it is the
46 public policy of the state of West Virginia to maintain
47 and protect the state's groundwater so as to support the
48 present and future beneficial uses and further to
49 maintain and protect groundwater at existing quality
50 where the existing quality is better than that required
51 to maintain and protect the present and future benefi-
52 cial uses. Such existing quality shall be maintained and
53 protected unless it is established that (1) the measures
54 necessary to preserve existing quality are not techni-
55 cally feasible or economically practical and (2) a change
56 in groundwater quality is justified based upon economic
57 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

4 denial of any permit, license or other required agency
5 approval, or any terms or conditions thereof, or any
6 order or other directive issued by the division of natural
7 resources, division of health, division of energy, depart-
8 ment of agriculture or any other agency of the state or
9 a political subdivision to the extent that such action
10 relates directly to the implementation, administration or
11 enforcement of this article.

12 (b) "Beneficial uses" means those uses which are
13 protective of human health and welfare and the
14 environment. Pollution of groundwater shall not be
15 considered a beneficial use.

16 (c) "Board" means the state water resources board.

17 (d) "Constituent" means any chemical or biological
18 substance found in groundwater due to either natural
19 or man-made conditions.

20 (e) "Director" means the director of the division of
21 natural resources of the department of commerce, labor
22 and environmental resources.

23 (f) "Groundwater" means the water occurring in the
24 zone of saturation beneath the seasonal high water table,
25 or any perched water zones.

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

36 (h) "Person" means any industrial user, public or
37 private corporation, institution, association, firm or
38 company organized or existing under the laws of this or
39 any other state or country; state of West Virginia;
40 governmental agency, including federal facilities;
41 political subdivision; county commission; municipal
42 corporation; industry; sanitary district; public service

43 district; soil conservation district; watershed improve-
44 ment district; partnership; trust; estate; person or
45 individual; group of persons or individuals acting
46 individually or as a group; or any legal entity whatever.

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

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

55 (k) "Water" means any and all water on or beneath
56 the surface of the ground, whether percolating, stand-
57 ing, diffused or flowing, wholly or partially within this
58 state, or bordering this state and within its jurisdiction,
59 and shall include, without limiting the generality of the
60 foregoing, natural or artificial lakes, rivers, streams,
61 creeks, branches, brooks, ponds (except farm ponds,
62 industrial settling basins and ponds and water treat-
63 ment facilities), impounding reservoirs, springs, wells,
64 watercourses and wetlands.

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

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

8 (b) Such standards shall establish the maximum
9 contaminant levels permitted for groundwater, but in no
10 event shall such standards allow contaminant levels in
11 groundwater to exceed the maximum contaminant
12 levels adopted by the United States Environmental
13 Protection Agency pursuant to the federal Safe Drink-
14 ing Water Act. The board may set standards more
15 restrictive than the maximum contaminant levels where

16 it finds that such standards are necessary to protect
17 drinking water use where scientifically supportable
18 evidence reflects factors unique to West Virginia or
19 some area thereof, or to protect other beneficial uses of
20 the groundwater. For contaminants not regulated by the
21 federal Safe Drinking Water Act, standards for such
22 contaminants shall be established by the board to be no
23 less stringent than may be reasonable and prudent to
24 protect drinking water or any other beneficial use.
25 Where the concentration of a certain constituent exceeds
26 such standards due to natural conditions, the natural
27 concentration shall be the standard for that constituent.
28 Where the concentration of a certain constituent exceeds
29 such standard due to human-induced contamination, no
30 further contamination by that constituent shall be
31 allowed, and every reasonable effort shall be made to
32 identify, remove or mitigate the source of such contam-
33 ination, and to strive where practical to reduce the level
34 of contamination over time to support drinking water
35 use.

36 (d) The standards of purity and quality for ground-
37 water promulgated by the board shall recognize the
38 degree to which groundwater is hydrologically con-
39 nected with surface water and other groundwater and
40 such standards shall provide protection for such surface
41 water and other groundwater.

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

46 (f) Any groundwater standard of the board that is in
47 effect on the effective date of this article shall remain
48 in effect until modified by the board. Notwithstanding
49 any other provisions of this code to the contrary, the
50 authority of the board to adopt standards of purity and
51 quality for groundwater granted by the provisions of
52 this article is exclusive, and to the extent that any other
53 provisions of this code grant such authority to any
54 person, body, agency or entity other than the board,
55 those other provisions shall be void.

§20-5M-5. Authority of other agencies; applicability.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, no agency of state government or any
3 political subdivision may regulate any facility or
4 activities for the purpose of maintaining and protecting
5 the groundwater except as expressly authorized pursu-
6 ant to this article.

7 (b) To the extent that such agencies have the author-
8 ity pursuant to any provision of this code, other than this
9 article, to regulate facilities or activities, the division of
10 natural resources, the department of agriculture, the
11 division of energy, the division of health, and such
12 agencies of the state or any political subdivision as may
13 be specifically designated by the director with the
14 concurrence of such designated agencies or political
15 subdivisions, as appropriate, are hereby authorized to be
16 groundwater regulatory agencies for purposes of
17 regulating such facilities or activities to satisfy the
18 requirements of this article. In addition, the department
19 of agriculture is hereby authorized to be the ground-
20 water regulatory agency for purposes of regulating the
21 use or application of pesticides and fertilizers. Where
22 the authority to regulate facilities or activities which
23 may adversely impact groundwater is not otherwise
24 assigned to the division of natural resources, the
25 department of agriculture, the division of energy, the
26 division of health or such other specifically designated
27 agency pursuant to any other provision of this code, the
28 division of natural resources is hereby authorized to be
29 the groundwater regulatory agency with respect to such
30 unassigned facilities or activities. The division of natural
31 resources shall cooperate with the department of
32 agriculture, division of energy, and division of health,
33 as appropriate, in the regulation of such unassigned
34 facilities or activities.

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

41 by this article.

42 (d) Groundwater regulatory agencies shall develop
43 groundwater protection practices to prevent ground-
44 water contamination from facilities and activities within
45 their respective jurisdictions consistent with this article.
46 Such practices shall include, but not be limited to,
47 criteria related to facility design, operational manage-
48 ment, closure, remediation and monitoring. Such
49 agencies shall issue such rules, permits, policies,
50 directives or any other appropriate regulatory devices,
51 as necessary, to implement the requirements of this
52 article.

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

61 (f) Where a person establishes to the director that (1)
62 the measures necessary to preserve existing quality are
63 not technically feasible or economically practical and (2)
64 a change in groundwater quality is justified based upon
65 economic or societal objectives, the director may allow
66 for a deviation from such existing quality. Upon the
67 director's finding of (1) and (2) above, the director may
68 grant or deny such a deviation for a specific site, activity
69 or facility or for a class of activities or facilities which
70 have impacts which are substantially similar and exist
71 in a defined geographic area. The director's reasons for
72 granting or denying such a deviation shall be set forth
73 in writing and the director shall have the exclusive
74 authority to determine the terms and conditions of such
75 a deviation. To insure that groundwater standards
76 promulgated by the board are not violated and that the
77 present and future beneficial uses of groundwater are
78 maintained and protected, the director shall evaluate
79 the cumulative impacts of all facilities and activities on
80 the groundwater resources in question prior to any
81 granting of such deviation from existing quality. The

82 director shall consult with the department of agricul-
83 ture, division of health and division of energy, as
84 appropriate in the implementation of this subsection.
85 The director or the chief of the water resources section
86 of the division of natural resources shall, upon a written
87 request for such information, provide notice of any
88 deviations from existing quality granted pursuant to
89 this subsection.

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

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

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

115 (1) The production or storage zones of crude oil or
116 natural gas and which are utilized for the exploration,
117 development or production of crude oil or natural gas
118 permitted pursuant to chapter twenty-two-b of this code;
119 and

120 (2) The injection zones of Class II or III wells
121 permitted pursuant to the statutes and regulations

122 governing the underground injection control program.

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

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

133 (k) The director shall have authority to modify the
134 requirements of subsection (g) of this section with
135 respect to non-coal mining activities subject to article
136 four, chapter twenty-two-a of this code. Such modifica-
137 tion shall assure protection of human health and the
138 environment. Those agencies regulating such non-coal
139 mining activities shall retain their groundwater regu-
140 latory authority as provided for in the relevant statutes
141 and regulations governing such activities other than this
142 article.

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

158 (m) All rules, permits, policies, directives and orders
159 of the department of agriculture, the division of health,
160 the division of energy and division of natural resources,
161 in effect on the effective date of this article and which

162 are consistent with this article shall remain in full force
163 and effect as if they were issued pursuant to this article
164 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
2 designated to be the lead agency for groundwater and
3 is authorized and shall perform the following additional
4 powers and duties:

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

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

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

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

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

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

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

28 (b) The division of natural resources, division of
29 energy, division of health, and department of agricul-
30 ture shall participate in the data management system
31 developed by the division of natural resources pursuant
32 to subsection (a) of this section and shall provide the

33 director with such information as the director shall
34 reasonably request in support of his or her promulgation
35 of rules pursuant to this article.

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

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

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

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

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

71 (5) To develop a public education and promotion

72 program to aid and assist in publicizing the need of and
73 securing support for the maintenance and protection of
74 groundwater.

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

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

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

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

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

33 (e) In the biannual report to the Legislature required
34 by this article, the director shall identify all portions of

35 groundwater protection programs which have been
36 determined not to be sufficient to satisfy the require-
37 ments of this article and which have not been adequately
38 addressed within the time period specified by the
39 director.

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

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

§20-5M-8. Groundwater certification.

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

9 (b) Every state, county or local government body
10 which reviews or issues permits, licenses, registrations,
11 certificates of other forms of approval, or renewal
12 thereof, for activities or practices which may affect
13 groundwater quality shall first submit to the director of
14 the division of natural resources for review and approval
15 an application for certification. Such application shall
16 include a copy of the approval proposed by such body,
17 including any terms and conditions which have been
18 imposed by it. Upon receipt of this application, the
19 director shall act within thirty days to determine
20 whether to waive or exercise his or her certification
21 powers. If no decision is made or communicated by the
22 director within said thirty day period, groundwater
23 certification shall be deemed approved. If the director

24 decides to exercise his or her certification powers, he or
25 she may utilize additional time, not to exceed an
26 additional sixty days, to further review the materials
27 submitted or to conduct such investigations as he or she
28 deems necessary.

29 (c) The director may waive, grant, grant with condi-
30 tions, or deny groundwater certification. Groundwater
31 certification, and all conditions required under such
32 certification, shall become a condition on any permit,
33 approval, or renewal thereof, issued by any state, county
34 or local government body. Where appropriate, the
35 director may provide general groundwater certification
36 for or may waive certification for classes or categories
37 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.**

1 (a) The director of the division of natural resources
2 shall promulgate legislative rules in accordance with the
3 provisions of chapter twenty-nine-a of this code estab-
4 lishing a schedule of groundwater protection fees
5 applicable to persons who own or operate facilities or
6 conduct activities subject to the provisions of this article.
7 The schedule of fees shall be calculated by the director
8 to recover the reasonable and necessary costs of
9 implementing the provisions of this article as it relates
10 to a particular facility or activity. In addition, the fee
11 may include an appropriate assessment of other pro-
12 gram costs not otherwise attributable to any particular
13 facility or activity. Such fees in the aggregate shall not
14 exceed one million dollars per year and shall be
15 deposited into the groundwater protection fund estab-
16 lished pursuant to this article: *Provided*, That any
17 unexpended balance in the groundwater protection fund
18 at the end of each fiscal year may, by an act of the
19 Legislature, be transferred to the groundwater remedi-
20 ation fund created by this article: *Provided, however*,
21 That if no action is taken to transfer the unexpended
22 balance to the remediation fund, such moneys shall not

23 be transferred to the general revenue fund, but shall
24 remain in the groundwater protection fund. Such fees
25 imposed by this section are in addition to all other fees
26 and taxes levied by law. The director shall require such
27 fees to be paid at the time of certification pursuant to
28 section eight of this article, or at such more frequent
29 time as the director may deem to be appropriate. The
30 director may withhold certification pursuant to section
31 eight of this article where such fees have not been timely
32 paid.

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

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

51 (1) The "Groundwater Protection Fund", the moneys
52 of which shall be expended by the director in the
53 administration, certification, enforcement, inspection,
54 monitoring, planning, research, and other activities of
55 the state water resources board, division of natural
56 resources, division of energy, division of health and
57 department of agriculture in accordance with legislative
58 rules promulgated pursuant to the provisions of chapter
59 twenty-nine-a of this code. The moneys, including the
60 interest thereon, in said fund shall be kept and main-
61 tained by the director and expended without appropri-
62 ation by the Legislature for the purpose of implement-
63 ing the provisions of this article. The director may

64 withhold the payment of any such moneys to any agency
65 whose groundwater protection program has been
66 determined by the director, in consultation with the
67 groundwater coordinating committee, not to be suffi-
68 cient to satisfy the requirements of this article and
69 where such agency has failed to adequately address such
70 determination within the time period specified by the
71 director. At the end of each fiscal year, any unexpended
72 balance of said fund may not be transferred to the
73 general revenue fund, but shall remain in the ground-
74 water protection fund.

75 (2) The "Groundwater Remediation Fund", the mo-
76 neys of which, to the extent that moneys are available,
77 shall be expended by the director for the purposes of
78 investigation, clean-up and remedial action intended to
79 identify, minimize or mitigate damage to the environ-
80 ment, natural resources, public and private water
81 supplies, surface waters and groundwaters and the
82 public health, safety and general welfare which may
83 result from contamination of groundwater or the related
84 environment. The director or other authorized agency
85 officials are authorized to recover through civil action
86 or cooperative agreements with responsible persons the
87 full amount of any and all groundwater remediation
88 fund moneys expended pursuant to this article. All
89 moneys expended from such fund which are so reco-
90 vered shall be deposited in such fund. The director may
91 expend moneys from said fund and the interest thereon
92 without necessity of appropriation by the Legislature.
93 All civil penalties and assessments of civil administra-
94 tive penalties collected pursuant to this article shall be
95 deposited into the said fund. In addition, said fund may
96 receive proceeds from any gifts, grants, contributions or
97 other moneys accruing to the state which are specifically
98 designated for inclusion in the fund.

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

1 (a) Any person who violates any provision of this
2 article, or any permit or agency approval, rule or order

3 issued to implement this article, shall be subject to civil
4 penalties in accordance with the provisions of section
5 seventeen, article five-a of this chapter: *Provided*, That
6 such penalties shall be in lieu of civil penalties which
7 may be imposed under other provisions of this code for
8 the same violation.

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

18 (c) Any person who violates any provision of this
19 article, or any permit or rule or order issued to
20 implement this article, shall be subject to a civil
21 administrative penalty to be levied by the director of the
22 division of natural resources, the commissioner of
23 agriculture, the director of the division of health or the
24 commissioner of the division of energy, as appropriate,
25 of not more than five thousand dollars for each day of
26 such violation, not to exceed a maximum of twenty
27 thousand dollars. In assessing any such penalty, any
28 such official shall take into account the seriousness of
29 the violation and any good faith efforts to comply with
30 applicable requirements as well as any other appro-
31 priate factors as may be established by such official by
32 legislative rules promulgated pursuant to this article
33 and the provisions of chapter twenty-nine-a of this code.
34 No assessment may be levied pursuant to this subsection
35 until after the alleged violator has been notified by such
36 official by certified mail or personal service. The notice
37 shall include a reference to the section of the statute,
38 rule, order or statement of permit conditions that was
39 allegedly violated, a concise statement of the facts
40 alleged to constitute the violation, a statement of the
41 amount of the administrative penalty to be imposed and
42 a statement of the alleged violator's right to an informal
43 hearing. The alleged violator shall have twenty calendar

44 days from receipt of the notice within which to deliver
45 to such official a written request for an informal
46 hearing. If no hearing is requested, the notice becomes
47 a final order after the expiration of the twenty-day
48 period. If a hearing is requested, such official shall
49 inform the alleged violator of the time and place of the
50 hearing. Such official may appoint an assessment officer
51 to conduct the informal hearing who shall make a
52 written recommendation to such official concerning the
53 assessment of a civil administrative penalty. Within
54 thirty days following the informal hearing, such official
55 shall issue and furnish to the violator a written decision,
56 and the reasons therefor, concerning the assessment of
57 a civil administrative penalty. Within thirty days after
58 notification of such official's decision, the alleged
59 violator may request a formal hearing before the board
60 in accordance with the provisions of section eleven of
61 this article. Any administrative civil penalty assessed
62 pursuant to this section shall be in lieu of any other civil
63 penalty which may be assessed under any provision of
64 this code for the same violation. No combination of
65 assessments against any violator under this section may
66 exceed twenty-five thousand dollars per day of each such
67 violation. All administrative penalties shall be levied in
68 accordance with legislative rules promulgated by such
69 official in accordance with the provisions of chapter
70 twenty-nine-a of this code.

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

77 (e) Any such official may seek an injunction, or may
78 institute a civil action against any person in violation of
79 any provision of this article or any permit, agency
80 approval, rule or order issued to implement this article.
81 In seeking an injunction, it is not necessary for such
82 official to post bond nor to allege or prove at any point
83 in the proceeding that irreparable damage will occur if
84 the injunction is not issued or that the remedy at law

85 is inadequate. An application for injunctive relief or a
 86 civil penalty action under this section may be filed and
 87 relief granted notwithstanding the fact that all adminis-
 88 trative remedies provided for in this article have not
 89 been exhausted or invoked against the person or persons
 90 against whom such relief is sought.

91 (f) If any such official upon inspection, investigation
 92 or through other means observes, discovers or learns of
 93 a violation of the provisions of this article, or any permit,
 94 order or rules issued to implement the provisions of this
 95 article, he or she may issue an order stating with
 96 reasonable specificity the nature of the violation and
 97 requiring compliance immediately or within a specified
 98 time. An order under this section includes, but is not
 99 limited to, any or all of the following: Orders implement-
 100 ing this article which (1) suspend, revoke or modify
 101 permits; (2) require a person to take remedial action; or
 102 (3) are cease and desist orders.

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

§20-5M-11. Appeal and review procedures.

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

10 (b) Any person, the director or any public official
 11 adversely affected by an order made and entered by the

12 water resources board may obtain judicial review
13 thereof in the same manner as provided for under
14 section sixteen, article five-a of this chapter.

§20-5M-12. Rulemaking petition.

1 Any person may petition the appropriate rulemaking
2 agency for rulemaking on an issue arising under this
3 article. The appropriate rulemaking agency, if it
4 believes such issue to merit rulemaking, may initiate
5 rulemaking in accordance with the provisions of chapter
6 twenty-nine-a of this code. A decision by the appropriate
7 rulemaking agency not to pursue rulemaking must set
8 forth in writing reasons for refusing to do so. Any
9 person may petition an agency to issue a declaratory
10 ruling pursuant to section one, article four, chapter
11 twenty-nine-a of this code with respect to the applica-
12 bility to any person, property or state of facts of any
13 rules promulgated by that agency pursuant to this
14 article.

**§20-5M-13. Existing rights and remedies preserved;
effect of compliance.**

1 (a) It is the purpose of this article to provide addi-
2 tional and cumulative remedies to address the quality
3 of the groundwater of the state. This article shall not
4 be interpreted to alter the authority of any agency with
5 respect to water other than groundwater. Except as
6 expressly stated in this article, it is not the intention of
7 the Legislature in enacting this article to repeal any
8 other provision of this code.

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

18 (c) Where a person is operating a source or conduct-
19 ing an activity in compliance with the terms and

20 conditions of a permit, rule, order, directive, or other
21 authorization issued by a groundwater regulatory
22 agency pursuant to this article, such person shall not be
23 subject to criminal prosecution for pollution recognized
24 and authorized by such permit, rule, order, directive or
25 other authorization.

§20-5M-14. Conflicting provisions.

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

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

1 To the extent that this article modifies any powers,
2 duties, functions and responsibilities of any state agency
3 that may require approval of one or more federal
4 agencies or officials in order to avoid disruption of the
5 federal-state relationship involved in the implementa-
6 tion of federal regulatory programs by the state, any
7 such modifications shall become effective upon a
8 proclamation by the governor stating either that final
9 approval of such modifications has been given by the
10 appropriate federal agency or official or that final
11 approval of such modification is not necessary to avoid
12 disruption of the federal-state relationship under which
13 such regulatory programs are implemented.

§20-5M-16. Severability.

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

Enr. Com. Sub. for H. B. 2377] 24

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

Lomer Heek

Chairman Senate Committee

Ernst C. Moeck

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harriet K. Phelps

Clerk of the Senate

Donald L. Klapp

Clerk of the House of Delegates

Paul Sundette

President of the Senate

W. W. W. W.

Speaker of the House of Delegates

The within *approved* this the *3rd*
day of *April*, 1991.

Gaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:10 am