WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

HOUSE BILL No. 4643

(By Delegates Gallagher and Pethel)

Passed March 7, 1992

In Effect from Passage
AN ACT to repeal section thirteen, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, four, five, six, seven and eight of said article; to redesignate section eleven-a as section twelve and to amend and reenact section twelve; to redesignate section eleven-b as section thirteen and to amend and reenact section thirteen; to redesignate section eleven-c as section eighteen and to amend and reenact section eighteen; to redesignate section twelve as section twenty; to further amend said article by adding thereto five new sections, designated sections fourteen, fifteen, sixteen, seventeen and nineteen, all relating to air pollution control generally; repealing the effective date of regulations; defining terms; providing for composition of the commission, terms, meetings, compensation; prescribing the powers and duties of the commission; amending the advisory councils' membership; authorizing the commission to promulgate rules; creating the air pollution education and environment fund; modifying the time requirements for filing notice with the secretary of state; authorizing the commission to establish an operating permit program; authorizing the commission to impose fees; authorizing the director to suspend, modify or revoke and reissue permits for violations; allowing conference and hearing on permit actions; authorizing the issuance of cease and desist
orders; authorizing permit suspension, modification and revocation; providing for administrative and judicial appeals of permit actions; providing for appeals of orders generally, procedure; providing for the imposition of a stay upon motion for certain permit actions; providing for appeals to the circuit court of Kanawha County if the parties agree and to remove automatic stay provisions for other orders; authorizing the imposition of civil penalties; defining the crime of knowing misrepresentation and providing penalties therefor; defining the crime for violation of the article, permit or rule and providing penalties therefor; amending the civil and criminal penalties for violations of the article; allowing limited access to confidential records; providing for record and data maintenance generally; allowing inspection of certain records; requiring permits for construction, modification or relocation for stationary sources of air pollution; providing for a maximum time for the issuance or renewal of construction, modification or relocation permits; allowing for permit consolidation; providing for an inspection and maintenance program for motor vehicles; imposing an inspection fee; requiring operating permits for stationary sources of air pollution; and establishing a small business environmental compliance assistance program and advisory panel.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, four, five, six, seven and eight be amended and reenacted; that section eleven-a be redesignated as section twelve and be amended and reenacted; that section eleven-b be redesignated as section thirteen and be amended and reenacted; that section eleven-c be redesignated as section eighteen and be amended and reenacted; that section twelve be redesignated as section twenty and be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections fourteen, fifteen, sixteen, seventeen and nineteen, all to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.
§16-20-2. Definitions.

1 The terms used in this article are defined as follows:

2 (a) "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

3 (b) "Commission" means the air pollution control commission created pursuant to the provisions of this article.

4 (c) "Commissioner" means a member of the air pollution control commission.

5 (d) "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

6 (e) "Discharge" means any release, escape or emission of air pollutants into the air.

7 (f) "Statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

8 (g) "Director" means the person appointed by the air pollution control commission to act as the director or the director's designated representative.

§16-20-4. Air pollution control commission — Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.

1 The "air pollution control commission," heretofore created, shall continue in existence as an agency of the state and shall consist of seven members, including the
commissioneer of the bureau of public health and the
commissioner of agriculture, or their designees, both of
whom shall be members ex officio, and five other
members to be appointed by the governor with the
advice and consent of the Senate, two of whom shall be
representative of industries engaged in business in this
state, and three of whom shall be representative of the
public at large. The three appointed members of the
commission in office on the effective date of this act
shall, unless sooner removed, continue to serve until
their terms expire and until their successors have been
appointed and have qualified. On or before June fifteen,
one thousand nine hundred sixty-seven, the governor
shall appoint one member to serve until June thirty, one
thousand nine hundred seventy, and one member to
serve until June thirty, one thousand nine hundred
seventy-one, or until their successors have been ap-
pointed and have qualified. As the terms of the three
appointed members of the commission in office on the
effective date of this act expire and as the terms of the
two members to be appointed by the governor on or
before June fifteen, one thousand nine hundred sixty-
seven, expire, members shall be appointed for overlap-
ing terms of five years, so that one term expires each
year, or until their successors have been appointed and
have qualified. Any vacancy in the office of an appointed
member of the commission shall be filled by appoint-
ment by the governor for the unexpired term of the
appointed member whose office shall be vacant.

The ex officio members of the commission shall
receive no salary or remuneration for their services as
such but they shall be reimbursed, out of moneys
appropriated for such purpose, for all reasonable and
necessary expenses actually incurred in the discharge of
their duties as such.

As compensation for his services on the commission,
each appointed member shall receive, out of moneys
appropriated for such purpose, the sum of seventy-five
dollars for each day or substantial portion thereof that
he is actually engaged in the work of the commission.
Each member shall also be entitled to be reimbursed,
out of moneys appropriated for such purpose, for any
reasonable and necessary expenses actually incurred in
the discharge of his duties as a member of the
commission.

At its first meeting the commission shall elect from
its membership a chairman, and at the first meeting in
each fiscal year thereafter the commission shall elect
from its membership a chairman to act during such
fiscal year. At similar times the commission shall elect
from its membership a vice chairman and appoint a
secretary. The secretary need not be a member of the
commission. The vice chairman shall preside over the
meetings and hearings of the commission in the absence
of the chairman. The commission shall appoint and
employ a director and such personnel as may be
required, whose duties shall be defined by the commis-
sion and whose compensation, to be fixed by the
commission, shall be paid out of the state treasury, upon
the requisition of the commission, from moneys approp-
riated for such purposes.

The commission may establish rules for the regulation
of its affairs and the conduct of all proceedings before
it. All proceedings of the commission shall be entered
in a permanently bound record book, properly indexed,
and the same shall be carefully preserved. Copies of
orders entered by the commission, as well as copies of
papers or documents filed with it, or the records of
proceedings before the commission, shall be attested by
the secretary of the commission. The commission shall
meet at such times and places as may be agreed upon
by the commissioners, or upon the call of the chairman
of the commission or any two commissioners, all of
which meetings shall be general meetings for the
consideration of any and all matters which may properly
come before the commission.

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

(a) The commission is hereby authorized and
empowered:

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

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

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

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

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

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

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

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

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

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

(11) To cooperate with, receive and expend money
from the federal government and other sources; and the
commission may cooperate with any public or private
agency or person and receive therefrom and on behalf
of the state gifts, donations, and contributions, which
shall be deposited to the credit of the “Air Pollution
Education and Environment Fund” which is hereby
created in the state treasury. The moneys collected
pursuant to this article which are directed to be
deposited in the air pollution education and environment
fund must be deposited in a separate account in the state
treasury and expenditures for purposes set forth in this
article are not authorized from collection but are to be
made only in accordance with appropriation and in
accordance with the provisions of article three, chapter
twelve of this code and upon fulfillment of the provisions
set forth in article two, chapter five-a of the code.
Amounts collected which are found from time to time
to exceed the funds needed for the purposes set forth in
this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

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

(13) To appoint advisory councils from such areas of the state as it may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area;

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

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

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

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

(18) To promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, providing for the following:

(A) Procedures and requirements for permit applications and modifications and the review thereof;

(B) Imposition of permit application fees;

(C) Establishment of criteria for construction, modification, relocation and operating permits;

(D) Imposition of permit fees and of certificate fees: *Provided*, That any person subject to operating permit fees pursuant to section fourteen of this article shall be exempt from imposition of the certificate fee; and

(E) Imposition of penalties and interest for the nonpayment of fees.

The fees, penalties and interest shall be deposited in a special account in the state treasury designated the “Air Pollution Control Commission Fund” which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the commission and its employees to carry out the provisions of this article: *Provided*, That the fees, penalties and interest collected for operating permits required by section fourteen of this article shall be expended solely to cover all reasonable direct and indirect costs required to admin-
ister the operating permit program. The fees collected pursuant to this subdivision must be deposited in a separate account in the state treasury and expenditures for purposes set forth in this article are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of the code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature: Provided, however, That for fiscal year one thousand nine hundred ninety-three, expenditures are permitted from collections without appropriation by the Legislature.

(19) Receipt of any money by the commission as a result of the entry of any consent order shall be deposited in the state treasury to the credit of the air pollution education and environment fund.

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

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

§16-20-6. Issuance of cease and desist orders by director;
service; permit suspension, modification and
revocation; appeals to commission; hearings,
subpoenas, etc.; orders and findings of
commission.

1 If, from any investigation made by him or from any
2 complaint filed with him, the director shall be of the
3 opinion that a person is violating the provisions of this
4 article, or any rules and regulations promulgated
5 pursuant thereto, he shall make and enter an order
directing such person to cease and desist such activity.
The director shall fix a reasonable time in such order
by which such activity must stop or be prevented. The
order shall contain the findings of fact upon which the
director determined to make and enter such order.

If, after any investigation made by him, or his
designated representative, or from any complaint filed
with him, the director shall be of the opinion that a
permit holder is violating the provisions of this article,
or any rules or regulations promulgated pursuant
thereto, or any order of the director, or any provision
of a permit, the director may issue notice of intent to
suspend, modify or revoke and reissue such permit.
Upon notice of the director's intent to suspend, modify
or revoke a permit, the permit holder may request a
conference with the director to show cause why the
permit should not be suspended, modified or revoked.
The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order shall be considered a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter such order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the commission.

The director shall cause a copy of any such order to be served upon such person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of such final order has been served may appeal such order to the air pollution control commission in the following manner except as otherwise provided in this section. The person so appealing shall be known as the appellant and the director shall be known as the appellee. Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the commission for such purpose, with the commission within fifteen days after the date upon which the appellant received a copy of the order. The notice of appeal shall set forth the order complained of and the grounds upon which the appeal is based. Upon motion of the appellant, the commission may, by informal conference at which the appellant may be present and held no later than five business days after issuance of an order, stay the effect of the order complained of until final determination thereof is made by the commission. A copy of the notice of appeal shall be filed by the commission with the director within eight days after the notice of appeal is filed with the commission.

Within seven days after receipt of his copy of the notice of appeal, the director shall prepare and certify to the commission a complete record of the proceedings out of which the appeal arises, including all documents
and correspondence in the director's file relating to the matter in question. The commission shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code, shall apply to and govern the hearing on appeal authorized by the provisions of this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, except that any such appeal hearing shall be held in the county wherein the alleged statutory air pollution complained of originated or as agreed to among the parties.

Any such appeal hearing shall be conducted by a quorum of the commission. For the purpose of conducting any such appeal hearing, any member of the commission and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the commission, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

Any such hearing shall be held within thirty days after the date upon which the commission received the timely notice of appeal, unless there is a postponement or continuance. The commission may postpone or continue any hearing on its own motion, or upon application of the appellant or the appellee for good cause shown. The director shall be represented at any such hearing by the attorney general or his assistants. At any such hearing the appellant may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.
After such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall make and enter an order affirming, modifying or vacating the order of the director, or shall make and enter such order as the director should have entered.

Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and his attorney of record, if any, and upon the appellee in person or by registered or certified mail. The order of the commission shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section seven of this article.

§16-20-7. Appeals from orders of commission.

Any person whose interest shall have been substantially affected by an order of the commission may appeal from such order or decision by filing with the commission a written notice of appeal. Such notice shall be filed within thirty days from the date notice of the order or decision of the commission was given to such person, and shall be signed by him or his attorney. Within thirty days from the receipt of the notice of appeal, the commission shall prepare and forward to the appellant or his attorney a copy of a full transcript of the proceedings, together with a copy of the order or decision of the commission and a copy of the notice of appeal, and at the same time shall file a transcript of the proceedings before the commission and the other documents mentioned above with the clerk of the circuit court herein designated. All documents shall be duly certified by the secretary of the commission. The court shall thereafter have complete jurisdiction of the matter.

The appeal shall be taken to the circuit court of the county wherein the alleged statutory air pollution complained of originated or in Kanawha County upon agreement between the parties. The court shall fix a time for the hearing of the appeal and shall, after such hearing, without a jury, by order entered of record,
affirm, modify or set aside in whole or in part the order
of the commission. The said court shall make findings
of fact and conclusions of law based upon the transcript
of the proceedings before the commission and upon any
additional evidence adduced before said court, the right
to adduce such additional evidence being hereby
reserved to the commission or to any person substan-
tially affected by the order of the commission. In the
event the circuit court shall affirm or modify the
commission's order that a statutory air pollution exists
under the provisions of this article, the order of the court
shall specify that such pollution shall be corrected
within a reasonable period of time to be fixed therein.
The commission or any person whose interests shall have
been substantially affected by the final order of the
circuit court may appeal to the supreme court of appeals
in the manner prescribed by law. .

Any order appealed to the commission, the circuit
court or to the supreme court shall have full force and
effect during the pendency of the appeal except the
order may be stayed within the full discretion of the
commission or the respective court based upon consid-
erations as provided by general law.

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

(a) Any person who violates any provision of this
article, any permit or any rule or order issued pursuant
to this article shall be subject to a civil penalty not to
exceed ten thousand dollars for each day of such
violation, which penalty shall be recovered in a civil
action brought by the commission in the name of the
state of West Virginia in the circuit court of any county
wherein such person resides or is engaged in the activity
complained of or in the circuit court of Kanawha
County. The amount of the penalty shall be fixed by the
court without a jury: Provided, That any such person
shall not be subject to such civil penalties unless such
person shall have been given written notice thereof by
the director: Provided, however, That for the first such
minor violation, if such person corrects the violation
within such time as was specified in the notice of
violation issued by the director, no such civil penalty
may be recovered: Provided further, That if such person
fails to correct such minor violation or for any serious
or subsequent serious or minor violation, such person
shall be subject to civil penalties imposed pursuant to
this section from the first day of such violation notwith-
standing the date of the issuance or receipt of the notice
of violation. The commission shall, by rule and regula-
tion subject to the provisions of chapter twenty-nine-a
of this code, determine the definitions of serious and
minor violations. The amount of any such penalty
collected by the commission shall be deposited in the
general revenue of the state treasury according to law.

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

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

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

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

§16-20-12. Records, reports, data or information; confi-
dentiality; proceedings upon request to
inspect or copy.
All air quality data, emission data, permits, compliance schedules, commission orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall consider such records, reports, data or information or such particular portion thereof confidential: Provided, That such confidentiality shall not apply to the types and amounts of air pollutants discharged and that such records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environment protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: Provided, however, That such officers, employees or authorized representatives of the state or federal environmental protection agency protect such records, reports, data or information to the same degree required of the director by this section. The commission shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of such a request, the director or his designate shall: (a) Advise the person making such request of the time and place at which he may inspect and copy the documents; or (b) deny the request, stating in writing the reasons for such denial. For purposes of judicial appeal, a written denial by the director or his designate shall be deemed an exhaustion of administrative remedies. Any person whose request
for information is denied in whole or in part may appeal from such denial by filing with the director a notice of appeal. Such notice shall be filed within thirty days from the date the request for information was denied, and shall be signed by the person whose request was denied or his attorney. The appeal shall be taken to the circuit court of Kanawha County, where it shall be heard without a jury. The scope of review shall be limited to the question of whether the records, reports, data or other information, or any particular part thereof (other than emission data), sought to be inspected or copied, would, if made public, divulge methods or processes entitled to protection as trade secrets. The said court shall make findings of fact and conclusions of law based upon the evidence and testimony. The director, the person whose request was denied, or any other person whose interest shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

§16-20-13. Construction, modification or relocation permits required for stationary sources of air pollutants.

No person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as hereinafter provided.

The commission shall by rule and regulation specify the class or categories of stationary sources to which this section shall apply. Application for permits shall be made upon such form, in such manner, and within such time as the rule and regulation shall prescribe and shall include such information, as in the judgment of the director, will enable him to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules and regulations promulgated thereunder.

The director shall, within a reasonable time not to exceed twelve months for major sources, as defined by the commission, and six months for all other sources
after the receipt of a complete application, issue such permit unless he determines that the proposed construction, modification or relocation will not be in accordance with this article or rules and regulations promulgated thereunder, in which case he shall issue an order for the prevention of such construction, modification or relocation.

For the purposes of this section, a modification is deemed to be any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by such source above a de minimis level set by the commission.

§16-20-14. Operating permits required for stationary sources of air pollution.

No person may operate a stationary source of air pollutants without first obtaining an operating permit as hereinafter provided. The commission shall promulgate legislative rules, in accordance with chapter twenty-nine-a of this code, which specify classes or categories of stationary sources which shall be required to obtain an operating permit. The legislative rule shall provide for the form and content of the application procedure including time limitations for obtaining the required permits. Any person who has filed a timely and complete application for a permit or renewal thereof required by this section, and who is abiding by the requirements of this article and the rules promulgated pursuant thereto, shall be deemed to be in compliance with the requirements of this article and any regulation promulgated thereunder until a permit is issued or denied. Any legislative rule promulgated pursuant to the authority granted by this section shall be equivalent to and consistent with rules and regulations adopted by the administrator of United States environmental protection agency pursuant to Title IV and Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7651 et seq. and 42 U.S.C. §7661 et seq., respectively:

Provided, That such legislative rule may deviate from the federal rules and regulations where a deviation is appropriate to implement the policy and purpose of this
article taking into account such factors unique to West Virginia.


For permits required by sections thirteen and fourteen of this article, the commission may incorporate the required permits with an existing permit or consolidate the required permits into a single permit.

§16-20-16. Administrative review of permit actions.

Any person whose interest may be affected, including, but not necessarily limited to the applicant and any person who participated in the public comment process, by a permit issued, modified or denied by the director may appeal such action of the director to the commission pursuant to section six of this article.


Any person whose interest may be affected, including, but not necessarily limited to, the applicant and any person who participated in the public comment process or the administrative review process, by an order issued by the commission pursuant to section sixteen of this article, may appeal such order to the circuit court of Kanawha County pursuant to section seven of this article.

§16-20-18. Motor vehicle pollution, inspection and maintenance.

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this article, the commission may provide by legislative rule for the control of emissions from motor vehicles. Such legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The commission shall not require, as a condition precedent
to the initial sale of a vehicle or vehicular equipment,
the inspection, certification or other approval of any
feature or equipment designed for the control of
emissions from motor vehicles, if such feature or
equipment has been certified, approved, or otherwise
authorized pursuant to federal law.

(b) Except as permitted or authorized by law or
legislative rule, no person shall fail to maintain in good
working order or remove, dismantle, or otherwise cause
to be inoperative any equipment or feature constituting
an operational element of the air pollution control
system or mechanism of a motor vehicle required by
rules and regulations of the commission to be main-
tained in or on the vehicle. Any such failure to maintain
in good working order or removal, dismantling, or
causing of inoperability shall subject the owner or
operator to suspension or cancellation of the registration
for the vehicle by the department of transportation,
division of motor vehicles. The vehicle shall not thereaf-
ter be eligible for registration until all parts and
equipment constituting operational elements of the
motor vehicle have been restored, replaced or repaired
and are in good working order.

(c) The department of transportation, division of
motor vehicles, department of administration, informa-
tion and communication services division, and the
department of public safety shall make available
technical information and records to the commission to
implement the legislative rule regarding motor vehicle
pollution, inspection and maintenance. The commission
shall promulgate a legislative rule establishing motor
vehicle pollution, inspection and maintenance standards
and imposing an inspection fee at a rate sufficient to
implement the motor vehicle inspection program.

(d) The commission shall promulgate a legislative rule
requiring maintenance of features of equipment in or on
motor vehicles for the purpose of controlling emissions
therefrom, and no motor vehicle may be issued a
division of motor vehicles registration certificate, or the
existing registration certificate shall be revoked, unless
the motor vehicle has been found to be in compliance
with the commission's legislative rule.

(e) The remedies and penalties provided in section eighteen of this article and section one, article three, chapter seventeen-a of this code, shall apply to violations hereof, and no provisions of sections eight or nine of this article shall apply thereto.

(f) As used in this section "motor vehicle" shall have the same meaning as in chapter seventeen-c of this code.

§16-20-19. Small business environmental compliance assistance program, compliance advisory panel.

The secretary of the department of commerce, labor, and environmental resources shall establish a small business stationary source technical and environmental compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

(a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the governor to represent the general public;

(b) One member selected by the speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(d) One member selected by the president of the Senate who is an owner or who represents owners of small business stationary sources;

(e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources;

(f) One member selected by the commission to represent the commission.
§16-20-20. Severability.

1 The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sections or parts of the article or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this article would have been adopted if such invalid or unconstitutional provision, section or part had not been included therein.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within .............. approved this the 15th day of April, 1992.

[Signature]
Governor