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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. 4643

(By Delegates Gallagher and Pethel)

— ● —

Passed March 7 1992

In Effect From Passage

ENROLLED
H. B. 4643

(By DELEGATES GALLAGHER AND PETHTEL)

[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
3 artificial, including the state of West Virginia or any
4 other state, the United States of America, any munic-
5 ipal, statutory, public or private corporation organized
6 or existing under the laws of this or any other state or
7 country, and any firm, partnership or association of
8 whatever nature.

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

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

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

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

19 (f) "Statutory air pollution" means and is limited to
20 the discharge into the air by the act of man of substan-
21 ces (liquid, solid, gaseous, organic or inorganic) in a
22 locality, manner and amount as to be injurious to human
23 health or welfare, animal or plant life, or property, or
24 which would interfere with the enjoyment of life or
25 property.

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

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

1 The "air pollution control commission," heretofore
2 created, shall continue in existence as an agency of the
3 state and shall consist of seven members, including the

4 commissioner of the bureau of public health and the
5 commissioner of agriculture, or their designees, both of
6 whom shall be members ex officio, and five other
7 members to be appointed by the governor with the
8 advice and consent of the Senate, two of whom shall be
9 representative of industries engaged in business in this
10 state, and three of whom shall be representative of the
11 public at large. The three appointed members of the
12 commission in office on the effective date of this act
13 shall, unless sooner removed, continue to serve until
14 their terms expire and until their successors have been
15 appointed and have qualified. On or before June fifteen,
16 one thousand nine hundred sixty-seven, the governor
17 shall appoint one member to serve until June thirty, one
18 thousand nine hundred seventy, and one member to
19 serve until June thirty, one thousand nine hundred
20 seventy-one, or until their successors have been ap-
21 pointed and have qualified. As the terms of the three
22 appointed members of the commission in office on the
23 effective date of this act expire and as the terms of the
24 two members to be appointed by the governor on or
25 before June fifteen, one thousand nine hundred sixty-
26 seven, expire, members shall be appointed for overlap-
27 ping terms of five years, so that one term expires each
28 year, or until their successors have been appointed and
29 have qualified. Any vacancy in the office of an appointed
30 member of the commission shall be filled by appoint-
31 ment by the governor for the unexpired term of the
32 appointed member whose office shall be vacant.

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

39 As compensation for his services on the commission,
40 each appointed member shall receive, out of moneys
41 appropriated for such purpose, the sum of seventy-five
42 dollars for each day or substantial portion thereof that
43 he is actually engaged in the work of the commission.
44 Each member shall also be entitled to be reimbursed,

45 out of moneys appropriated for such purpose, for any
46 reasonable and necessary expenses actually incurred in
47 the discharge of his duties as a member of the
48 commission.

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

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

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

1 (a) The commission is hereby authorized and
2 empowered:

3 (1) To develop ways and means for the regulation and

4 control of pollution of the air of the state;

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

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

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

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

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

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

42 (8) To employ personnel, including specialists and

43 consultants, purchase materials and supplies, and enter
44 into contracts necessary, incident or convenient to the
45 accomplishment of the purpose of this article;

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

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

65 (11) To cooperate with, receive and expend money
66 from the federal government and other sources; and the
67 commission may cooperate with any public or private
68 agency or person and receive therefrom and on behalf
69 of the state gifts, donations, and contributions, which
70 shall be deposited to the credit of the "Air Pollution
71 Education and Environment Fund" which is hereby
72 created in the state treasury. The moneys collected
73 pursuant to this article which are directed to be
74 deposited in the air pollution education and environment
75 fund must be deposited in a separate account in the state
76 treasury and expenditures for purposes set forth in this
77 article are not authorized from collection but are to be
78 made only in accordance with appropriation and in
79 accordance with the provisions of article three, chapter
80 twelve of this code and upon fulfillment of the provisions
81 set forth in article two, chapter five-a of the code.
82 Amounts collected which are found from time to time
83 to exceed the funds needed for the purposes set forth in

84 this article may be transferred to other accounts or
85 funds and redesignated for other purposes by appropri-
86 ation of the Legislature.

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

91 (13) To appoint advisory councils from such areas of
92 the state as it may determine. The members shall
93 possess some knowledge and interest in matters pertain-
94 ing to the regulation, control and abatement of air
95 pollution. The council may advise and consult with the
96 commission about all matters pertaining to the regula-
97 tion, control and abatement of air pollution within such
98 area;

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

109 (15) To require the owner or operator of any stationary
110 source discharging air pollutants to install such moni-
111 toring equipment or devices as the director may
112 prescribe and to submit periodic reports on the nature
113 and amount of such discharges to the commission;

114 (16) To do all things necessary and convenient to
115 prepare and submit a plan or plans for the implemen-
116 tation, maintenance and enforcement of the "Federal
117 Clean Air Act," as amended: *Provided*, That in prepar-
118 ing and submitting each such plan the commission shall
119 establish in such plan that such standard shall be first
120 achieved, maintained and enforced by limiting and
121 controlling emissions of pollutants from commercial and
122 industrial sources and locations and shall only provide
123 in such plans for limiting and controlling emissions of

124 pollutants from private dwellings and the curtilage
125 thereof as a last resort: *Provided, however,* That nothing
126 herein contained shall be construed to affect plans for
127 achievement, maintenance and enforcement of motor
128 vehicle emission standards and of standards for fuels
129 used in dwellings;

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

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

141 (A) Procedures and requirements for permit applica-
142 tions and modifications and the review thereof;

143 (B) Imposition of permit application fees;

144 (C) Establishment of criteria for construction, modi-
145 fication, relocation and operating permits;

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

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

152 The fees, penalties and interest shall be deposited in
153 a special account in the state treasury designated the
154 "Air Pollution Control Commission Fund" which is
155 hereby continued to be appropriated for the sole purpose
156 of paying salaries and expenses of the commission and
157 its employees to carry out the provisions of this article:
158 *Provided,* That the fees, penalties and interest collected
159 for operating permits required by section fourteen of
160 this article shall be expended solely to cover all
161 reasonable direct and indirect costs required to admin-

162 ister the operating permit program. The fees collected
163 pursuant to this subdivision must be deposited in a
164 separate account in the state treasury and expenditures
165 for purposes set forth in this article are not authorized
166 from collections but are to be made only in accordance
167 with appropriation and in accordance with the provi-
168 sions of article three, chapter twelve of this code and
169 upon fulfillment of the provisions set forth in article two,
170 chapter five-a of the code. Amounts collected which are
171 found from time to time to exceed the funds needed for
172 the purposes set forth in this article may be transferred
173 to other accounts or funds and redesignated for other
174 purposes by appropriation of the Legislature: *Provided,*
175 *however,* That for fiscal year one thousand nine hundred
176 ninety-three, expenditures are permitted from collec-
177 tions without appropriation by the Legislature.

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

182 (b) The attorney general and his assistants and the
183 prosecuting attorneys of the several counties shall
184 render to the commission without additional compensa-
185 tion such legal services as the commission may require
186 of them to enforce the provisions of this article.

187 (c) No rule of the commission pertaining to the control,
188 reduction or abatement of air pollution shall become
189 effective until after at least one public hearing thereon
190 shall have been held by the commission within the state.
191 Notice to the public of the time and place of any such
192 hearing shall be given by the commission at least thirty
193 days prior to the scheduled date of such hearing by
194 advertisement published as a Class II legal advertise-
195 ment in compliance with the provisions of article three,
196 chapter fifty-nine of this code, and the publication area
197 for such publication shall be in at least one county in
198 each affected air quality control region defined by the
199 commission. A copy of any proposed rule of the commis-
200 sion shall be filed in the office of the secretary of state
201 at least thirty days and not more than sixty days prior
202 to the scheduled date of any such hearing. Full oppor-

203 tunity to be heard shall be accorded to all persons in
204 attendance and any person, whether or not in attendance
205 at such hearing, may submit in writing his views with
206 respect to any such rule to the commission within thirty
207 days after such hearing. After such thirty-day period,
208 no views or comments shall be received in writing or
209 otherwise, unless formally solicited by the commission.
210 The proceedings at the hearing before the commission
211 shall be recorded by mechanical means or otherwise as
212 may be prescribed by the commission. Such record of
213 proceedings need not be transcribed unless requested by
214 an interested party in which event the prevailing rates
215 for such transcripts will be required from such inter-
216 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
6 directing such person to cease and desist such activity.
7 The director shall fix a reasonable time in such order
8 by which such activity must stop or be prevented. The
9 order shall contain the findings of fact upon which the
10 director determined to make and enter such order.

11 If, after any investigation made by him, or his
12 designated representative, or from any complaint filed
13 with him, the director shall be of the opinion that a
14 permit holder is violating the provisions of this article,
15 or any rules or regulations promulgated pursuant
16 thereto, or any order of the director, or any provision
17 of a permit, the director may issue notice of intent to
18 suspend, modify or revoke and reissue such permit.
19 Upon notice of the director's intent to suspend, modify
20 or revoke a permit, the permit holder may request a
21 conference with the director to show cause why the
22 permit should not be suspended, modified or revoked.

23 The request for conference must be received by the
24 director within fifteen days following receipt of notice.
25 After conference or fifteen days after issuance of notice
26 of intent, if no conference is requested, the director may
27 enter an order suspending, modifying or revoking the
28 permit and send notice to the permit holder. Such order
29 shall be considered a cease and desist order for purposes
30 of administrative and judicial review and shall contain
31 findings of fact upon which the director determined to
32 make and enter such order. If an appeal of the director's
33 order is filed, the order of the director shall be stayed
34 from the date of issuance pending a final decision of the
35 commission.

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

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

60 Within seven days after receipt of his copy of the
61 notice of appeal, the director shall prepare and certify
62 to the commission a complete record of the proceedings
63 out of which the appeal arises, including all documents

64 and correspondence in the director's file relating to the
65 matter in question. The commission shall hear the
66 appeal de novo, and evidence may be offered on behalf
67 of the appellant and appellee.

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

78 Any such appeal hearing shall be conducted by a
79 quorum of the commission. For the purpose of conduct-
80 ing any such appeal hearing, any member of the
81 commission and the secretary thereof shall have the
82 power and authority to issue subpoenas and subpoenas
83 duces tecum in the name of the commission, in accor-
84 dance with the provisions of section one, article five,
85 chapter twenty-nine-a of this code. All subpoenas and
86 subpoenas duces tecum shall be issued and served
87 within the time and for the fees and shall be enforced,
88 as specified in section one, article five of said chapter
89 twenty-nine-a, and all of the said section one provisions
90 dealing with subpoenas and subpoenas duces tecum
91 shall apply to subpoenas and subpoenas duces tecum
92 issued for the purpose of an appeal hearing hereunder.

93 Any such hearing shall be held within thirty days
94 after the date upon which the commission received the
95 timely notice of appeal, unless there is a postponement
96 or continuance. The commission may postpone or
97 continue any hearing on its own motion, or upon
98 application of the appellant or the appellee for good
99 cause shown. The director shall be represented at any
100 such hearing by the attorney general or his assistants.
101 At any such hearing the appellant may represent
102 himself or be represented by an attorney at law
103 admitted to practice before any circuit court of this
104 state.

105 After such hearing and consideration of all of the
106 testimony, evidence and record in the case, the commis-
107 sion shall make and enter an order affirming, modifying
108 or vacating the order of the director, or shall make and
109 enter such order as the director should have entered.

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

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

1 Any person whose interest shall have been substan-
2 tially affected by an order of the commission may appeal
3 from such order or decision by filing with the commis-
4 sion a written notice of appeal. Such notice shall be filed
5 within thirty days from the date notice of the order or
6 decision of the commission was given to such person, and
7 shall be signed by him or his attorney. Within thirty
8 days from the receipt of the notice of appeal, the
9 commission shall prepare and forward to the appellant
10 or his attorney a copy of a full transcript of the
11 proceedings, together with a copy of the order or
12 decision of the commission and a copy of the notice of
13 appeal, and at the same time shall file a transcript of
14 the proceedings before the commission and the other
15 documents mentioned above with the clerk of the circuit
16 court herein designated. All documents shall be duly
17 certified by the secretary of the commission. The court
18 shall thereafter have complete jurisdiction of the matter.

19 The appeal shall be taken to the circuit court of the
20 county wherein the alleged statutory air pollution
21 complained of originated or in Kanawha County upon
22 agreement between the parties. The court shall fix a
23 time for the hearing of the appeal and shall, after such
24 hearing, without a jury, by order entered of record,

25 affirm, modify or set aside in whole or in part the order
26 of the commission. The said court shall make findings
27 of fact and conclusions of law based upon the transcript
28 of the proceedings before the commission and upon any
29 additional evidence adduced before said court, the right
30 to adduce such additional evidence being hereby
31 reserved to the commission or to any person substan-
32 tially affected by the order of the commission. In the
33 event the circuit court shall affirm or modify the
34 commission's order that a statutory air pollution exists
35 under the provisions of this article, the order of the court
36 shall specify that such pollution shall be corrected
37 within a reasonable period of time to be fixed therein.
38 The commission or any person whose interests shall have
39 been substantially affected by the final order of the
40 circuit court may appeal to the supreme court of appeals
41 in the manner prescribed by law. .

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

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

1 (a) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant
3 to this article shall be subject to a civil penalty not to
4 exceed ten thousand dollars for each day of such
5 violation, which penalty shall be recovered in a civil
6 action brought by the commission in the name of the
7 state of West Virginia in the circuit court of any county
8 wherein such person resides or is engaged in the activity
9 complained of or in the circuit court of Kanawha
10 County. The amount of the penalty shall be fixed by the
11 court without a jury: *Provided*, That any such person
12 shall not be subject to such civil penalties unless such
13 person shall have been given written notice thereof by
14 the director: *Provided, however*, That for the first such
15 minor violation, if such person corrects the violation
16 within such time as was specified in the notice of

17 violation issued by the director, no such civil penalty
18 may be recovered: *Provided further*, That if such person
19 fails to correct such minor violation or for any serious
20 or subsequent serious or minor violation, such person
21 shall be subject to civil penalties imposed pursuant to
22 this section from the first day of such violation notwith-
23 standing the date of the issuance or receipt of the notice
24 of violation. The commission shall, by rule and regula-
25 tion subject to the provisions of chapter twenty-nine-a
26 of this code, determine the definitions of serious and
27 minor violations. The amount of any such penalty
28 collected by the commission shall be deposited in the
29 general revenue of the state treasury according to law.

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

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

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

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

**§16-20-12. Records, reports, data or information; confi-
dentiality; proceedings upon request to
inspect or copy.**

1 All air quality data, emission data, permits, com-
2 pliance schedules, commission orders and any other
3 information required by a federal implementation
4 program (all for convenience hereinafter referred to in
5 this section as "records, reports, data or information")
6 obtained under this article shall be available to the
7 public, except that upon a showing satisfactory to the
8 director, by any person, that records, reports, data or
9 information or any particular part thereof, to which the
10 director has access under this article if made public,
11 would divulge methods or processes entitled to protec-
12 tion as trade secrets of such person, the director shall
13 consider such records, reports, data or information or
14 such particular portion thereof confidential: *Provided,*
15 That such confidentiality shall not apply to the types and
16 amounts of air pollutants discharged and that such
17 records, reports, data or information may be disclosed
18 to other officers, employees or authorized representa-
19 tives of the state or of the federal environment protec-
20 tion agency concerned with enforcing this article, the
21 federal Clean Air Act, as amended, or the federal
22 Resource Conservation and Recovery Act, as amended,
23 when relevant to any official proceedings thereunder:
24 *Provided, however,* That such officers, employees or
25 authorized representatives of the state or federal
26 environmental protection agency protect such records,
27 reports, data or information to the same degree required
28 of the director by this section. The commission shall
29 promulgate legislative rules regarding the protection of
30 records, reports, data or information, or trade secrets,
31 as required by this section.

32 All requests to inspect or copy documents must state
33 with reasonable specificity the documents or type of
34 documents sought to be inspected or copied. Within five
35 business days of the receipt of such a request, the
36 director or his designate shall: (a) Advise the person
37 making such request of the time and place at which he
38 may inspect and copy the documents; or (b) deny the
39 request, stating in writing the reasons for such denial.
40 For purposes of judicial appeal, a written denial by the
41 director or his designate shall be deemed an exhaustion
42 of administrative remedies. Any person whose request

43 for information is denied in whole or in part may appeal
44 from such denial by filing with the director a notice of
45 appeal. Such notice shall be filed within thirty days
46 from the date the request for information was denied,
47 and shall be signed by the person whose request was
48 denied or his attorney. The appeal shall be taken to the
49 circuit court of Kanawha County, where it shall be
50 heard without a jury. The scope of review shall be
51 limited to the question of whether the records, reports,
52 data or other information, or any particular part thereof
53 (other than emission data), sought to be inspected or
54 copied, would, if made public, divulge methods or
55 processes entitled to protection as trade secrets. The said
56 court shall make findings of fact and conclusions of law
57 based upon the evidence and testimony. The director,
58 the person whose request was denied, or any other
59 person whose interest shall have been substantially
60 affected by the final order of the circuit court may
61 appeal to the supreme court of appeals in the manner
62 prescribed by law.

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

1 No person shall construct, modify or relocate any
2 stationary source of air pollutants without first obtain-
3 ing a construction, modification or relocation permit as
4 hereinafter provided.

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

15 The director shall, within a reasonable time not to
16 exceed twelve months for major sources, as defined by
17 the commission, and six months for all other sources

18 after the receipt of a complete application, issue such
19 permit unless he determines that the proposed construc-
20 tion, modification or relocation will not be in accordance
21 with this article or rules and regulations promulgated
22 thereunder, in which case he shall issue an order for the
23 prevention of such construction, modification or
24 relocation.

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

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

1 No person may operate a stationary source of air
2 pollutants without first obtaining an operating permit
3 as hereinafter provided. The commission shall promul-
4 gate legislative rules, in accordance with chapter
5 twenty-nine-a of this code, which specify classes or
6 categories of stationary sources which shall be required
7 to obtain an operating permit. The legislative rule shall
8 provide for the form and content of the application
9 procedure including time limitations for obtaining the
10 required permits. Any person who has filed a timely and
11 complete application for a permit or renewal thereof
12 required by this section, and who is abiding by the
13 requirements of this article and the rules promulgated
14 pursuant thereto, shall be deemed to be in compliance
15 with the requirements of this article and any regulation
16 promulgated thereunder until a permit is issued or
17 denied. Any legislative rule promulgated pursuant to
18 the authority granted by this section shall be equivalent
19 to and consistent with rules and regulations adopted by
20 the administrator of United States environmental
21 protection agency pursuant to Title IV and Title V of
22 the Clean Air Act Amendments of 1990, 42 U.S.C. §7651
23 et seq. and 42 U.S.C. §7661 et seq., respectively:
24 *Provided*, That such legislative rule may deviate from
25 the federal rules and regulations where a deviation is
26 appropriate to implement the policy and purpose of this

27 article taking into account such factors unique to West
28 Virginia.

§16-20-15. Consolidation of permits.

1 For permits required by sections thirteen and four-
2 teen of this article, the commission may incorporate the
3 required permits with an existing permit or consolidate
4 the required permits into a single permit.

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

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

§16-20-17. Judicial review of permits and denials.

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

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

1 (a) As the state of knowledge and technology relating
2 to the control of emissions from motor vehicles may
3 permit or make appropriate, and in furtherance of the
4 purposes of this article, the commission may provide by
5 legislative rule for the control of emissions from motor
6 vehicles. Such legislative rule may prescribe require-
7 ments for the installation and use of equipment designed
8 to reduce or eliminate emissions and for the proper
9 maintenance of such equipment and of vehicles. Any
10 legislative rule pursuant to this section shall be
11 consistent with provisions of federal law, if any, relating
12 to control of emissions from the vehicles concerned. The
13 commission shall not require, as a condition precedent

14 to the initial sale of a vehicle or vehicular equipment,
15 the inspection, certification or other approval of any
16 feature or equipment designed for the control of
17 emissions from motor vehicles, if such feature or
18 equipment has been certified, approved, or otherwise
19 authorized pursuant to federal law.

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

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

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

55 with the commission's legislative rule.

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

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

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

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

10 (a) Two members who are not owners, nor represen-
11 tatives of owners, of small business stationary sources,
12 selected by the governor to represent the general public;

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

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

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

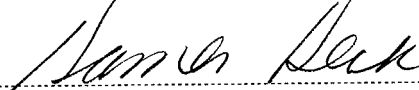
22 (e) One member selected by the minority leader of the
23 Senate who is an owner or who represents owners of
24 small business stationary sources;

25 (f) One member selected by the commission to
26 represent the commission.

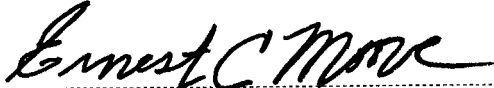
§16-20-20. Severability.

1 The provisions of this article are severable and if any
2 provision, section or part thereof shall be held invalid,
3 unconstitutional or inapplicable to any person or
4 circumstance, such invalidity, unconstitutionality or
5 inapplicability shall not affect or impair any of the
6 remaining provisions, sections or parts of the article or
7 their application to him or to other persons and
8 circumstances. It is hereby declared to be the legislative
9 intent that this article would have been adopted if such
10 invalid or unconstitutional provision, section or part had
11 not been included therein.

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



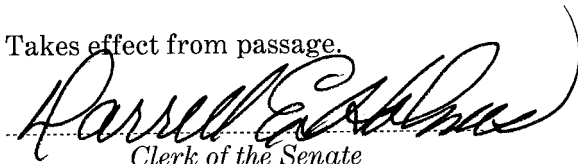
Chairman Senate Committee



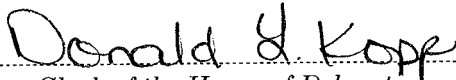
Chairman House Committee

Originating in the House.

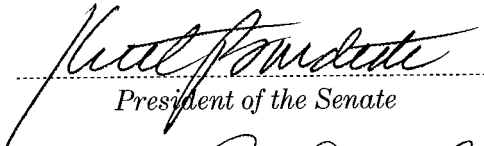
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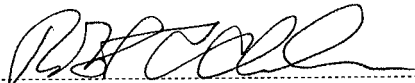
Clerk of the Senate



Clerk of the House of Delegates

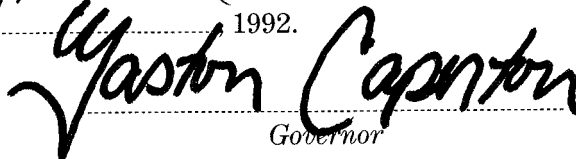


President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of April 1992.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/92

Time 2:45 PM