WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

ENROLLED

HOUSE BILL No. 2251

(By Delegates William, Capers, Phillips,
H. White, Rutledge and Harrison)

Passed .................. April 9 .................. 1993

In Effect Ninety Days From Passage
AN ACT to amend article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to providing fiduciaries with specific statutory powers to respond to environmental problems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.


(a) For purposes of this section:

1. “environmental law” means any federal, state or local law, rule, regulation or ordinance relating to the regulation of hazardous substances or hazardous wastes, air pollution, water pollution and underground storage tanks;


(3) "hazardous waste" means a waste characterized or listed as hazardous in the Resource, Conservation and Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as amended] and regulations promulgated thereunder;

(4) "fiduciary" means a fiduciary as defined by section one-d, article four-d, chapter thirty-one of this code.

(b) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian, or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") has the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:

(1) To inspect property held by the fiduciary including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting such property and to take necessary or reasonable action, including reporting to the appropriate regulatory authority as may be otherwise required by law, with respect to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(2) To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

(3) To refuse to accept property in trust or estate if the fiduciary determines any property to be donated or conveyed to the trust or estate is contaminated by any hazardous substance or hazardous waste or is being used or has been used for any activity directly or indirectly involving any violation of an environmental law which
is reasonably likely to result in liability to the fiduciary:

Provided, That such refusal shall not be construed to
limit the liability of the trust or estate or its income or
principal, for any liability such trust or estate may
otherwise have in connection with any environmental
law, but only to limit the liability of the fiduciary.

Property not accepted into a trust or estate by the
fiduciary may revert to the grantor or its successors or
pass by the laws of descent and distribution, as may
otherwise be provided by law.

(4) To settle or compromise at any time any and all
claims against the trust or estate which may be asserted
by any governmental body or private party involving the
alleged violation of any environmental law affecting
property held in trust or in an estate;

(5) To decline to serve as a fiduciary if the fiduciary
reasonably believes that there is or may be a conflict of
interest between it and its fiduciary capacity and in its
individual capacity because of potential claims or
liabilities which may be asserted against it on behalf of
the trust or estate because of the type or condition of
assets held therein.

(c) The fiduciary is entitled to charge the cost of any
inspection, review, abatement, response, cleanup or
remedial action authorized herein against the income or
principal of the trust or estate.

(d) A fiduciary is not personally liable to any bene-
ciciary or other party for any decrease in value of assets
in trust or in an estate by reason of the fiduciary’s
compliance with any environmental law, specifically
including any reporting requirement under such law.

(e) Neither the acceptance by the fiduciary of property
nor the failure by the fiduciary to inspect property
creates any inference as to whether or not there is or
may be any liability under any environmental law with
respect to such property.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

President of the Senate

Speaker of the House of Delegates

The within is approved this the 12th day of May, 1993.

Governor
PRESENTED TO THE

GOVERNOR

Date 4/23/93
me 11:34 am