WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

Com. Sub. for
House Bill No. 4578

(By Delegates Ashley, Martin, Cacrist and Staton)

Passed March 13, 1998

In Effect Ninety Days from Passage
AN ACT to amend article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to requiring the director of the division of environmental protection to propose legislative rules; establishing a market-based air emission banking and trading program; and providing for emissions credits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.

(a) Within one hundred eighty days after the effective date of this section, the director shall propose legislative rules for promulgation in accordance with article three,
chapter twenty-nine-a of this code, to the full extent
allowed by federal and state law, one or more rules
establishing a voluntary emissions trading and banking
program that provides incentives to make progress toward
the attainment or maintenance of the national ambient air
quality standards, the reduction or prevention of
hazardous air contaminants or the protection of human
health and welfare and the environment from air
pollution.

(b) Any person reducing air emission from a source to
a greater extent than otherwise required by state or federal
law is entitled to an emissions credit in the amount of the
excess emission reduction. The director shall establish a
system for quantifying, verifying and registering
all emissions reduction credits, which are eligible for
banking and trading if achieved after the first day of
January, one thousand nine hundred ninety-one, to the
extent permitted by federal law. Credits also shall be
available for permanent shutdowns: Provided, That the
credits may be transferred by the depositor to the state
office of economic development or to a public interest
group of the depositor’s designation. Except for
voluntary reductions of nitrogen oxides, ten percent of
any emission credits registered with the director shall be
credited to an account for the benefit of the state and
retired from future use, if not used within ten years. All
other emissions reduction credits registered shall remain in
effect until used and debited or retired, if not used within
ten years. The director may charge a reasonable
transaction fee at the time any credits are registered and
shall deposit the fees in the air pollution control fund.

(c) Emission credits registered by a person in
accordance with subsection (b) of this section may be used
by the person to satisfy emission reduction requirements
that would otherwise be required under state or federal law
or the credits may be used for the same purpose at another
source, by the person who registered the credit or by
another person to whom the credit was transferred. Same
source use of banked emission credits requires prior
notification to the West Virginia office of air quality. The
rules may not prohibit the transfer of credits among
persons, but shall establish procedures by which transfers are identified, tracked and accounted for in the program. The division may establish the emissions trading program as a state, multistate or regional program as long as the program contributes to the goal of improving the air quality in West Virginia and in the air quality region where the source is located.

(d) The director may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, establishing classes of volatile organic compounds, and shall allow banking and trading of different volatile organic compounds within the same class. In lieu thereof, trading shall be allowed among all volatile organic compounds where not inconsistent with federal law and where similar degrees of hazard and qualitative impact are anticipated with respect to air quality. For any emissions banking and trading program used for the purpose of making progress toward attaining or maintaining the national ambient air quality standard for ozone, the director may allow reductions of volatile organic compounds to be substituted for required reductions of oxides of nitrogen, or reductions of oxides of nitrogen to be substituted for required reductions of volatile organic compounds, where appropriate, if not inconsistent with federal law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairs Fantano
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 24th day of November, 1998.

Governor