House Bill No. 4693

(By Delegates Staton, Amores, Hunt, Pino, Tombili, Riggs and L. White)

Passed March 13, 1998

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections one and six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to allowing the department of environmental protection to promote pollution reduction and elimination; providing for findings, policy and purpose; allowing the director to establish a program to assist businesses with pollution reduction and elimination activities; providing duties and powers of the director; requiring release of information when human health or the environment are at risk; granting the director authority to propose legislative rules to implement the pollution reduction and elimination program; and deleting provisions relating to governor’s discretion in appointing director or requiring secretary to act as director.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings; legislative statement of policy and purpose.
(a) The Legislature finds that:

(1) Restoring and protecting the environment is fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for our citizens.

(2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

(3) Governmental decisions on matters which relate to the use, enhancement, preservation, protection and conservation of the environment should be made after public participation and public hearings.

(4) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making and would benefit from the coordination, consolidation and integration of state programs and agencies which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

(5) Those functions of government which regulate the environment should be consolidated in order to accomplish the purposes set forth in this article, to carry out the environmental functions of government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic development consistent with environmental goals and standards.

(b) The Legislature declares that the establishment of a division of environmental protection is in the public interest and will promote the general welfare of the state of West Virginia without sacrificing social and economic development. It is the policy of the state of West Virginia,
in cooperation with other governmental agencies, public
and private organizations, and the citizens of this state, to
use all practicable means and measures to prevent or
eliminate harm to the environment and biosphere, to
create and maintain conditions under which man and
nature can exist in productive harmony, and fulfill the
social, economic and other requirements of present and
future generations. The purposes of this chapter are:

(1) To strengthen the commitment of this state to
restore, maintain and protect the environment;

(2) To consolidate environmental regulatory
programs in a single state agency;

(3) To provide a comprehensive program for the
conservation, protection, exploration, development,
enjoyment and use of the natural resources of the state of
West Virginia;

(4) To supplement and complement the efforts of the
state by coordinating state programs with the efforts of
other governmental entities, public and private
organizations and the general public; to improve the
quality of the environment, the public health and public
enjoyment of the environment, and the propagation and
protection of animal, aquatic and plant life, in a manner
consistent with the benefits to be derived from strong
agricultural, manufacturing, tourism and energy-
producing industries;

(5) Insofar as federal environmental programs require
state participation, to endeavor to obtain and continue state
primacy in the administration of such federally-mandated
environmental programs, and to endeavor to maximize
federal funds which may be available to accomplish the
purposes of the state and federal environmental programs
and to cooperate with appropriate federal agencies to meet
environmental goals;

(6) To encourage the increased involvement of all
citizens in the development and execution of state
environmental programs;
(7) To promote improvements in the quality of the
environment through research, evaluation and sharing of
information;

(8) To improve the management and effectiveness of
state environmental protection programs;

(9) To increase the accountability of state
environmental protection programs to the governor, the
Legislature and the public generally; and

(10) To promote pollution prevention by encouraging
reduction or elimination of pollutants at the source
through process modification, material substitutions, in-
process recycling, reduction of raw material use or other
source reduction opportunities.

§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the
division. Subject to section seven of this article and other
provisions of law, the director shall organize the division
into such offices, sections, agencies and other units of
activity as may be found by the director to be desirable
for the orderly, efficient and economical administration of
the division and for the accomplishment of its objects and
purposes. The director may appoint assistants, hearing
officers, clerks, stenographers and other officers, technical
personnel and employees needed for the operation of the
division and may prescribe their powers and duties and fix
their compensation within amounts appropriated
therefore.

(b) The director has the power to and may designate
supervisory officers or other officers or employees of the
division to substitute for him or her on any board or
commission established under this code or to sit in his or
her place in any hearings, appeals, meetings or other
activities with such substitute having the same powers,
duties, authority and responsibility as the director.
Additionally, the director has the power to delegate, as he
or she considers appropriate, to supervisory officers or
other officers or employees of the division his or her
powers, duties, authority and responsibility relating to
issuing permits, hiring and training inspectors and other
employees of the division, conducting hearings and
appeals and such other duties and functions set forth in
this chapter or elsewhere in this code.

(c) The director has responsibility for the conduct of
the intergovernmental relations of the division, including
assuring: (1) That the division carries out its functions in a
manner which supplements and complements the
environmental policies, programs and procedures of the
federal government, other state governments and other
instrumentalities of this state; and (2) that appropriate
officers and employees of the division consult with
individuals responsible for making policy relating to
environmental issues in the federal government, other state
governments and other instrumentalities of this state
concerning differences over environmental policies,
programs and procedures and concerning the impact of
statutory law and rules upon the environment of this state.

(d) The director has the authority to designate
employees in established programs within the division of
environmental protection to engage in bona fide pollution
prevention and compliance assistance activities as
designated by the director within the state. Disclosure to
the enforcement or other division personnel is not
required unless an imminent hazard to human health or
the environment exists. Pollution prevention and
compliance assistance may not interfere with current or
future enforcement actions by state or federal regulatory
agencies even if such assistance may result in compliance
although the director may modify agency enforcement
actions in light of a facility's implementation of pollution
prevention and waste minimization practices. The director
shall propose for legislative promulgation, legislative rules
pursuant to article three, chapter twenty-nine-a of this
code to implement the provisions of this subsection.

(e) In addition to other powers, duties and
responsibilities granted and assigned to the director by this
chapter, the director is hereby authorized and empowered
to:
(1) Sign and execute in the name of the state by the "division of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the director to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrest; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The
director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director;

(6) Issue certifications required under 33 U.S.C. §1341. Prior to issuing any such certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the director and the division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the director may call upon the attorney general for legal assistance and representation as provided by law.

(f) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor.

(g) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a
candidate for or accepts appointment to any other public
office or political party committee.

(h) The director shall receive an annual salary of
sixty-five thousand dollars and shall be allowed and paid
necessary expenses incident to the performance of his or
her official duties. Prior to the assumption of the duties of
his or her office, the director shall take and subscribe to
the oath required of public officers prescribed by section
five, article IV of the constitution of West Virginia and
shall execute a bond, with surety approved by the
governor, in the penal sum of ten thousand dollars, which
executed oath and bond shall be filed in the office of the
secretary of state. Premiums on the bond shall be paid
from the division funds.
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 ninety days 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 __ day of __________, 1998.

[Signature]
Governor