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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 440

(By Senator Ross)



PASSED MARCH 13, 1999

In Effect NINETY DAYS FROM Passage

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WEST VIRGINIA LEGISLATURE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 440

(SENATOR ROSS, *original sponsor*)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections five, six and fifteen, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state air pollution control requirements; modifying requirements for the issuance of a cease and desist order; clarifying the criminal penalty for knowing misrepresentation of a material fact in a report or other document; and modifying requirements relating to rules for motor vehicle emissions.

Be it enacted by the Legislature of West Virginia:

That sections five, six and fifteen, article five, 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 5. AIR POLLUTION CONTROL.

§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.

1 If, from any investigation made by the director or from
2 any complaint filed with him or her, the director is of the
3 opinion that a person is violating the provisions of this
4 article, or any rules promulgated pursuant thereto, he or
5 she shall make and enter an order directing the person to
6 cease and desist the activity, unless the director deter-
7 mines the violation is of a minor nature or the violation
8 has been abated. The director shall fix a reasonable time
9 in such order by which the activity must stop or be pre-
10 vented. The order shall contain the findings of fact upon
11 which the director determined to make and enter the
12 order.

13 If, after any investigation made by the director, or from
14 any complaint filed with him or her, the director is of the
15 opinion that a permit holder is violating the provisions of
16 this article, or any rules promulgated pursuant thereto, or
17 any order of the director, or any provision of a permit, the
18 director may issue notice of intent to suspend, modify or
19 revoke and reissue such permit. Upon notice of the direc-
20 tor's intent to suspend, modify or revoke a permit, the
21 permit holder may request a conference with the director
22 to show cause why the permit should not be suspended,
23 modified or revoked. The request for conference must be
24 received by the director within fifteen days following
25 receipt of notice. After conference or fifteen days after
26 issuance of notice of intent, if no conference is requested,
27 the director may enter an order suspending, modifying or
28 revoking the permit and send notice to the permit holder.
29 Such order is a cease and desist order for purposes of
30 administrative and judicial review and shall contain
31 findings of fact upon which the director determined to
32 make and enter the order. If an appeal of the director's

33 order is filed, the order of the director shall be stayed from
34 the date of issuance pending a final decision of the board.

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

38 Any person upon whom a copy of the final order has
39 been served may appeal such order to the air quality board
40 pursuant to the provisions of article one, chapter
41 twenty-two-b of this code.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

1 (a) Any person who violates any provision of this article,
2 any permit or any rule or order issued pursuant to this
3 article or article one, chapter twenty-two-b of this code is
4 subject to a civil penalty not to exceed ten thousand
5 dollars for each day of such violation, which penalty shall
6 be recovered in a civil action brought by the director in the
7 name of the state of West Virginia in the circuit court of
8 any county wherein the person resides or is engaged in the
9 activity 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 person is not
12 subject to civil penalties unless the person has been given
13 written notice thereof by the director: *Provided, however*,
14 That for the first such minor violation, if the person
15 corrects the violation within the time as was specified in
16 the notice of violation issued by the director, no civil
17 penalty may be recovered: *Provided further*, That if the
18 person fails to correct a minor violation or for any serious
19 or subsequent serious or minor violation, the person is
20 subject to civil penalties imposed pursuant to this section
21 from the first day of the violation notwithstanding the
22 date of the issuance or receipt of the notice of violation.
23 The director shall, by rule subject to the provisions of
24 chapter twenty-nine-a of this code, determine the defini-
25 tions of serious and minor violations. The amount of any
26 penalty collected by the director shall be deposited in the
27 general revenue of the state treasury according to law.

28 (b) (1) Any person who knowingly misrepresents any
29 material fact in an application, record, report, plan or
30 other document filed or required to be maintained under
31 the provisions of this article or any rules promulgated
32 under this article is guilty of a misdemeanor and, upon
33 conviction thereof, shall be fined not more than
34 twenty-five thousand dollars or imprisoned in the county
35 jail not more than six months or both fined and impris-
36 oned: *Provided*, That if the violation occurs on separate
37 days or is continuing in nature, the fine shall be no more
38 than twenty-five thousand dollars for each day of such
39 violation.

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

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

54 (d) For the purpose of this section, violations on separate
55 days are separate offenses.

§22-5-15. Motor vehicle pollution, inspection and maintenance.

1 (a) As the state of knowledge and technology relating to
2 the control of emissions from motor vehicles may permit
3 or make appropriate and in furtherance of the purposes of
4 this article, the director may provide by legislative rule for
5 the control of emissions from motor vehicles. The legisla-
6 tive rule may prescribe requirements for the installation
7 and use of equipment designed to reduce or eliminate
8 emissions and for the proper maintenance of such equip-
9 ment and of vehicles. Any legislative rule pursuant to this
10 section shall be consistent with provisions of federal law,

11 if any, relating to control of emissions from the vehicles
12 concerned. The director shall not require, as a condition
13 precedent to the initial sale of a vehicle or vehicular
14 equipment, the inspection, certification or other approval
15 of any feature or equipment designed for the control of
16 emissions from motor vehicles, if such feature or equip-
17 ment has been certified, approved or otherwise authorized
18 pursuant to federal law.

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

35 (c) The department of transportation, division of motor
36 vehicles, department of administration, information and
37 communication services division and the state police shall
38 make available technical information and records to the
39 director to implement the legislative rule regarding motor
40 vehicle pollution, inspection and maintenance. The
41 director may promulgate a legislative rule establishing
42 motor vehicle pollution, inspection and maintenance
43 standards and imposing an inspection fee at a rate suffi-
44 cient to implement the motor vehicle inspection program
45 and shall do so when required pursuant to federal law
46 regarding attainment of ambient air quality standards.

47 (d) The director may promulgate a legislative rule
48 requiring maintenance of features of equipment in or on
49 motor vehicles for the purpose of controlling emissions
50 therefrom and shall do so when required pursuant to

51 federal law regarding attainment of ambient air quality
52 standards, and no motor vehicle may be issued a division
53 of motor vehicles registration certificate, or the existing
54 registration certificate shall be revoked, unless the motor
55 vehicle has been found to be in compliance with the
56 director's legislative rule.

57 (e) The remedies and penalties provided in this section
58 and section one, article three, chapter seventeen-a of this
59 code, apply to violations hereof and the provisions of
60 sections six or seven of this article do not apply thereto.

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

That 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 Senate.

In effect ninety days from passage.

[Signature]

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

The within *approved* this the *7th*
Day of *April*, 1999

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 10:47am