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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

House Bill No. 2882

(By Delegates Craig, Morgan, Caputo and Smirl)



Passed March 8, 2003

In Effect Ninety Days from Passage

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LEGISLATIVE SERVICES

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H. B. 2882

(BY DELEGATES CRAIG, MORGAN, CAPUTO AND SMIRL)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section seven, article one, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appeals to the environmental quality boards generally; and limiting requirements for stays for appeals under the surface coal mining and reclamation act for unjust hardship.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL POLICY AND PURPOSE.

§22B-1-7. Appeals to boards.

- 1 (a) The provisions of this section are applicable to all
- 2 appeals to the boards, with the modifications or exceptions set
- 3 forth in this section.

4 (b) Any person authorized by statute to seek review of an
5 order, permit or official action of the chief of air quality, the
6 chief of water resources, the chief of waste management, the
7 chief of mining and reclamation, the chief of oil and gas, or the
8 secretary may appeal to the air quality board, the environmental
9 quality board or the surface mine board, as appropriate, in
10 accordance with this section. The person so appealing shall be
11 known as the appellant and the appropriate chief or the secre-
12 tary shall be known as the appellee.

13 (c) An appeal filed with a board by a person subject to an
14 order, permit or official action shall be perfected by filing a
15 notice of appeal with the board within thirty days after the date
16 upon which such order, permit or official action was received
17 by such person as demonstrated by the date of receipt of
18 registered or certified mail or of personal service. For parties
19 entitled to appeal other than the person subject to such order,
20 permit or official action, an appeal shall be perfected by filing
21 a notice of appeal with the board within thirty days after the
22 date upon which service was complete. For purposes of this
23 subsection, service is complete upon tendering a copy to the
24 designated agent or to the individual who, based upon reason-
25 able inquiry, appears to be in charge of the facility or activity
26 involved, or to the permittee; or by tendering a copy by
27 registered or certified mail, return receipt requested to the last
28 known address of the person on record with the agency. Service
29 is not incomplete by refusal to accept. Notice of appeal must be
30 filed in a form prescribed by the rule of the board for such
31 purpose. Persons entitled to appeal may also file a notice of
32 appeal related to the failure or refusal of the appropriate chief
33 or the secretary to act within a specified time on an application
34 for a permit; such notice of appeal shall be filed within a
35 reasonable time.

36 (d) The filing of the notice of appeal does not stay or
37 suspend the effectiveness or execution of the order, permit or

38 official action appealed from, except that the filing of a notice
39 of appeal regarding a notice of intent to suspend, modify or
40 revoke and reissue a permit, issued pursuant to the provisions
41 of section five, article five, chapter twenty-two of this code,
42 does stay the notice of intent from the date of issuance pending
43 a final decision of the board. If it appears to the appropriate
44 chief, the secretary or the board that an unjust hardship to the
45 appellant will result from the execution or implementation of a
46 chief's or secretary's order, permit or official action pending
47 determination of the appeal, the appropriate chief, the secretary
48 or the board, as the case may be, may grant a stay or suspension
49 of the order, permit or official action and fix its terms: *Pro-*
50 *vided*, That unjust hardship shall not be grounds for granting a
51 stay or suspension of an order, permit or official action for an
52 order issued pursuant to article three, chapter twenty-two of this
53 code. A decision shall be made on any request for a stay within
54 five days of the date of receipt of the request for stay. The
55 notice of appeal shall set forth the terms and conditions of the
56 order, permit or official action complained of and the grounds
57 upon which the appeal is based. A copy of the notice of appeal
58 shall be filed by the board with the appropriate chief or secre-
59 tary within seven days after the notice of appeal is filed with the
60 board.

61 (e) Within fourteen days after receipt of a copy of the notice
62 of appeal, the appropriate chief or the secretary as the case may
63 be, shall prepare and certify to the board a complete record of
64 the proceedings out of which the appeal arises including all
65 documents and correspondence in the applicable files relating
66 to the matter in question. With the consent of the board and
67 upon such terms and conditions as the board may prescribe, any
68 person affected by the matter pending before the board may by
69 petition intervene as a party appellant or appellee. In any appeal
70 brought by a third party, the permittee or regulated entity shall
71 be granted intervenor status as a matter of right where issuance
72 of a permit or permit status is the subject of the appeal. The

73 board shall hear the appeal de novo, and evidence may be
74 offered on behalf of the appellant, appellee and by any
75 intervenors. The board may visit the site of the activity or
76 proposed activity which is the subject of the hearing and take
77 such additional evidence as it considers necessary: *Provided*,
78 That all parties and intervenors are given notice of the visit and
79 are given an opportunity to accompany the board. The appeal
80 hearing shall be held at such location as may be approved by
81 the board including Kanawha County, the county wherein the
82 source, activity or facility involved is located or such other
83 location as may be agreed to among the parties.

84 (f) Any such hearing shall be held within thirty days after
85 the date upon which the board received the timely notice of
86 appeal, unless there is a postponement or continuance. The
87 board may postpone or continue any hearing upon its own
88 motion, or upon application of the appellant, the appellee or any
89 intervenors for good cause shown. The chief or the secretary, as
90 appropriate, may be represented by counsel. If so represented
91 they shall be represented by the attorney general or with the
92 prior written approval of the attorney general may employ
93 counsel who shall be a special assistant attorney general. At any
94 such hearing the appellant and any intervenor may represent
95 themselves or be represented by an attorney-at-law admitted to
96 practice before the supreme court of appeals.

97 (g) After such hearing and consideration of all the testi-
98 mony, evidence and record in the case:

99 (1) The environmental quality board or the air quality
100 board, as the case may be, shall make and enter a written order
101 affirming, modifying or vacating the order, permit or official
102 action of the chief or secretary, or shall make and enter such
103 order as the chief or secretary should have entered, or shall
104 make and enter an order approving or modifying the terms and
105 conditions of any permit issued; and

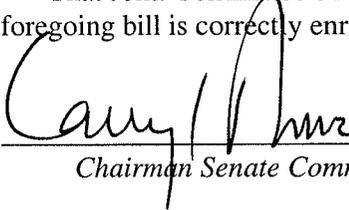
106 (2) The surface mine board shall make and enter a written
107 order affirming the decision appealed from if the board finds
108 that the decision was lawful and reasonable, or if the board
109 finds that the decision was not supported by substantial
110 evidence in the record considered as a whole, it shall make and
111 enter a written order reversing or modifying the decision of the
112 secretary.

113 (h) In appeals of an order, permit or official action taken
114 pursuant to articles, six, eleven, twelve, thirteen, fifteen, chapter
115 twenty-two of this code, the environmental quality board
116 established in article three of this chapter, shall take into
117 consideration, in determining its course of action in accordance
118 with subsection (g) of this section, not only the factors which
119 the appropriate chief or the secretary was authorized to consider
120 in issuing an order, in granting or denying a permit, in fixing
121 the terms and conditions of any permit, or in taking other
122 official action, but also the economic feasibility of treating or
123 controlling, or both, the discharge of solid waste, sewage,
124 industrial wastes or other wastes involved.

125 (i) An order of a board shall be accompanied by findings of
126 fact and conclusions of law as specified in section three, article
127 five, chapter twenty-nine-a of this code, and a copy of such
128 order and accompanying findings and conclusions shall be
129 served upon the appellant, and any intervenors, and their
130 attorneys of record, if any, and upon the appellee in person or
131 by registered or certified mail.

132 (j) The board shall also cause a notice to be served with the
133 copy of such order, which notice shall advise the appellant, the
134 appellee and any intervenors of their right to judicial review, in
135 accordance with the provisions of this chapter. The order of the
136 board shall be final unless vacated or modified upon judicial
137 review thereof in accordance with the provisions of this chapter.

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



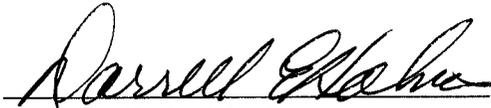
Chairman Senate Committee



Chairman House Committee

Originating in the House.

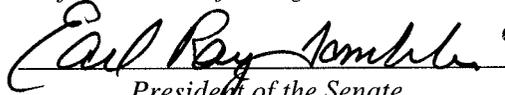
In effect ninety days from passage



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 15th
day of April, 2003.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/26/03

Time 3:50 pm