

US EPA ARCHIVE DOCUMENT

APPENDIX I  
WEST VIRGINIA HAZARDOUS  
WASTE MANAGEMENT ACT  
ACT

## ARTICLE 5E.

### HAZARDOUS WASTE MANAGEMENT ACT.

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#### § 20-5E-1. Short title.

This article may be known and cited as the "Hazardous Waste Management Act." (1981, c. 119.)

### § 20-5E-2. Declaration of policy.

(a) The legislature finds that:

(1) Continuing technological progress and increases in the amount of manufacture and the abatement of air and water pollution have resulted in ever increasing quantities of hazardous wastes;

(2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner;

(3) The knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available;

(4) The manufacture, refinement, processing, treatment and use of coal, raw chemicals, ores, petroleum, gas and other natural and synthetic products are activities that make a significant contribution to the economy of this State; and

(5) The problem of managing hazardous wastes has become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this article are:

(1) To protect the public health and safety, and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes;

(3) To assure the safe and adequate management of hazardous wastes within this State; and

(4) To assume regulatory primacy through Subtitle C of the federal Solid Waste Disposal Act, as amended. (1981, c. 119.)

**Editor's note.** — The federal Solid Waste Disposal Act, referred to in (b)(4), is compiled in 42 U.S.C. §§ 3251 — 3259, 6901 et seq.

### § 20-5E-3. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Chief" means the chief of the division of water resources of the department of natural resources;

(2) "Director" means the director of the department of natural resources;

(3) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters;

(4) "Division" means the division of water resources of the department of natural resources;

(5) "Generation" means the act or process of producing hazardous waste materials;

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(6) "Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

(7) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

(8) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

(9) "Person" means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this State or any other state, municipality, county commission or any other political subdivision of a state or any interstate body;

(10) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

(11) "Treatment" means any method, technique or process including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(12) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended, or source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954, as amended. (1981, c. 119.)

Editor's notes. — The federal Water Pollution Control Act, referred to in (12), is compiled in 33 U.S.C. § 1151 et seq.

The federal Atomic Energy Act of 1954, referred to in (12), is compiled in 42 U.S.C. § 2011 et seq.

**§ 20-5E-4. Designation of department of natural resources as the state hazardous waste management lead agency.**

The department of natural resources is hereby designated as the hazardous waste management lead agency for this State for purposes of Subtitle C of the federal Solid Waste Disposal Act as amended, and is hereby authorized to take all action necessary or appropriate to secure to this State the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the federal environmental protection agency and other agencies of the federal government, this State and other states, and other interested persons in all matters relating to hazardous waste management. (1981, c. 119.)

**Editor's note.** — The federal Solid Waste Disposal Act, referred to above, is compiled in 42 U.S.C. §§ 3251 — 3259, 6901 et seq.

**§ 20-5E-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.**

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the federal Solid Waste Disposal Act, as amended as of the effective date of this article [July 9, 1981].

(b) The director shall integrate all provisions of this article for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with the appropriate provisions of the Water Pollution Control Act, article five-A [§ 20-5A-1 et seq.] of this chapter; the Surface Mining and Reclamation Act, article six [§ 20-6-1 et seq.] of this chapter; the Coal Refuse Disposal Control Act, article six-C [§ 20-6C-1 et seq.] of this chapter; the Air Pollution Control Act, article twenty [§ 16-20-1 et seq.], chapter sixteen of this Code; the Oil and Gas Laws of article four [§ 22-4-1 et seq.], chapter twenty-two of this Code; the Public Health Laws, chapter sixteen [§ 16-1-1 et seq.] of this Code; the Dam Control Act, article five-D [§ 20-5D-1 et seq.] of this chapter; the Pesticide Use and Application Act of 1975, article sixteen-B [§ 19-16B-1 et seq.], chapter nineteen of this Code; and the Pesticide Act of 1961, article sixteen-A [§ 19-16A-1 et seq.], chapter nineteen of this Code.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts or cooperative arrangements, under such terms and conditions as he deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

(d) The director shall cooperate with and may receive and expend money from the federal government and other sources.

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(e) Within twelve months after the effective date of this article [July 9, 1981], the director, or upon designation by the director, the chief, shall conduct and publish a study of hazardous waste management in this State which shall include, but not be limited to:

(1) A description of the sources of hazardous waste generation within the State, including the types and quantities of such wastes;

(2) A description of current hazardous waste management practices and costs, including treatment, storage and disposal within the State; and

(3) An inventory of existing and abandoned hazardous waste treatment, storage and disposal sites.

(f) The director, or upon designation by the director, the chief, in preparing the study provided for in subsection (e) of this section may (1) require any owner or operator of a storage, treatment or disposal facility, or site, or any transporter or generator of hazardous wastes to furnish or permit access to any and all information that may reasonably be required to fulfill the duty imposed upon him in subsection (e) of this section, and (2) may issue subpoenas or subpoena duces tecum to compel the production of information regarding the location of any existing or abandoned hazardous waste treatment, disposal or storage site as well as production of information regarding quantity, quality and hazardous waste management practices from any generator or transporter of hazardous waste or any owner or operator of an existing or abandoned hazardous waste treatment, storage or disposal site.

(g) The director, or upon designation by the director, the chief, shall (1) encourage, participate in and conduct an ongoing investigation and analysis of methods, incentives, technologies of source reduction, reuse, recycling or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste, and (2) investigate the feasibility of operating an information clearinghouse for hazardous wastes.

(h) The director, or upon designation by the director, the chief, shall provide for the continuing education and training of appropriate department personnel in matters of hazardous waste management. (1981, c. 119.)

**Editor's note.** — The federal Solid Waste Disposal Act, referred to in (a), is compiled in 42 U.S.C. §§ 3251 — 3259, 6901 et seq.

**§ 20-5E-6. Promulgation of regulations by director.**

(a) The director has overall responsibility for the promulgation of rules and regulations under this article. Within six months of the effective date of this article [July 9, 1981] the director shall promulgate the following rules and regulations; in consultation with the department of health, the air pollution control commission, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the department of highways, the department of agriculture, the water resources board and the department of mines office of oil and gas. In promulgating and revising such rules and regulations the director shall comply with the provisions of chapter twenty-nine-A [§ 29A-1-1 et seq.] of this Code, shall avoid duplication

to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five [§ 20-5E-5(b)] of this article and shall be consistent with the rules and regulations promulgated by the federal environmental protection agency pursuant to the federal Solid Waste Disposal Act, as amended:

(1) Rules and regulations establishing a plan for the safe and effective management of hazardous wastes within the State;

(2) Rules and regulations establishing criteria for identifying the characteristics of hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of this article: Provided, that:

(A) Each waste listed below shall, except as provided in subparagraph (B) of this subdivision, be subject only to regulation under other applicable provisions of federal or state law in lieu of this article until proclamation by the governor finding that at least six months have elapsed since the date of submission of the applicable study required to be conducted under section 8002 of the federal Solid Waste Disposal Act, as amended, and that regulations have been promulgated with respect to such wastes in accordance with section 3001 (b) (3) (C) of the federal Solid Waste Disposal Act, as amended, and finding in the case of the wastes identified in paragraph (iv) of this subparagraph that the regulation of such wastes have been authorized by an act of Congress in accordance with section 3001 (b) (2) of the federal Solid Waste Disposal Act, as amended:

(i) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes listed in subparagraph (A) of this subdivision may be required by the director of the department of natural resources through regulation prescribed under authority of this section;

(i) As to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future; and

(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(3) Rules and regulations establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting (A) record keeping practices that accurately identify the quantities of such hazardous waste generated, the

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constituents thereof which are significant in quantity or in potential harm to human health of the environment and the disposition of such wastes, (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste, (C) use of appropriate containers for such hazardous waste, (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting, treating, storing or disposing of such wastes, (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) with respect to which permits have been issued which are required (1) by this article or any rule and regulation required by this article to be promulgated, (2) by Subtitle C of the federal Solid Waste Disposal Act, as amended, (3) by the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the federal Solid Waste Disposal Act, as amended, or (4) by title I of the federal Marine Protection, Research and Sanctuaries Act and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules and regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such rules and regulations and shall include, but need not be limited to, requirements respecting: (A) Maintaining records of all hazardous wastes identified or listed under this article which are treated, stored or disposed of, as the case may be, and the manner in which such wastes were treated, stored or disposed of; (B) satisfactory reporting, monitoring and inspection and compliance with the manifest system referred to in subdivision (3), subsection (a) of this section; (C) treatment, storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the directors; (D) the location, design and construction of such hazardous waste treatment, disposal or storage facilities; (E) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any such hazardous waste; (F) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment,

storage or disposal of specified hazardous waste; and (G) compliance with the requirements of section eight [§ 20-5E-8] of this article respecting permits for treatment, storage or disposal;

(5) Rules and regulations specifying the terms and conditions under which the chief shall issue, modify, suspend, revoke or deny such permits as may be required by this article;

(6) Rules and regulations for the establishment and maintenance of records; the making of reports; the taking of samples and the performing of tests and analyses; the installing, calibrating, operating and maintaining of monitoring equipment or methods; and the providing of any other information as may be necessary to achieve the purposes of this article;

(7) Rules and regulations establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites;

(8) Rules and regulations for public participation in the implementation of this article;

(9) Rules and regulations establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(10) Rules and regulations establishing procedures and requirements for the submission and approval of a plan, applicable to owners or operators of hazardous waste storage, treatment and disposal facilities, as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences and nonsudden and accidental occurrences;

(11) Rules and regulations establishing a schedule of fees to recover the costs of processing permit applications and permit renewals; and

(12) Such other rules and regulations as are necessary to effectuate the purposes of this article.

(b) The rules and regulations required by this article to be promulgated shall be reviewed and where necessary, revised not less frequently than every three years. Additionally, the rules and regulations required to be promulgated by this article shall be revised, as necessary, within six months of the effective date of any amendment of the federal Solid Waste Disposal Act and within six months of the effective date of any adoption or revision of rules and regulations required to be promulgated by the federal Solid Waste Disposal Act, as amended.

(c) Notwithstanding any other provision in this article the director shall not promulgate rules and regulations which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven [§ 20-5E-7] of this article. (1981, c. 119.)

**Editor's notes.** — The federal Solid Waste Disposal Act, referred to above, is compiled in 42 U.S.C. §§ 3251 — 3259, 6901 et seq.

The federal Marine Protection, Research and

Sanctuaries Act, referred to above, is compiled in 16 U.S.C. §§ 1431 — 1434, 33 U.S.C. § 1401 et seq.

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§20-5E-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of highways, in consultation with  
2 the director, and avoiding inconsistencies with and  
3 avoiding duplication to the maximum extent practicable  
4 with rules and regulations required to be promulgated  
5 pursuant to this article by the director or any other rule-  
6 making authority, and in accordance with the provisions of  
7 chapter twenty-nine-a of this code, shall promulgate, as  
8 necessary, rules and regulations governing the  
9 transportation of hazardous wastes by vehicle upon the  
10 roads and highways of this state. Such rules and regulations  
11 shall be consistent with applicable rules and regulations  
12 issued by the federal department of transportation and  
13 consistent with this article: *Provided*, That such rules and  
14 regulations shall apply to the interstate transportation of  
15 hazardous wastes as well as the intrastate transportation of  
16 such waste within the boundaries of this state.

17 In lieu of those enforcement and inspection powers  
18 conferred upon the commissioner of highways elsewhere by  
19 law with respect to the transportation of hazardous waste,  
20 the commissioner of highways has the same enforcement  
21 and inspection powers as those granted to the chief, his  
22 authorized representative or agent, or any authorized  
23 employee or agent of the department of natural resources,  
24 as the case may be, under sections eleven, twelve, thirteen,  
25 fourteen, fifteen, sixteen and seventeen of this article. The  
26 limitations of this subsection shall not affect in any way the  
27 powers of the department of highways with respect to  
28 weight enforcement.

29 (b) The public service commission, in consultation with  
30 the director, and avoiding inconsistencies with and  
31 avoiding duplication to the maximum extent practicable  
32 with rules and regulations required to be promulgated  
33 pursuant to this article by the director or any other rule-  
34 making authority, and in accordance with the provisions of  
35 chapter twenty-nine-a of this code, shall promulgate, as  
36 necessary, rules and regulations governing the  
37 transportation of hazardous wastes by railroad in this state.  
38 Such rules and regulations shall be consistent with  
39 applicable rules and regulations issued by the federal  
40 department of transportation and consistent with this

41 article: *Provided*, That such rules and regulations apply to  
42 the interstate transportation of hazardous wastes as well as  
43 the intrastate transportation of such wastes within the  
44 boundaries of this state.

45 In lieu of those enforcement and inspection powers  
46 conferred upon the public service commission elsewhere by  
47 law with respect to the transportation of hazardous waste,  
48 the public service commission has the same enforcement  
49 and inspection powers as those granted to the chief, his  
50 authorized representative or agent or any authorized  
51 employee or agent of the department of natural resources,  
52 as the case may be, under sections eleven, twelve, thirteen,  
53 fourteen, fifteen, sixteen and seventeen of this article.

54 (c) The rules and regulations required to be  
55 promulgated pursuant to subsections (a) and (b) of this  
56 section shall apply equally to those persons transporting  
57 hazardous wastes generated by others and to those  
58 transporting hazardous wastes they have generated  
59 themselves or combinations thereof. Such rules and  
60 regulations shall establish such standards, applicable to  
61 transporters of hazardous waste identified or listed under  
62 this article, as may be necessary to protect public health,  
63 safety and the environment. Such standards shall include,  
64 but need not be limited to, requirements respecting (A)  
65 record keeping concerning such hazardous waste  
66 transported, and their source and delivery points, (B)  
67 transportation of such waste only if properly labeled, (C)  
68 compliance with the manifest system referred to in  
69 subdivision (3), subsection (a), section six of this article, and  
70 (D) transportation of all such hazardous waste only to the  
71 hazardous waste treatment, storage or disposal facilities  
72 which the shipper designates on the manifest form to be a  
73 facility holding a permit issued under: (1) This article or any  
74 rule and regulation required by this article to be  
75 promulgated; (2) Subtitle C of the federal Solid Waste  
76 Disposal Act, as amended; (3) the laws of any other state  
77 which has an authorized hazardous waste program  
78 pursuant to Section 3006 of the federal Solid Waste  
79 Disposal Act, as amended; or (4) Title I of the federal Marine  
80 Protection, Research and Sanctuaries Act.

81 (d) The state board of health of the state department of

82 health, in consultation with the director of the department  
83 of natural resources, and avoiding inconsistencies with, and  
84 avoiding duplication to the maximum extent practicable  
85 with rules and regulations required to be promulgated  
86 pursuant to this article by the director of the department of  
87 natural resources or any other rule-making authority, shall  
88 promulgate rules and regulations establishing standards  
89 applicable to permitting, licensing and operation of  
90 facilities that treat, store or dispose of hazardous wastes  
91 with infectious characteristics. Such rules and regulations  
92 shall specify the terms, conditions and procedures under  
93 which the state director of health or his authorized  
94 representative shall issue, modify, suspend, revoke or deny  
95 such permits required pursuant to those regulations. Such  
96 permits as the board of health regulations may require shall  
97 be issued by the state director of health or his authorized  
98 representative. All rules and regulations promulgated  
99 under this subsection shall be promulgated in accordance  
100 with the provisions of chapter twenty-nine-a of this code.  
101 Nothing in this subsection shall be construed to diminish or  
102 alter the authority of the air pollution control commission  
103 or its director under this article or article twenty, chapter  
104 sixteen of this code: *Provided*, That such permitting or  
105 licensing required by this subsection shall be in addition to  
106 those permits required by section eight of this article. Such  
107 rules and regulations shall be consistent with this article  
108 and shall be promulgated within six months of the effective  
109 date of this article.

110 Any person aggrieved or adversely affected by an order of  
111 the state director of health pursuant to this article, or the  
112 denial or issuance of a permit, or the failure or refusal of  
113 said director to act within a reasonable time on an  
114 application for a permit or the terms or conditions of a  
115 permit granted under the provisions of this article, may  
116 appeal to a special hearing examiner appointed to hear  
117 contested cases in accordance with the provisions of  
118 chapter twenty-nine-a of this code. All procedures for  
119 appeal and conduct of hearings shall comply with rules and  
120 regulations promulgated by the state board of health.  
121 Unless the board of health directs otherwise, the appeal  
122 hearing shall be held in the city of Charleston, Kanawha  
123 County.

124 In lieu of those enforcement and inspection powers  
125 conferred upon the state director of health elsewhere by law  
126 with respect to hazardous waste with infectious  
127 characteristics, the state director of health shall have the  
128 same enforcement and inspection powers as those granted  
129 to the chief, his authorized representative or agent or any  
130 authorized employee or agent of the department of natural  
131 resources, as the case may be, under sections eleven, twelve,  
132 thirteen, fourteen, fifteen, sixteen and seventeen of this  
133 article.

134 (e) The director shall rely, to the maximum extent  
135 practicable, on the department of health for expertise on  
136 the adverse effects of toxic hazardous waste on human  
137 health.

138 (f) The air pollution control commission, in consultation  
139 with the director, and avoiding inconsistencies with and  
140 avoiding duplication to the maximum extent practicable  
141 with rules and regulations required to be promulgated  
142 pursuant to this article by the director or any other rule-  
143 making authority, and in accordance with the provisions of  
144 article twenty, chapter sixteen and chapter twenty-nine-a  
145 of this code, shall promulgate such rules and regulations  
146 establishing air pollution performance standards and  
147 permit requirements and procedures as may be necessary to  
148 comply with the requirements of this article. Such permits  
149 shall be in addition to those permits required by section  
150 eight of this article. All rules and regulations promulgated  
151 pursuant to this subsection shall be consistent with this  
152 article.

153 With respect to this article, and any rules or regulations  
154 promulgated pursuant thereto, the director of the air  
155 pollution control commission has the same enforcement  
156 and inspection powers as those of the chief under sections  
157 eleven, twelve, thirteen, fourteen, fifteen, sixteen and  
158 seventeen of this article: *Provided*, That no action for  
159 penalties may be initiated by the director of the air  
160 pollution control commission without the approval of that  
161 commission. Any person aggrieved or adversely affected by  
162 an order of the director of the air pollution control  
163 commission made and entered in accordance with the  
164 provisions of this article, or by the failure or refusal of said  
165 director to act within a reasonable time on an application

166 for a permit or by the issuance or denial of or by the terms  
167 and conditions of a permit granted under the provisions of  
168 this article, may appeal to the air pollution control  
169 commission in accordance with the procedure set forth in  
170 section six, article twenty, chapter sixteen of this code, and  
171 orders made and entered by said commission shall be  
172 subject to judicial review in accordance with the  
173 procedures set forth in section seven, article twenty,  
174 chapter sixteen of this code, except that as to cases  
175 involving an order granting or denying an application for a  
176 permit, revoking or suspending a permit or approving or  
177 modifying the terms and conditions of a permit or the  
178 failure to act within a reasonable time on an application for  
179 a permit, the petition for judicial review shall be filed in the  
180 circuit court of Kanawha County.

181 (g) The director of the department of natural resources  
182 has exclusive responsibility for carrying out any  
183 requirement of this article with respect to coal mining  
184 wastes or overburden for which a permit is issued under the  
185 surface coal mining and reclamation act of 1980, article six  
186 of this chapter.

187 (h) To the extent that this article relates to activities  
188 with respect to oil and gas wells, liquid injection wells and  
189 waste disposal wells now regulated by articles four, four-b  
190 and seven, chapter twenty-two of this code, the  
191 administrator of the office of oil and gas and the shallow  
192 gas-well review board has the jurisdiction with respect to  
193 the regulation of such activities and shall promulgate such  
194 rules and regulations as may be necessary to comply with  
195 the requirements of this article: *Provided*, That nothing in  
196 this subsection may be construed to diminish or alter the  
197 authority and responsibility of the chief or the water  
198 resources board under articles five and five-a, chapter  
199 twenty of this code.

200 In lieu of those enforcement and inspection powers  
201 conferred upon the administrator of the office of oil and gas  
202 and the shallow gas-well review board elsewhere by law,  
203 with respect to hazardous wastes, the administrator of the  
204 office of oil and gas and the shallow gas-well review board  
205 have the same enforcement and inspection powers as those  
206 granted to the chief, his authorized representative or agent

207 or any authorized employee or agent of the department of  
208 natural resources, as the case may be, under sections eleven,  
209 twelve, thirteen, fourteen, fifteen, sixteen and seventeen of  
210 this article.

211 (i) The water resources board, in consultation with the  
212 director, and avoiding inconsistency with and avoiding  
213 duplication to the maximum extent practicable with rules  
214 and regulations required to be promulgated pursuant to  
215 this article by the director or any other rule-making  
216 authority, and in accordance with the provisions of chapter  
217 twenty-nine-a of this code, shall, as necessary, promulgate  
218 rules and regulations governing discharges into the waters  
219 of this state of hazardous waste resulting from the  
220 treatment, storage or disposal of hazardous waste as may be  
221 required by this article. Such rules and regulations shall be  
222 consistent with this article.

223 (j) All rules and regulations promulgated pursuant to  
224 this section shall be consistent with rules and regulations  
225 promulgated by the federal environmental protection  
226 agency pursuant to the federal Solid Waste Disposal Act, as  
227 amended.

228 (k) The director shall submit his written comments to  
229 the legislative rule-making review committee regarding all  
230 rules and regulations promulgated pursuant to this article.

**§20-5E-8. Permit process; undertaking activities without a permit.**

1 (a) No person may own, construct, modify, operate or  
2 close any facility or site for the treatment, storage or  
3 disposal of hazardous waste identified or listed under this  
4 article, nor shall any person store, treat or dispose of any  
5 such hazardous waste without first obtaining a permit from  
6 the chief for such facility, site or activity and all other  
7 permits as required by law. Such permit shall be issued,  
8 after public notice and opportunity for public hearing,  
9 upon such reasonable terms and conditions as the chief may  
10 direct if the application, together with all supporting  
11 information and data and other evidence establishes that  
12 the construction, modification, operation or closure, as the  
13 case may be, of the hazardous waste facility, site or activity  
14 will not violate any provisions of this article or any of the  
15 rules and regulations promulgated by the director as

16 required by this article: *Provided*, That in issuing the  
17 permits required by this subsection, the chief shall not  
18 regulate those aspects of a hazardous waste treatment,  
19 storage or disposal facility which are the subject of the  
20 permitting or licensing requirements of section seven of this  
21 article, and which need not be regulated in order for the  
22 chief to perform his duties under this article.

23 (b) The chief shall prescribe a form of application for all  
24 permits issued by the chief.

25 (c) The chief may require a plan for the closure of such  
26 facility or site to be submitted along with an application for  
27 a permit which plan for closure shall comply in all respects  
28 with the requirements of this article and any rules and  
29 regulations promulgated hereunder. Such plan of closure  
30 shall be subject to modification upon application by the  
31 permit holder to the chief and approval of such  
32 modification by the chief.

33 (d) An environmental analysis shall be submitted with  
34 the permit application for all hazardous waste treatment,  
35 storage or disposal facilities which are major facilities as  
36 that term may be defined by rules and regulations  
37 promulgated by the director: *Provided*, That facilities in  
38 existence on the nineteenth day of November, one thousand  
39 nine hundred eighty, need not comply with this subsection.  
40 Such environmental analysis shall contain information of  
41 the type, quality and detail that will permit adequate  
42 consideration of the environmental, technical and  
43 economic factors involved in the establishment and  
44 operation of such facilities:

45 (1) The portion of the applicant's environmental  
46 analysis dealing with environmental assessments shall  
47 contain, but not be limited to:

48 (A) The potential impact of the method and route of  
49 transportation of hazardous waste to the site and the  
50 potential impact of the establishment and operation of such  
51 facilities on air and water quality, existing land use,  
52 transportation and natural resources in the area affected by  
53 such facilities;

54 (B) A description of the expected effect of such  
55 facilities; and

56 (C) Recommendations for minimizing any adverse  
57 impact.

58 (2) The portion of the applicant's environmental  
59 analysis dealing with technical and economic assessments  
60 shall contain, but not be limited to:

61 (A) Detailed descriptions of the proposed site and  
62 facility, including site location and boundaries and facility  
63 purpose, type, size, capacity and location on the site and  
64 estimates of the cost and charges to be made for material  
65 accepted, if any;

66 (B) Provisions for managing the site following cessation  
67 of operation of the facility; and

68 (C) Qualifications of owner and operation, including a  
69 description of the applicant's prior experience in hazardous  
70 waste management operations.

71 (e) Any person undertaking, without a permit, any of  
72 the activities for which a permit is required under this  
73 section or under section seven of this article, or any person  
74 violating any term or condition under which a permit has  
75 been issued pursuant to this section or pursuant to section  
76 seven of this article, shall be subject to the enforcement  
77 procedures of this article.

78 (f) Notwithstanding any provision to the contrary in  
79 subsections (a) through (e) of this section or section seven of  
80 this article, any surface coal mining and reclamation permit  
81 covering any coal mining wastes or overburden which has  
82 been issued or approved under the surface coal mining and  
83 reclamation act of 1980, article six of this chapter, shall be  
84 considered to have all necessary permits issued pursuant to  
85 this article with respect to the treatment, storage or  
86 disposal of such wastes or overburden. Rules and  
87 regulations promulgated under this article are not  
88 applicable to treatment, storage or disposal of coal mining  
89 wastes and overburden which are covered by such a permit.

#### § 20-5E-9. Public participation in permit process.

Before the issuing of a permit to any person with respect to any facility for the treatment, storage or disposal of hazardous waste under sections seven or eight [§§ 20-5E-7 or 20-5E-8] of this article, the chief or other permit issuing authority shall:

(a) Cause to be published as a Class I-O legal advertisement in a newspaper of general circulation, and the publication area shall be the county wherein the real estate or greater portion thereof is situate, and broadcast over local radio stations notice of the chief's or other permit issuing authority's intention to issue such permit; and

(b) Transmit written notice of the chief's or other permit issuing authority's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of such facility.

If within forty-five days the chief or other permit issuing authority receives written notice of opposition to the chief's or other permit issuing authority's intention to issue such permit and a request for a hearing, or if the chief or other permit issuing authority determines on his own initiative, to have a

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hearing he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the chief or other permit issuing authority shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time and subject matter of such hearing. (1981, c. 119.)

**Cross reference.** — Class I-O legal advertisement, § 59-3-2.

**§ 20-5E-10. Transition program for existing facilities.**

Any person who owns or operates a facility required to have any permit under this article, which facility is in existence on the effective date of this article [July 9, 1981], shall be treated as having been issued such permit until such time as final administrative disposition is made with respect to an application for such permit: Provided, that on the effective date of this article [July 9, 1981] such facility is operating and continues to operate in compliance with the interim status requirement of the federal environmental protection agency established pursuant to section 3005 of the federal Solid Waste Disposal Act, as amended, if applicable, and in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment: Provided, however, that the owner or operator of such facility shall make a timely and complete application for such permit in accordance with rules and regulations promulgated pursuant to this article specifying procedures and requirements for obtaining such permit. (1981, c. 119.)

**Editor's note.** — The federal Solid Waste Disposal Act, referred to above, is compiled in 42 U.S.C. §§ 3251 — 3259, 6901 et seq.

**§ 20-5E-11. Confidential information.**

Information obtained by any agency under this article shall be available to the public unless the chief certifies such information to be confidential. The chief may make such certification where any person shows, to the satisfaction of the chief, that the information or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this section may be construed as limiting the disclosure of information by the division to any officer, employee or authorized representative of the state or federal government concerned with effecting the purposes of this article.

Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned. (1981, c. 119.)

**§20-5E-12. Inspections; right of entry; sampling; reports and analyses; subpoenas.**

1 (a) The chief or any authorized representative,  
2 employee or agent of the division, upon the presentation of  
3 proper credentials and at reasonable times, may enter any  
4 building, property, premises, place, vehicle or permitted  
5 facility where hazardous wastes are or have been generated,  
6 treated, stored, transported or disposed of for the purpose  
7 of making an investigation with reasonable promptness to  
8 ascertain the compliance by any person with the provisions  
9 of this article or the rules and regulations promulgated by  
10 the director or permits issued by the chief hereunder.

11 (b) The chief or his authorized representative, employee  
12 or agent shall make periodic inspections at every permitted  
13 facility as necessary to effectively implement and enforce  
14 the requirements of this article or the rules and regulations  
15 promulgated by the director or permits issued by the chief  
16 hereunder. After an inspection is made, a report shall be  
17 prepared and filed with the chief and a copy of such  
18 inspection report shall be promptly furnished to the person  
19 in charge of such building, property, premises, place,  
20 vehicle or facility. Such inspection reports shall be  
21 available to the public in accordance with the provisions of  
22 article one, chapter twenty-nine-b of this code.

23 (c) Whenever the chief has cause to believe that any  
24 person is in violation of any provision of this article, any  
25 condition of a permit issued by the chief, any order or any  
26 regulation promulgated by the director under this article,  
27 he shall immediately order an inspection of the building,  
28 property, premises, place, vehicle or permitted facility at  
29 which the alleged violation is occurring.

30 (d) The chief or any authorized representative,  
31 employee or agent of the division may, upon presentation of  
32 proper credentials and at reasonable times, enter any  
33 establishment, building, property, premises, vehicle or  
34 other place maintained by any person where hazardous  
35 wastes are being or have been generated, transported,  
36 stored, treated or disposed of to inspect and take samples of  
37 wastes, soils, air, surface water and ground water and  
38 samples of any containers or labelings for such wastes. In  
39 taking such samples, the division may utilize such sampling  
40 methods as it determines to be necessary, including, but not  
41 limited to, soil borings and monitoring wells. If the  
42 representative, employee or agent obtains any such  
43 samples, prior to leaving the premises, he shall give to the  
44 owner, operator or agent in charge a receipt describing the  
45 sample obtained and, if requested, a portion of each such  
46 sample equal in volume or weight to the portion retained.  
47 The division shall promptly provide a copy of any analysis  
48 made to the owner, operator or agent in charge.

49 (e) Upon presentation of proper credentials and at  
50 reasonable times, the chief or any authorized  
51 representative, employee or agent of the division shall be  
52 given access to all records relating to the generation,  
53 transportation, storage, treatment or disposal of hazardous  
54 waste in the possession of any person who generates, stores,  
55 treats, transports, disposes of, or otherwise handles or has  
56 handled such waste, the chief or an authorized  
57 representative, employee or agent shall be furnished with  
58 copies of all such records or given the records for the  
59 purpose of making copies. If the chief, upon inspection,  
60 investigation or through other means, observes or learns of  
61 a violation or probable violation of this article, he is  
62 authorized to issue subpoenas and subpoenas duces tecum  
63 and to order the attendance and testimony of witnesses and  
64 to compel the production of any books, papers, documents,  
65 manifests and other physical evidence pertinent to such  
66 investigation or inspection.

**§20-5E-13. Monitoring, analysis and testing.**

1 (a) If the chief determines, upon receipt of any  
2 information, that (1) the presence of any hazardous waste at  
3 a facility or site at which hazardous waste is, or has been,  
4 stored, treated or disposed of, or (2) the release of any such  
5 waste from such facility or site may present a substantial  
6 hazard to human health or the environment, he may issue an  
7 order requiring the owner or operator of such facility or site  
8 to conduct such monitoring, testing, analysis and reporting  
9 with respect to such facility or site as the chief deems  
10 reasonable to ascertain the nature and extent of such  
11 hazard.

12 (b) In the case of any facility or site not in operation at  
13 the time a determination is made under subsection (a) of  
14 this section with respect to the facility or site, if the chief  
15 finds that the owner of such facility or site could not  
16 reasonably be expected to have actual knowledge of the  
17 presence of hazardous waste at such facility or site and of its  
18 potential for release, he may issue an order requiring the  
19 most recent previous owner or operator of such facility or  
20 site who could reasonably be expected to have such actual  
21 knowledge to carry out the actions referred to in subsection  
22 (a) of this section.

23 (c) An order under subsection (a) or (b) of this section  
24 shall require the person to whom such order is issued to  
25 submit to the chief within thirty days from the issuance of  
26 such order a proposal for carrying out the required  
27 monitoring, testing, analysis and reporting. The chief may,  
28 after providing such person with an opportunity to confer  
29 with the chief respecting such proposal, require such person  
30 to carry out such monitoring, testing, analysis and  
31 reporting in accordance with such proposal, and such  
32 modifications in such proposal as the chief deems  
33 reasonable to ascertain the nature and extent of the hazard.

34 (d) The following duties shall be carried out by the  
35 chief:

36 (1) If the chief determines that no owner or operator  
37 referred to in subsection (a) or (b) of this section is able to  
38 conduct monitoring, testing, analysis or reporting  
39 satisfactory to the chief, if the chief deems any such action  
40 carried out by an owner or operator to be unsatisfactory or  
41 if the chief cannot initially determine that there is an owner  
42 or operator referred to in subsection (a) or (b) of this section  
43 who is able to conduct such monitoring, testing, analysis or  
44 reporting, he may conduct monitoring, testing or analysis  
45 (or any combination thereof) which he deems reasonable to  
46 ascertain the nature and extent of the hazard associated  
47 with the site concerned, or authorize a state or local  
48 authority or other person to carry out any such action, and  
49 require, by order, the owner or operator referred to in  
50 subsection (a) or (b) of this section to reimburse the chief or  
51 other authority or person for the costs of such activity.

52 (2) No order may be issued under this subsection  
53 requiring reimbursement of the costs of any action carried  
54 out by the chief which confirms the results of the order  
55 issued under subsection (a) or (b) of this section.

56 (e) If the monitoring, testing, analysis and reporting  
57 conducted pursuant to this section indicates that a  
58 potential hazard to human health or the environment may  
59 or does exist, the chief may issue an appropriate order  
60 requiring that the hazard or risk of hazard be eliminated.

61 (f) The chief may commence a civil action against any  
62 person who fails or refuses to comply with any order issued  
63 under this section. Such action shall be brought in the

64 circuit court in which the defendant is located, resides or is  
65 doing business. Such court has jurisdiction to require  
66 compliance with such order and to assess a civil penalty of  
67 not to exceed five thousand dollars for each day during  
68 which such failure or refusal occurs.

**§ 20-5E-14. Enforcement orders; hearings.**

(a) If the chief, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or rules or regulations issued or promulgated hereunder, he may issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the chief not more than seven days from the issuance of such order and shall have a hearing before the chief contesting the terms and conditions of such order within ten days of the filing of such notice of a request for reconsideration. The filing of a notice of request for reconsideration shall not stay or suspend the execution or enforcement of such cease and desist order. (1981, c. 119.)

**§20-5E-15. Criminal penalties.**

1 (a) If any person knowingly (1) transports any  
2 hazardous waste identified or listed under this article to a  
3 facility which does not have a permit required by this  
4 article, Section 3005 of the federal Solid Waste Disposal  
5 Act, as amended, the laws of any other state which has an  
6 authorized hazardous waste program pursuant to Section  
7 3006 of the federal Solid Waste Disposal Act, as amended,  
8 or Title I of the federal Marine Protection, Research and  
9 Sanctuaries Act; (2) treats, stores or disposes of any such  
10 hazardous waste either (A) without having obtained a  
11 permit required by this article, or by Title I of the Federal  
12 Marine Protection, Research and Sanctuaries Act, or by  
13 Section 3005 or 3006 of the federal Solid Waste Disposal  
14 Act, as amended, or (B) in knowing violation of a material  
15 condition or requirement of such permit, he shall be guilty  
16 of a felony, and, upon conviction thereof, shall be fined not  
17 to exceed fifty thousand dollars for each day of violation or  
18 confined in the penitentiary not less than one nor more than  
19 two years, or both such fine and imprisonment or, in the  
20 discretion of the court, be confined in jail not more than one  
21 year in addition to the above fine.

22 (b) If any person knowingly (1) makes any false material  
23 statement or representation in any application, label,  
24 manifest, record, report, permit or other document filed,  
25 maintained or used for purposes of compliance with this  
26 article; or (2) generates, stores, treats, transports, disposes  
27 of or otherwise handles any hazardous waste identified or  
28 listed under this article (whether such activity took place  
29 before or takes place after the effective date of this article)  
30 and who knowingly destroys, alters or conceals any record  
31 required to be maintained under regulations promulgated  
32 by the director pursuant to this article, he shall be guilty of a  
33 misdemeanor, and, upon conviction thereof, shall be fined  
34 not to exceed twenty-five thousand dollars, or sentenced to  
35 imprisonment for a period not to exceed one year, or both

36 fined and sentenced to imprisonment for each violation.

37 (c) Any person convicted of a second or subsequent  
38 violation of subsections (a) and (b) of this section, shall be  
39 guilty of a felony, and, upon such conviction, shall be  
40 confined in the penitentiary not less than one nor more than  
41 three years, or fined not more than fifty thousand dollars for  
42 each day of violation, or both such fine and imprisonment.

43 (d) Any person who knowingly transports, treats, stores  
44 or disposes of any hazardous waste identified or listed  
45 pursuant to this article in violation of subsection (a) of this  
46 section, or having applied for a permit pursuant to sections  
47 seven and eight of this article, and knowingly either (1) fails  
48 to include in a permit application any material information  
49 required pursuant to this article, or rules and regulations  
50 promulgated hereunder, or (2) fails to comply with  
51 applicable interim status requirements as provided in  
52 section ten of this article and who thereby exhibits an  
53 unjustified and inexcusable disregard for human life or the  
54 safety of others and he thereby places another person in  
55 imminent danger of death or serious bodily injury, shall be  
56 guilty of a felony, and, upon conviction thereof, shall be  
57 fined not more than two hundred fifty thousand dollars or  
58 imprisoned not less than one year nor more than four years  
59 or both such fine and imprisonment.

60 (e) As used in subsection (d) of this section, the term  
61 "serious bodily injury" means:

62 (1) Bodily injury which involves a substantial risk of  
63 death;

64 (2) Unconsciousness;

65 (3) Extreme physical pain;

66 (4) Protracted and obvious disfigurement; or

67 (5) Protracted loss or impairment of the function of a  
68 bodily member, organ or mental faculty.

#### § 20-5E-16. Civil penalties and injunctive relief.

Any person who violates any provision of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action in the circuit court of the appropriate county.

The chief may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule, regulation or order issued pursuant to this article. In seeking an injunction, it is not necessary for the chief to post bond nor to allege or prove at any stage of the

proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

Upon request of the chief, the attorney general, or the prosecuting attorney of the county in which the violation occurs, shall assist the chief in any civil action under this section.

In any action brought pursuant to the provisions of this section, the State, or any agency of the State which prevails, may be awarded costs and reasonable attorney's fees. (1981, c. 119.)

#### § 20-5E-17. Imminent and substantial hazards; orders; penalties; hearings.

(a) Notwithstanding any provision of this article to the contrary, the chief, upon receipt of information, or upon observation or discovery that the handling, storage, transportation, treatment or disposal of any hazardous waste may present an imminent and substantial endangerment to public health, safety or the environment, may:

(1) Request the attorney general or the appropriate prosecuting attorney to commence an action in the circuit court of the county in which the hazardous condition exists to immediately restrain any person contributing to such handling, storage, transportation, treatment or disposal to stop such handling, storage, transportation, treatment or disposal or to take such other action as may be necessary; or

(2) Take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Any person who willfully violates, or fails or refuses to comply with, any order of the chief under subsection (a) of this section may, in an action brought in the appropriate circuit court to enforce such orders, be fined not more than five thousand dollars for each day in which such violation occurs or such failure to comply continues. (1981, c. 119.)

#### § 20-5E-18. Citizens suits; petitions for rule making; intervention.

(a) Any person may commence a civil action on his own behalf against any person who is alleged to be in violation of any provision of this article or any condition of a permit issued or rules and regulations promulgated hereunder, except that no action may be commenced under this section prior to sixty days after the plaintiff has given notice to the appropriate enforcement, permit issuing or rule-making authority and to the person against whom the action will be commenced, or if the State has commenced and is diligently prosecuting a civil or criminal action pursuant to this article: Provided, that such person may commence a civil action immediately upon notification in the case of an action under subsection (b) of this section. Such actions may be brought in the

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circuit court in the county in which the alleged violation occurs or in the circuit court of Kanawha county.

(b) Any person may commence a civil action against the appropriate enforcement, permit issuing or rule-making authority where there is alleged a failure of such authority to perform any nondiscretionary duty or act under this article. Such actions may be brought only in the circuit court of Kanawha county.

(c) Any person may petition the appropriate rule-making authority for rule-making on an issue arising under this article. The appropriate rule-making authority, if it believes such issue to merit rule-making, may commence any studies and investigations necessary to issue rules and regulations. A decision by the appropriate rule-making authority not to pursue rule-making must be set forth in writing with substantial reasons for refusing to do so.

(d) Nothing in this article may be construed to restrict any rights of any person or class of persons under statute or common law.

(e) In issuing any final order in any action brought pursuant to this section any court with jurisdiction may award costs of litigation, including reasonable attorney's fees and expert witnesses fees, to any party whenever the court determines such award to be appropriate.

(f) Any enforcement, permit issuing or rule-making authority may intervene as a matter of right in any suit brought under this section.

(g) Any person may intervene as a matter of right in any civil action or administrative action instituted under this article.

(h) Notwithstanding any provision of this article to the contrary, any person may maintain an action to enjoin a nuisance against any permit holder or other person subject to the provisions of this article and may seek damages in said action, all to the same extent and for all intents and purposes as if this article were not enacted, if such person maintaining such action and seeking such damages would otherwise have standing to maintain such action and be entitled to damages by any other rule of law. (1981, c. 119.)

**§ 20-5E-19. Appeal to water resources board; notice; hearings; orders.**

(a) Any person aggrieved or adversely affected by an order of the chief made and entered in accordance with the provisions of this article, or by the failure or refusal of the chief to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the chief under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as such person believes that the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee.

(b) An appeal shall be perfected by filing a notice of appeal, on the form prescribed by the water resources board for such purpose, with such board within thirty days after date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice

of appeal shall not stay or suspend the execution of the order appealed from. If it appears to the water resources board that an unjust hardship to the appellant will result from the execution of the chief's order pending determination of the appeal, the chief or such board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order, action or terms and conditions complained of, the grounds upon which the appeal is based and the action sought by the appellant. A copy of the notice of appeal shall be filed by the water resources board with the chief within three days after the notice of appeal is filed with such board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the water resources board a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the possession of the chief relating to the matter in question. With the consent of such board and upon such terms and conditions as such board may prescribe, any persons affected by any such activity may by petition intervene as a party appellant or appellee. The board shall hear the appeal de novo and evidence may be offered on behalf of the appellant, the appellee and by any intervenors.

(d) All of the pertinent provisions of article five [§ 29A-5-1 et seq.], chapter twenty-nine-A of this Code apply to and govern the hearing on appeal authorized by this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of article five were set forth in extenso in this section, with the following modifications or exceptions:

(1) Unless the board directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha county; and

(2) In accordance with the provisions of section one [§ 29A-5-1], article five of said chapter twenty-nine-A, all of the testimony at any such hearing shall be recorded by stenographic notes and characters or by mechanical means. Such reported testimony in every appeal hearing under this article shall be transcribed.

(e) Any such appeal hearing shall be conducted by a quorum of the board but the parties by stipulation may agree to take evidence before a hearing examiner employed by the board. For the purpose of conducting such appeal hearing, any member of the board and the secretary thereof may issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-A of this Code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced as specified in section one, article five of chapter twenty-nine-A and all of the provisions of section one dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after the date upon which the board received the notice of appeal unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief shall be represented at any such hearing by the

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attorney general or his assistants, or the chief, with the written approval of the attorney general, may employ counsel to represent him. At any such hearing the appellant and any intervenor may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this State.

(g) After such hearing and consideration of all the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the chief, or shall make and enter such order as the chief should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued or shall make and enter an order taking such action as the chief should have taken.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three [§ 29A-5-3], article five, chapter twenty-nine-A of this Code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, the appellee, any intervenors and their respective attorneys of record, if any, in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review. The order of the board is final unless vacated or modified upon judicial review thereof. (1981, c. 119.)

**§ 20-5E-20. Disclosures required in deeds and leases.**

(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property or the subsurface of such property, (whether or not the grantor or lessor is at the time of such conveyance or lease the owner of such subsurface) was used for the storage, treatment or disposal of hazardous waste. The provisions of this subsection shall only apply to those grantors or lessors who owned or had an interest in the real property when the same or the subsurface thereof was used for the purpose of storage, treatment or disposal of hazardous waste or who have actual knowledge that such real property or the subsurface thereof was used for such purpose or purposes at any time prior thereto.

(b) Any grantee of real estate or of any substrata underlying said real estate or any lessee for a term who intends to use the real estate conveyed or let or any substrata underlying the same for the purpose of storing, treating or disposing of hazardous waste shall disclose in writing at the time of such conveyance or lease or within thirty days prior thereto such fact to the grantor or lessor of such real estate or substrata. Such disclosure shall describe the proposed location upon said property of the site to be used for the storage, treatment or disposal of hazardous waste, the identity of such waste, the proposed method of storage, treatment or disposal to be used with respect to such waste and any and all other information required by rules and regulations of the director. (1981, c. 119.)

**§20-5E-21. Appropriation of funds; hazardous waste management fund created.**

1 The net proceeds of all fines, penalties and forfeitures  
2 collected under this article shall be appropriated as  
3 directed by Article XII, Section 5 of the Constitution of  
4 West Virginia. For the purposes of this section, the net  
5 proceeds of such fines, penalties and forfeitures shall be  
6 deemed the proceeds remaining after deducting therefrom  
7 those sums appropriated by the Legislature for defraying  
8 the cost of administering this article. All permit application  
9 fees collected under this article shall be paid into the state  
10 treasury into a special fund designated "The Hazardous  
11 Waste Management Fund." In making the appropriation for  
12 defraying the cost of administering this article, the  
13 Legislature shall first take into account the sums included  
14 in such special fund prior to deducting such additional  
15 sums as may be needed from the fines, penalties and  
16 forfeitures collected pursuant to this article.

**§ 20-5E-22. State program to be consistent with and equivalent to federal program.**

The program for the management of hazardous waste pursuant to this article shall be equivalent to and consistent with the federal program established pursuant to Subtitle C of the federal Solid Waste Disposal Act, as amended. (1981, c. 119.)

*Editor's note.* — The federal Solid Waste Disposal Act, referred to above, as compiled in 42 U.S.C. §§ 3251 — 3259, 6901 et seq.

**§ 20-5E-23. Conflicting provisions.**

This article is intended to supplement existing law and it is not the intention of the legislature in enacting this article to repeal, expressly or by implication, any other provision of this Code. In the event that some provision herein is inconsistent with any other provisions of the Code, making it impossible to comply with both, the provisions of this article shall control: Provided, that no enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this Code with respect to the same transaction or event unless such subsequent proceeding involves the violation of a permit or permitting requirement of such other article. (1981, c. 119.)

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 649**

(MR. WHITACRE, *original sponsor*)

(Originating in the Committee on Health and Human Resources.)

[Passed April 13, 1985; in effect from passage.]

AN ACT to amend sections seven, eight, twelve, thirteen, fifteen and twenty-one, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority and jurisdiction of the state board of health in establishing standards regarding hazardous waste; ownership of hazardous waste sites or facilities requiring permit; employee access to records regarding generation and transportation of hazardous waste; authority of chief of division of water resources to issue order requiring elimination of hazard, or risk of hazard, where potential hazard to human health or environment exists; criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections seven, eight, twelve, thirteen, fifteen and twenty-one, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.**

**§20-5E-7. Authority and jurisdiction of other state agencies.**

1 (a) The commissioner of highways, in consultation with  
2 the director, and avoiding inconsistencies with and  
3 avoiding duplication to the maximum extent practicable  
4 with rules and regulations required to be promulgated  
5 pursuant to this article by the director or any other rule-  
6 making authority, and in accordance with the provisions of  
7 chapter twenty-nine-a of this code, shall promulgate, as  
8 necessary, rules and regulations governing the  
9 transportation of hazardous wastes by vehicle upon the  
10 roads and highways of this state. Such rules and regulations  
11 shall be consistent with applicable rules and regulations  
12 issued by the federal department of transportation and  
13 consistent with this article: *Provided*, That such rules and  
14 regulations shall apply to the interstate transportation of  
15 hazardous wastes as well as the intrastate transportation of  
16 such waste within the boundaries of this state.

17 In lieu of those enforcement and inspection powers  
18 conferred upon the commissioner of highways elsewhere by  
19 law with respect to the transportation of hazardous waste,  
20 the commissioner of highways has the same enforcement  
21 and inspection powers as those granted to the chief, his  
22 authorized representative or agent, or any authorized  
23 employee or agent of the department of natural resources,  
24 as the case may be, under sections eleven, twelve, thirteen,  
25 fourteen, fifteen, sixteen and seventeen of this article. The  
26 limitations of this subsection shall not affect in any way the  
27 powers of the department of highways with respect to  
28 weight enforcement.

29 (b) The public service commission, in consultation with  
30 the director, and avoiding inconsistencies with and  
31 avoiding duplication to the maximum extent practicable  
32 with rules and regulations required to be promulgated  
33 pursuant to this article by the director or any other rule-  
34 making authority, and in accordance with the provisions of  
35 chapter twenty-nine-a of this code, shall promulgate, as  
36 necessary, rules and regulations governing the  
37 transportation of hazardous wastes by railroad in this state.  
38 Such rules and regulations shall be consistent with  
39 applicable rules and regulations issued by the federal  
40 department of transportation and consistent with this

41 article: *Provided*, That such rules and regulations apply to  
42 the interstate transportation of hazardous wastes as well as  
43 the intrastate transportation of such wastes within the  
44 boundaries of this state.

45 In lieu of those enforcement and inspection powers  
46 conferred upon the public service commission elsewhere by  
47 law with respect to the transportation of hazardous waste,  
48 the public service commission has the same enforcement  
49 and inspection powers as those granted to the chief, his  
50 authorized representative or agent or any authorized  
51 employee or agent of the department of natural resources,  
52 as the case may be, under sections eleven, twelve, thirteen,  
53 fourteen, fifteen, sixteen and seventeen of this article.

54 (c) The rules and regulations required to be  
55 promulgated pursuant to subsections (a) and (b) of this  
56 section shall apply equally to those persons transporting  
57 hazardous wastes generated by others and to those  
58 transporting hazardous wastes they have generated  
59 themselves or combinations thereof. Such rules and  
60 regulations shall establish such standards, applicable to  
61 transporters of hazardous waste identified or listed under  
62 this article, as may be necessary to protect public health,  
63 safety and the environment. Such standards shall include,  
64 but need not be limited to, requirements respecting (A)  
65 record keeping concerning such hazardous waste  
66 transported, and their source and delivery points, (B)  
67 transportation of such waste only if properly labeled, (C)  
68 compliance with the manifest system referred to in  
69 subdivision (3), subsection (a), section six of this article, and  
70 (D) transportation of all such hazardous waste only to the  
71 hazardous waste treatment, storage or disposal facilities  
72 which the shipper designates on the manifest form to be a  
73 facility holding a permit issued under: (1) This article or any  
74 rule and regulation required by this article to be  
75 promulgated; (2) Subtitle C of the federal Solid Waste  
76 Disposal Act, as amended; (3) the laws of any other state  
77 which has an authorized hazardous waste program  
78 pursuant to Section 3006 of the federal Solid Waste  
79 Disposal Act, as amended; or (4) Title I of the federal Marine  
80 Protection, Research and Sanctuaries Act.

81 (d) The state board of health of the state department of

82 health, in consultation with the director of the department  
83 of natural resources, and avoiding inconsistencies with, and  
84 avoiding duplication to the maximum extent practicable  
85 with rules and regulations required to be promulgated  
86 pursuant to this article by the director of the department of  
87 natural resources or any other rule-making authority, shall  
88 promulgate rules and regulations establishing standards  
89 applicable to permitting, licensing and operation of  
90 facilities that treat, store or dispose of hazardous wastes  
91 with infectious characteristics. Such rules and regulations  
92 shall specify the terms, conditions and procedures under  
93 which the state director of health or his authorized  
94 representative shall issue, modify, suspend, revoke or deny  
95 such permits required pursuant to those regulations. Such  
96 permits as the board of health regulations may require shall  
97 be issued by the state director of health or his authorized  
98 representative. All rules and regulations promulgated  
99 under this subsection shall be promulgated in accordance  
100 with the provisions of chapter twenty-nine-a of this code.  
101 Nothing in this subsection shall be construed to diminish or  
102 alter the authority of the air pollution control commission  
103 or its director under this article or article twenty, chapter  
104 sixteen of this code: *Provided*, That such permitting or  
105 licensing required by this subsection shall be in addition to  
106 those permits required by section eight of this article. Such  
107 rules and regulations shall be consistent with this article  
108 and shall be promulgated within six months of the effective  
109 date of this article.

110 Any person aggrieved or adversely affected by an order of  
111 the state director of health pursuant to this article, or the  
112 denial or issuance of a permit, or the failure or refusal of  
113 said director to act within a reasonable time on an  
114 application for a permit or the terms or conditions of a  
115 permit granted under the provisions of this article, may  
116 appeal to a special hearing examiner appointed to hear  
117 contested cases in accordance with the provisions of  
118 chapter twenty-nine-a of this code. All procedures for  
119 appeal and conduct of hearings shall comply with rules and  
120 regulations promulgated by the state board of health.  
121 Unless the board of health directs otherwise, the appeal  
122 hearing shall be held in the city of Charleston, Kanawha  
123 County.

124 In lieu of those enforcement and inspection powers  
125 conferred upon the state director of health elsewhere by law  
126 with respect to hazardous waste with infectious  
127 characteristics, the state director of health shall have the  
128 same enforcement and inspection powers as those granted  
129 to the chief, his authorized representative or agent or any  
130 authorized employee or agent of the department of natural  
131 resources, as the case may be, under sections eleven, twelve,  
132 thirteen, fourteen, fifteen, sixteen and seventeen of this  
133 article.

134 (e) The director shall rely, to the maximum extent  
135 practicable, on the department of health for expertise on  
136 the adverse effects of toxic hazardous waste on human  
137 health.

138 (f) The air pollution control commission, in consultation  
139 with the director, and avoiding inconsistencies with and  
140 avoiding duplication to the maximum extent practicable  
141 with rules and regulations required to be promulgated  
142 pursuant to this article by the director or any other rule-  
143 making authority, and in accordance with the provisions of  
144 article twenty, chapter sixteen and chapter twenty-nine-a  
145 of this code, shall promulgate such rules and regulations  
146 establishing air pollution performance standards and  
147 permit requirements and procedures as may be necessary to  
148 comply with the requirements of this article. Such permits  
149 shall be in addition to those permits required by section  
150 eight of this article. All rules and regulations promulgated  
151 pursuant to this subsection shall be consistent with this  
152 article.

153 With respect to this article, and any rules or regulations  
154 promulgated pursuant thereto, the director of the air  
155 pollution control commission has the same enforcement  
156 and inspection powers as those of the chief under sections  
157 eleven, twelve, thirteen, fourteen, fifteen, sixteen and  
158 seventeen of this article: *Provided*, That no action for  
159 penalties may be initiated by the director of the air  
160 pollution control commission without the approval of that  
161 commission. Any person aggrieved or adversely affected by  
162 an order of the director of the air pollution control  
163 commission made and entered in accordance with the  
164 provisions of this article, or by the failure or refusal of said  
165 director to act within a reasonable time on an application

166 for a permit or by the issuance or denial of or by the terms  
167 and conditions of a permit granted under the provisions of  
168 this article, may appeal to the air pollution control  
169 commission in accordance with the procedure set forth in  
170 section six, article twenty, chapter sixteen of this code, and  
171 orders made and entered by said commission shall be  
172 subject to judicial review in accordance with the  
173 procedures set forth in section seven, article twenty,  
174 chapter sixteen of this code, except that as to cases  
175 involving an order granting or denying an application for a  
176 permit, revoking or suspending a permit or approving or  
177 modifying the terms and conditions of a permit or the  
178 failure to act within a reasonable time on an application for  
179 a permit, the petition for judicial review shall be filed in the  
180 circuit court of Kanawha County.

181 (g) The director of the department of natural resources  
182 has exclusive responsibility for carrying out any  
183 requirement of this article with respect to coal mining  
184 wastes or overburden for which a permit is issued under the  
185 surface coal mining and reclamation act of 1980, article six  
186 of this chapter.

187 (h) To the extent that this article relates to activities  
188 with respect to oil and gas wells, liquid injection wells and  
189 waste disposal wells now regulated by articles four, four-b  
190 and seven, chapter twenty-two of this code, the  
191 administrator of the office of oil and gas and the shallow  
192 gas-well review board has the jurisdiction with respect to  
193 the regulation of such activities and shall promulgate such  
194 rules and regulations as may be necessary to comply with  
195 the requirements of this article: *Provided*, That nothing in  
196 this subsection may be construed to diminish or alter the  
197 authority and responsibility of the chief or the water  
198 resources board under articles five and five-a, chapter  
199 twenty of this code.

200 In lieu of those enforcement and inspection powers  
201 conferred upon the administrator of the office of oil and gas  
202 and the shallow gas-well review board elsewhere by law,  
203 with respect to hazardous wastes, the administrator of the  
204 office of oil and gas and the shallow gas-well review board  
205 have the same enforcement and inspection powers as those  
206 granted to the chief, his authorized representative or agent

207 or any authorized employee or agent of the department of  
208 natural resources, as the case may be, under sections eleven,  
209 twelve, thirteen, fourteen, fifteen, sixteen and seventeen of  
210 this article.

211 (i) The water resources board, in consultation with the  
212 director, and avoiding inconsistency with and avoiding  
213 duplication to the maximum extent practicable with rules  
214 and regulations required to be promulgated pursuant to  
215 this article by the director or any other rule-making  
216 authority, and in accordance with the provisions of chapter  
217 twenty-nine-a of this code, shall, as necessary, promulgate  
218 rules and regulations governing discharges into the waters  
219 of this state of hazardous waste resulting from the  
220 treatment, storage or disposal of hazardous waste as may be  
221 required by this article. Such rules and regulations shall be  
222 consistent with this article.

223 (j) All rules and regulations promulgated pursuant to  
224 this section shall be consistent with rules and regulations  
225 promulgated by the federal environmental protection  
226 agency pursuant to the federal Solid Waste Disposal Act, as  
227 amended.

228 (k) The director shall submit his written comments to  
229 the legislative rule-making review committee regarding all  
230 rules and regulations promulgated pursuant to this article.

**§20-5E-8. Permit process; undertaking activities without a permit.**

1 (a) No person may own, construct, modify, operate or  
2 close any facility or site for the treatment, storage or  
3 disposal of hazardous waste identified or listed under this  
4 article, nor shall any person store, treat or dispose of any  
5 such hazardous waste without first obtaining a permit from  
6 the chief for such facility, site or activity and all other  
7 permits as required by law. Such permit shall be issued,  
8 after public notice and opportunity for public hearing,  
9 upon such reasonable terms and conditions as the chief may  
10 direct if the application, together with all supporting  
11 information and data and other evidence establishes that  
12 the construction, modification, operation or closure, as the  
13 case may be, of the hazardous waste facility, site or activity  
14 will not violate any provisions of this article or any of the  
15 rules and regulations promulgated by the director as

16 required by this article: *Provided*, That in issuing the  
17 permits required by this subsection, the chief shall not  
18 regulate those aspects of a hazardous waste treatment,  
19 storage or disposal facility which are the subject of the  
20 permitting or licensing requirements of section seven of this  
21 article, and which need not be regulated in order for the  
22 chief to perform his duties under this article.

23 (b) The chief shall prescribe a form of application for all  
24 permits issued by the chief.

25 (c) The chief may require a plan for the closure of such  
26 facility or site to be submitted along with an application for  
27 a permit which plan for closure shall comply in all respects  
28 with the requirements of this article and any rules and  
29 regulations promulgated hereunder. Such plan of closure  
30 shall be subject to modification upon application by the  
31 permit holder to the chief and approval of such  
32 modification by the chief.

33 (d) An environmental analysis shall be submitted with  
34 the permit application for all hazardous waste treatment,  
35 storage or disposal facilities which are major facilities as  
36 that term may be defined by rules and regulations  
37 promulgated by the director: *Provided*, That facilities in  
38 existence on the nineteenth day of November, one thousand  
39 nine hundred eighty, need not comply with this subsection.  
40 Such environmental analysis shall contain information of  
41 the type, quality and detail that will permit adequate  
42 consideration of the environmental, technical and  
43 economic factors involved in the establishment and  
44 operation of such facilities:

45 (1) The portion of the applicant's environmental  
46 analysis dealing with environmental assessments shall  
47 contain, but not be limited to:

48 (A) The potential impact of the method and route of  
49 transportation of hazardous waste to the site and the  
50 potential impact of the establishment and operation of such  
51 facilities on air and water quality, existing land use,  
52 transportation and natural resources in the area affected by  
53 such facilities;

54 (B) A description of the expected effect of such  
55 facilities; and

56 (C) Recommendations for minimizing any adverse  
57 impact.

58 (2) The portion of the applicant's environmental  
59 analysis dealing with technical and economic assessments  
60 shall contain, but not be limited to:

61 (A) Detailed descriptions of the proposed site and  
62 facility, including site location and boundaries and facility  
63 purpose, type, size, capacity and location on the site and  
64 estimates of the cost and charges to be made for material  
65 accepted, if any;

66 (B) Provisions for managing the site following cessation  
67 of operation of the facility; and

68 (C) Qualifications of owner and operation, including a  
69 description of the applicant's prior experience in hazardous  
70 waste management operations.

71 (e) Any person undertaking, without a permit, any of  
72 the activities for which a permit is required under this  
73 section or under section seven of this article, or any person  
74 violating any term or condition under which a permit has  
75 been issued pursuant to this section or pursuant to section  
76 seven of this article, shall be subject to the enforcement  
77 procedures of this article.

78 (f) Notwithstanding any provision to the contrary in  
79 subsections (a) through (e) of this section or section seven of  
80 this article, any surface coal mining and reclamation permit  
81 covering any coal mining wastes or overburden which has  
82 been issued or approved under the surface coal mining and  
83 reclamation act of 1980, article six of this chapter, shall be  
84 considered to have all necessary permits issued pursuant to  
85 this article with respect to the treatment, storage or  
86 disposal of such wastes or overburden. Rules and  
87 regulations promulgated under this article are not  
88 applicable to treatment, storage or disposal of coal mining  
89 wastes and overburden which are covered by such a permit.

**§20-5E-12. Inspections; right of entry; sampling; reports and  
analyses; subpoenas.**

1 (a) The chief or any authorized representative,  
2 employee or agent of the division, upon the presentation of  
3 proper credentials and at reasonable times, may enter any  
4 building, property, premises, place, vehicle or permitted  
5 facility where hazardous wastes are or have been generated,  
6 treated, stored, transported or disposed of for the purpose

7 of making an investigation with reasonable promptness to  
8 ascertain the compliance by any person with the provisions  
9 of this article or the rules and regulations promulgated by  
10 the director or permits issued by the chief hereunder.

11 (b) The chief or his authorized representative, employee  
12 or agent shall make periodic inspections at every permitted  
13 facility as necessary to effectively implement and enforce  
14 the requirements of this article or the rules and regulations  
15 promulgated by the director or permits issued by the chief  
16 hereunder. After an inspection is made, a report shall be  
17 prepared and filed with the chief and a copy of such  
18 inspection report shall be promptly furnished to the person  
19 in charge of such building, property, premises, place,  
20 vehicle or facility. Such inspection reports shall be  
21 available to the public in accordance with the provisions of  
22 article one, chapter twenty-nine-b of this code.

23 (c) Whenever the chief has cause to believe that any  
24 person is in violation of any provision of this article, any  
25 condition of a permit issued by the chief, any order or any  
26 regulation promulgated by the director under this article,  
27 he shall immediately order an inspection of the building,  
28 property, premises, place, vehicle or permitted facility at  
29 which the alleged violation is occurring.

30 (d) The chief or any authorized representative,  
31 employee or agent of the division may, upon presentation of  
32 proper credentials and at reasonable times, enter any  
33 establishment, building, property, premises, vehicle or  
34 other place maintained by any person where hazardous  
35 wastes are being or have been generated, transported,  
36 stored, treated or disposed of to inspect and take samples of  
37 wastes, soils, air, surface water and ground water and  
38 samples of any containers or labelings for such wastes. In  
39 taking such samples, the division may utilize such sampling  
40 methods as it determines to be necessary, including, but not  
41 limited to, soil borings and monitoring wells. If the  
42 representative, employee or agent obtains any such  
43 samples, prior to leaving the premises, he shall give to the  
44 owner, operator or agent in charge a receipt describing the  
45 sample obtained and, if requested, a portion of each such  
46 sample equal in volume or weight to the portion retained.  
47 The division shall promptly provide a copy of any analysis  
48 made to the owner, operator or agent in charge.

49 (e) Upon presentation of proper credentials and at  
50 reasonable times, the chief or any authorized  
51 representative, employee or agent of the division shall be  
52 given access to all records relating to the generation,  
53 transportation, storage, treatment or disposal of hazardous  
54 waste in the possession of any person who generates, stores,  
55 treats, transports, disposes of, or otherwise handles or has  
56 handled such waste, the chief or an authorized  
57 representative, employee or agent shall be furnished with  
58 copies of all such records or given the records for the  
59 purpose of making copies. If the chief, upon inspection,  
60 investigation or through other means, observes or learns of  
61 a violation or probable violation of this article, he is  
62 authorized to issue subpoenas and subpoenas duces tecum  
63 and to order the attendance and testimony of witnesses and  
64 to compel the production of any books, papers, documents,  
65 manifests and other physical evidence pertinent to such  
66 investigation or inspection.

**§20-5E-13. Monitoring, analysis and testing.**

1 (a) If the chief determines, upon receipt of any  
2 information, that (1) the presence of any hazardous waste at  
3 a facility or site at which hazardous waste is, or has been,  
4 stored, treated or disposed of, or (2) the release of any such  
5 waste from such facility or site may present a substantial  
6 hazard to human health or the environment, he may issue an  
7 order requiring the owner or operator of such facility or site  
8 to conduct such monitoring, testing, analysis and reporting  
9 with respect to such facility or site as the chief deems  
10 reasonable to ascertain the nature and extent of such  
11 hazard.

12 (b) In the case of any facility or site not in operation at  
13 the time a determination is made under subsection (a) of  
14 this section with respect to the facility or site, if the chief  
15 finds that the owner of such facility or site could not  
16 reasonably be expected to have actual knowledge of the  
17 presence of hazardous waste at such facility or site and of its  
18 potential for release, he may issue an order requiring the  
19 most recent previous owner or operator of such facility or  
20 site who could reasonably be expected to have such actual  
21 knowledge to carry out the actions referred to in subsection  
22 (a) of this section.

23 (c) An order under subsection (a) or (b) of this section  
24 shall require the person to whom such order is issued to  
25 submit to the chief within thirty days from the issuance of  
26 such order a proposal for carrying out the required  
27 monitoring, testing, analysis and reporting. The chief may,  
28 after providing such person with an opportunity to confer  
29 with the chief respecting such proposal, require such person  
30 to carry out such monitoring, testing, analysis and  
31 reporting in accordance with such proposal, and such  
32 modifications in such proposal as the chief deems  
33 reasonable to ascertain the nature and extent of the hazard.

34 (d) The following duties shall be carried out by the  
35 chief:

36 (1) If the chief determines that no owner or operator  
37 referred to in subsection (a) or (b) of this section is able to  
38 conduct monitoring, testing, analysis or reporting  
39 satisfactory to the chief, if the chief deems any such action  
40 carried out by an owner or operator to be unsatisfactory or  
41 if the chief cannot initially determine that there is an owner  
42 or operator referred to in subsection (a) or (b) of this section  
43 who is able to conduct such monitoring, testing, analysis or  
44 reporting, he may conduct monitoring, testing or analysis  
45 (or any combination thereof) which he deems reasonable to  
46 ascertain the nature and extent of the hazard associated  
47 with the site concerned, or authorize a state or local  
48 authority or other person to carry out any such action, and  
49 require, by order, the owner or operator referred to in  
50 subsection (a) or (b) of this section to reimburse the chief or  
51 other authority or person for the costs of such activity.

52 (2) No order may be issued under this subsection  
53 requiring reimbursement of the costs of any action carried  
54 out by the chief which confirms the results of the order  
55 issued under subsection (a) or (b) of this section.

56 (e) If the monitoring, testing, analysis and reporting  
57 conducted pursuant to this section indicates that a  
58 potential hazard to human health or the environment may  
59 or does exist, the chief may issue an appropriate order  
60 requiring that the hazard or risk of hazard be eliminated.

61 (f) The chief may commence a civil action against any  
62 person who fails or refuses to comply with any order issued  
63 under this section. Such action shall be brought in the

64 circuit court in which the defendant is located, resides or is  
65 doing business. Such court has jurisdiction to require  
66 compliance with such order and to assess a civil penalty of  
67 not to exceed five thousand dollars for each day during  
68 which such failure or refusal occurs.

**§20-5E-15. Criminal penalties.**

1 (a) If any person knowingly (1) transports any  
2 hazardous waste identified or listed under this article to a  
3 facility which does not have a permit required by this  
4 article, Section 3005 of the federal Solid Waste Disposal  
5 Act, as amended, the laws of any other state which has an  
6 authorized hazardous waste program pursuant to Section  
7 3006 of the federal Solid Waste Disposal Act, as amended,  
8 or Title I of the federal Marine Protection, Research and  
9 Sanctuaries Act; (2) treats, stores or disposes of any such  
10 hazardous waste either (A) without having obtained a  
11 permit required by this article, or by Title I of the Federal  
12 Marine Protection, Research and Sanctuaries Act, or by  
13 Section 3005 or 3006 of the federal Solid Waste Disposal  
14 Act, as amended, or (B) in knowing violation of a material  
15 condition or requirement of such permit, he shall be guilty  
16 of a felony, and, upon conviction thereof, shall be fined not  
17 to exceed fifty thousand dollars for each day of violation or  
18 confined in the penitentiary not less than one nor more than  
19 two years, or both such fine and imprisonment or, in the  
20 discretion of the court, be confined in jail not more than one  
21 year in addition to the above fine.

22 (b) If any person knowingly (1) makes any false material  
23 statement or representation in any application, label,  
24 manifest, record, report, permit or other document filed,  
25 maintained or used for purposes of compliance with this  
26 article; or (2) generates, stores, treats, transports, disposes  
27 of or otherwise handles any hazardous waste identified or  
28 listed under this article (whether such activity took place  
29 before or takes place after the effective date of this article)  
30 and who knowingly destroys, alters or conceals any record  
31 required to be maintained under regulations promulgated  
32 by the director pursuant to this article, he shall be guilty of a  
33 misdemeanor, and, upon conviction thereof, shall be fined  
34 not to exceed twenty-five thousand dollars, or sentenced to  
35 imprisonment for a period not to exceed one year, or both

36 fined and sentenced to imprisonment for each violation.

37 (c) Any person convicted of a second or subsequent  
38 violation of subsections (a) and (b) of this section, shall be  
39 guilty of a felony, and, upon such conviction, shall be  
40 confined in the penitentiary not less than one nor more than  
41 three years, or fined not more than fifty thousand dollars for  
42 each day of violation, or both such fine and imprisonment.

43 (d) Any person who knowingly transports, treats, stores  
44 or disposes of any hazardous waste identified or listed  
45 pursuant to this article in violation of subsection (a) of this  
46 section, or having applied for a permit pursuant to sections  
47 seven and eight of this article, and knowingly either (1) fails  
48 to include in a permit application any material information  
49 required pursuant to this article, or rules and regulations  
50 promulgated hereunder, or (2) fails to comply with  
51 applicable interim status requirements as provided in  
52 section ten of this article and who thereby exhibits an  
53 unjustified and inexcusable disregard for human life or the  
54 safety of others and he thereby places another person in  
55 imminent danger of death or serious bodily injury, shall be  
56 guilty of a felony, and, upon conviction thereof, shall be  
57 fined not more than two hundred fifty thousand dollars or  
58 imprisoned not less than one year nor more than four years  
59 or both such fine and imprisonment.

60 (e) As used in subsection (d) of this section, the term  
61 "serious bodily injury" means:

- 62 (1) Bodily injury which involves a substantial risk of  
63 death;
- 64 (2) Unconsciousness;
- 65 (3) Extreme physical pain;
- 66 (4) Protracted and obvious disfigurement; or
- 67 (5) Protracted loss or impairment of the function of a  
68 bodily member, organ or mental faculty.

**§20-5E-21. Appropriation of funds; hazardous waste  
management fund created.**

1 The net proceeds of all fines, penalties and forfeitures  
2 collected under this article shall be appropriated as  
3 directed by Article XII, Section 5 of the Constitution of  
4 West Virginia. For the purposes of this section, the net  
5 proceeds of such fines, penalties and forfeitures shall be  
6 deemed the proceeds remaining after deducting therefrom

7 those sums appropriated by the Legislature for defraying  
8 the cost of administering this article. All permit application  
9 fees collected under this article shall be paid into the state  
10 treasury into a special fund designated "The Hazardous  
11 Waste Management Fund." In making the appropriation for  
12 defraying the cost of administering this article, the  
13 Legislature shall first take into account the sums included  
14 in such special fund prior to deducting such additional  
15 sums as may be needed from the fines, penalties and  
16 forfeitures collected pursuant to this article.

Date  
Time

Enr. Com. Sub. for S. B. No. 649] 16

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

*Harold E. Holt*  
Chairman Senate Committee

*Floyd Fuller*  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Judd C. Welles*  
Clerk of the Senate

*Donald C. Hoff*  
Clerk of the House of Delegates

*Don Tomlin*  
President of the Senate

*Joseph P. Allright*  
Speaker House of Delegates

The within *appeared* this the *2<sup>nd</sup>*  
day of *May* 1985.

*Richard P. Mason, Jr.*  
Governor

