

US EPA ARCHIVE DOCUMENT

West Virginia Statutes

Chapter 20, Article 5M

West Virginia Groundwater Protection Act,
1993 replacement volume

(Submitted as part of Program Revision 1 Program
Description Appendix N)

§ 20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.

(a) On and after the first day of July one thousand nine hundred ninety-one, collectors, haulers and transporters of infectious medical waste who are "common carriers by motor vehicle," as defined in section two [§ 24A-1-2], article one, chapter twenty-four-a of this code, shall be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a [§ 24A-1-1 et seq.] and rules and regulations promulgated thereunder. The rules of the public service commission shall not conflict nor take precedence over the rules promulgated by the secretary.

(b) The commission shall provide a separate and distinct category of special certificates of convenience and necessity for infectious medical waste collectors, haulers and transporters regulated by this section: Provided, That within six months of the effective date of this article, the commission may issue such special certificates to existing common carriers of solid waste who are presently transporting infectious medical waste and who demonstrate that they are in compliance with the provisions of this article: Provided, however, That such common carriers need not make any additional demonstration of public convenience and necessity. Regulation of collectors, haulers and transporters of medical waste shall be separate and distinct from the regulation of solid waste collectors, haulers and transporters provided for in section twenty-three [§ 16-26-23], article twenty-six, chapter sixteen of this code.

(c) At any hearing conducted by the public service commission pertaining to infectious medical waste collectors, haulers and transporters, the secretary may appear before the commission and present evidence. (1991, c. 75.)

Editor's notes. — This section was enacted by Acts 1991, c. 75, effective February 23, 1991.

ARTICLES 5K, 5L.

[RESERVED FOR FUTURE USE.]

ARTICLE 5M.

WEST VIRGINIA GROUNDWATER PROTECTION ACT.

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NATURAL RESOURCES

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§ 20-5M-1. Short title.

This article may be known and cited as the "Groundwater Protection Act." (1991, c. 117.)

§ 20-5M-2. Legislative findings, public policy and purposes.

(a) The Legislature finds that:

(1) West Virginia has relatively pure groundwater resources which are abundant and readily available;

(2) Over fifty percent of West Virginia's overall population, and over ninety percent of the state's rural population, depend on groundwater for drinking water;

(3) A rural lifestyle has created a quality of life in many parts of West Virginia which is highly valued. Maintaining this lifestyle depends upon protecting groundwater to avoid increased expenses associated with providing treated drinking water supplies to rural households;

(4) West Virginia's groundwater resources are geologically complex, with the nature and vulnerability of groundwater aquifers and recharge areas not fully known;

(5) Contamination of groundwater is generally much more difficult and expensive to clean up than is the case with surface water;

(6) Groundwaters and surface waters can be highly interconnected. The quality of any given groundwater can have a significant impact on the quality of groundwaters and surface waters to which it is hydrologically connected;

(7) A diverse array of human activities can adversely impact groundwater, making it necessary to develop regulatory programs that utilize a variety of approaches;

(8) Various agencies of state government currently exercise regulatory control over activities which may impact on groundwater. Coordination and streamlining of the regulatory activities of these agencies is necessary to assure that the state's groundwater is maintained and protected through an appropriate groundwater protection program;

(9) Disruption of existing state regulatory programs should be avoided to the maximum extent practical;

(10) The maintenance and protection of the state's groundwater resources can be achieved consistent with the maintenance and expansion of employment opportunities, agriculture, and industrial development; and

(11) A state groundwater management program will provide economic, social, and environmental benefits for the citizens of West Virginia now and in the future.

(b) Therefore, the Legislature establishes that it is the public policy of the state of West Virginia to maintain and protect the state's groundwater so as to support the present and future beneficial uses and further to maintain and protect groundwater at existing quality where the existing quality is better than that required to maintain and protect the present and future beneficial uses. Such existing quality shall be maintained and protected unless it is established that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives. Such a change shall maintain and protect groundwater quality so as to support the present and future beneficial uses of such groundwater.

(c) The purposes of this article are to:

(1) Maintain and protect the state's groundwater resources consistent with this article to protect the present and future beneficial uses of the groundwater;

(2) Provide for the establishment of a state groundwater management program which will:

(i) Define the roles of agencies of the state and political subdivisions with respect to the maintenance and protection of groundwater, and designate a lead agency for groundwater management;

(ii) Designate a state agency responsible for establishment of groundwater quality standards;

(iii) Provide for the establishment of standards of purity and quality for all groundwater;

(iv) Provide for the establishment of groundwater protection programs consistent with this article;

(v) Establish groundwater protection and groundwater remediation funds;

(vi) Provide for the mapping and analysis of the state's groundwater resources and coordination of the agencies involved; and

(vii) Provide for public education on groundwater resources and methods for preventing contamination.

(3) Provide such enforcement and compliance mechanisms as will assure the implementation of the state's groundwater management program.

(4) Assure that actions taken to implement this article are consistent with the policies set forth in section one [§ 20-5A-1], article five-a of this chapter. (1991, c. 117.)

§ 20-5M-3. Definitions.

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

(a) "Agency action" means the issuance, renewal or denial of any permit, license or other required agency approval, or any terms or conditions thereof, or any order or other directive issued by the division of natural resources,

division of health, division of energy, department of agriculture or any other agency of the state or a political subdivision to the extent that such action relates directly to the implementation, administration or enforcement of this article.

(b) "Beneficial uses" means those uses which are protective of human health and welfare and the environment. Pollution of groundwater shall not be considered a beneficial use.

(c) "Board" means the state water resources board.

(d) "Constituent" means any chemical or biological substance found in groundwater due to either natural or man-made conditions.

(e) "Director" means the director of the division of natural resources of the department of commerce, labor and environmental resources.

(f) "Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table, or any perched water zones.

(g) "Groundwater certification" means an assurance issued by the director of the division of natural resources that a permit or other approval issued by a state, county or local government body regarding an activity that affects or is reasonably anticipated to affect groundwater complies with all requirements of this chapter, the legislative rules promulgated pursuant to this chapter in accordance with chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code and any other requirements of state law, regulations or agreements regarding groundwater.

(h) "Person" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(i) "Pollution" shall mean the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of the groundwater;

(j) "Preventative action limit" means a numerical value expressing the concentration of a substance in groundwater that, if exceeded, shall cause action to be taken to assure that standards of purity and quality of groundwater are not violated.

(k) "Water" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands. (1991, c. 117.)

§ 20-5M-4. Authority of state water resources board; standards of purity and quality.

(a) The state water resources board shall have the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state and shall promulgate such standards following a public hearing within one year from the effective date of this article, by legislative rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code.

(b) Such standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall such standards allow contaminant levels in groundwater to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. The board may set standards more restrictive than the maximum contaminant levels where it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the federal Safe Drinking Water Act, standards for such contaminants shall be established by the board to be no less stringent than may be reasonable and prudent to protect drinking water or any other beneficial use. Where the concentration of a certain constituent exceeds such standards due to natural conditions, the natural concentration shall be the standard for that constituent. Where the concentration of a certain constituent exceeds such standard due to human-induced contamination, no further contamination by that constituent shall be allowed, and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination, and to strive where practical to reduce the level of contamination over time to support drinking water use.

(d) The standards of purity and quality for groundwater promulgated by the board shall recognize the degree to which groundwater is hydrologically connected with surface water and other groundwater and such standards shall provide protection for such surface water and other groundwater.

(e) In the promulgation of such standards the board shall consult with the division of natural resources, department of agriculture, division of energy, and division of health, as appropriate.

(f) Any groundwater standard of the board that is in effect on the effective date of this article shall remain in effect until modified by the board. Notwithstanding any other provisions of this code to the contrary, the authority of the board to adopt standards of purity and quality for groundwater granted by the provisions of this article is exclusive, and to the extent that any other provisions of this code grant such authority to any person, body, agency or entity other than the board, those other provisions shall be void. (1991, c. 117.)

Editor's notes. — This section, which has no subsection (c), appears as it was enacted by Acts 1991, c. 117.

Concerning the reference to "the effective date of this article," Acts 1991, c. 117 was

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passed March 8, 1991 and effective 90 days from passage.

The federal Safe Drinking Water Act is principally compiled in Titles 21 and 42 U.S.C.

§ 20-5M-5. Authority of other agencies; applicability.

(a) Notwithstanding any other provision of this code to the contrary, no agency of state government or any political subdivision may regulate any facility or activities for the purpose of maintaining and protecting the groundwater except as expressly authorized pursuant to this article.

(b) To the extent that such agencies have the authority pursuant to any provision of this code, other than this article, to regulate facilities or activities, the division of natural resources, the department of agriculture, the division of energy, the division of health, and such agencies of the state or any political subdivision as may be specifically designated by the director with the concurrence of such designated agencies or political subdivisions, as appropriate, are hereby authorized to be groundwater regulatory agencies for purposes of regulating such facilities or activities to satisfy the requirements of this article. In addition, the department of agriculture is hereby authorized to be the groundwater regulatory agency for purposes of regulating the use or application of pesticides and fertilizers. Where the authority to regulate facilities or activities which may adversely impact groundwater is not otherwise assigned to the division of natural resources, the department of agriculture, the division of energy, the division of health or such other specifically designated agency pursuant to any other provision of this code, the division of natural resources is hereby authorized to be the groundwater regulatory agency with respect to such unassigned facilities or activities. The division of natural resources shall cooperate with the department of agriculture, division of energy, and division of health, as appropriate, in the regulation of such unassigned facilities or activities.

(c) Within one year of the effective date of this article, the department of agriculture, division of energy, division of health, and division of natural resources shall promulgate in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code such legislative rules as may be necessary to implement the authority granted them by this article.

(d) Groundwater regulatory agencies shall develop groundwater protection practices to prevent groundwater contamination from facilities and activities within their respective jurisdictions consistent with this article. Such practices shall include, but not be limited to, criteria related to facility design, operational management, closure, remediation and monitoring. Such agencies shall issue such rules, permits, policies, directives or any other appropriate regulatory devices, as necessary, to implement the requirements of this article.

(e) Groundwater regulatory agencies shall take such action as may be necessary to assure that facilities or activities within their respective jurisdictions maintain and protect groundwater at existing quality, where the existing quality is better than that required to maintain and protect the standards

of purity and quality promulgated by the board to support the present and future beneficial uses of the state's groundwater.

(f) Where a person establishes to the director that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives, the director may allow for a deviation from such existing quality. Upon the director's finding of (1) and (2) above, the director may grant or deny such a deviation for a specific site, activity or facility or for a class of activities or facilities which have impacts which are substantially similar and exist in a defined geographic area. The director's reasons for granting or denying such a deviation shall be set forth in writing and the director shall have the exclusive authority to determine the terms and conditions of such a deviation. To insure that groundwater standards promulgated by the board are not violated and that the present and future beneficial uses of groundwater are maintained and protected, the director shall evaluate the cumulative impacts of all facilities and activities on the groundwater resources in question prior to any granting of such deviation from existing quality. The director shall consult with the department of agriculture, division of health and division of energy, as appropriate in the implementation of this subsection. The director or the chief of the water resources section of the division of natural resources shall, upon a written request for such information, provide notice of any deviations from existing quality granted pursuant to this subsection.

(g) Should the approval required in subsection (f) of this section be granted allowing for a deviation from existing quality, the groundwater regulatory agencies shall take such alternative action as may be necessary to assure that facilities and activities within their respective jurisdictions maintain and protect the standards of purity and quality promulgated by the board to support the present and future beneficial uses for that groundwater. In maintaining and protecting such standards of the board, such agencies shall establish preventative action limits which, once reached, shall require action to control a source of contamination to assure that such standards are not violated. The director shall provide guidelines to the groundwater regulatory agencies with respect to the establishment of such preventative action limits.

(h) Subsections (e), (f) and (g) of this section shall not apply to coal extraction and earth disturbing activities directly involved in coal extraction that are subject to either or both article three [§ 22A-3-1 et seq.], chapter twenty-two-a of this code and article five-a [§ 20-5A-1 et seq.] of this chapter. Such activities shall be subject to all other provisions of this article.

(i) This article shall not be applicable to groundwater within areas of geologic formations which are site specific to:

(1) The production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to chapter twenty-two-b [§ 22B-1-1 et seq.] of this code; and

(2) The injection zones of Class II or III wells permitted pursuant to the statutes and regulations governing the underground injection control program.

All groundwater outside such areas shall remain subject to the provisions of this article. Groundwater regulatory agencies shall have the right to require the submission of data with respect to the nature of the activities subject to this subsection.

(j) Those agencies regulating the activities specified in subsections (h) and (i) of this section shall retain their groundwater regulatory authority as provided for in the relevant statutes and regulations governing such activities, other than this article.

(k) The director shall have authority to modify the requirements of subsection (g) of this section with respect to noncoal mining activities subject to article four [§ 22A-4-1 et seq.], chapter twenty-two-a of this code. Such modification shall assure protection of human health and the environment. Those agencies regulating such noncoal mining activities shall retain their groundwater regulatory authority as provided for in the relevant statutes and regulations governing such activities other than this article.

(l) If the director proposes a need for a variance for classes of activities which by their nature cannot be conducted in compliance with the requirements of subsection (g) of this section, then the director shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code, following public hearing on the record. The rules so promulgated shall set forth the director's findings to substantiate such need and the criteria by which such variances shall be granted or denied. Should any person petition or request the director to undertake such a determination, that person will give contemporaneous notice of such petition or request by Class I advertisement in a newspaper of general circulation in the area to be affected by the request.

(m) All rules, permits, policies, directives and orders of the department of agriculture, the division of health, the division of energy and division of natural resources, in effect on the effective date of this article and which are consistent with this article shall remain in full force and effect as if they were issued pursuant to this article unless and until modified pursuant to this article. (1991, c. 117.)

Editor's notes. — Concerning the reference c. 117 was passed March 8, 1991 and effective to "the effective date of this article," Acts 1991, 90 days from passage.

§ 20-5M-6. Lead agency designation; additional powers and duties.

(a) The division of natural resources is hereby designated to be the lead agency for groundwater and is authorized and shall perform the following additional powers and duties:

- (1) To maintain the state groundwater management strategy;
- (2) To develop, as soon as practical, a central groundwater data management system for the purpose of providing information needed to manage the state's groundwater program;
- (3) To provide a biannual report to the Legislature on the status of the state's groundwater and groundwater management program, including detailed reports from each groundwater regulatory agency;

(4) To coordinate with other agencies to develop a uniform groundwater program;

(5) To perform any and all acts necessary to obtain the benefits to the state of any federal program related to groundwater;

(6) To receive grants, gifts or contributions for purposes of implementing this article from federal agencies, state agencies or any other persons interested in the management of groundwater resources; and

(7) To promulgate legislative rules implementing this subsection in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code, including rules relating to monitoring and analysis of groundwater.

(b) The division of natural resources, division of energy, division of health, and department of agriculture shall participate in the data management system developed by the division of natural resources pursuant to subsection (a) of this section and shall provide the director with such information as the director shall reasonably request in support of his or her promulgation of rules pursuant to this article.

(c) The division of natural resources, division of energy, division of health, and department of agriculture are hereby authorized:

(1) To engage the voluntary cooperation of all persons in the maintenance and protection of groundwater, and to advise, consult and cooperate with all persons, all agencies of this state, universities and colleges, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purposes of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, receive and spend funds as appropriated by the Legislature, and from such agencies and other officers and persons on behalf of the state;

(2) To encourage the formulation and execution of plans to maintain and protect groundwater by cooperative groups or associations of municipal corporations, industries, industrial users and other users of groundwaters of the state, who, jointly or severally, are or may be impacting on the maintenance and protection of groundwater;

(3) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the maintenance and protection of groundwater, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article, and to make reports and recommendations with respect thereto;

(4) To conduct groundwater sampling, data collection, analyses and evaluation with sufficient frequency so as to ascertain the characteristics and quality of groundwater, and the sufficiency of the groundwater protection programs established pursuant to this article;

(5) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for the maintenance and protection of groundwater. (1991, c. 117.)

§ 20-5M-7. Groundwater coordinating committee; creation.

(a) There is hereby created a state groundwater coordinating committee which shall consist of the director of the division of health, the commissioner of the division of energy, the commissioner of agriculture, the chairperson of the water resources board, the chief of the water resources section of the division of natural resources and the director of the division of natural resources who shall serve as its chairperson.

(b) The groundwater coordinating committee shall consult, review and make recommendations on the implementation of this article by each of the groundwater regulatory agencies. Such committee shall require the periodic submittal to it of the groundwater protection programs of each groundwater regulatory agency including all rules, permits, policies, directives and any other regulatory devices employed to implement this article.

(c) Upon a review of such programs, the groundwater coordinating committee shall recommend to the director approval of such programs, in whole or in part, and identify in writing any aspect of such programs that are not sufficient to satisfy the requirements of this article and specify a reasonable time period for correcting those portions of the program that are found not to be sufficient.

(d) The director may accept the recommendation of the committee, in whole or in part and identify in writing any additional aspects of such programs that are not sufficient to satisfy the requirements of this article and specify a time period for correcting those portions of the program that are found not to be sufficient.

(e) In the biannual report to the Legislature required by this article, the director shall identify all portions of groundwater protection programs which have been determined not to be sufficient to satisfy the requirements of this article and which have not been adequately addressed within the time period specified by the director.

(f) No agency shall modify any aspect of its groundwater protection program as approved by the director without the prior written approval of the director of such modification. This requirement does not relieve such agency of any other requirements of law that may be applicable to such a modification.

(g) The groundwater coordinating committee is authorized and empowered to promulgate such legislative rules as may be necessary to implement this section in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code. (1991, c. 117.)

§ 20-5M-8. Groundwater certification.

(a) To ensure a comprehensive, consistent and unfragmented approach to the management and protection of groundwater, including evaluation of the cumulative effects of all activities that have the potential to impact on groundwater, the director shall oversee and coordinate the implementation of this article by each of the groundwater regulatory agencies through a groundwater certification program as hereby established.

(b) Every state, county or local government body which reviews or issues permits, licenses, registrations, certificates of other forms of approval, or renewal thereof, for activities or practices which may affect groundwater quality shall first submit to the director of the division of natural resources for review and approval an application for certification. Such application shall include a copy of the approval proposed by such body, including any terms and conditions which have been imposed by it. Upon receipt of this application, the director shall act within thirty days to determine whether to waive or exercise his or her certification powers. If no decision is made or communicated by the director within said thirty day period, groundwater certification shall be deemed approved. If the director decides to exercise his or her certification powers, he or she may utilize additional time, not to exceed an additional sixty days, to further review the materials submitted or to conduct such investigations as he or she deems necessary.

(c) The director may waive, grant, grant with conditions, or deny groundwater certification. Groundwater certification, and all conditions required under such certification, shall become a condition on any permit, approval, or renewal thereof, issued by any state, county or local government body. Where appropriate, the director may provide general groundwater certification for or may waive certification for classes or categories of activities or approvals. (1991, c. 117.)

§ 20-5M-9. Groundwater protection fees authorized; director to promulgate rules; dedication of fee proceeds; groundwater protection fund established; groundwater remediation fund established.

(a) The director of the division of natural resources shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a [§. 29A-1-1 et seq.] of this code establishing a schedule of groundwater protection fees applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article. The schedule of fees shall be calculated by the director to recover the reasonable and necessary costs of implementing the provisions of this article as it relates to a particular facility or activity. In addition, the fee may include an appropriate assessment of other program costs not otherwise attributable to any particular facility or activity. Such fees in the aggregate shall not exceed one million dollars per year and shall be deposited into the groundwater protection fund established pursuant to this article: Provided, That any unexpended balance in the groundwater protection fund at the end of each fiscal year may, by an act of the Legislature, be transferred to the groundwater remediation fund created by this article: Provided, however, That if no action is taken to transfer the unexpended balance to the remediation fund, such moneys shall not be transferred to the general revenue fund, but shall remain in the groundwater protection fund. Such fees imposed by this section are in addition to all other

fees and taxes levied by law. The director shall require such fees to be paid at the time of certification pursuant to section eight of this article, or at such more frequent time as the director may deem to be appropriate. The director may withhold certification pursuant to section eight [§ 20-5M-8] of this article where such fees have not been timely paid.

(b) The director of the division of natural resources shall also promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater remediation fees which in the aggregate shall not exceed two hundred fifty thousand dollars. Such groundwater remediation fees shall be assessed over a time period not to exceed two years from effective date of such rules and shall be deposited into the groundwater remediation fund established pursuant to this article. Such fees shall be assessed against persons who own or operate facilities or conduct activities subject to the provisions of this article in proportion to the groundwater protection fees assessed pursuant to subsection (a) of this section for the year in which such groundwater remediation fees, or any portion thereof, are assessed.

(c) There are hereby created and established in the state treasury two special revenue accounts:

(1) The "Groundwater Protection Fund", the moneys of which shall be expended by the director in the administration, certification, enforcement, inspection, monitoring, planning, research, and other activities of the state water resources board, division of natural resources, division of energy, division of health and department of agriculture in accordance with legislative rules promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The moneys, including the interest thereon, in said fund shall be kept and maintained by the director and expended without appropriation by the Legislature for the purpose of implementing the provisions of this article. The director may withhold the payment of any such moneys to any agency whose groundwater protection program has been determined by the director, in consultation with the groundwater coordinating committee, not to be sufficient to satisfy the requirements of this article and where such agency has failed to adequately address such determination within the time period specified by the director. At the end of each fiscal year, any unexpended balance of said fund may not be transferred to the general revenue fund, but shall remain in the groundwater protection fund.

(2) The "Groundwater Remediation Fund", the moneys of which, to the extent that moneys are available, shall be expended by the director for the purposes of investigation, clean-up and remedial action intended to identify, minimize or mitigate damage to the environment, natural resources, public and private water supplies, surface waters and groundwaters and the public health, safety and general welfare which may result from contamination of groundwater or the related environment. The director or other authorized agency officials are authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any and all groundwater remediation fund moneys expended pursuant to this article. All moneys expended from such fund which are so recovered shall be deposited in such

fund. The director may expend moneys from said fund and the interest thereon without necessity of appropriation by the Legislature. All civil penalties and assessments of civil administrative penalties collected pursuant to this article shall be deposited into the said fund. In addition, said fund may receive proceeds from any gifts, grants, contributions or other moneys accruing to the state which are specifically designated for inclusion in the fund. (1991, c. 117.)

§ 20-5M-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearings.

(a) Any person who violates any provision of this article, or any permit or agency approval, rule or order issued to implement this article, shall be subject to civil penalties in accordance with the provisions of section seventeen [§ 20-5A-17], article five-a of this chapter: Provided, That such penalties shall be in lieu of civil penalties which may be imposed under other provisions of this code for the same violation.

(b) Any person who willfully or negligently violates any provision of this article, or any provision of a permit or agency approval, rule or order issued to implement this article, shall be subject to criminal penalties in accordance with the provisions of section nineteen [§ 20-5A-19], article five-a of this chapter: Provided, That such penalties shall be in lieu of other criminal penalties which may be imposed under other provisions of this code for the same violation.

(c) Any person who violates any provision of this article, or any permit or rule or order issued to implement this article, shall be subject to a civil administrative penalty to be levied by the director of the division of natural resources, the commissioner of agriculture, the director of the division of health or the commissioner of the division of energy, as appropriate, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars. In assessing any such penalty, any such official shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by such official by legislative rules promulgated pursuant to this article and the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by such official by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to such official a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, such official

shall inform the alleged violator of the time and place of the hearing. Such official may appoint an assessment officer to conduct the informal hearing who shall make a written recommendation to such official concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, such official shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of such official's decision, the alleged violator may request a formal hearing before the board in accordance with the provisions of section eleven [§ 20-5M-11] of this article. Any administrative civil penalty assessed pursuant to this section shall be in lieu of any other civil penalty which may be assessed under any provision of this code for the same violation. No combination of assessments against any violator under this section may exceed twenty-five thousand dollars per day of each such violation. All administrative penalties shall be levied in accordance with legislative rules promulgated by such official in accordance with the provisions of chapter twenty-nine-a of this code.

(d) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section and all assessments of any civil administrative penalties collected pursuant to subsection (c) of this section shall be deposited into the groundwater remediation fund established pursuant to this article.

(e) Any such official may seek an injunction, or may institute a civil action against any person in violation of any provision of this article or any permit, agency approval, rule or order issued to implement this article. In seeking an injunction, it is not necessary for such official to post bond nor to allege or prove at any point in 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.

(f) If any such official upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, or any permit, order or rules issued to implement the provisions of this article, he or she 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 implementing this article which (1) suspend, revoke or modify permits; (2) require a person to take remedial action; or (3) are cease and desist orders.

(g) Any person issued a cease and desist order under subsection (f) of this section may file a notice of request for reconsideration with such official not more than seven days from the issuance of such order and shall have a hearing before such official to contest the terms and conditions of such order within ten days after filing such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order. (1991, c. 117.)

§ 20-5M-11. Appeal and review procedures.

(a) Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director or any public official authorized to take or implement an agency action, or by the issuance or denial of a permit issued to implement this article or by such permit's term or conditions, or by the failure or refusal to act within a reasonable time, may appeal to the water resources board in the same manner as appeals are taken under section fifteen [§ 20-5A-15], article five-a of this chapter.

(b) Any person, the director or any public official adversely affected by an order made and entered by the water resources board may obtain judicial review thereof in the same manner as provided for under section sixteen [§ 20-5A-16], article five-a of this chapter. (1991, c. 117.)

§ 20-5M-12. Rule-making petition.

Any person may petition the appropriate rule-making agency for rule making on an issue arising under this article. The appropriate rule-making agency, if it believes such issue to merit rule making, may initiate rule making in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code. A decision by the appropriate rule-making agency not to pursue rule making must set forth in writing reasons for refusing to do so. Any person may petition an agency to issue a declaratory ruling pursuant to section one [§ 29A-4-1], article four, chapter twenty-nine-a of this code with respect to the applicability to any person, property or state of facts of any rules promulgated by that agency pursuant to this article. (1991, c. 117.)

§ 20-5M-13. Existing rights and remedies preserved; effect of compliance.

(a) It is the purpose of this article to provide additional and cumulative remedies to address the quality of the groundwater of the state. This article shall not be interpreted to alter the authority of any agency with respect to water other than groundwater. Except as expressly stated in this article, it is not the intention of the Legislature in enacting this article to repeal any other provision of this code.

(b) Nothing contained in this article shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.

(c) Where a person is operating a source or conducting an activity in compliance with the terms and conditions of a permit, rule, order, directive, or other authorization issued by a groundwater regulatory agency pursuant to this article, such person shall not be subject to criminal prosecution for pollution recognized and authorized by such permit, rule, order, directive, or other authorization. (1991, c. 117.)

US EPA ARCHIVE DOCUMENT

§ 20-5M-14

NATURAL RESOURCES

§ 20-5M-14. Conflicting provisions.

In the event that any provision of this article is inconsistent or in conflict with any other provisions of this code, making it impossible to comply with both, the provisions of this article shall control. (1991, c. 117.)

§ 20-5M-15. Effective dates of provisions subject to federal approval.

To the extent that this article modifies any powers, duties, functions and responsibilities of any state agency that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of federal regulatory programs by the state, any such modifications shall become effective upon a proclamation by the governor stating either that final approval of such modifications has been given by the appropriate federal agency or official or that final approval of such modification is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented. (1991, c. 117.)

§ 20-5M-16. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of the article are declared severable. (1991, c. 117.)

ARTICLE 5N.

SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

Sec.		Sec.	
20-5N-1.	Legislative findings and purpose.		county, municipality or of any political subdivision; expenses incurred pursuant to article.
20-5N-2.	Definitions.		
20-5N-3.	Commercial solid waste facility closure assistance program.	20-5N-4e.	Solid waste closure revenue bonds lawful investments.
20-5N-4.	Solid waste assessment fee; penalties.	20-5N-5.	Limitation on assistance.
20-5N-4a.	Solid waste management board empowered to issue solid waste closure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.	20-5N-6.	Application for closure assistance.
		20-5N-7.	Solid waste facility closure cost assistance fund.
20-5N-4b.	Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.	20-5N-8.	Promulgation of rules by director.
		20-5N-9.	Liability of owner or operator.
20-5N-4c.	Legal remedies of bondholders.	20-5N-10.	Procedures for handling remedial actions; payment of costs of remedial actions to be paid by owner or operator.
20-5N-4d.	Bonds and notes not debt of state.	20-5N-11.	Right of entry.
		20-5N-12.	Authority of director to accept grants and gifts.
		20-5N-13.	Management and control of project.