

US EPA ARCHIVE DOCUMENT

## West Virginia Statutes

- Chapter 22B Environmental Boards;
- Chapter 22C Environmental Resources;  
Boards, Authorities, Commissions, and  
Compacts, 1997 Supplement

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

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## CHAPTER 22B. ENVIRONMENTAL BOARDS.

### Article

#### 3. Environmental Quality Board.

W. Va. Law Review. — Flannery, Beckett Regulation in West Virginia." 97 W. Va. L. Rev.  
and McThomas, "Consolidated Environmental 401 (1995).

### ARTICLE 3.

#### ENVIRONMENTAL QUALITY BOARD.

##### Sec.

22B-3-4. Environmental quality board rule-  
making authority.

#### § 22B-3-4. Environmental quality board rule-making au- thority.

(a) In order to carry out the purposes of this chapter and chapter twenty-two [§ 22-1-1 et seq.] of this code, the board shall promulgate legislative rules setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.

(b) Except for the alternate procedures provided for in subsection (c) of this section, the board shall promulgate legislative rules setting water quality standards in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code and the declaration of policy set forth in section two [§ 22-11-2], article eleven, chapter twenty-two of this code.

(c) The board may grant site specific variance only for remined areas of coal remining operation from the standards of water quality set forth in legislative rule 46-CSR-1, et seq., setting standards for iron manganese and pH prior to the issuance of a national pollutant discharge elimination system (NPDES) permit by the division of environmental protection in accordance with 33 USC Section 1311(p) of the federal Water Pollution Control Act. The standards established in the variance will exist for the term of the NPDES permit. The board will promulgate procedural rules on granting site specific coal remining variances in accordance with the provisions of article three, chapter twenty-nine-a of this code on or before the first day of July, one thousand nine hundred ninety-five. At a minimum, the procedures for granting or denying a remining variance will include the following: A description of the data and information

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ENVIRONMENTAL BOARDS

to be submitted to the board by the applicant for such variance; the criteria to be employed by the board in its decision; and provisions for a public comment period and public hearing prior to the board's decision. The board may not grant a variance without requiring the applicant to improve the instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment which requirement will be included as a permit condition. The board may not grant a variance without a demonstration by the applicant that the coal remining operation will result in the potential for improved instream water quality as a result of the remining operation. The board may not grant a variance where the board determines that degradation of the instream water quality will result from the remining operation.

(d) No rule of the board may specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant. (1994, c. 61; 1995, c. 105.)

**Effect of amendment of 1995.** — The amendment substituted "water" for "waters" in (a); redesignated former (b) as present (d); added (c); redesignated former (c) as present

(b); and, in present (b), added "Except for the ... of this section" at the beginning, deleted "such" after "promulgate," and inserted "setting water quality standards" following "legislative rules."

ARTICLE 4.

SURFACE MINE BOARD.

§ 22B-4-1. Appointment and organization of surface mine board.

Cited in *Elk Run Coal Co. v. Babbitt*, 919 F. Supp. 225 (S.D.W. Va. 1996).

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## CHAPTER 22C.

# ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

### Article

1. Water Development Authority.
2. Water Pollution Control Revolving Fund Act.
7. Oil and Gas Inspectors' Examining Board.
11. Interstate Commission on the Potomac River Basin.

### ARTICLE 1.

## WATER DEVELOPMENT AUTHORITY.

#### Sec.

22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.

#### Sec.

22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.

22C-1-27. Authorized limit on borrowing.

**§ 22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.**

The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority is controlled, managed and operated by the seven-member board known as the water development board. The director of the division of environmental protection, and the commissioner of the bureau of public health and the state officer or employee who in the judgment of the governor is most responsible for economic or community development are members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board are appointed by the governor, by and with the advice and consent of the Senate, for terms of two, three, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made, except that any person appointed to fill a vacancy occurring

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prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her successor. No more than two of the appointed board members shall at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.

All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one [§ 6-1-1 et seq.], chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two [§ 6-2-1 et seq.], chapter six of this code. The governor may remove any board member for cause as provided in article six [§ 6-6-1 et seq.], chapter six of this code.

Annually the board shall elect one of its appointed members as chair and another as vice chair, and shall appoint a secretary-treasurer, who need not be a member of the board. Four members of the board is a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if he or she is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

The director of the division of environmental protection, the commissioner of the bureau of public health and the state officer or employee most responsible for economic or community development shall not receive any compensation for serving as board members. Each of the four appointed members of the board shall receive an annual salary of five thousand dollars, payable in monthly installments. Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of such board. All such expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority appointed by the board. (1994, c. 61; 1995, c. 252.)

**Effect of amendment of 1994.** - The second sentence, and inserted the present third amendment, in the fifth paragraph create the sentence.

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**§ 22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.**

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when the refinancing is in conjunction with the financing for a new water development project regardless of the source of the financing for the new project: Provided, That the amount of the refinancing may not exceed fifty percent of the aggregate amount of the refinancing of an existing project and the financing of a new project; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of projects, or finance projects, in whole or in part, by loans to governmental agencies. A water development project shall not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the director of the division of environmental protection or in the process of preparation by the director and to be consistent with the standards set by the state environmental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing projects or for making a loan or grant for projects shall include a finding by the authority that the determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include, without limitation, the following provisions:

(1) The cost of the project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include, in addition to the pledge of all revenues from the project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on the project;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of the governmental agency under the loan agreement, increase service charges from persons using the project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of the governmental agency under the loan agreement; and

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(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project. (1994, c. 61; 1995, c. 252.)

**Effect of amendment of 1995.** — The amendment, in the first sentence of the introductory paragraph, substituted "the financing" for "a loan" preceding "for a new water development project," inserted "regardless of the source of the financing for the new project" preceding the proviso, substituted "the aggregate

amount of the refinancing of an existing project and the financing of a new project" for "the loan to the governmental agency"; and made stylistic changes throughout.

**Quoted in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).**

**§ 22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.**

**Authority.** — This section authorizes the water development authority to directly impose on a public service district "in its own name and for its own benefit service charges determined by it to be necessary" when the public service district defaults on a loan made by the water development authority to the public service district; however, the water development au-

thority's power to impose such service charges upon the public service district which operates a public utility is subject to the regulatory review and approval of the public service commission pursuant to § 24-2-1. *State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).*

**§ 22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.**

**Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).**

**§ 22C-1-12. Legal remedies of bondholders and trustees.**

**Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).**

**§ 22C-1-18. Water development bonds lawful investments.**

**Editor's notes.** — Former § 12-6-9, referred to in this section, concerned loans to the state, purpose for which moneys transferred could be disbursed and expended, terms and conditions

for repayment, and the creation of a special account in the state treasury, and was repealed by Acts 1996, c. 258. For new law see § 44-6B-1 et seq.

§ 22C-1-27

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§ 22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority shall not exceed three hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded. (1994, c. 61; 1995, c. 252.)

Effect of amendment of 1995. — The dollars" for "two hundred million dollars"; and amendment substituted "three hundred million deleted "such" preceding "refunding bonds."

ARTICLE 2.

WATER POLLUTION CONTROL REVOLVING FUND ACT.

Sec.

22C-2-1. Definitions.

22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

Sec.

22C-2-5. Collection of money due to the fund.

22C-2-7. Environmental review of funded projects.

§ 22C-2-1. Definitions.

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

(a) "Authority" means the water development authority provided for in section four (§ 22C-1-4), article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

## § 22C-2-3

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(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

- (1) Sewage and wastewater collection, treatment and disposal facilities;
- (2) Public water transportation, treatment and distribution facilities;
- (3) Drainage facilities and projects;
- (4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;
- (5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and
- (6) Other projects allowable under federal law. (1994, c. 61; 1996, c. 257.)

**Effect of amendment of 1996.** — The amendment substituted "entity" for "government" throughout the section; in (b)(3), substituted "on the land or buildings" for "thereon"

and "the land" for "such land"; in (c), substituted "to the acts" for "thereto"; and, in (e), inserted "banking institution" following "commission."

**§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.**

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this

article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code. (1994, c. 61; 1996, c. 257.)

**Effect of amendment of 1996.** — The amendment substituted "entities" for "governments" throughout the section; in (b) and (d), inserted "legislative" preceding "rules" and "article three" preceding "chapter twenty-nine-a"; and made stylistic changes.

## § 22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

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## ENVIRONMENTAL RESOURCES

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

- (1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;
- (2) The enforcement and collection of service charges; and
- (3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1994, c. 61; 1996, c. 257.)

**Effect of amendment of 1996.** — The amendment substituted "government" for "entity" throughout; and made minor stylistic changes.

## § 22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three (§ 29A-3-1 et seq.), chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended. (1994, c. 61; 1996, c. 257.)

**Effect of amendment of 1996.** — The amendment, in (a), inserted "legislative" preceding "rules in accordance" and "article three" preceding "chapter twenty-nine-a," substituted

"the rules" for "said rules," and deleted "rules and" preceding "regulations promulgated"; and, in (b), substituted "entity" for "government" and "the projects" for "such projects."

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## § 22C-4-3

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## ARTICLE 3.

## SOLID WASTE MANAGEMENT BOARD.

## § 22C-3-18. Solid waste disposal revenue bonds lawful investments.

**Editor's notes.** — Former § 12-6-9, referred to in this section, concerned loans to the state, purpose for which moneys transferred could be disbursed and expended, terms and conditions

for repayment, and the creation of a special account in the state treasury, and was repealed by Acts 1996, c. 258. For new law see § 44-6B-1 et seq.

## ARTICLE 4.

## COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

## § 22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

Cited in Wetzel County Solid Waste Auth. v. West Virginia Div. of Natural Resources, 195 W. Va. 1, 462 S.E.2d 349 (1995).

## § 22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

Quoted in Wetzel County Solid Waste Auth. v. West Virginia Div. of Natural Resources, 195 W. Va. 1, 462 S.E.2d 349 (1995).

## § 22C-4-23. Powers, duties and responsibilities of authority generally.

Quoted in Wetzel County Solid Waste Auth. v. West Virginia Div. of Natural Resources, 195 W. Va. 1, 462 S.E.2d 349 (1995).

## ARTICLE 7.

## OIL AND GAS INSPECTORS' EXAMINING BOARD.

Sec.

22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensa-

tion of members; meetings; powers and duties generally; continuation following audit.

## § 22C-7-3

## ENVIRONMENTAL RESOURCES

W. Va. Law Review. — Flannery, Beckett Regulation in West Virginia," 97 W. Va. L. Rev. and McThomas, "Consolidated Environmental 401 (1995).

**§ 22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.**

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members, two of whom shall be ex officio members and three of whom shall be appointed by the governor, by and with the advice and consent of the Senate. Appointed members may be removed only for the same causes and like manner as elective state officers. One member of the board shall be the representative of the public at large and shall be a person who is knowledgeable about the subject matter of this article and has no direct or indirect financial interest in oil and gas production other than the receipt of royalty payments which do not exceed a five-year average of six hundred dollars per year; one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The chief of the office of oil and gas of the division of environmental protection and the chief of the office of water resources of the division of environmental protection shall be ex officio members.

The appointed members of the board shall be appointed for overlapping terms of six years, except that the original appointments shall be for terms of two, four and six years, respectively. Any member whose term expires may be reappointed by the governor.

The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

The chief of the office of oil and gas shall serve as chair of the board. The board shall elect a secretary from its members.

Members of the board, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.

The board shall meet at such times and places as shall be designated by the chair. It is the duty of the chair to call a meeting of the board on the written request of two members. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. A majority of members is a quorum for the transaction of business.

(b) In addition to other powers and duties expressly set forth elsewhere in this article, the board shall:

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West Virginia," 97 W. Va. L. Rev.

# Examining board creation, term and meetings; powers and jurisdiction following

Inspectors' examining board shall consist of five members and three advisory members with the advice and approval of the board. Only for the same purpose a member of the board shall be a person who is not an employee and has no direct or indirect interest in the receipt of compensation in excess of six hundred dollars per year by reason of previous employment. The board shall represent the viewpoint of the public and shall be a person who by the board may be said to represent

the interests of environmental protection of the division of environmental protection.

The board shall be appointed for overlapping terms and shall be for terms of not more than four years. A term expires may be

renewed by the board. Compensation and expense allowance shall be for their interim compensation commission as determined in the discharge of their duties.

The board shall be the chair of the board. The

The board shall take and subscribe the oath of West Virginia. The board shall be designated by the board on the written resolution given in writing to the effect of the meeting. A resolution of the board shall be a business.

The board shall set forth elsewhere in

(1) Establish, and from time to time revise, forms of application for employment as an oil and gas inspector and supervising inspector, which shall include the applicant's social security number, and forms for written examinations to test the qualifications of candidates, with such distinctions, if any, in the forms for oil and gas inspector and supervising inspector as the board may from time to time deem necessary or advisable;

(2) Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, required to be held by this article. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

(3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By unanimous agreement of all members of the board, one or more members of the board or an employee of the division of environmental protection may be designated to give to a candidate the written portion of the examination;

(4) Prepare and certify to the director of the division of environmental protection a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the director of the division of environmental protection a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment; (c) who have been passed over for appointment for three years; (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment; or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets and other papers of all applicants for appointment for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of inspectors or the supervising inspector in accordance with the provisions of this article;

(8) Hear and determine appeals of inspectors or the supervising inspector from suspension orders made by said director pursuant to the provisions of section two [§ 22-6-2], article six, chapter twenty-two of this code: Provided, That in order to appeal from any order of suspension, an aggrieved inspector

## § 22C-8-1

## ENVIRONMENTAL RESOURCES

or supervising inspector shall file such appeal in writing with the oil and gas inspectors' examining board not later than ten days after receipt of the notice of suspension. On such appeal the board shall affirm the action of said director unless it be satisfied from a clear preponderance of the evidence that said director has acted arbitrarily;

(9) Make an annual report to the governor concerning the administration of oil and gas inspection personnel in the state service; making such recommendations as the board considers to be in the public interest; and

(10) Render such advice and assistance to the director of the division of environmental protection as the director shall from time to time determine necessary or desirable in the performance of such duties.

(c) After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten (§ 4-10-1 et seq.), chapter four of this code, the Legislature hereby finds and declares that the oil and gas inspectors' examining board within the division of environmental protection should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the oil and gas inspectors' examining board within the division of environmental protection shall continue to exist until the first day of July, two thousand. (1994, c. 61; 1997, 1st Ex. Sess., c. 16.)

**Effect of amendment of 1997.** — The amendment, effective July 1, 1997, inserted "which shall include the applicant's social security number" in (b)(1).

## ARTICLE 8.

## SHALLOW GAS WELL REVIEW BOARD.

**W. Va. Law Review.** — Lane, "Fire in the Hole to Longwall Shears: Old Law Applied to New Technology and Other Longwall Mining Issues," 96 W. Va. L. Rev. 577 (1994).

## § 22C-8-1. Declaration of public policy; legislative findings.

Cited in *Croston v. Emax Oil Co.*, 195 W. Va. 86, 464 S.E.2d 728 (1995).

## § 22C-8-2. Definitions.

Quoted in *Croston v. Emax Oil Co.*, 195 W. Va. 86, 464 S.E.2d 728 (1995).

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Establishment of a (a)(1) leave procedure intended to be more than an ordinary drilling. I (1995).

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## ARTICLE 9.

## OIL AND GAS CONSERVATION.

## § 22C-9-1. Declaration of public policy; legislative findings.

**Legislative intent.** — The declaration of public interest found presently in this section clearly sets out the current public policy of the State with respect to the duty to "pool" or unitize shallow oil and gas wells. *Croston v. Emax Oil Co.*, 195 W. Va. 86, 464 S.E.2d 728 (1995).

Although an oil and gas lessee, who also is lessee of adjoining land, has a duty to avoid the

fraudulent or evasive drainage of the property of one to the detriment of the other, there presently is no implied duty to unitize or "pool" the leasehold of the one with the leasehold of the other with respect to shallow wells not located in a coal field or utilized in a secondary recovery program. *Croston v. Emax Oil Co.*, 195 W. Va. 86, 464 S.E.2d 728 (1995).

## § 22C-9-2. Definitions.

Cited in *Croston v. Emax Oil Co.*, 195 W. Va. 86, 464 S.E.2d 728 (1995).

## § 22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

**W. Va. Law Review.** — Lane, "Fire in the Hole to Longwall Shears: Old Law Applied to New Technology and Other Longwall Mining Issues," 96 W. Va. L. Rev. 577 (1994).

**Establishment of drilling units discretionary.** — The term "may" in subdivision (a)(1) leaves no doubt that avilment of the procedures for establishing drilling units was intended to operate in a discretionary, rather than an obligatory, manner. *Powers v. Union Drilling, Inc.*, 194 W. Va. 782, 461 S.E.2d 844 (1995).

The provisions found in §§ 22C-9-1 to 22C-9-16 contain no provisions making it mandatory for an oil and gas developer to establish a drilling unit or pool before it can drill a well. *Powers v. Union Drilling, Inc.*, 194 W. Va. 782, 461 S.E.2d 844 (1995).

**Mandatory pooling or unitization is required only in certain circumstances involving so-called deep wells, involving shallow wells**

drilled in coal fields, and involving shallow wells which are a part of secondary recovery program; even under leases for deep wells, a driller has discretion to determine whether to unitize. *Croston v. Emax Oil Co.*, 195 W. Va. 86, 464 S.E.2d 728 (1995).

**Refusal to execute unitization agreement.** — The owner of a minority interest in the oil and gas underlying a tract of land, the other interests in which are under lease, who refuses to execute the lease binding his cotenants and a unitization agreement embracing the tract mentioned and an adjoining boundary in which he has no interest and which is under lease to the same lessee, neither the lease nor the unitization agreement being under attack, has no equitable interest in the production of a well drilled by the lessee upon the adjoining boundary. *Powers v. Union Drilling, Inc.*, 194 W. Va. 782, 461 S.E.2d 844 (1995).

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§ 22C-11-1

ENVIRONMENTAL RESOURCES

ARTICLE 11.

INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

Sec.  
22C-11-1. Creation of commission; members;  
terms; compact with other political units.

§ 22C-11-1. Creation of commission; members; terms; compact with other political units.

There is hereby created a commission consisting of three members, to act jointly with commissioners appointed for like purposes by the commonwealths of Pennsylvania and Virginia, the state of Maryland, and the District of Columbia, and an additional three members to be appointed by the president of the United States, and which, together with the other commissioners appointed as hereinbefore mentioned, shall constitute and be known as the "Interstate Commission on the Potomac River Basin." The said commission of the state of West Virginia shall consist of three members. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner for any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state is the director of the division of environmental protection, and the term of the ex officio commissioner terminates at the time he ceases to hold said office. Said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his division or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The term of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners: Provided, That the compact hereinafter referred to shall then have gone into effect, in accordance with article six thereof, otherwise to begin upon the date said compact shall become effective, in accordance with said article six.

Any commissioner may be removed from office by the governor.

The governor of the state of West Virginia is hereby authorized and directed to execute a compact on behalf of the state of West Virginia, with the other states and the district hereinabove referred to, who may by their legislative bodies so authorize a compact in form substantially as follows:

Whereas control of a joint agency in the area of the

Whereas states of Maryland and Virginia the creation of the Potomac River Basin regulating and harmful sewage and

Whereas affected by water management planning resources activities coordinated as

The state of Pennsylvania and Virginia signatory hereinafter drained by an agency River basin organization

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# A COMPACT

Whereas, It is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate streams; and

Whereas, The Congress of the United States has given its consent to the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac River and the main and tributary streams therein, for "the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes"; and

Whereas, The regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of federal, state, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district; now, therefore,

The states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac valley conservancy district, hereinafter designated the conservancy district, comprising all of the area drained by the Potomac River and its tributaries; and also, do hereby create, as an agency of each signatory body, the interstate commission on the Potomac River basin, hereinafter designated the commission, under the articles of organization as set forth below.

## Article I

The interstate commission on the Potomac River basin shall consist of three members from each signatory body and three members appointed by the president of the United States. Said commissioners, other than those appointed by the president, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed, and shall serve without compensation from the commission but shall be paid by the commission their actual expenses incurred and incident to the performance of their duties.

(A) The commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, shall adopt suitable bylaws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The commission shall appoint, and at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as

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may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The commission may maintain one or more offices for the transaction of its business and may meet at any time within the area of the signatory bodies.

(C) The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the commission.

(D) A quorum of the commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the commission who shall represent at least a majority of the signatory bodies: Provided, That no action of the commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the commissioners from such signatory body shall vote in favor thereof.

#### Article II

The commission shall have the power:

(A) To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the conservancy district.

(B) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and federal, local governmental and nongovernmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said conservancy district.

(C) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the conservancy district and on the aims, views, purposes and recommendations of the commission in relation thereto.

(D) To cooperate with, assist, and provide liaison for and among, public and nonpublic agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

(E) In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private

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agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

(F) (1) To make, and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the conservancy district, and also, for cleanliness of the various streams in the conservancy district.

(2) To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the district in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the commission with its recommendations thereon.

The commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the commission.

It is agreed that after acceptance of such classification, the signatory body through its appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the commission for classified waters. The commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a manner similar to that in which these standards and classifications were originally established.

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, bathing and other recreational purposes, maintenance and propagation of fish life, industrial and agricultural uses, navigation and disposal of wastes.

### Article III

For the purpose of dealing with the problems of pollution and of water and associated land resources in specific areas which directly affect two or more, but not all, signatory bodies, the commission may establish sections of the commissions consisting of the commissioners from such affected signatory bodies: Provided, That no signatory body may be excluded from any section in

which it wishes to participate. The commissioners appointed by the president of the United States may participate in any section. The commission shall designate, and from time to time may change, the geographical area with respect to which each section shall function. Each section shall, to such extent as the commission may from time to time authorize, have authority to exercise and perform with respect to its designated geographical area any power or function vested in the commission, and in addition may exercise such other powers and perform such functions as may be vested in such section by the laws of any signatory body or by the laws of the United States. The exercise or performance by a section of any power or function vested in the commission may be financed by the commission, but the exercise or performance of powers or functions vested solely in a section shall be financed through funds provided in advance by the bodies, including the United States, participating in such section.

#### Article IV

The moneys necessary to finance the commission in the administration of its business in the conservancy district shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contribution shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge; as shall be determined from time to time by the commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

#### Article V

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the conservancy district and in planning for the utilization, conservation and development of the water and associated land resources thereof.

2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

3. The appropriation of biennial sums on the proportionate basis as set forth in article four.

#### Article VI

This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and by the commissioners of the District of Columbia, and approval by the Congress of the

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United States: Provided, That this compact shall not be effective as to any signatory body until ratified thereby.

### Article VII

Any signatory body may, by legislative action, after one year's notice to the commission, withdraw from this compact. (1994, c. 61; 1996, c. 203.)

**Effect of amendment of 1996.** — The amendment, in the first introductory paragraph, substituted "director of the division of environmental protection" for "commissioner of the bureau of public health ex officio"; in Article III, deleted "however" following "Provided"; and, in Article VI, deleted "however" following "Provided."

**Editor's notes.** — Concerning the reference in Article II(A) to "the effective date of this compact," see § 22C-11-4 regarding the effective date of Acts 1994, c. 61. Acts 1996, c. 203, which amended and reenacted this section, passed March 8, 1996, and became effective 90 days from passage.

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