

US EPA ARCHIVE DOCUMENT

West Virginia Statutes

- Chapter 16 Article 20 Air Pollution Control, 1993 replacement volume; and
- Chapter 16 Article 20 Air Pollution Control (repealed), 1997 Supplement

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

appropriated for such purpose, for all reasonable and necessary expenses actually incurred in the discharge of their duties as such.

As compensation for his services on the commission, each appointed member shall receive, out of moneys appropriated for such purpose, the sum of fifty dollars for each day or substantial portion thereof that he is actually engaged in the work of the commission. Each member shall also be entitled to be reimbursed, out of moneys appropriated for such purpose, for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the commission.

At its first meeting the commission shall elect from its membership a chairman, and at the first meeting in each fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year. At similar times the commission shall elect from its membership a vice chairman and appoint a secretary. The secretary need not be a member of the commission. The vice chairman shall preside over the meetings and hearings of the commission in the absence of the chairman. The commission shall appoint and employ a director and such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

The commission may establish rules for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved. Copies of orders entered by the commission, as well as copies of papers or documents filed with it, or the records of proceedings before the commission, shall be attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two commissioners, all of which meetings shall be general meetings for the consideration of any and all matters which may properly come before the commission. (1961, c. 63; 1967, c. 13; 1979, c. 2.)

Editor's notes. — For transfer of the air pollution control commission to the department of commerce, labor and environmental resources in 1989, see § 5F-2-1.

§ 16-20-5. Air pollution control commission — Powers and duties; legal services; rules; public hearings.

The commission is hereby authorized and empowered:

- (1) To develop ways and means for the regulation and control of pollution of the air of the state;
- (2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;
- (3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the commission shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no rule or program of the commission shall be any more stringent than any federal rule or program except to the limited extent that the commission first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, however, That nothing contained in this article shall be construed to allow a search of a private dwelling, including the curtilage thereof, without a proper warrant;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members appointed from the general public, for each area so designated. Such members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise

and consult with the commission about all matters pertaining to the creation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the commission such information as the director may require in a form or manner prescribed by him for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the commission;

(16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended: Provided, That in preparing and submitting each such plan the commission shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: Provided, however, That nothing herein contained shall be construed to affect plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(17) Whenever the commission achieves informally, by letter, or other agreement with any person that said person will cease and desist in any act resulting in the discharge of pollutants or do any act to reduce or eliminate such discharge, such agreement shall be embodied in a consent order and entered as, and shall have the same effect as, an order entered after a hearing as provided in section six [§ 16-20-6] of this article; and

(18) To establish by rule, permit and operating fees and penalties for non-payment thereof. Such fees shall be deposited in a special fund in the state treasury designated "Air Pollution Control Commission Fund," to be appropriated as provided by law for the purpose of paying salaries and expenses of the commission. Any balance remaining in the fund at the end of any fiscal year shall not revert to the treasury but shall remain in the fund and may be appropriated and used as provided above in the ensuing fiscal years.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by adver-

tisement published as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be in at least one county in each affected air quality control region defined by the commission. A copy of any proposed rule of the commission shall be filed in the office of the secretary of state at least sixty days prior to the scheduled date of any such hearing. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule to the commission within thirty days after such hearing. After such thirty-day period, no views or comments shall be received in writing or otherwise, unless formally solicited by the commission. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party in which event the prevailing rates for such transcripts will be required from such interested party. (1961, c. 63; 1963, c. 76; 1967, c. 105; 1971, c. 73; 1979, c. 2; 1990, c. 8.)

Effect of amendment of 1990. — The amendment deleted "and regulations" following "rules" in (5), (6), and (9); deleted "and regulation" following "rule" twice in the first proviso in (4) and throughout the last paragraph of the section; in (4), substituted "To promulgate ... of this code" for "To adopt and to promulgate reasonable rules and regulations" and rewrote the second proviso; in (16), substituted "Provided, however" for "Provided further" in the second proviso; and added (18).

Editor's notes. — The Federal Clean Air Act, referred to above, is codified as 42 U.S.C. § 7401 et seq.

Textbooks. — Administrative Law in West Virginia (Neely), §§ 4.07, 5.16.

W. Va. Law Review. — Flannery and Poland, "Hazardous Waste Management Act — Closing the Circle," 84 W. Va. L. Rev. 347 (1982).

Federal Clean Air Act intended as comparative base for regulations. — The Federal Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, was intended to be the comparative base for the commission's regulations, rules or standards, etc., under § 16-20-5(4). Op. Att'y Gen., Nov. 15, 1979.

Stringency of regulations limited by federal standards. — The commission cannot regulate sources more stringently than applicable Environmental Protection Agency (EPA) prevent significant deterioration (PSD) requirements, new source performance standards or Standards for Hazardous Air Pollutants (NESHAP) regulations unless necessary to attain and maintain ambient air quality standards. Op. Att'y Gen., Nov. 15, 1979.

The commission can regulate existing

sources as stringently as it desires. Op. Att'y Gen., Nov. 15, 1979.

When the commission regulates a source which has two differing federal requirements, the commission can regulate as stringently as the stricter federal requirement. Op. Att'y Gen., Nov. 15, 1979.

Regulation of new sources in attainment areas. — The commission can regulate new sources in attainment areas in the same way as it regulates sources in nonattainment areas. Op. Att'y Gen., Nov. 15, 1979.

The first proviso of § 16-20-5(4) means that the commission could not require a pollution source to: (1) install a particular manufacturer's equipment to the exclusion of all other, (2) use a specific type of construction, or (3) use a particular method of compliance to the exclusion of all others to comply with the commission's regulations unless the Clean Air Act, as amended, specifically requires it. Op. Att'y Gen., Nov. 15, 1979.

The second proviso of subdivision (4) is applicable only when the federal government has a rule, regulation, program, plan or standard for the same source which the commission will regulate. Op. Att'y Gen., Nov. 15, 1979.

And applies only to rules, etc. effective after 1979 amendment. — The second proviso of subdivision (4) applies to rules, regulations, programs, standards or plans put into effect after enactment of the amendment of 1979. Op. Att'y Gen., Nov. 15, 1979.

Pre-1979 rules, etc. continue to apply. — Pollution sources meeting regulations, rules, programs, standards and plans put into effect prior to the amendment of 1979 must continue

to meet their assigned emission limitations. Op. Att'y Gen., Nov. 15, 1979.

A commission regulation permitting certain pollution sources to "bank" their excess emission offset credits was a reasonable regulation within the commission's authority under subdivision (1), and reasonably related to the purpose of the legislative enactment. Op. Att'y Gen., Feb. 1, 1980, No. 49.

The provision of subdivision (4) that no commission rule be more stringent than the federal regulations was met by a rule permitting, for two years only, the "banking" by pollution sources of excess emission offset credits, because federal regulations would permit the State to prohibit such banking altogether. Op. Att'y Gen., Feb. 1, 1980, No. 49.

Municipality may not enforce conflicting local laws. — The city of Wheeling, in the absence of an express grant of the State, may not enforce local laws which are in conflict with or inconsistent with the general laws or statutes of the State and, therefore, would be prohibited from enforcing provisions of a local ordinance relating to emission standards which are either less restrictive or more restrictive than the emission standards established by the West Virginia air pollution control commission. Op. Att'y Gen., Mar. 30, 1972.

A second public hearing or a continuance of a public hearing can be held at the discretion of the air pollution control commission after compliance with applicable laws as to notice, and if neither the request for a second public hearing nor a request for a continuance of the first public hearing are granted, then any discussion as to regulations or proposed regulations, not the subject of the public

hearing, is proper only as such discussion concerns the proposed regulation for which the public hearing was called. Op. Att'y Gen., Dec. 14, 1971.

Commission regulation found valid under this section. — The requirement of a compliance program and schedule found in section 8 of the air pollution control commission regulation II (1972) is found to be valid and reasonable under this section. Op. Att'y Gen., Mar. 12, 1973.

Review of complex sources authorized. — This section authorizes the promulgation by the West Virginia air pollution control commission of a regulation requiring review of complex sources as to their direct and indirect effects. Op. Att'y Gen., Nov. 30, 1973.

And is necessary and convenient to the preparation and submission of a plan for the implementation, maintenance and enforcement of air quality standards. Op. Att'y Gen., Nov. 30, 1973.

The air pollution control commission is an agency as defined in § 29A-1-1 and is subject to the applicable provisions of chapter 29A, art. 3. Op. Att'y Gen., July 7, 1976.

Nonapplicability of §§ 29A-3-5 and 29A-3-6. — This section does not require the air pollution control commission to "make certain findings and determinations," and therefore, §§ 29A-3-5 and 29A-3-6 do not apply to an administrative statute, such as this section in which there is no requirement to make findings and determinations. Op. Att'y Gen., July 7, 1976.

Cited in APCO v. Environmental Protection Agency, 579 F.2d 846 (4th Cir. 1978).

§ 16-20-6. Issuance of cease and desist orders by director; service; appeals to commission; hearings, subpoenas, etc.; orders and findings of commission.

If, from any investigation made by him or from any complaint filed with him, the director shall be of the opinion that a person is violating the provisions of this article, or any rules and regulations promulgated pursuant thereto, he shall make and enter an order directing such person to cease and desist such activity. The director shall fix a reasonable time in such order by which such activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter such order.

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

Any person upon whom a copy of such final order has been served may appeal such order to the air pollution control commission in the manner here-

inafter provided. The person so appealing shall be known as the appellant and the director shall be known as the appellee. Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the commission for such purpose, with the commission within fifteen days after the date upon which the appellant received a copy of the order. The notice of appeal shall set forth the order complained of and the grounds upon which the appeal is based. The filing of such notice of appeal shall stay the effect of the order complained of until final determination thereof is made by the commission. A copy of the notice of appeal shall be filed by the commission with the director within eight days after the notice of appeal is filed with the commission.

Within seven days after receipt of his copy of the notice of appeal, the director shall prepare and certify to the commission a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the director's file relating to the matter in question. The commission shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee.

All of the pertinent provisions of article five [§ 29A-5-1 et seq.], chapter twenty-nine-A of this Code shall apply to and govern the hearing on appeal authorized by the provisions of this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, except that any such appeal hearing shall be held in the county wherein the alleged statutory air pollution complained of originated.

Any such appeal hearing shall be conducted by a quorum of the commission. For the purpose of conducting any such appeal hearing, any member of the commission and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the commission, in accordance with the provisions of section one [§ 29A-5-1], article five, chapter twenty-nine-A of this Code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-A, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

Any such hearing shall be held within twenty days after the date upon which the commission received the timely notice of appeal, unless there is a postponement or continuance. The commission may postpone or continue any hearing on its own motion, or upon application of the appellant or the appellee for good cause shown. The director shall be represented at any such hearing by the attorney general or his assistants. At any such hearing the appellant may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this State.

After such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall make and enter an order affirming, modifying or vacating the order of the director, or shall make and enter such order as the director should have entered.

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Such order shall be accompanied by findings of fact and conclusions of law as specified in section three [§ 29A-5-3], article five, chapter twenty-nine-A of this Code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and his attorney of record, if any, and upon the appellee in person or by registered or certified mail. The order of the commission shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section seven [§ 16-20-7] of this article. (1961, ch. 63; 1963, c. 76; 1967, c. 13.)

§ 16-20-7. Appeals from orders of commission.

Any person whose interest shall have been substantially affected by an order of the commission may appeal from such order or decision by filing with the commission a written notice of appeal. Such notice shall be filed within thirty days from the date notice of the order or decision of the commission was given to such person, and shall be signed by him or his attorney. Within thirty days from the receipt of the notice of appeal, the commission shall prepare and forward to the appellant or his attorney a copy of a full transcript of the proceedings, together with a copy of the order or decision of the commission and a copy of the notice of appeal, and at the same time shall file a transcript of the proceedings before the commission and the other documents mentioned above with the clerk of the circuit court herein designated. All documents shall be duly certified by the secretary of the commission. The court thereafter have complete jurisdiction of the matter.

The appeal shall be taken to the circuit court of the county wherein alleged statutory air pollution complained of originated. The circuit court to which any such appeal shall have been taken, or the judge thereof, shall fix a time for the hearing of the appeal and shall, after such hearing, without a jury, by order entered of record, affirm, modify or set aside in whole or in part the order of the commission. The said court shall make findings of fact and conclusions of law based upon the transcript of the proceedings before the commission and upon any additional evidence adduced before said court, the right to adduce such additional evidence being hereby reserved to the commission or to any person substantially affected by the order of the commission. In the event the circuit court shall affirm or modify the commission's order that a statutory air pollution exists under the provisions of this article, the order of the court shall specify that such pollution shall be corrected within a reasonable period of time to be fixed therein. The commission or any person whose interests shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

An appeal to a circuit court or to the supreme court of appeals shall serve to stay the order of the commission or circuit court, as the case may be, pending final determination thereof. (1961, c. 63.)

§ 16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article shall be subject to a civil penalty not to exceed ten thousand dollars for each day of such violation, which penalty shall be recovered in a civil action brought by the commission in the name of the state of West Virginia in the circuit court of any county wherein such person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury: Provided, That any such person shall not be subject to such civil penalties unless such person shall have first failed to correct such violation after being given written notice thereof by the director and within such time as is specified in the notice of violation issued by the director, such time period to begin upon receipt of said notice. The amount of any such penalty collected by the commission shall be deposited in the general revenue of the state treasury, according to law.

(b) (1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the commission thereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or imprisoned in the county jail not more than six months or both fined and imprisoned.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or imprisoned in the county jail not more than one year or both fined and imprisoned.

(c) Upon a request in writing from the commission, it shall be the duty of the attorney general and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section nine [§ 16-20-9] of this article may be brought to institute and prosecute all such actions on behalf of the commission.

(d) For the purpose of this section, violations on separate days shall be considered separate offenses. (1961, c. 63; 1967, c. 13; 1979, c. 2; 1990, c. 8.)

Effect of amendment of 1990. — The amendment designated the first through third sentences of the former first undesignated paragraph as (a), and designated the fourth sentence of that paragraph as (c) and the for-

mer second undesignated paragraph as (d), and inserted (b); rewrote (a); and inserted "attorney general and the" and "or section nine of this article" in (c).

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§ 16-20-9. Applications for injunctive relief.

The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief brought under this section or for civil penalty brought under section eight [§ 16-20-8] of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section eight or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees. (1961, c. 63; 1967, c. 13; 1990, c. 8.)

Effect of amendment of 1990. — The **Rules of Civil Procedure.** — Injunctions, amendment rewrote the section. Rule 65.

§ 16-20-10. Emergencies.

Whenever air pollution conditions in any area of the State become such as, in the opinion of the commission, to create an emergency and to require immediate action for the protection of the public health, the commission may, with the written approval of the governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the commission shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the commission shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the commission may thereafter apply by petition to the circuit court of the county for a review of the commission's action. The circuit court shall forthwith fix a time for hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside in whole or in part the order and action of the commission. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the supreme court of appeals in the manner prescribed by law. (1961, c. 63.)

§ 16-20-11. Powers reserved to state board of health, local health boards and political subdivisions; conflicting statutes repealed.

Nothing in this article shall affect or limit the powers or duties heretofore conferred by the provisions of this chapter upon the state board of health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this State except insofar as such powers and duties might otherwise be hereafter deemed to apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise be deemed to apply to the control, reduction or abatement of air pollution, hereby repealed: Provided, however, That no ordinance heretofore adopted by any municipality relating to the control, reduction or abatement of air pollution shall be deemed repealed by this article. (1961, c. 63.)

County commissions without authority. gage in any activities relating to air pollution.
— No provision of law specifically authorizes Op. Att'y Gen., Oct. 20, 1972.
county courts (now county commissions) to en-

§ 16-20-11a. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

All air quality data, emission data, permits, compliance schedules, commission orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall consider such records, reports, data or information or such particular portion thereof confidential: Provided, That such confidentiality shall not apply to the types and amounts of air pollutants discharged, and that such records, reports, data or information may be disclosed to other officers or employees of the State concerned with enforcing this article when relevant to any official proceedings thereunder.

All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of such a request, the director or his designate shall: (a) Advise the person making such request of the time and place at which he may inspect and copy the documents; or (b) deny the request, stating in writing the reasons for such denial. For purposes of judicial appeal, a written denial by the director or his designate shall be deemed an

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exhaustion of administrative remedies. Any person whose request for information is denied in whole or in part may appeal from such denial by filing with the director a notice of appeal. Such notice shall be filed within thirty days from the date the request for information was denied, and shall be signed by the person whose request was denied or his attorney. The appeal shall be taken to the circuit court of Kanawha county, where it shall be heard without a jury. The scope of review shall be limited to the question of whether the records, reports, data or other information, or any particular part thereof (other than emission data), sought to be inspected or copied, would, if made public, divulge methods or processes entitled to protection as trade secrets. The said court shall make findings of fact and conclusions of law based upon the evidence and testimony. The director, the person whose request was denied, or any other person whose interest shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law. (1971, c. 73.)

Textbooks. — Administrative Law in West Virginia (Neely), § 7.12.

§ 16-20-11b. Permits required for stationary sources of air pollutants.

No person shall construct or modify any stationary source of air pollutants without first obtaining a permit therefor as hereinafter provided.

The commission shall by rule and regulation specify the class or category of stationary sources to which this section shall apply and compliance with this section shall be required only with respect to such sources as are specified in such rule and regulation. Application for permits shall be made upon such form, in such manner, and within such time as the rule and regulation shall prescribe and shall include such information, as in the judgment of the director, will enable him to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules and regulations promulgated thereunder.

Within ninety days of the receipt of an application required pursuant to this section the director shall issue such permit unless he determines that the proposed construction or modification will not be in accordance with this article or rules and regulations promulgated thereunder, in which case he shall issue an order for the prevention of such construction or modification. Failure to issue the permit or such order within the time prescribed herein shall be deemed a determination that such construction or modification may proceed: Provided, that it is in accordance with the plans and specifications or other information required to be submitted on the application required herein.

For the purposes of this section a modification is deemed to be any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by such source or which results in the emission of any air pollutant not previously discharged. (1971, c. 73.)

W. Va. Law Review. — Wakefield, "Problems Associated With the Management of Solid Wastes: Is There a Solution in the Offing?" 83 W. Va. L. Rev. 131 (1980).

The phrase, "stationary source of air pollutants," can include stationary sources which will have both direct and indirect (associated mobile-source) pollution effects. Op. Att'y Gen., Nov. 30, 1973.

Authority to regulate construction of complex sources. — This section would empower the West Virginia air pollution control commission to review and prevent construction of complex sources, provided the appropriate regulation is promulgated. Op. Att'y Gen., Nov. 30, 1973.

A conditional construction permit cannot be used as a substitute for providing sufficient information in an application, but conditions can be made a part of a granted permit in order to insure that the applicant is proceeding according to information in the application. Op. Att'y Gen., April 3, 1974.

Conditional construction permits cannot be issued by the director, unless the director can make a present determination through information supplied only in the application that such source will be so designed as to operate in conformance with the provisions of chapter 16, article 20, or any rules and regulations promulgated thereunder. Op. Att'y Gen., April 3, 1974.

§ 16-20-11c. Motor vehicle pollution.

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this article, the commission may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any rules and regulations pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The commission shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved, or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle, or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules and regulations of the commission to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling, or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration for the vehicle by the department of motor vehicles. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The commission shall consult with the department of motor vehicles and furnish it with technical information, including testing techniques, standards and instructions for emission control features and equipment.

(d) When the commission has issued rules and regulations requiring the maintenance of features or equipment in or on motor vehicles for the purpose of controlling emissions therefrom, no motor vehicle shall be issued an inspec-

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tion sticker as required by article sixteen [§ 17C-16-1 et seq.], chapter seventeen-C of this Code, unless all such required features or equipment have been inspected in accordance with the standards, testing techniques and instructions furnished by the commission pursuant to this section eleven-c and have been found to meet those standards.

(e) The remedies and penalties provided in this section eleven-c, shall apply to violations hereof, and no provisions of sections eight or nine [§ 16-20-8 or 16-20-9] of this article shall apply thereto.

(f) As used in this section "motor vehicle" shall have the same meaning as in chapter seventeen-C [§ 17C-1-1 et seq.] of this Code. (1971, c. 73.)

Editor's notes. — For redesignation of the department of motor vehicles or the division of motor vehicles, see § 5F-2-1.

§ 16-20-12. Severability.

The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sections or parts of the article or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this article would have been adopted if such invalid or unconstitutional provision, section or part had not been included therein. (1961, c. 63.)

§ 16-20-13. Effective date of rules and regulations.

The rules and regulations promulgated pursuant to the provisions of this article shall be of no effect until one year after the effective date of this article [one year after June 6, 1961]. (1961, c. 63.)

W. Va. Law Review. — Flannery and Poland, "Hazardous Waste Management Act — Closing the Circle," 84 W. Va. L. Rev. 347 (1982).

ARTICLE 21.

BLOOD DONATIONS.

Sec.

16-21-1. Donations by seventeen year old minors without parental permission.

Editor's notes. — Former art. 21, works systems and deriving from Acts 1963, c. §§ 16-21-1 to 16-21-20. pertaining to water- 77, was repealed by Acts 1965, c. 135.

§ 16-21-1. Donations by seventeen year old minors without parental permission.

Notwithstanding any other provision of law to the contrary, any person seventeen years of age or older may donate blood without the permission or authorization of a parent or guardian: Provided, That no parent or guardian shall be liable for any medical expense which may occur as a result of a minor donating blood under the provisions of this section: Provided, however, That nothing herein shall be construed as permitting such minor of age seventeen or older to give blood for compensation in any form. (1971, c. 74; 1986, c. 39.)

ARTICLE 22.

**DETECTION AND CONTROL OF
PHENYLKETONURIA, GALAC-
TOSEMIA, AND HYPOTHY-
ROIDISM IN NEWBORN
CHILDREN.**

Sec.		Sec.	
16-22-1.	Findings.		specified by the state health director; reports; assistance to afflicted children.
16-22-2.	Program to combat mental retardation; rules and regulations; facilities for making tests.	16-22-4.	Penalties for violating provisions of article.
16-22-3.	Tests for phenylketonuria, galactosemia and hypothyroidism, and certain other diseases	16-22-5.	Severability.
		16-22-6.	Effective date.

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

Wrongful birth. — A cause of action for wrongful birth is recognized in West Virginia. *James v. Caserta*, 332 S.E.2d 872 (W. Va. 1985).

The legal theory in a wrongful birth claim is based on the fact that the physician failed to advise the parents of the existence of a condition indicating that their child may have birth defects. This failure to advise prevented the

parents from making an informed decision with regard to not conceiving a child or, in the event of a pregnancy, to terminate the same. *James v. Caserta*, 332 S.E.2d 872 (W. Va. 1985).

Parents may in a wrongful birth action recover the extraordinary costs for rearing a child with birth defects not only during his minority, but also after the child reaches the age of majority if the child is unable to support himself because of physical or emotional disabilities. *James v. Caserta*, 332 S.E.2d 872 (W. Va. 1985).

(b) "Mayor" shall mean the chief executive of the city, whether the official designation of his office be mayor, city manager or otherwise: Provided, That the term "mayor" may also be the chief elected officer of the municipality regardless of whether or not the corporate charter provides for a city manager appointed by the city council who is the chief executive officer.

(c) "Council" shall mean the chief legislative body of the city.

(d) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(e) "Government" shall include the state and federal governments and any subdivisions, agency or instrumentality, corporate or otherwise, of either of them.

(f) The "state" shall mean the state of West Virginia.

(g) "City" shall mean any incorporated city, town or village.

(h) "Slum clearance" shall include the removal of housing conditions which shall be considered by the housing authority of the city in which such conditions exist to be unsanitary or substandard or a menace to public health.

(i) "Low-cost housing" shall include any housing accommodations which are or are to be rented at not in excess of a maximum rate per room, or maximum average rate per room, which shall be specified or provided by the housing authority of the city in which such housing accommodations are or are to be located, or the Legislature, or a duly constituted agency of the state, or of the United States of America.

(j) "Project" shall include all lands, buildings and improvements, acquired, owned, leased, managed or operated by a housing authority, and all buildings and improvements constructed, reconstructed or repaired by a housing authority, designed to provide housing accommodations, or stores, offices and community facilities appurtenant thereto, which are planned as a unit, whether or not acquired or constructed at one time, and which ordinarily are contiguous or adjacent to one another. The term "project" may also be applied to the planning of buildings and improvements, the acquisition of property, the demolition of existing structures, the clearing of land, the construction, reconstruction and repair of improvements and all other work in connection therewith.

(k) "Community facilities" shall include lands, buildings and equipment of recreation or social assembly, for educational, health or welfare activities and other necessary utilities primarily for use and benefit of the occupants of housing accommodations to be constructed and operated hereunder. (1933, 2nd Ex. Sess., c. 93, § 1; 1967, c. 88; 1994, c. 69.)

Effect of amendment of 1994. — The amendment, effective March 11, 1994, added the proviso at the end of (b).

ARTICLE 20.

AIR POLLUTION CONTROL.

§§ 16-20-1 to 16-20-20.

Repealed by Acts 1994, c. 61.