

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds that:

(1) Restoring and protecting the environment is fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for our citizens.

(2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

(3) Governmental decisions on matters which relate to the use, enhancement, preservation, protection and conservation of the environment should be made after public participation and public hearings.

(4) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making and would benefit from the coordination, consolidation and integration of state programs and agencies which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

(5) Those functions of government which regulate the environment should be consolidated in order to accomplish the purposes set forth in this article, to carry out the environmental functions of government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic development consistent with environmental goals and standards.

(b) The Legislature declares that the establishment of a division of environmental protection is in the public interest and will promote the general welfare of the state of West Virginia without sacrificing social and economic development. It is the policy of the state of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use all practicable means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations. The purposes of this chapter are:

(1) To strengthen the commitment of this state to restore, maintain and protect the environment;

(2) To consolidate environmental regulatory programs in a single state agency;

(3) To provide a comprehensive program for the conservation, protection, exploration, development, enjoyment and use of the natural resources of the state of West Virginia;

(4) To supplement and complement the efforts of the state by coordinating state programs with the efforts of other governmental entities, public and private organizations, and the general public; to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries;

(5) Insofar as federal environmental programs require state participation, to endeavor to obtain and continue state primacy in the administration of such federally-mandated environmental programs, and to endeavor to maximize federal funds which may be available to accomplish the purposes of the state and federal environmental programs and to cooperate with appropriate federal agencies to meet environmental goals;

(6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;

(7) To promote improvements in the quality of the environment through research, evaluation and sharing of information;

(8) To improve the management and effectiveness of state environmental protection programs; and

(9) To increase the accountability of state environmental protection programs to the governor, the Legislature and the public generally.

§22-1-2. Definitions.

As used in this article, unless otherwise provided or indicated by the context:

(1) "Department" means the department of commerce, labor and environmental resources.

(2) "Director" means the director of the division of environmental protection.

(3) "Division" means the division of environmental protection.

(4) "Function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity or program.

(5) "Office" includes any office, board, agency, unit, organizational entity, or component thereof.

(6) "Secretary" means the secretary of the department of commerce, labor and environmental resources.

§22-1-3. Rule-making generally; relationship to federal programs.

(a) The director has the power and authority to propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out and implement the provisions of this chapter and to carry out and implement any other provision of law relating to offices or functions of the division.

(b) The requirements and limitations set forth in this section apply to any rule-making authority granted pursuant to this chapter or chapters twenty-two-b and twenty-two-c of this code.

(c) Prior to the proposal of any new rule, the director shall consult with the division of environmental protection advisory council and after such consultation, the director may determine that such a rule should be the same in substance as a counterpart federal regulation. If the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practicable, such proposed rule shall incorporate by reference the counterpart federal regulation. The director shall file, contemporaneously with the proposed rule, a statement setting forth whether the rule is the same in substance as a counterpart federal regulation. If the director determines that the rule should not be the same in substance as a counterpart federal regulation, then the director shall file contemporaneously with the proposed rule, a statement setting forth the differences between the proposed rule and the counterpart federal regulation. In addition, the director shall file a statement setting forth the results of the consultation with the advisory council.

(d) Whenever any existing rule is modified, amended or replaced, the provisions of subsection (c) of this section apply to the proposal of any such modification, amendment or replacement rule.

(e) Notwithstanding the provisions of article three, chapter twenty-nine-a of this code, at least one public hearing shall be held by the division in conjunction with each rule-making prior to the expiration of the public comment period for the proposed rules.

§22-1-3a. Rules -- New or amended environmental provisions.

Except for legislative rules promulgated for the purpose of implementing the provisions of section four, article twelve, section six, article seventeen, and section six, article eighteen, all of this chapter, and notwithstanding the provisions of section four, article five of this chapter, legislative rules promulgated by the director which become effective on or after the first day of July, one thousand nine hundred ninety-four, may include new or amended environmental provisions which are more stringent than the counterpart federal rule or program to the extent that the director first provides specific written reasons which demonstrate that such provisions are reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the event that legislative rules promulgated by the director which become effective on or after the first day of July, one thousand nine hundred ninety-four, include new or amended environmental provisions which are

less stringent than a counterpart federal rule which recommends, but does not require, a particular standard or any federally recommended environmental standard whether or not there be a counterpart federal rule, the division shall first provide specific written reasons which demonstrate that such provisions are not reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristic of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the absence of a federal rule, the adoption of a state rule shall not be construed to be more stringent than a federal rule, unless the absence of a federal rule is the result of a specific federal exemption.

§22-1-4. Division of environmental protection; appointment of director.

The division of environmental protection is continued within the department of commerce, labor and environmental resources. The division shall be administered, in accordance with the provisions of this article, under the supervision and direction of the director.

§22-1-5. Jurisdiction vested in division.

Except as may be otherwise provided in this code, the division is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to all activities regulated under this chapter.

§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the director shall organize the division into such offices, sections, agencies and other units of activity as may be found by the director to be desirable for the orderly, efficient and economical administration of the division and for the accomplishment of its objects and purposes. The director may appoint assistants, hearing officers, clerks, stenographers, and other officers, technical personnel and employees needed for the operation of the division and may prescribe their powers and duties and fix their compensation within amounts appropriated therefor.

(b) The director has the power to and may designate supervisory officers or other officers or employees of the division to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties,

authority and responsibility as the director. Additionally, the director has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the division his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the division, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The director has responsibility for the conduct of the intergovernmental relations of the division, including assuring: (1) That the division carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and (2) that appropriate officers and employees of the division consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the director by this chapter, the director is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the "division of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the director to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director; and

(6) Issue certifications required under 33 U.S.C. §1341. Prior to issuing any such certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration.

(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor: Provided, That in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the division shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary and the director or in the event of vacancies in both of those offices.

(f) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the director shall take and subscribe to the oath required of public officers prescribed by section five, article four of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from the division funds.

| §22-1-7. Offices within division.

Consistent with the provisions of this article the director shall, at a minimum, maintain the following offices within the division:

(1) The office of abandoned mine lands and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article two of this chapter;

(2) The office of mining and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director the provisions of articles three and four of this chapter;

(3) The office of air quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

(4) The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

(5) The office of water resources, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven, twelve, thirteen and fourteen of this chapter; and

(6) The office of waste management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter.

§22-1-8. Supervisory officers.

(a) The director shall appoint a competent and qualified person to be chief of each office specified in section seven of this article. The chief is the principal administrative officer of that office and is accountable and responsible for the orderly and efficient performance of the duties, functions and services of her or his office.

(b) There shall be in the division such other supervisory officers as the director determines is necessary to administer the functions of the division. Such supervisory officers are "administrators" as such term is defined in section two, article six, chapter twenty-nine of this code, notwithstanding the fact that the positions filled by such persons are not statutorily created. Any such supervisory officer may be designated by the director as a deputy director, assistant director, chief, administrator, or other administrative title or designation. Each of the supervisory officers shall be appointed by the director and serve at the will and pleasure of the director. The compensation of such supervisory officers shall be fixed by the director. A single individual may be appointed to serve simultaneously in two distinct supervisory positions, but in a case where such dual appointment is made, such supervisory officer shall not receive additional compensation above that which would be paid for serving in one supervisory position.

(c) A supervisory officer appointed pursuant to the provisions of this section shall report directly to the director and shall, in addition to any functions vested in or required to be delegated to such officer, perform such additional functions as the director may prescribe.

(d) The supervisory officers of the division shall, before entering upon the discharge of their duties, take the oath of office prescribed by section five, article four of the constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of their duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state. Premiums on such bond shall be paid from the division funds.

§22-1-9. Environmental protection advisory council.

(a) There is created within the department of commerce, labor and environmental resources the environmental protection advisory council. The environmental protection advisory council consists of seven members. The director serves as an ex officio member of the council and as its chair. The remaining six members are appointed by the governor. Each member serves for a term of four years and may be reappointed. Of the members of the council first appointed, two shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-six, and two each for terms ending one and two years thereafter. Vacancies on the council shall be filled within sixty days after the vacancy occurs.

(b) Two members of the council shall represent industries regulated by the division or their trade associations. Two members shall represent organizations advocating environmental protection. One member shall represent organizations representing local governments. One member shall represent public service districts. In making subsequent appointments this balance of membership shall be maintained.

(c) Appointed members shall be paid 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.

(d) The council shall meet at least once every quarter and at the call of the chair.

(e) The council shall:

(1) Consult with and advise the director on program and policy development, problem solving and other appropriate subjects;

(2) Identify and define problems associated with the implementation of the policy set forth in section one of this article;

(3) Provide and disseminate to industry and the public early identification of major federal program and regulatory changes;

(4) Provide a forum for the resolution of conflicts between constituency groups;

(5) To the extent possible, strive for consensus on the development of overall environmental policy; and



(6) Provide an annual report to the joint committee on government and finance on or before the first day of January of each year relating to its findings with regard to the division's performance during the previous year. The report will specifically address the division's performance in accomplishing the nine purposes set forth in subsection (b), section one of this article.

§22-1-10. Allocation of appropriations and effect on personnel.

(a) The director may, with the exception of the special reclamation fund established in section eleven, article three, of this chapter, expend, in accordance with the provisions of chapter five-a of this code, from special revenue accounts, and funds established pursuant to this chapter and chapters twenty-two-b and twenty-two-c of this code, amounts necessary to implement and administer the general powers, duties and responsibilities of the division of environmental protection: Provided, That federal funds required by law to be expended for a specific purpose may not be expended for any purpose contrary to the laws, rules or regulations of the federal government.

(b) With respect to employees affected by the creation of the division or the transfer of functions and offices to the division the layoff and recall rights of such employees within the classified service of the state as provided in subsections (5) and (6), section ten, article six, chapter twenty-nine of this code are limited to the department of commerce, labor and environmental resources and further limited to an occupational group substantially similar to the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed: Provided, That the employee has the qualifications established for the job class. The duration of recall rights provided in this subsection is limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section abridges the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code.

(c) The director is empowered to authorize the payment of all or any part of the reasonable expenses of employees of the division in moving their household furniture and effects as a result of a reassignment of such employee caused by a transfer of functions or offices to the division.

§22-1-11. Saving provisions.

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, or allowed to become effective by the governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the director or to the division, and were in effect on the date such transfer occurred continue in effect, for the benefit of the division, according to their terms until

modified, terminated, superseded, set aside, or revoked in accordance with the law by the governor, the secretary, the director, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) Any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending before any department, division or other office, functions of which were transferred to the division are not affected by the transfer. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the governor, the secretary, the director, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if the division had not been created or if functions or offices had not been transferred to the division. The director is authorized to propose legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the orderly transfer of proceedings continued under the provisions of this subsection.

(c) Except as provided in subsection (e) of this section, the creation of the division and the subsequent transfer of functions to it do not affect suits commenced prior to the effective date of the creation or any transfer of functions or offices to it, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with like effect as if the creation or transfer had not occurred.

(d) No suit, action or other proceeding commenced by or against any officer in the official capacity of such individual as an officer of any department, division or other office, functions of which were transferred to the division abates by reason of such transfer. No cause of action by or against any department, division or other office, functions of which were transferred to the division, or by or against any officer thereof in the official capacity of such officer, abates by reason of the transfer.

(e) If, before the transfer, any department, division or other office, or officer thereof in the official capacity of such officer, was a party to a suit, and any function of such department, division or other office, or officer was transferred to the secretary, the director or other officer of the division, then such suit shall be continued with the secretary, the director or other appropriate officer substituted or added as a party.

§22-1-12. Public information.

The division shall collect, organize and from time to time distribute to the public, through news media or otherwise, interesting facts, information and data concerning the state's environment and its environmental regulatory programs. The director may organize and promote lectures, demonstrations, symposiums, schools and other educational programs relating to the state's environment and its protection. Video tapes, motion pictures, slide

films and other photographic services may be provided for instruction on the environment and its protection for schools, other governmental agencies, and civic organizations under such rules as may be prescribed by the director.

The director shall select and designate a competent and qualified person as division public information officer, who is responsible for the organization and management of the division's public information and public affairs programs.

§22-1-13. Notification of permitting decisions.

Any person may request the director to notify the person of a decision to issue or deny a specific permit applied for under this chapter. The request must be in writing and received by the director within the public comment period or at a public hearing held for the specific permit application. If there is no public comment period or public hearing held for the specific permit application the director is required to make the notification under this section only if the request for notification is received by the director at least two working days prior to notifying the applicant of the decision. The director shall notify all persons who have made a timely request under this section of the decision on the application at the same time the applicant is notified of the decision. The notification shall advise the person of any appeal rights under this chapter.

§22-1-14. Stream restoration fund; creation; special account; purposes and expenditures.

(a) There is hereby created in the state treasury a special interest bearing account known as the "stream restoration fund." Moneys received by the division pursuant to transfers from any other account lawfully transferred, from the federal government and other sources, from mitigation, moneys, from gifts, bequests, donations and contributions, and other moneys lawfully received from whatever source, may be deposited in the state treasury to the credit of the stream restoration fund.

(b) Expenditures from the fund are not authorized from collections but shall only be authorized by line item appropriation by the Legislature. The moneys are to be used and expended for the restoration and enhancement of the streams and water resources of this state which have been affected by coal mining or acid mine drainage.

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

(a) The director shall promulgate rules to require the certification of laboratories conducting waste and wastewater tests and analyses to be used for purposes of demonstrating compliance under the covered statutory programs, including reasonable annual certification fees based upon the type or classification of tests or analyses being conducted by laboratories not to exceed an annual program aggregate of one hundred fifty thousand dollars, to be assessed against laboratory owners or operators in such an amount as is necessary to cover the actual costs of

administration of this program and the processing of certification applications, to be deposited in the state environmental laboratory certification fund created pursuant to this section. By the first day of July of each year beginning the first day of July, one thousand nine hundred ninety-five, the director shall provide to the secretary a written report reflecting funds collected, how the funds were expended, and an assessment of the adequacy of the funding to administer the program.

(b) After the effective date of the rules promulgated pursuant to this section, waste and wastewater tests and analyses conducted in laboratories that are not certified for the parameters or toxicity being tested or analyses shall not be accepted by the division, except as otherwise provided, as being in compliance with the requirements, rules or orders of the division issued under authority of one or more of the covered statutory programs: Provided, That field tests and remote monitoring or testing equipment which is conducted or located away from any laboratory shall not be deemed a laboratory for purposes of assessing the fee but shall be subject to such quality assurance and quality control standards as may be established by the director in rules promulgated pursuant to this section. The director shall provide by rule for the granting of certification for laboratories located outside of West Virginia without performance testing or assessment of certification fee pursuant to this section if such laboratories provide written documentation that approval has been received under requirements in another state determined by the director to be equivalent to the West Virginia laboratory certification program. Such reciprocal certification shall be granted only for testing methods and parameters for which the laboratory holds a valid authorization in such other state and only for laboratories in states which allow reciprocity with respect to laboratories located in this state.

(c) Application shall be made to the director for approval or certification by laboratories on forms and in a manner prescribed by the director.

(d) Certification shall be renewed on an annual basis. The existing certification shall remain in effect until the director notifies the applicant for renewal that renewal of certification has been granted or denied.

(e) Certification shall be granted for those tests or parameters for which the laboratory demonstrates adequate performance on performance evaluation tests based on the criteria established in rules by the director. The director shall, by rule, establish criteria governing what shall be considered in any decision to deny or issue a certification.

(f) Failure to comply with the requirements of the applicable analytical methods and procedures or standards specified in the rules of the director shall be grounds for revocation or suspension of certification for the affected test procedures or parameters.

(g) No person subject to the covered statutory programs shall be allowed to use data or test results from waste and wastewater tests and analyses conducted at laboratories lacking certification for purposes of demonstrating compliance under the covered statutory programs: Provided, That any person whose data or test

results are invalidated because such person had relied upon a laboratory which loses its certification, shall be granted thirty days after notice thereof by the director during which data or test results may be repeated or reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered statutory programs.

(h) A special revenue fund designated the "environmental laboratory certification fund" shall be established in the state treasury on the first day of July, one thousand nine hundred ninety-four. The net proceeds of all fees collected pursuant to this section shall be deposited in the environmental laboratory certification fund. Upon line item appropriation by the Legislature, the director shall expend the proceeds of the environmental laboratory certification fund solely for the administration of the requirements of this section: Provided, That for fiscal year one thousand nine hundred ninety-five, expenditures are permitted from collection without further appropriation by the Legislature.

(i) For purposes of this section, "covered statutory program" means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature: Water Pollution Control Act, article eleven of this chapter; Hazardous Waste Management Act, article eighteen of this chapter; Hazardous Waste Emergency Response Fund Act, article nineteen of this chapter; Underground Storage Tank Act, article seventeen of this chapter; the Solid Waste Management Act, article fifteen of this chapter; or the Groundwater Protection Act, article twelve of this chapter.

(j) Any person adversely affected by an order or action by the director pursuant to this section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by the action of the director in granting or denying a certification or renewal thereof, may appeal to the environmental quality board pursuant to article one, chapter twenty-two-b of this code.

(k) The provisions of this section shall apply only to tests and analyses of waste or wastewater subject to regulation by the division of environmental protection. The provisions of this section do not apply to tests or analyses of potable or drinking water.