

## **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

### **§22-11-1. Short title.**

This article may be known and cited as the "Water Pollution Control Act."

### **§22-11-2. Declaration of policy.**

- (a) It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development.
- (b) It is also the public policy of the state of West Virginia that the water resources of this state with respect to the quantity thereof be available for reasonable use by all of the citizens of this state.

### **§22-11-3. Definitions.**

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

- (1) "Activity" or "activities" means any activity or activities for which a permit is required by the provisions of section seven of this article;
- (2) "Board" means the environmental quality board, provided for in article three, chapter twenty-two-b of this code;
- (3) "Chief" means the chief of the office of water resources of the division of environmental protection;
- (4) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;
- (5) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;
- (6) "Disposal system" means a system for treating or disposing of sewage, industrial wastes or other wastes, or the effluent therefrom, either by surface or underground methods, and includes sewer systems, the use of subterranean spaces, treatment works, disposal wells and other systems;
- (7) "Disposal well" means any well drilled or used for the injection or disposal of treated or untreated sewage, industrial wastes or other wastes into underground strata;
- (8) "Division" means the division of environmental protection;
- (9) "Effluent limitation" means any restriction established on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters of this state;
- (10) "Establishment" means an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;
- (11) "Industrial user" means those industries identified in the standard industrial

classification manual, United States Bureau of the Budget, 1967, as amended and supplemented, under the category "division d--manufacturing" and other classes of significant waste producers identified under regulations issued by the director or the administrator of the United States environmental protection agency;

(12) "Industrial wastes" means any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as hereinafter defined, is also "industrial waste" within the meaning of this article;

(13) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues resulting from secondary processing; sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, heat or all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state;

(14) "Outlet" means the terminus of a sewer system or the point of emergence of any water-carried sewage, industrial wastes or other wastes, or the effluent therefrom, into any of the waters of this state, and includes a point source;

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

(16) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or vessel or other floating craft, from which pollutants are or may be discharged;

(17) "Pollutant" means industrial wastes, sewage or other wastes as defined in this section;

(18) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the waters of the state;

(19) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants;

(20) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present;

(21) "Sewer system" means pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of disposal or treatment;

(22) "Treatment works" means any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the purpose of regulating or controlling the quality

and rate of flow thereof;

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

(24) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

#### **§22-11-4. General powers and duties of director with respect to pollution.**

(a) In addition to all other powers and duties the director has and may exercise, subject to specific grants of authority to the chief or the board in this article or elsewhere in this code, the following powers and authority and shall perform the following duties:

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System" established under that act;

(2) To encourage voluntary cooperation by all persons in the conservation, improvement and development of water resources and in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the division may receive moneys from such agencies, officers and persons on behalf of the state. The division shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the director solely for the purpose or purposes for which the grant, gift or contribution was made;

(3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the water resources of the state and water pollution and its causes, control and reduction, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to water pollution and the control and

reduction thereof;

(7) To develop a public education and promotion program to aid and assist in publicizing the need for, and securing support for, pollution control and abatement;

(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

(9) To develop programs for the control and reduction of the pollution of the waters of the state;

(10) To exercise general supervision over the administration and enforcement of the provisions of this article, and all rules, permits and orders issued pursuant to the provisions of this article and articles one and three, chapter twenty-two-b of this code;

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the director may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by the director according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the division;

(12) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such permits as are required by this article or the rules promulgated hereunder or pursuant to article three, chapter twenty-two-b of this code;

(13) To require any and all persons directly or indirectly discharging, depositing or disposing of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, to file with the division such information as the director may require in a form or manner prescribed for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of any such discharge, deposit, escape, release or disposition;

(14) To adopt, modify, or repeal procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code administering and implementing the powers, duties and responsibilities vested in the director by the provisions of this article;

(15) To cooperate with interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to: (A) The control and reduction of water pollution; and (B) the state's share of waters in watercourses bordering the state;

(16) To adopt, modify, repeal and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code: (A) Implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in

the director and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(17) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development and conservation.

(b) Whenever required to carry out the objectives of this article the director shall require the owner or operator of any point source or establishment to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods, (iv) sample such effluents in accordance with such methods, at such locations, at such intervals and in such manner as the director shall prescribe, and (v) provide such other information as the director may reasonably require.

(c) The director upon presentation of credentials (i) has a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained under subsection (b) of this section are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under subsection (b) of this section and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under subsection (b) of this section. Nothing in this subsection eliminates any obligation to follow any process that may be required by law.

(d) The director is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code. In the event a county commission fails to act to establish a county-wide public service district or districts, the director shall act jointly with the commissioner of the bureau of public health to further investigate and ascertain the financial feasibility and projected financial capability and, subject to the approval of the public service commission, order the county commission to take action to establish such public service district or districts as may be necessary to control, reduce or abate the pollution, and when so ordered the county commission members must act to establish such a county-wide public service district or districts.

(e) The director has the authority to enter at all reasonable times upon any private or public property for the purpose of making surveys, examinations, investigations and studies needed in the gathering of facts concerning the water resources of the state and their use, subject to responsibility for any damage to the property entered. Upon entering, and before making any survey, examination, investigation and study, such person shall immediately present himself or herself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or subdivision, and before making any survey, examination, investigation and study, such

person shall immediately present himself or herself to the person in charge of the operation, and if he or she is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such surveys, examinations, investigations and studies, the director may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance or the making of such surveys, examinations, investigations and studies; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: Provided, That nothing in this subsection eliminates any obligation to follow any process that may be required by law.

**§22-11-5. Water areas beautification; investigations; law enforcement.**

The division shall maintain a program and practices in the husbandry of waters of the state and the lands immediately adjacent thereto. The director shall make such investigations and surveys, conduct such schools and public meetings and take such other steps as may be expedient in the conservation, beautification, improvement and use of all such water areas of the state. The director shall cooperate with the division of natural resources' chief law enforcement officer in enforcing the provisions of law prohibiting the disposal of litter in, along and near such water areas.

**§22-11-6. Requirement to comply with standards of water quality and effluent limitations.**

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, That where necessary and proper, the chief may specify a reasonable time for persons not complying with such standards and limitations to comply therewith, and upon the expiration of any such period of time, the chief shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of such waters below the standards and limitations established therefor by rules of the board or director.

**§22-11-7. Cooperation with other governments and agencies.**

The office of water resources is hereby designated as the water pollution control agency for this state for all purposes of federal legislation and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this section, the chief is hereby authorized to cooperate with the United States environmental protection agency and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for controlling and reducing water pollution and improving the sanitary conditions of the waters of the state; to apply for and receive, on behalf of this state, funds made available under the aforesaid federal legislation on condition that all moneys received from any federal agency as herein provided shall be paid into the

state treasury and shall be expended, under the direction of the director, solely for purposes for which the grants are made; to approve projects for which applications for loans or grants under the federal legislation are made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this state and having jurisdiction over the disposal of sewage, industrial wastes or other wastes) or agency of this state or by any interstate agency; and to participate through authorized representatives in proceedings under the federal legislation to recommend measures for the abatement of water pollution originating in this state. The governor may give consent on behalf of this state to requests by the administrator of the United States environmental protection agency to the attorney general of the United States for the bringing of actions for the abatement of such pollution. Whenever a federal law requires the approval or recommendation of a state agency or any political subdivision of the state in any matter relating to the water resources of the state, the director, subject to approval of the Legislature, is hereby designated as the sole person to give the approval or recommendation required by the federal law, unless the federal law specifically requires the approval or recommendation of some other state agency or political subdivision of the state.

**§22-11-7a. Certification agreements; required provisions; effective date.**

(a) Any applicant for the water quality certification that seeks certification of activities covered by the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 for use at or in conjunction with a surface coal mining operation as defined in section three, article three of this chapter, certification may be issued subject to the following conditions:

(1) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact wetlands of the state in a manner inconsistent with all applicable state or federal standards as the case may be, as required by the federal Clean Water Act, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is less than two hundred fifty acres, then the director may issue a water quality certification pursuant to the requirements of this section. If the watershed above the toe of the farthest downstream permanent structure impacted is equal to or greater than two hundred fifty acres, the director shall require that mitigation be undertaken. Additionally, the director may require mitigation for temporary impacts to waters of the state as specified in subdivision (2) of this subsection.

(2) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is greater than or equal to two hundred fifty acres and all other necessary requirements are met consistent with this section, the director shall further condition a water quality certification on a requirement that the applicant mitigate the expected water quality impacts under the following conditions:

(A) The water quality certification may require mitigation at a ratio appropriate to the type of waters impacted, consistent with state or federal standards as required by the federal Clean Water Act, for the types and locations of waters impacted;

(B) The Director may accept mitigation on the permitted area, mitigation off the permitted

area, mitigation banking of waters of the state, or any combination thereof, or any other mitigation measure acceptable to the Director; and

(C) The Director shall provide credit for any mitigation that is a required component of the permit issued by the United States Army Corps of Engineers pursuant to 33 U.S.C. §1344 to the extent that it satisfies required mitigation pursuant to this section.

(D) Upon completion of the work required by an agreement to conduct operations authorized by this subsection the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work specified in the agreement has been completed in accordance with the conditions of the water quality certification. The director shall promptly review the certification and provide to the surface coal mining operation with notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification. The mitigation amount may not exceed two hundred thousand dollars per acre of stream disturbed above the toe of the farthest downstream permanent structure. Those moneys shall be deposited in the stream restoration fund under the jurisdiction of the Division of Environmental Protection and any expenditures from this fund after the thirtieth day of June, one thousand nine hundred ninety-eight, shall not be authorized from collections but shall only be authorized by appropriation by the Legislature. Additionally, the expenditures are only authorized in those counties where the activity leading to the mitigation occurred or in those counties adjacent to the counties where the activity leading to the mitigation occurred. The Director shall by the thirty-first day of December of each year provide a report to the Joint Committee on Government and Finance on receipts and expenditures from the stream restoration fund, the number of acreage reclaimed by the Division through the use of these funds and the effectiveness of achieving stream restoration through the payment of the mitigation amounts into the fund in lieu of reclamation by the certificate holder.

(3) The Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations with an interest in water quality in developing a manual of approval options for mitigation on permitted areas, mitigation off permitted areas and mitigation involving banking of waters of the state.

(4) The proposed surface coal mining operation shall comply with all applicable state and federal laws, rules and regulations. (5) The Director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, for the purpose of implementing the provisions of this section which rules shall include, but not be limited to, the following:

(A) Establishing all necessary operational and performance requirements for an operator undertaking activities covered by this section;

(B) Modifying the provisions of this section, when necessary and appropriate to bring the provisions of this section into compliance with state or federal law or regulation; and

(C) Establishing the specific operational requirements for mining operations consistent with this section appropriate to protect the waters of this state during and following mining operations.

(b) The Joint Committee on Government and Finance may undertake or facilitate a study of the impact of mountaintop mining and valley fills upon the State of West Virginia.

(1) To facilitate the study, the Joint Committee on Government and Finance is further authorized to coordinate with and seek funding from appropriate federal agencies to facilitate the study including, but not limited to: The Environmental Protection Agency, Army Corps



of Engineers, Office of Surface Mining and the Fish and Wildlife Service.

(2) In order to facilitate the research, the Joint Committee on Government and Finance shall appoint a council to coordinate and direct the research. The composition of the council shall be determined by the Joint Committee, but shall include representatives from the various interested parties as determined solely by the Joint Committee.

**§22-11-7b. Water quality standards; implementation of antidegradation procedures.**

(a) All authority to promulgate rules and implement water quality standards vested in the Environmental Quality Board is hereby transferred from the Environmental Quality Board to the Secretary of the Department of Environmental Protection as of the effective date of the amendment and reenactment of this section during the two thousand five regular session of the Legislature: *Provided*, That the legislative rule containing the state's water quality standards shall remain in force and effect as if promulgated by the Department of Environmental Protection until the secretary amends the rule in accordance with the provisions of article three, chapter twenty-nine-a of this code. Any proceedings, including notices of proposed rulemaking pending before the Environmental Quality Board, and any other functions, actions or authority transferred to the secretary shall continue in effect as actions of the secretary.

(b) All meetings with the secretary or any employee of the Department and any interested party which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of the rule governing water quality standards or variances thereto shall be held in accordance with the provisions of article nine-a, chapter six of this code. When the secretary is considering the form and substance of the rule governing water quality standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i) Consultations between the department's employees or its consultants, contractors or agents; (ii) consultations with other state or federal agencies and the department's employees or its consultants, contractors or agents; or (iii) consultations between the secretary, the department's employees or its consultants, contractors or agents with any interested party for the purpose of collecting facts and explaining state and federal requirements relating to a site specific change or variance.

(c) In order to carry out the purposes of this chapter, the secretary shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code 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 protect the public health and welfare, wildlife, fish and aquatic life and the present and prospective future uses of the water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof. The water quality standards of the secretary may not specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant.

(d) The secretary shall establish the antidegradation implementation procedures as required by 40 C.F.R. 131.12(a) which apply to regulated activities that have the potential to affect water quality. The secretary shall propose for legislative approval, pursuant to article three, chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which include specifics of the review depending upon the existing uses of the water body segment that would be affected, the level of protection or "tier" assigned to the applicable

water body segment, the nature of the activity and the extent to which existing water quality would be degraded. Any final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does not become effective until that determination is approved by the Legislature through the legislative rulemaking process as provided for in article three, chapter twenty-nine-a of the code.

(e) All remining variances shall be applied for and considered by the secretary and any variance granted shall be consistent with 33 U.S.C. Section 1311(p) of the Federal Water Control Act. At a minimum, when considering an application for a remining variance the secretary shall consider the data and information submitted by the applicant for the variance; and comments received at a public comment period and public hearing. The secretary 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. Any such requirement will be included as a permit condition. The secretary 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 secretary may not grant a variance where he or she determines that degradation of the instream water quality will result from the remining operation.

#### **§22-11-8. Prohibitions; permits required.**

(a) The chief may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article and article three, chapter twenty-two-b of this code.

(b) It is unlawful for any person, unless the person holds a permit therefor from the division, which is in full force and effect, to:

- (1) Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state;
- (2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state;
- (3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;
- (4) Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;
- (5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the state;
- (6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant: Provided, That the division's permit is only required wherever the aforementioned activities cause, may cause or might reasonably be expected to

cause a discharge into or pollution of waters of the state, except that a permit is required for any preparation plant: Provided, however, That unless waived in writing by the chief, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant shall contain a plan for abandonment of such facility or operation, which plan shall comply in all respects to the requirements of this article. Such plan of abandonment is subject to modification or amendment upon application by the permit holder to the chief and approval of such modification or amendment by the chief;

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all such outlets.

(d) For water pollution control and national pollutant discharge elimination system permits issued for activities regulated by the office of mining and reclamation and the office of oil and gas, the chief of the office of water resources may delegate functions, procedures and activities to the respective chiefs of those offices. Permits for such activities shall be issued under the supervision of and with the signature and approval of the chief of the office of water resources who shall review and approve all procedures, effluent limits and other conditions of such permits.

#### **§22-11-9. Form of application for permit; information required.**

The chief shall prescribe a form of application for all permits for any activity specified in section eight of this article and, notwithstanding any other provision of law to the contrary, no other discharge permit or discharge authorization from any other state department, agency, commission, board or officer is required for such activity except that which is required from the office of miners' health, safety and training pursuant to section seventy-six, article two, chapter twenty-two-a of this code. All applications must be submitted on a form as prescribed above. An applicant shall furnish all information reasonably required by any such form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Until all such required information is furnished, an application is not a complete application. The division shall protect any information (other than effluent data) contained in such permit application form, or other records, reports or plans as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in a national pollutant discharge elimination form, the chief or board shall forward such information to the regional administrator of the United States environmental protection agency for concurrence in any determination of confidentiality.

#### **§22-11-10. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules.**

(a) The special revenue fund designated the "Water Quality Management Fund" established

in the state treasury on the first day of July, one thousand nine hundred eighty-nine is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the water quality management fund. The secretary shall expend the proceeds of the water quality management fund for the review of initial permit applications, renewal permit applications and permit issuance activities.

(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in article three of this chapter. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: *Provided*, That no initial application fee may exceed fifteen thousand dollars for any facility nor may any permit renewal application fee exceed five thousand dollars. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in article three of this chapter. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: *Provided*, That no person holding a permit for a home aerator of six hundred gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: *Provided, however*, That no annual permit fee may exceed five thousand dollars. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than ninety days past due pursuant to the rules promulgated under this section. Voiding of the permit will only become effective upon the date the secretary mails, by certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the joint committee on government and finance setting forth the fees established and collected pursuant to this section.

(f) On the first day of July, two thousand two, and each year thereafter, a one thousand dollar fee shall be assessed for permit applications and renewals submitted pursuant to this article for surface coal mining operations, as defined in article three of this chapter. On the first day of July, two thousand two, and each year thereafter, a five hundred dollar fee shall be assessed for application for permit modifications submitted pursuant to this article for surface coal mining operations, as defined in article three of this chapter. Beginning the first day of July, two thousand two and every year thereafter, an annual permit fee shall be assessed on

the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in article three of this chapter. The annual permit fee shall be collected as follows: Five hundred dollars for the fiscal year beginning on the first day of July, two thousand two and one thousand dollars for each fiscal year thereafter.

**§22-11-11. Procedure concerning permits required under article; transfer of permits; prior permits.**

(a) The chief or his or her duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the office of environmental health services of the state bureau of public health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section eight of this article, the chief shall consult with the director of the state geological and economic survey and the chief of the office of oil and gas of the division, and all such persons shall cooperate with the chief and assist him or her in carrying out the duties and responsibilities imposed upon him or her under the provisions of this article and the rules of the director and board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules of the director.

(b) The division's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits and disposition of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any effluent limitations or any rules of the board or director: Provided, That the chief may issue a permit whenever in his or her judgment the water quality standards of the state may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the state; and (2) in cases wherein it is required, such applicant shall include the name and address of the responsible agent as set forth in subsection (e), section section six, article six of this chapter.

(c) Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That when the applicant, in accordance with agency rules, has made a timely and complete application for permit reissuance, the permit term may be extended by the chief, at his or her discretion. An extension may be granted for a period not to exceed twelve months beyond its expiration date. Successive extensions may be granted for periods not to exceed twelve months if the chief determines additional time is necessary in order to process the application for permit reissuance. Upon expiration of a permit, a new permit may be issued by the chief upon condition that the discharges or releases, escapes, deposits and disposition thereunder meet or will meet all applicable state and federal water quality standards, effluent limitations and all other requirements of this article.

(d) An application for a permit incident to remedial action in accordance with the provisions

of section sixteen of this article shall be processed and decided as any other application for a permit required under the provisions of section eight of this article.

(e) A complete application for any permit shall be acted upon by the chief, and the division's permit delivered or mailed, or a copy of any order of the chief denying any such application delivered or mailed to the applicant by the chief, within a reasonable time period as prescribed by rules of the director.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with a copy of such order, which notice shall advise the applicant of the right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of, and within the time specified in, section seven, article one, chapter twenty-two-b of this code. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) A permit is transferable to another person upon proper notification to the chief and in accordance with applicable rules. Such transfer does not become effective until it is reflected in the records of the office of water resources.

(h) All permits for the discharge of sewage, industrial wastes or other wastes into any waters of the state issued by the water resources board prior to July one, one thousand nine hundred sixty-four, and all permits heretofore issued under the provisions of former article five-a, chapter twenty of this code, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a copy of a notice of the right to appeal to the board as provided for in section twelve of this article, to be served upon the permit holder as specified in said section twelve.

#### **§22-11-12. Inspections; orders to compel compliance with permits; service of orders.**

After issuance of the division's permit for any activity the director may make field inspections of the work on the activity, and, after completion thereof, may inspect the completed activity, and, from time to time, may inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions of the division's permit for any activity, the director is hereby authorized, after at least twenty days' notice, to make and enter an order revoking, suspending or modifying, in whole or in part, such permit for cause including, but not limited to, the following:

- (1) Violation of any term or condition of the permit;
- (2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, release, escape, deposit or disposition.

The director shall cause a copy of any such order to be served by registered or certified mail

or by a law-enforcement officer upon the person to whom any such permit was issued. The director shall also cause a notice to be served with a copy of such order, which notice shall advise such person of the right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of, and within the time specified in, section seven, article one, chapter twenty-two-b of this code.

**§22-11-13. Voluntary water quality monitors; appointment; duties; compensation.**

The director is hereby authorized to appoint voluntary water quality monitors to serve at the will and pleasure of the director. All such monitors appointed pursuant hereto shall be eighteen years of age or over and shall be bona fide residents of this state.

Such monitors are authorized to take water samples of the waters of this state at such times and at such places as the director shall direct and to forward such water samples to the director for analysis.

The director is authorized to provide such monitors with such sampling materials and equipment as he or she deems necessary: Provided, That such equipment and materials shall at all times remain the property of the state and shall be immediately returned to the director upon his or her direction.

Such monitors shall not be construed to be employees of this state for any purpose except that the director is hereby authorized to pay such monitors a fee not to exceed fifty cents for each sample properly taken and forwarded to the director as hereinabove provided.

The director shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training.

Upon a showing that any water sample as herein provided was taken and analyzed in conformity with standard and recognized procedures, such sample and analysis is admissible in any court of this state for the purpose of enforcing the provisions of this article.

**§22-11-14. Information to be filed by certain persons with division; tests.**

Any and all persons directly or indirectly discharging or depositing treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state shall file with the director such information as the director may reasonably require on forms prescribed for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of such discharge or deposit. If the director has reasonable cause to believe that any establishment is, or may be, polluting the waters of the state, the director may require any person owning, operating or maintaining such establishment to furnish such information as may reasonably be required to ascertain whether such establishment is, or may be causing such pollution, and the director may conduct any test or tests that he or she may deem necessary or useful in making his or her investigation and determination.

**§22-11-15. Orders of director to stop or prevent discharges or deposits or take remedial action; service of orders.**

If the director, on the basis of investigations, inspections and inquiries, determines that any person who does not have a valid permit issued pursuant to the provisions of this article is causing the pollution of any of the waters of the state, or does on occasions cause pollution or is violating any rule or effluent limitation of the board or the director, he or she shall either make and enter an order directing such person to stop such pollution or the violation of the rule or effluent limitation of the board or director, or make and enter an order directing such person to take corrective or remedial action. Such order shall contain findings of fact upon which the director based the determination to make and enter such order. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections eight, nine and eleven of this article. The director shall fix a time limit for the completion of such action. Whether the director shall make and enter an order to stop such pollution or shall make and enter an order to take remedial action, in either case the person so ordered may elect to cease operations of the establishment deemed to be the source of such discharge or deposits causing pollution, if the pollution referred to in the director's order shall be stopped thereby.

The director shall cause a copy of any such order to be served by registered or certified mail or by a law-enforcement officer upon such person. The director shall also cause a notice to be served with the copy of such order, which notice shall advise such person of the right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of article one, chapter twenty-two-b of this code.

#### **§22-11-16. Compliance with orders of director.**

Any person upon whom any order of the director or any order of the board in accordance with the provisions of section fifteen of this article, or article one, chapter twenty-two-b of this code has been served shall fully comply therewith.

When such person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution, or when such ceasing does not stop the pollution, he or she shall forthwith apply for a permit under and in accordance with the provisions of sections eight, nine and eleven of this article. No such remedial action shall be taken until a permit therefor has been issued; however, receipt of a permit does not in and of itself constitute remedial action.

#### **§22-11-17. Power of eminent domain; procedures; legislative finding.**

(a) When any person who is owner of an establishment is ordered by the director to stop or prevent pollution or the violation of the rules of the board or director or to take corrective or remedial action, compliance with which order will require the acquisition, construction or installation of a new treatment works or the extension or modification of or an addition to an existing treatment works, (which acquisition, construction, installation, extension, modification or addition of or to a treatment works pursuant to such order is referred to in this section as "such compliance") such person may exercise the power of eminent domain in the manner provided in chapter fifty-four of this code, to acquire such real property or interests in real property as may be determined by the director to be reasonably necessary for



such compliance.

(b) Upon application by such person and after twenty days' written notice to all persons whose property may be affected, the director shall make and enter an order determining the specific real property or interests in real property, if any, which are reasonably necessary for such compliance. In any proceeding under this section, the person seeking to exercise the right of eminent domain herein conferred shall establish the need for the amount of land sought to be condemned and that such land is reasonably necessary for the most practical method for such compliance.

(c) The right of eminent domain herein conferred does not apply to the taking of any dwelling house or for the taking of any land within five hundred feet of any such dwelling house.

(d) The Legislature hereby declares and finds that the taking and use of real property and interests in real property determined to be reasonably necessary for such compliance promotes the health, safety and general welfare of the citizens of this state by reducing and abating pollution in the waters of this state in which the public at large has an interest and otherwise; that such taking and use are necessary to provide and protect a safe, pure and adequate water supply to the municipalities and citizens of the state; that because of topography, patterns of land development and ownership and other factors it is impossible in many cases to effect such compliance without the exercise of the power of eminent domain and that the use of real property or interests in real property to effect such compliance is a public use for which private property may be taken or destroyed.

**§22-11-18. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.**

When any person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution or when ceasing does not stop the pollution, such person shall immediately upon issuance of the permit required under section sixteen of this article take or begin appropriate steps or proceedings to carry out such remedial action. In any such case it is the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately. The director may require progress reports, at such time intervals as he or she deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligently prosecuted to completion.

Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association or other legal entity whatever, to provide immediately for the financing and carrying out of such remedial action, as may be necessary to comply with said order, constitutes failure to take or begin appropriate steps or proceedings to comply with such order. If such person is a municipal corporation, the cost of all such remedial action as is necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal

corporation, not otherwise appropriated, and if there is not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds. Any direct general obligation bond issue is subject to the approval of the municipal bond commission and the attorney general of the state of West Virginia.

If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in article thirteen, chapter sixteen of this code:

Provided, That the provisions of section six of said article, allowing objections to be filed with the governing body, and providing that a written protest of thirty percent or more of the owners of real estate requires a four-fifths vote of the governing body for the issuance of said revenue bonds, does not apply to bond issues proposed by any municipal corporation to comply with an order made and entered under the authority of this article, and such objections and submission of written protest is not authorized, nor does the same, if made or had, operate to justify or excuse failure to comply with such order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, does constitute a "sanitary fund," and shall be used for no other purpose than for carrying out such order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the director. The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided, and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same is financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of article thirteen, chapter sixteen of this code.

#### **§22-11-19. Emergency orders.**

Whenever the director finds that any discharge, release, escape, deposit or disposition of treated or untreated sewage, industrial wastes or other wastes into any waters within this state, when considered alone or in conjunction with other discharges, releases, escapes, deposits or dispositions, constitutes a clear, present and immediate danger to the health of the public, or to the fitness of a private or public water supply for drinking purposes, the director may, with the concurrence in writing of the commissioner of the bureau of public health, without notice or hearing, issue an order or orders requiring the immediate cessation or abatement of any such discharge, release, escape, deposit or disposition, and the cessation of

any drilling, redrilling, deepening, casing, fracturing, pressuring, operating, plugging, abandoning, converting or combining of any well, or requiring such other action to be taken as the director, with the concurrence aforesaid, deems necessary to abate such danger. Notwithstanding the provisions of any other section of this article, any order issued under the provisions of this section is effective immediately and may be served in the same manner as a notice may be served under the provisions of section two, article seven, chapter twenty-nine-a of the code. Any person to whom such order is directed shall comply therewith immediately, but on notice of appeal to the board shall be afforded a hearing as promptly as possible, and not later than ten days after the board receives such notice of appeal. On the basis of such hearing, and within five days thereafter, the board shall make and enter an order continuing the order of the director in effect, revoking it, or modifying it. For the purpose of such appeal and judicial review of the order entered following an appeal hearing, all pertinent provisions of article one, chapter twenty-two-b of this code shall govern.

**§22-11-20. Control by state as to pollution; continuing jurisdiction.**

No right to violate the rules of the board or director or to continue existing pollution of any of the waters of the state exists nor may such right be acquired by virtue of past or future pollution by any person. The right and control of the state in and over the quality of all waters of the state are hereby expressly reserved and reaffirmed. It is recognized that with the passage of time, additional efforts may have to be made by all persons toward control and reduction of the pollution of the waters of the state, irrespective of the fact that such persons may have previously complied with all orders of the director or board. It is also recognized that there should be continuity and stability respecting pollution control measures taken in cooperation with, and with the approval of, the director, or pursuant to orders of the director or board. When a person is complying with the terms and conditions of a permit granted pursuant to the provisions of section eleven of this article or when a person has completed remedial action pursuant to an order of the director or board, additional efforts may be required wherever and whenever the rules of the board or director or effluent limitations are violated or the waters of the state are polluted by such person.

**§22-11-21. Appeal to environmental quality board.**

Any person adversely affected by an order made and entered by the director in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the specified time as provided in subsection (e) of section eleven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the environmental quality board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

**§22-11-22. Civil penalties and injunctive relief; administrative penalties.**

(a) Any person who violates any provision of any permit issued under or subject to the provisions of this article is subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the

provisions of this article or article one or three, chapter twenty-two-b of this code is subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

Upon application by the director, the circuit courts of the state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules of the board or director, effluent limitations, the terms and conditions of any permit granted under the provisions of this article, or any order of the director or board, and the venue of any such actions shall be the county in which the violations or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunction application filed. Any other section of this code to the contrary notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article. An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section is final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review in any injunctive proceeding must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

Legal counsel and services for the chief, director or the board in all civil penalty and injunction proceedings in the circuit court and in the supreme court of appeals of this state shall be provided by the attorney general or his or her assistants and by the prosecuting attorneys of the several counties as well, all without additional compensation, or the chief, director or the board, with the written approval of the attorney general, may employ counsel to represent him or her or it in a particular proceeding.

(b) In addition to the powers and authority granted to the director by this chapter to enter into consent agreements, settlements and otherwise enforce this chapter, the director shall propose, for legislative promulgation, rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a mechanism for the administrative resolution of violations set forth in this section through consent order or agreement as an alternative to instituting a civil action.

### **§22-11-23. Priority of actions.**

All applications under section twenty-two of this article and all proceedings for judicial review under article one, chapter twenty-two-b of this code shall take priority on the docket of the circuit court in which pending, and shall take precedence over all other civil cases. Where such applications and proceedings for judicial review are pending in the same court at

the same time, such applications shall take priority on the docket and shall take precedence over proceedings for judicial review.

**§22-11-24. Violations; criminal penalties.**

- (a) Any person who causes pollution or who fails or refuses to discharge any duty imposed upon him or her by this article or by any rule of the board or director, promulgated pursuant to the provisions and intent of this article or article three, chapter twenty-two-b of this code, or by an order of the director or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both fine and imprisonment.
- (b) Any person who intentionally 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 director thereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or by imprisonment in the county jail not exceeding six months or by both fine and imprisonment.
- (c) Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any provision of this article or any rule of the board or director or any effluent limitation or any order of the director or board is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation or by imprisonment in the county jail not exceeding one year or by both fine and imprisonment.
- (d) Any person convicted of a second or subsequent willful violation of subsections (b) or (c) of this section or knowingly and willfully violates any provision of any permit, rule or order issued under or subject to the provisions of this article, or knowingly and willfully violates any provision of this article, is guilty of a felony and, upon conviction, shall be imprisoned in a correctional facility not less than one nor more than three years, or fined not more than fifty thousand dollars for each day of violation, or both fined and imprisoned.
- (e) Any person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided for in this article have been pursued or invoked against said person and notwithstanding that civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person.
- (f) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, the person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

**§22-11-25. Civil liability; natural resources game fish and aquatic life fund; use of funds.**

If any loss of game fish or aquatic life results from a person's or persons' failure or refusal to discharge any duty imposed upon such person by this article or section seven, article six of this chapter, either the West Virginia division of natural resources or the division of environmental protection, or both jointly may initiate a civil action on behalf of the state of

West Virginia to recover from such person or persons causing such loss a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected shall be deposited in a special revenue fund entitled "natural resources game fish and aquatic life fund" and shall be expended as hereinafter provided. The fund shall be expended to stock waters of this state with game fish and aquatic life. Where feasible, the director of the division of natural resources shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in said fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever located in this state, with game fish and aquatic life.

**§22-11-26. Exceptions as to criminal liabilities.**

The criminal liabilities may not be imposed pursuant to section twenty-four of this article for violations resulting from accident or caused by an act of God, war, strike, riot or other catastrophe as to which negligence or willful misconduct on the part of such person was not the proximate cause.

**§22-11-27. Existing rights and remedies preserved; article for benefit of state only.**

It is the purpose of this article to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers, or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages. The provisions of this article inure solely to and are for the benefit of the people generally of the state of West Virginia, and this article is not intended to in any way create new, or enlarge existing rights of riparian owners or others. An order of the director or of the board, the effect of which is to find that pollution exists, or that any person is causing pollution, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state of West Virginia.

**§22-11-28. Functions, services and reports of director of the division; obtaining information from others.**

The director shall make surveys and investigations of the water resources of the state and shall maintain an inventory of the water resources of the state and to the extent practicable shall divide the state into watershed drainage areas in making this inventory. The director shall investigate and study the problems of agriculture, industry, conservation, health, water pollution, domestic and commercial uses and allied matters as they relate to the water resources of the state, and shall make and formulate comprehensive plans and recommendations for the further development, improvement, protection, preservation, regulation and use of such water resources, giving proper consideration to the hydrologic cycle in which water moves. The director shall provide to the Legislature a biennial report on the quality of the state's waters, including an evaluation of the information which has been obtained in accordance with the requirements of this section and shall include in this report

the plans and recommendations which have been formulated pursuant to the requirements of this section. Where possible the timing and content of this report shall be structured so that it may also be used to fulfill any federal program reporting requirements. The report shall include reasons for such plans and recommendations, as well as any changes in the law which are deemed desirable to effectuate such plans and recommendations. Such report shall be made available to the public at a reasonable price to be determined by the director. The director may request, and, upon request, is entitled to receive from any agency of the state or any political subdivision thereof, or from any other person who engages in a commercial use or controls any of the water resources of the state, such necessary information and data as will assist in obtaining a complete picture of the water resources of the state and the existing control and commercial use thereof. The director shall reimburse such agencies, political subdivisions and other persons for any expenses, which would not otherwise have been incurred, in making such information and data available.

**§22-11-29. Reimbursement of response costs.**

(a) The secretary may recover through civil action or cooperative agreements with responsible persons, the actual, reasonable and necessary amounts expended by the department for the purpose of responding to, evaluating or overseeing a response to a spill or accidental discharge of any pollutant that enters the waters of the state, or taking measures required to prevent a spill or accidental discharge of any pollutant from entering the waters of the state. The department shall provide the responsible party an itemized invoice of the expenditures that the department seeks to recover.

(b) All moneys recovered by the secretary shall be deposited into the water quality management fund created in section ten of this article and shall be used for future responses to, evaluation or oversight of a response to a spill or accidental discharge of any pollutant that enters the waters of the state, or measures required to be taken to prevent a spill or accidental discharge of any pollutant from entering the waters of the state.

(c) The amounts that may be collected by the secretary pursuant to subsection (a) of this section may include any reasonable and necessary costs incurred by a third party who is not a responsible party and who, with the prior authorization of the secretary or the chief inspector, responds to a spill or accidental discharge that enters or threatens to enter the waters of the state. The department is not responsible for or may not be held liable for costs incurred by the third party responder.

(d) Any civil action instituted pursuant to this section may be brought in the county in which the spill or accidental discharge occurred or the county in which the response occurred.