

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 596

By Senators Smith and Phillips

[Originating in the Committee on Energy, Industry,
and Mining; reported February 5, 2024]

1 A BILL to amend and reenact §22-11-4, §22-11-22, §22-11-22a, §22-11-24, and §22-11-25 of the
2 Code of West Virginia, 1931, as amended; and to amend and reenact §22-11B-3 and §22-
3 11B-12 of said code, all related to the administration of the West Virginia Water Pollution
4 Control Act and Underground Carbon Dioxide Sequestration and Storage to provide
5 assurances to the United States Environmental Protection Agency regarding the State of
6 West Virginia's application for primary enforcement authority over underground carbon
7 dioxide sequestration programs; to insert cross references between the Underground
8 Carbon Sequestration and Storage statutes and the West Virginia Water Pollution Control
9 Act to protect water resources; providing that before a Certificate of Completion can be
10 issued, all the requirements of a class six injection well permit must be met, including post
11 injection site care and closure requirements; altering the minimum 10-year period between
12 the end of injections and the issuance of the certificate to be either 50 years or another time
13 period on a site-specific basis as determined by Department of Environmental Protection
14 rules; providing exceptions and limitations to what liability is transferred to the state and
15 what remains with the permittee; providing that a permittee will be responsible for certain
16 contractual obligations and criminal liability; providing that a release of liability does not
17 apply to owners or operators of a facility when liability arises from noncompliance with
18 applicable laws, regulations, or permits prior to issuance of the Certificate of Completion;
19 providing for liability when it is determined that fluid migration has occurred that causes or
20 threatens underground sources of drinking water; providing that the secretary will
21 implement the article in a manner consistent with the requirements of the federal Safe
22 Drinking Water Act; providing for the exercise of the state's authority to restrain people
23 from endangering or damaging public health or the environment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

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

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

4 (1) To perform any and all acts necessary to carry out the purposes and requirements of
5 this article and of the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, as amended,
6 relating to this state's participation in the National Pollutant Discharge Elimination System, 33
7 U.S.C. §1342, established under that act;

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

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

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

26 (5) To study and investigate all problems concerning water flow, water pollution, and the

27 control and reduction of pollution of the waters of the state, and to make reports and
28 recommendations with respect thereto;

29 (6) To collect and disseminate information relating to water pollution and the control and
30 reduction thereof;

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

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

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

37 (10) To exercise general supervision over the administration and enforcement of the
38 provisions of this article, and all rules, permits, and orders issued pursuant to the provisions of this
39 article, §22-11-1 *et seq.*, §22-11A-1 *et seq.*, §22-11B-1 *et seq.*, of this code, and §22B-1-1 *et seq.*
40 of this code;

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

52 (12) To require the prior submission of plans, specifications, and other data relative to, and

53 to inspect the construction and operation of, any activity or activities in connection with the
54 issuance and revocation of such permits as are required by this article, §22-11A-1 *et seq.* and §22-
55 11B-1 *et seq.*, of this code or the rules promulgated thereunder;

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

66 (14) To adopt, modify, or repeal procedural rules and interpretive rules in accordance with
67 the provisions of Chapter 29A of this code administering and implementing the powers, duties and
68 responsibilities vested in the director by the provisions of this article, and §22-11A-1 *et seq.* and
69 §22-11B-1 *et seq.* of this code;

70 (15) To cooperate with interstate agencies for the purpose of formulating, for submission to
71 the Legislature, interstate compacts and agreements relating to:

72 (A) The control and reduction of water pollution; and

73 (B) The state's share of waters in watercourses bordering the state;

74 (16) To adopt, modify, repeal, and enforce rules, in accordance with the provisions of
75 chapter twenty-nine-a of this code:

76 (A) Implementing and making effective the declaration of policy contained in section one of
77 this article and the powers, duties, and responsibilities vested in the director and the chief by the
78 provisions of this article and otherwise by law;

79 (B) Preventing, controlling, and abating pollution; and

80 (C) Facilitating the state's participation in the National Pollutant Discharge Elimination
81 System pursuant to the Federal Water Pollution Control Act, as amended: *Provided*, That no rule
82 adopted by the director shall specify the design of equipment, type of construction or particular
83 method which a person shall use to reduce the discharge of a pollutant; and

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

86 (b) Whenever required to carry out the objectives of this article, §22-11A-1 et seq. or §22-
87 11B-1 et seq. of this code, the director shall require the owner or operator of any point source or
88 establishment to:

89 (i) Establish and maintain such records;

90 (ii) Make such reports;

91 (iii) Install, use, and maintain such monitoring equipment or methods;

92 (iv) Sample such effluents in accordance with such methods, at such locations, at such
93 intervals, and in such manner as the director shall prescribe; and

94 (v) Provide such other information as the director may reasonably require.

95 (c) The director upon presentation of credentials:

96 (i) Has a right of entry to, upon, or through any premises in which an effluent source is
97 located or in which any records required to be maintained under subsection (b) of this section are
98 located; and

99 (ii) May at reasonable times have access to and copy any records, inspect any monitoring
100 equipment or method required under subsection (b) of this section, and sample any streams in the
101 area as well as sample any effluents which the owner or operator of such source is required to
102 sample under subsection (b) of this section. Nothing in this subsection eliminates any obligation to
103 follow any process that may be required by law.

104 (d) The director is hereby authorized and empowered to may investigate and ascertain the

105 need and factual basis for the establishment of public service districts as a means of controlling
106 and reducing pollution from unincorporated communities and areas of the state, investigate and
107 ascertain, with the assistance of the Public Service Commission, the financial feasibility and
108 projected financial capability of the future operation of any such public service district or districts,
109 and to present reports and recommendations thereon to the county commissions of the areas
110 concerned, together with a request that such county commissions create a public service district or
111 districts, as therein shown to be needed and required and as provided in §16-13A-1 *et seq.* of this
112 code. In the event a county commission fails to act to establish a county-wide public service district
113 or districts, the director shall act jointly with the Commissioner of the Bureau of Public Health to
114 further investigate and ascertain the financial feasibility and projected financial capability and,
115 subject to the approval of the Public Service Commission, order the county commission to take
116 action to establish such public service district or districts as may be necessary to control, reduce,
117 or abate the pollution, and when so ordered, the county commission members must act to
118 establish such a county-wide public service district or districts.

119 (e) The director ~~has the authority to~~ may enter at all reasonable times upon any private or
120 public property for the purpose of making surveys, examinations, investigations, and studies
121 needed in the gathering of facts concerning the water resources of the state and their use, subject
122 to responsibility for any damage to the property entered. Upon entering, and before making any
123 survey, examination, investigation, and study, such person shall immediately present himself or
124 herself to the occupant of the property. Upon entering property used in any manufacturing, mining,
125 or other commercial enterprise, or by any municipality or governmental agency or subdivision, and
126 before making any survey, examination, investigation, and study, such person shall immediately
127 present himself or herself to the person in charge of the operation, and if he or she is not available,
128 to a managerial employee. All persons shall cooperate fully with the person entering such property
129 for such purposes. Upon refusal of the person owning or controlling such property to permit such
130 entrance or the making of such surveys, examinations, investigations, and studies, the director

131 may apply to the circuit court of the county in which such property is located, or to the judge thereof
132 in vacation, for an order permitting such entrance or the making of such surveys, examinations,
133 investigations, and studies; and jurisdiction is hereby conferred upon such court to enter such
134 order upon a showing that the relief asked is necessary for the proper enforcement of this article:
135 *Provided*, That nothing in this subsection eliminates any obligation to follow any process that may
136 be required by law.

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

1 (a) Any person who violates any provision of any permit issued under or subject to the
2 provisions of this article, or §22-11A-1 et seq., or §22-11B-1 et seq. of this code is subject to a civil
3 penalty not to exceed \$25,000 ~~per~~ a day of such violation and any person who violates any
4 provision of this article, §22-11A-1 et seq., or §22-11B-1 et seq. of this code or of any rule or who
5 violates any standard or order promulgated or made and entered under the provisions of this
6 article, §22-11A-1 et seq., §22-11B-1 et seq. of this code or §22B-1-1 et seq. of this code is subject
7 to a civil penalty not to exceed \$25,000 ~~per~~ a day of such violation. Any such civil penalty may be
8 imposed and collected only by a civil action instituted by the director in the circuit court of the
9 county in which the violation occurred, or is occurring, or of the county in which the waters thereof
10 are polluted as the result of such violation.

11 Upon application by the director, the circuit courts of the state, or the judges thereof in
12 vacation, may by injunction, compel compliance with and enjoin violations of the provisions of this
13 article, §22-11A-1 et seq., and §22-11B-1 et seq. of this code, the rules of the board or director,
14 effluent limitations, the terms and conditions of any permit granted under the provisions of this
15 article, or §22-11A-1 et seq., and §22-11B-1 et seq. of this code or any order of the director or
16 board, and the venue of any such actions shall be the county in which the violations or
17 noncompliance exists or is taking place, or in any county in which the waters thereof are polluted
18 as the result of such violation or noncompliance. The court, or the judge thereof in vacation, may
19 issue a temporary or preliminary injunction in any case pending a decision on the merits of any

20 injunction application filed. Any other section of this code to the contrary notwithstanding, the state
21 is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article, or
22 §22-11A-1 et seq., and §22-11B-1 et seq. of this code. An application for an injunction under the
23 provisions of this section may be filed and injunctive relief granted notwithstanding that all of the
24 administrative remedies provided for in this article have not been pursued or invoked against the
25 person or persons against whom such relief is sought and notwithstanding that the person or
26 persons against whom such relief is sought have not been prosecuted or convicted under the
27 provisions of this article.

28 The judgment of the circuit court upon any application filed or in any civil action instituted
29 under the provisions of this section is final unless reversed, vacated, or modified on appeal to the
30 Supreme Court of Appeals. Any such appeal shall be sought in the manner provided by law for
31 appeals from circuit courts in other civil cases, except that the petition seeking review in any
32 injunctive proceeding must be filed with said Supreme Court of Appeals within 90 days from the
33 date of entry of the judgment of the circuit court.

34 Legal counsel and services for the chief, director, or the board in all civil penalty and
35 injunction proceedings in the circuit court and in the Supreme Court of Appeals of this state shall
36 be provided by the Attorney General or his or her assistants and by the prosecuting attorneys of
37 the several counties as well, all without additional compensation, or the chief, director, or the
38 board, with the written approval of the Attorney General, may employ counsel to represent him or
39 her or it in a particular proceeding.

40 (b) In addition to the powers and authority granted to the director by this chapter to enter
41 into consent agreements, settlements and otherwise enforce this chapter, the director shall
42 propose, for legislative promulgation, rules in accordance with ~~the provisions of~~ §29A-3-1 *et seq.*
43 of this code to establish a mechanism for the administrative resolution of violations set forth in this
44 section through consent order or agreement as an alternative to instituting a civil action.

§22-11-22a. Civil penalties and injunctive relief; civil administrative penalties for coal

mining

operations.

1 (a) Any person who holds a permit to operate a coal mining operation issued under article
2 three of this chapter who violates any provision of any permit issued under or subject to the
3 provisions of this article, or §22-11A-1 et seq. and §22-11B-1 et seq. of this code is subject to a civil
4 penalty not to exceed \$25,000 ~~per~~ a day of the violation and any person who violates any provision
5 of this article or of any rule, or who violates any standard or order promulgated or made and
6 entered under the provisions of this article, §22-11A-1 et seq. of this code or §22-11B-1 et seq. of
7 this code is subject to a civil penalty not to exceed \$25,000 ~~per~~ a day of the violation: *Provided,*
8 That any penalty imposed pursuant to the Surface Coal Mining and Reclamation Act [§22-3-1 et
9 seq.] shall be credited against any enforcement action under this article for violations of standards
10 protecting state waters.

11 (1) Any such civil penalty may be imposed and collected only by a civil action instituted by
12 the secretary in the circuit court of the county in which the violation occurred, or is occurring, or of
13 the county in which the waters thereof are polluted as the result of such violation.

14 (2) In determining the amount of a civil penalty, the circuit court shall consider the
15 seriousness of the violation or violations, the economic benefit, if any, resulting from the violation,
16 any history of the violations, any good-faith efforts to comply with the applicable requirements,
17 cooperation by the permittee with the secretary, the economic impact of the penalty on the violator,
18 and other matters as justice may require.

19 (3) Upon application by the secretary, the circuit courts of the state, or the judges thereof in
20 vacation, may by injunction compel compliance with and enjoin violations of the provisions of this
21 article, ~~§22-7A-4~~ §22-11A-1 et seq., and §22-11B-1 et seq. of this code, the rules of the board or
22 secretary, effluent limitations, the terms and conditions of any permit granted under the provisions
23 of this article, §22-11A-1 et seq., and §22-11B-1 et seq. or of this code or any order of the secretary
24 or board, and the venue of any such actions shall be the county in which the violations or
25 noncompliance exists or is taking place, or in any county in which the waters thereof are polluted

26 as the result of the violation or noncompliance. The court, or the judge thereof in vacation, may
27 issue a temporary or preliminary injunction in any case pending a decision on the merits of any
28 injunction application filed. Any other section of this code to the contrary notwithstanding, the state
29 is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article, or
30 §22-11A-1 et seq., and §22-11B-1 et seq. of this code. An application for an injunction under the
31 provisions of this section may be filed and injunctive relief granted notwithstanding that all of the
32 administrative remedies provided in this article have not been pursued or invoked against the
33 person or persons against whom such relief is sought and notwithstanding that the person or
34 persons against whom such relief is sought have not been prosecuted or convicted under the
35 provisions of this article.

36 (4) The judgment of the circuit court upon any application filed or in any civil action
37 instituted under the provisions of this section is final unless reversed, vacated, or modified on
38 appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner provided
39 by law for appeals from circuit courts in other civil cases, except that the petition seeking review in
40 any injunctive proceeding must be filed with said Supreme Court of Appeals within 90 days from
41 the date of entry of the judgment of the circuit court.

42 (5) Legal counsel and services for the director, secretary, or the board in all civil penalty
43 and injunction proceedings in the circuit court and in the Supreme Court of Appeals of this state
44 shall be provided by legal counsel employed by the department, the Attorney General or his or her
45 assistants, and by the prosecuting attorneys of the several counties as well, all without additional
46 compensation, or the director, secretary, or the board may employ counsel to represent him or her
47 or it in a particular proceeding.

48 (b) The secretary may assess a civil administrative penalty whenever he or she finds that a
49 person who holds a permit to operate a coal mining operation issued under article three of this
50 chapter has violated any provision of this article, or §22-11A-1 et seq., or §22-11B-1 et seq. of this
51 code, any permit issued under or subject to the provisions of this article, or §22-11A-1 et seq., or

52 §22-11B-1 et seq. of this code or any rule or order issued pursuant to this article, or §22-11A-1 *et*
53 *seq.*, or §22-11B-1 et seq. of this code. A civil administrative penalty may be assessed unilaterally
54 by the director in accordance with this subsection.

55 (1) Any civil administrative penalty assessed pursuant to this section shall not exceed
56 \$10,000 per violation and the maximum amount of any civil administrative penalty assessed
57 pursuant to this section ~~shall~~ may not exceed \$125,000: *Provided*, That any stipulated penalties
58 accrued after the date of the draft order ~~shall~~ may not be included for purposes of determining the
59 total amount of the civil administrative penalty. For purposes of this section, a single operational
60 upset which leads to simultaneous violations of more than one pollutant parameter, shall be
61 treated as a single violation.

62 (2) In determining the amount of any civil administrative penalty assessed under this
63 subsection, the secretary shall take into account the nature, circumstances, extent, and gravity of
64 the violation or violations, and, with respect to the violator, ability to pay, any prior history of such
65 violations, the degree of good faith, economic benefit or savings, if any, resulting from the violation,
66 cooperation of the alleged violator, and such other matters as justice may require.

67 (3) No assessment may be levied pursuant to this subsection until after the alleged violator
68 has been notified by certified mail or personal service pursuant to the West Virginia rules of civil
69 procedure. The notice shall include a proposed order which refers to the provision of the statute,
70 rule, order, or permit alleged to have been violated, a concise statement of the facts alleged to
71 constitute the violation, a statement of the amount of the administrative penalty to be imposed, and
72 a statement of the alleged violator's right to an informal hearing prior to the issuance of the
73 proposed order.

74 (A) The alleged violator has 30 calendar days from receipt of the notice within which to
75 deliver to the secretary a written request for an informal hearing.

76 (B) If no hearing is requested, the proposed order becomes a draft order after the
77 expiration of the ~~thirty-~~ 30-day period.

78 (C) If an informal hearing is requested, the director shall inform the alleged violator of the
79 time and place of the hearing. The secretary may appoint an assessment officer to conduct the
80 informal hearing and make a written recommendation to the secretary concerning the proposed
81 order and the assessment of a civil administrative penalty.

82 (D) Within 30 days following the informal hearing, the secretary shall render and furnish to
83 the alleged violator a written decision, and the reasons therefor, concerning the assessment of a
84 civil administrative penalty. The proposed order shall be revised, if necessary, and shall become a
85 draft order.

86 (4) The secretary shall provide the opportunity for the public to comment on any draft order
87 by publishing a Class II legal advertisement in the newspaper with the largest circulation in the
88 county in which the violation occurred, and by other such means as the secretary deems
89 appropriate, which shall provide notice of the draft order, including the civil administrative penalty
90 assessment. The secretary shall consider any comments received in determining whether to
91 revise the draft order before issuance of a final order. During the 30-day public comment period,
92 any person may request a public hearing regarding the draft order and the secretary may grant or
93 deny the request at his or her discretion. If a request for a public hearing is denied, the secretary
94 shall provide notice to the person requesting a hearing and reasons for such denial.

95 (5) Within 30 days of the close of the public comment period on a draft order, the secretary
96 shall issue a final order or make a determination not to issue a final order, and shall provide written
97 notice by certified mail or personal service pursuant to the West Virginia rules of civil procedure to
98 the alleged violator and shall provide notice by certified mail or personal service pursuant to the
99 West Virginia rules of civil procedure to those persons who submitted written comments on the
100 draft order during the public comment period.

101 (6) The issuance of a final order assessing a civil administrative penalty pursuant to
102 subsection (b) of this section may be appealed to the environmental quality board pursuant to §22-
103 11-21 of this code. Any person who submitted written comments on a draft order during the public

104 comment period shall have the right to file such an appeal or intervene in any appeal filed by the
105 alleged violator.

106 (7) The authority to levy a civil administrative penalty is in addition to all other enforcement
107 provisions of this article and the payment of any assessment does not affect the availability of any
108 other enforcement provision in connection with the violation for which the assessment is levied:
109 *Provided*, That no combination of assessments against a violator under this section shall exceed
110 \$25,000 for each violation: *Provided, however*, That any violation for which the violator has paid a
111 civil administrative penalty assessed under this section may not be the subject of a separate civil
112 penalty action. No assessment levied pursuant to this section becomes due and payable until at
113 least ~~thirty~~ 30 days after receipt of the final order or the procedures for review of the assessment,
114 including any appeals, have been completed, whichever is later.

115 (c) In addition to the authorities set forth in this section, the secretary may also enter into
116 agreements, settlements, and other consent orders resolving alleged violations of this chapter.

117 (d) The secretary shall propose, for legislative review, rules, including emergency rules, in
118 accordance with the provisions of §29A-3-1 *et seq.* of this code to establish procedures for
119 assessing civil administrative penalties in accordance with this section by no later than July 1,
120 2015.

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

1 (a) Any person who causes pollution or who fails or refuses to discharge any duty imposed
2 upon him or her by this article, by §22-11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code or by any
3 rule of the board or director, promulgated pursuant to the provisions and intent of this article, or
4 §22-11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code, or by an order of the director or board, or who
5 fails or refuses to apply for and obtain a permit as required by the provisions of this article, or §22-
6 11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code, or who fails or refuses to comply with any term or
7 condition of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be
8 punished by a fine of not less than \$100 nor more than \$1,000, or ~~by imprisonment in the county~~

9 confined in jail for a period not exceeding six months, or by both fine and ~~imprisonment~~
10 confinement.

11 (b) Any person who intentionally misrepresents any material fact in an application, record,
12 report, plan, or other document filed or required to be maintained under the provisions of this
13 article, §22-11A-1 et seq., or §22-11B-1 et seq. of this code or any rules promulgated by the
14 director thereunder, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by
15 a fine of not less than \$1,000 nor more than \$10,000 or by ~~imprisonment~~ confined in jail not
16 exceeding six months, or by both fine and ~~imprisonment~~ confinement.

17 (c) Any person who willfully or negligently violates any provision of any permit issued under
18 or subject to the provisions of this article, or §22-11A-1 et seq., or §22-11B-1 et seq. of this code, or
19 who willfully or negligently violates any provision of this article, or §22-11A-1 et seq., or §22-11B-1
20 et seq. of this code, any rule of the board or director, any effluent limitation, or any order of the
21 director or board is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a
22 fine of not less than \$2,500 nor more than \$25,000 per day of violation or by ~~imprisonment~~
23 confinement in jail not exceeding one year or by both fine and ~~imprisonment~~ confinement.

24 (d) Any person convicted of a second or subsequent willful violation of subsections (b) or
25 (c) of this section, or knowingly and willfully violates any provision of any permit, rule, or order
26 issued under or subject to the provisions of this article, or §22-11A-1 et seq., or §22-11B-1 et seq.
27 of this code, or knowingly and willfully violates any provision of this article, or §22-11A-1 et seq., or
28 §22-11B-1 et seq. of this code, is guilty of a felony and, upon conviction, shall be imprisoned in a
29 state correctional facility not less than one nor more than three years, or fined not more than
30 \$50,000 for each day of violation, or both fined and imprisoned.

31 (e) Any person may be prosecuted and convicted under the provisions of this section
32 notwithstanding that none of the administrative remedies provided in this article have been
33 pursued or invoked against said person and notwithstanding that civil action for the imposition and
34 collection of a civil penalty or an application for an injunction under the provisions of this article has

35 not been filed against such person.

36 (f) Where a person holding a permit is carrying out a program of pollution abatement or
37 remedial action in compliance with the conditions and terms of the permit, the person is not subject
38 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.

1 If any loss of game fish or aquatic life results from a person or persons' failure or refusal to
2 discharge any duty imposed upon such person by this article, section seven, article six of this
3 chapter, or §22-11A-1 *et seq.*, or §22-11B-1 *et seq.* of this code, either the West Virginia Division of
4 Natural Resources or the Division of Environmental Protection, or both jointly may initiate a civil
5 action on behalf of the State of West Virginia to recover from such person or persons causing such
6 loss a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected
7 shall be deposited in a special revenue fund entitled Natural Resources Game Fish and Aquatic
8 Life Fund and shall be expended as hereinafter provided. The fund shall be expended to stock
9 waters of this state with game fish and aquatic life. Where feasible, the Director of the Division of
10 Natural Resources shall use any sum collected in accordance with the provisions of this section to
11 stock waters in the area in which the loss resulting in the collection of such sum occurred. Any
12 balance of such sum shall remain in said fund and be expended to stock state-owned and -
13 operated fishing lakes and ponds, wherever located in this state, with game fish and aquatic life.

ARTICLE 11B. UNDERGROUND CARBON DIOXIDE SEQUESTRATION AND STORAGE

§22-11B-3. Prohibition of underground carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article.

1 (a) It is unlawful for any person to commence work on, or to operate, a carbon dioxide
2 sequestration facility or storage site without first securing a Class VI underground injection control

3 permit from the secretary or from the US EPA.

4 (b) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other
5 minerals pursuant to a project approved by the secretary shall not be subject to the provisions of
6 this article.

7 (c) If an oil, natural gas, or coalbed methane well operator proposes to convert its
8 operations to carbon dioxide sequestration, then the underground carbon dioxide sequestration
9 facility shall be regulated pursuant to this article and §22-11-1 *et seq.* of this code.

10 (d) All applications for permits submitted after the effective date of this article shall be
11 governed by the provisions of this article and the provisions of §22-11-1 *et seq.* of this code.
12 Permits issued and applications submitted prior to the effective date of this article shall be
13 governed by the provisions of §22-11-1 *et seq.* and §22-11A-1 *et seq.* of this code. If the holder of a
14 Class VI underground injection control permit or other carbon dioxide sequestration permit,
15 granted prior to the effective date of this article, seeks a modification of that permit after this article
16 becomes effective, then the permit holder shall have the option to proceed either according to the
17 provisions of this article or the provisions of §22-11A-1 *et seq.* of this code.

§22-11B-12. Certificate of project completion, release, transfer of title and custody, filing.

1 (a) After carbon dioxide injections into a reservoir end, and the storage operator has
2 fulfilled all requirements of its Class VI underground injection control permit including
3 requirements related to post-injection site care and site closure, and upon application by the
4 storage operator demonstrating compliance with this article, the secretary may issue a Certificate
5 of Underground Carbon Dioxide Storage Project Completion (completion certificate).

6 (b) The completion certificate may only be issued after public notice and hearing. The
7 secretary shall establish notice requirements for this hearing by legislative rule.

8 (c) The completion certificate may not be issued until at least ~~40~~ 50 years after carbon
9 dioxide injections end or other time frame established on a site-specific basis in accordance with
10 the legislative rules regarding the timeframe for post-injection site care and site closure.

11 (d) The completion certificate may only be issued if the storage operator:

12 (1) Is in full compliance with all laws and other requirements governing the storage facility,
13 and has fulfilled all requirements including, without limitation, the terms of any underground
14 injection control permit associated with the facility including permit requirements related to post-
15 injection site care and site closure, legislative rules regarding post-injection site care and site
16 closure, and other applicable requirements;

17 (2) Demonstrates that it has addressed all pending claims regarding the storage facility's
18 operation; and

19 (3) Demonstrates that the storage reservoir is reasonably expected to retain the carbon
20 dioxide stored in it.

21 (e) As of the effective date of a completion certificate:

22 (1) Ownership of the stored carbon dioxide transfers, without payment of any
23 compensation, to the owners of the pore space as established in §22-11B-18 of this code;

24 (2) Ownership acquired by the pore space owners under subdivision (e)(1) of this section
25 includes all rights and interests in the stored carbon dioxide and any associated leasing rights;
26 *Provided*, That all liability other than contractual obligations and criminal liability ~~and regulatory~~
27 ~~requirements~~ associated with the stored carbon dioxide shall become the responsibility of the
28 state and the state shall defend, indemnify, and hold harmless the pore space and surface owners
29 against all claims using only funds from the Carbon Dioxide Storage Facility Trust Fund;

30 (3) The storage operator and all persons who transported and/or generated any stored
31 carbon dioxide are released from all liability other than contractual obligations and criminal liability
32 ~~and regulatory requirements~~ associated with the storage facility;

33 (4) Any bonds posted by the storage operator shall be released; and

34 (5) Notwithstanding ownership of the stored carbon dioxide in the pore space owners as
35 provided herein, monitoring, and managing the storage facility shall become the state's
36 responsibility to be overseen by the secretary utilizing only money from the Carbon Dioxide

37 Storage Facility Trust Fund until such time as the federal government assumes responsibility for
38 the long-term monitoring and management of storage facilities. The release of liability under this
39 section shall not apply to a current or former owner or operator of a storage facility when such
40 liability arises from that owner or operator's noncompliance with applicable underground injection
41 control laws, regulations, or permits prior to issuance of the certificate of completion of injection
42 operations, nor shall it apply when the director determines that there is fluid migration for which the
43 operator is responsible that causes or threatens imminent and substantial endangerment to an
44 underground source of drinking water.

45 (f) The secretary shall require that a copy of the completion certificate and a survey of the
46 storage field be filed with the county recorder in the county or counties where the carbon dioxide
47 storage facility is located.

48 (g) The secretary shall implement this article in a manner consistent with, and as he or she
49 deems necessary to carry out the purposes and requirements of the federal Safe Drinking Water
50 Act, as amended, and its implementing regulations relating to the state's primary enforcement
51 authority for the underground injection control program established under that Act with respect to
52 the storage and sequestration of carbon dioxide, including but not limited to the state's authority to
53 immediately and effectively restrain any person from engaging in any unauthorized activity which
54 is endangering or causing damage to public health or the environment. Additionally, in no event
55 may the release of liability under this section interfere with the US EPA's authority under Section
56 1431 of the federal Safe Drinking Water Act.