

1
2 **ENROLLED**

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 121**

6 (SENATORS MINARD, SNYDER, PREZIOSO, UNGER, BOLEY AND K. FACEMYER, *original*
7 *sponsors*)

8 _____
9 [Passed March 11, 2011; in effect from passage.]
10 _____

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12
13 AN ACT to amend and reenact article 3, chapter 64 of the Code of
14 West Virginia, 1931, as amended, relating generally to the
15 promulgation of administrative rules by the Department of
16 Environmental Protection; legislative mandate or authorization
17 for the promulgation of certain legislative rules by various
18 executive or administrative agencies of the state; authorizing
19 certain of the agencies to promulgate certain legislative
20 rules in the form that the rules were filed in the State
21 Register; authorizing certain of the agencies to promulgate
22 certain legislative rules in the form that the rules were
23 filed in the State Register and as amended by the Legislature;

1 authorizing certain of the agencies to promulgate certain
2 legislative rules with various modifications presented to and
3 recommended by the Legislative Rule-Making Review Committee;
4 authorizing certain of the agencies to promulgate certain
5 legislative rules with various modifications presented to and
6 recommended by the Legislative Rule-Making Review Committee
7 and as amended by the Legislature; authorizing certain of the
8 agencies to promulgate certain legislative rules as amended by
9 the Legislature; authorizing the Department of Environmental
10 Protection to promulgate a legislative rule relating to
11 hazardous waste management systems; authorizing the Department
12 of Environmental Protection to promulgate a legislative rule
13 relating to surface mining reclamation; authorizing the
14 Department of Environmental Protection to promulgate a
15 legislative rule relating to ambient air quality standards;
16 authorizing the Department of Environmental Protection to
17 promulgate a legislative rule relating to permits for
18 construction and major modification of major stationary
19 sources of air pollution for the prevention of significant
20 deterioration; authorizing the Department of Environmental
21 Protection to promulgate a legislative rule relating to
22 standards of performance for new stationary sources;
23 authorizing the Department of Environmental Protection to

1 promulgate a legislative rule relating to control of air
2 pollution from combustion of solid waste; authorizing the
3 Department of Environmental Protection to promulgate a
4 legislative rule relating to permits for construction and
5 major modification of major stationary sources of air
6 pollution which cause or contribute to nonattainment;
7 authorizing the Department of Environmental Protection to
8 promulgate a legislative rule relating to the control of air
9 pollution from hazardous waste treatment, storage and disposal
10 facilities; authorizing the Department of Environmental
11 Protection to promulgate a legislative rule relating to
12 emission standards for hazardous air pollutants; authorizing
13 the Department of Environmental Protection to promulgate a
14 legislative rule relating to the National Pollutant Discharge
15 Elimination System (NPDES) Program; authorizing the Department
16 of Environmental Protection to promulgate a legislative rule
17 relating to requirements governing groundwater standards; and
18 authorizing the Department of Environmental Protection to
19 promulgate a legislative rule relating to monitoring well
20 design standards.

21 *Be it enacted by the Legislature of West Virginia:*

22 That article 3, chapter 64 of the Code of West Virginia, 1931,
23 as amended, be amended and reenacted to read as follows:

1 **ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL**
2 **PROTECTION TO PROMULGATE LEGISLATIVE RULES.**

3 **§64-3-1. Department of Environmental Protection.**

4 (a) The legislative rule filed in the state register on the
5 thirtieth day of July, two thousand ten, authorized under the
6 authority of section six, article eighteen, chapter twenty-two of
7 this code, modified by the Department of Environmental Protection
8 to meet the objections of the Legislative Rule-Making Review
9 Committee and refiled in the state register on the twenty-first day
10 of September, two thousand ten, relating to the Department of
11 Environmental Protection (hazardous waste management system, 33 CSR
12 20), is authorized.

13 (b) The legislative rule filed in the state register on the
14 thirtieth day of July, two thousand ten, authorized under the
15 authority of section four, article three, chapter twenty-two of
16 this code, modified by the Department of Environmental Protection
17 to meet the objections of the Legislative Rule-Making Review
18 Committee and refiled in the state register on the eighteenth day
19 of January, two thousand eleven, relating to the Department of
20 Environmental Protection (surface mining reclamation, 38 CSR 2), is
21 authorized with the following amendments:

22 On page fifty-four, subdivision 3.32.b., by striking out the
23 words "For the purposes of W.Va. Code §22-3-19(a)(1)(B), an

1 operator shall be considered in compliance with the applicable
2 environmental performance standards referenced therein unless it
3 has unabated cessation orders, notices of violations that are not
4 in the process of being abated to the Secretary's satisfaction,
5 delinquent civil penalties, or bond forfeitures.";

6 On pages one hundred fifty-four and one hundred fifty-five,
7 paragraph 12.2.a.1., by striking out all of paragraph 12.2.a.1.
8 and inserting in lieu thereof a new paragraph 12.2.a.1. to read as
9 follows:

10 "12.2.a.1. The permittee may file an application with the
11 Secretary for the release of all or part of a bond. Applications
12 may be filed only at times or during seasons established by the
13 Secretary which allow proper evaluation of the completed
14 reclamation operations.";

15 And,

16 On page one hundred seventy-seven, subdivision 14.11.h., by
17 striking out the words "e. and f." and inserting in lieu thereof
18 the words "e., f. and g.".

19 (c) The legislative rule filed in the state register on the
20 twenty-eighth day of July, two thousand ten, authorized under the
21 authority of section four, article five, chapter twenty-two of this
22 code, relating to the Department of Environmental Protection
23 (ambient air quality standards, 45 CSR 8), is authorized.

1 (d) The legislative rule filed in the state register on the
2 twenty-eighth day of July, two thousand ten, authorized under the
3 authority of section four, article five, chapter twenty-two of this
4 code, modified by the Department of Environmental Protection to
5 meet the objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the eleventh day of January,
7 two thousand eleven, relating to the Department of Environmental
8 Protection (permits for construction and major modification of
9 major stationary sources of air pollution for the prevention of
10 significant deterioration, 45 CSR 14), is authorized with the
11 following amendment:

12 On page twenty, after paragraph 2.80.e.2., by adding the
13 following:

14 "2.80.f. Notwithstanding subdivisions 2.80.d. and 2.80.e.,
15 and subject to the public notice requirements set forth in
16 subdivision 2.80.g., the preconstruction permit requirements of
17 this rule shall not apply to a source's GHG emissions if any of the
18 following actions result in GHGs not being subject to regulation
19 under the otherwise applicable federal prevention of significant
20 deterioration requirements set forth in 40 CFR §51.166:

- 21 2.80.f.1. A US EPA final rule;
- 22 2.80.f.2. An act of the United States Congress;
- 23 2.80.f.3. A Presidential Executive Order;

1 2.80.f.4. A final order of the District of Columbia
2 Circuit Court of Appeals, if the specified time for appealing the
3 order has lapsed and no appeals, petitions seeking clarification or
4 rehearing, or other petitions regarding the order have been filed,
5 or, if any appeals or petitions are filed, the resolution of any
6 and all appeals and petitions regarding the final order are
7 complete and have upheld the relevant determination(s). Moreover,
8 a stay shall also create an exemption during the effective length
9 of the stay. These two specific exemptions shall become effective
10 only if US EPA does not object in writing by the end of the notice
11 period set forth in subdivision 2.80.g.; or

12 2.80.f.5. An order of the United States Supreme Court.

13 2.80.g. The exemption set forth in subdivision 2.80.f. shall
14 become effective after the Secretary provides a thirty day notice
15 of such exemption to US EPA and the public. Such notice shall be
16 published in the West Virginia Register and explain the
17 circumstances justifying the exemption."

18 (e) The legislative rule filed in the state register on the
19 twenty-eighth day of July, two thousand ten, authorized under the
20 authority of section four, article five, chapter twenty-two of this
21 code, relating to the Department of Environmental Protection
22 (standards of performance for new stationary sources, 45 CSR 16),
23 is authorized.

1 (f) The legislative rule filed in the state register on the
2 twenty-eighth day of July, two thousand ten, authorized under the
3 authority of section four, article five, chapter twenty-two of this
4 code, modified by the Department of Environmental Protection to
5 meet the objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the eleventh day of January,
7 two thousand eleven, relating to the Department of Environmental
8 Protection (control of air pollution from combustion of solid
9 waste, 45 CSR 18), is authorized.

10 (g) The legislative rule filed in the state register on the
11 twenty-eighth day of July, two thousand ten, authorized under the
12 authority of section four, article five, chapter twenty-two of this
13 code, relating to the Department of Environmental Protection
14 (permits for construction and major modification of major
15 stationary sources of air pollution which cause or contribute to
16 nonattainment, 45 CSR 19), is authorized.

17 (h) The legislative rule filed in the state register on the
18 twenty-eighth day of July, two thousand ten, authorized under the
19 authority of section four, article five, chapter twenty-two of this
20 code, relating to the Department of Environmental Protection
21 (control of air pollution from hazardous waste treatment, storage
22 or disposal facilities, 45 CSR 25), is authorized.

23 (i) The legislative rule filed in the state register on the

1 twenty-eighth day of July, two thousand ten, authorized under the
2 authority of section four, article five, chapter twenty-two of this
3 code, relating to the Department of Environmental Protection
4 (emission standards for hazardous air pollutants, 45 CSR 34), is
5 authorized.

6 (j) The legislative rule filed in the state register on the
7 thirtieth day of July, two thousand ten, authorized under the
8 authority of section four, article eleven, chapter twenty-two of
9 this code, relating to the Department of Environmental Protection
10 (requirements governing water quality standards, 47 CSR 2), is
11 authorized with the following amendments:

12 On pages two and three, subsection 3.1, by striking out the
13 words "and certain water withdrawal activities";

14 On page three, subsection 3.2, by striking out the words "or
15 water withdrawal activities";

16 On page fourteen, subdivision 8.2.b., striking out all of
17 subdivision 8.2.b. and inserting in lieu thereof a new subdivision
18 8.2.b. to read as follows:

19 "8.2.b. For waters other than the Ohio River between river
20 mile points 68.0 and 70.0, a final determination on the critical
21 design flow for carcinogens is not made in this rule, in order to
22 permit further review and study of that issue. Following the
23 conclusion of such review and study, the Legislature may again take

1 up the authorization of this rule for purposes of addressing the
2 critical design flow for carcinogens: Provided, That until such
3 time as the review and study of the issue is concluded or until
4 such time as the Legislature may again take up the authorization of
5 this rule, the regulatory requirements for determining effluent
6 limits for carcinogens shall remain as they were on the date this
7 rule was proposed.”;

8 On page fourteen, after subdivision 8.2.b., by adding a new
9 paragraph 8.2.b.1. to read as follows:

10 “8.2.b.1. For the Ohio River between river mile points 68.0
11 and 70.0 the critical design flow for determining effluent limits
12 for carcinogens shall be harmonic mean flow.”;

13 On page fourteen, subdivision 8.3.b., by striking out all of
14 subdivision 8.3.b.;

15 On page fourteen, paragraph 8.3.b.1., by striking out all of
16 paragraph 8.3.b.1.;

17 On page fourteen, subparagraph 8.3.b.1.A., by striking out all
18 of subparagraph 8.3.b.1.A.;

19 And,

20 On page forty-seven, by striking out all of parameter 8.32 and
21 renumbering the remaining parameters.

22 (k) The legislative rule filed in the State Register on April
23 8, 2010, authorized under the authority of section four, article

1 eleven, chapter twenty-two of this code, approved for promulgation
2 by the Legislature on March 13, 2010, relating to the Department of
3 Environmental Protection (National Pollutant Discharge Elimination
4 System (NPDES) Program, 47 CSR 10), is authorized with the
5 following amendments:

6 On page forty-four, part 13.1.b.4.A.13., by striking out all
7 of part 13.1.b.4.A.13. and inserting in lieu thereof a new part
8 13.1.b.4.A.13. to read as follows:

9 "13.1.b.4.A.13. Five thousand (5,000) ducks, if the AFO uses
10 a liquid manure handling system.";

11 On page forty-four, subparagraph 13.1.b.4.B, by striking out
12 all of subparagraph 13.1.b.4.B;

13 On page forty-four, part 13.1.b.4.B.1, by striking out all of
14 part 13.1.b.4.B.1.;

15 And,

16 On page forty-four, part 13.1.b.4.B.2, by striking out all of
17 part 13.1.b.4.B.2.

18 (1) The legislative rule filed in the state register on the
19 twenty-third day of July, two thousand ten, authorized under the
20 authority of section four, article twelve, chapter twenty-two of
21 this code, modified by the Department of Environmental Protection
22 to meet the objections of the Legislative Rule-Making Review
23 Committee and refiled in the state register on the fourteenth day

1 of September, two thousand ten, relating to the Department of
2 Environmental Protection (requirements governing groundwater
3 standards, 47 CSR 12), is authorized.

4 (m) The legislative rule filed in the state register on the
5 twenty-sixth day of July, two thousand ten, authorized under the
6 authority of section five, article twelve, chapter twenty-two of
7 this code, modified by the Department of Environmental Protection
8 to meet the objections of the Legislative Rule-Making Review
9 Committee and refiled in the state register on the twenty-second
10 day of September, two thousand ten, relating to the Department of
11 Environmental Protection (monitoring well design standards, 47 CSR
12 60), is authorized.

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