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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 121**

(By Senators Minard, Snyder, Prezioso, Unger, Boley and K.  
Facemyer)

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[Originating in the Committee on the Judiciary;  
reported February 23, 2011.]

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A BILL to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were 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. and  
8 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., and  
15 subject to the public notice requirements set forth in subdivision  
16 2.80.g., the preconstruction permit requirements of this rule shall  
17 not apply to a source's GHG emissions if any of the following  
18 actions result in GHGs not being subject to regulation under the  
19 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 Circuit  
2 Court of Appeals, if the specified time for appealing the order has  
3 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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