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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 18, 2011; in effect ninety days from passage.]  
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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 requirements governing water  
15 quality standards; authorizing the Department of Environmental  
16 Protection to promulgate a legislative rule relating to the  
17 National Pollutant Discharge Elimination System (NPDES)  
18 Program; authorizing the Department of Environmental  
19 Protection to promulgate a legislative rule relating to  
20 requirements governing groundwater standards; and authorizing  
21 the Department of Environmental Protection to promulgate a  
22 legislative rule relating to monitoring well design standards.

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

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

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

5   **§64-3-1. Department of Environmental Protection.**

6           (a) 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 six, article eighteen, chapter twenty-two of  
9 this code, modified by the Department of Environmental Protection  
10 to meet the objections of the Legislative Rule-Making Review  
11 Committee and refiled in the state register on the twenty-first day  
12 of September, two thousand ten, relating to the Department of  
13 Environmental Protection (hazardous waste management system, 33 CSR  
14 20), is authorized.

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

1           On page fifty-four, subdivision 3.32.b., by striking out the  
2 words "For the purposes of W.Va. Code §22-3-19(a)(1)(B), an  
3 operator shall be considered in compliance with the applicable  
4 environmental performance standards referenced therein unless it  
5 has unabated cessation orders, notices of violations that are not  
6 in the process of being abated to the Secretary's satisfaction,  
7 delinquent civil penalties, or bond forfeitures.";

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

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

17           And,

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

21           (c) The legislative rule filed in the state register on the  
22 twenty-eighth day of July, two thousand ten, authorized under the  
23 authority of section four, article five, chapter twenty-two of this

1 code, relating to the Department of Environmental Protection  
2 (ambient air quality standards, 45 CSR 8), is authorized.

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

14 On page twenty, after paragraph 2.80.e.2., by adding the  
15 following:

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

23 2.80.f.1. A US EPA final rule;

1           2.80.f.2. An act of the United States Congress;

2           2.80.f.3. A Presidential Executive Order;

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

14           2.80.f.5. An order of the United States Supreme Court.

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

20           (e) The legislative rule filed in the state register on the  
21 twenty-eighth day of July, two thousand ten, authorized under the  
22 authority of section four, article five, chapter twenty-two of this  
23 code, relating to the Department of Environmental Protection

1 (standards of performance for new stationary sources, 45 CSR 16),  
2 is authorized.

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

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

19 (h) 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 (control of air pollution from hazardous waste treatment, storage

1 or disposal facilities, 45 CSR 25), is authorized.

2 (i) The legislative rule filed in the state register on the  
3 twenty-eighth day of July, two thousand ten, authorized under the  
4 authority of section four, article five, chapter twenty-two of this  
5 code, relating to the Department of Environmental Protection  
6 (emission standards for hazardous air pollutants, 45 CSR 34), is  
7 authorized.

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

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

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

18 On page fourteen, subdivision 8.2.b., striking out all of  
19 subdivision 8.2.b. and inserting in lieu thereof a new subdivision  
20 8.2.b. to read as follows:

21 "8.2.b. For waters other than the Ohio River between river  
22 mile points 68.0 and 70.0, a final determination on the critical  
23 design flow for carcinogens is not made in this rule, in order to

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

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

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

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

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

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

21 And,

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

1           (k) The legislative rule filed in the State Register on April  
2 8, 2010, authorized under the authority of section four, article  
3 eleven, chapter twenty-two of this code, approved for promulgation  
4 by the Legislature on March 13, 2010, relating to the Department of  
5 Environmental Protection (National Pollutant Discharge Elimination  
6 System (NPDES) Program, 47 CSR 10), is authorized with the  
7 following amendments:

8           On page forty-four, part 13.1.b.4.A.13., by striking out all  
9 of part 13.1.b.4.A.13. and inserting in lieu thereof a new part  
10 13.1.b.4.A.13. to read as follows:

11           "13.1.b.4.A.13. Five thousand (5,000) ducks, if the AFO uses  
12 a liquid manure handling system.";

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

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

17           And,

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

20           (1) The legislative rule filed in the state register on the  
21 twenty-third day of July, two thousand ten, authorized under the  
22 authority of section four, article twelve, chapter twenty-two of  
23 this code, modified by the Department of Environmental Protection

1 to meet the objections of the Legislative Rule-Making Review  
2 Committee and refiled in the state register on the fourteenth day  
3 of September, two thousand ten, relating to the Department of  
4 Environmental Protection (requirements governing groundwater  
5 standards, 47 CSR 12), is authorized.

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

15