

1 **H. B. 2834**

2
3 (By Delegates Fleischauer, Manypenny, Marshall,
4 Doyle, Martin, Longstreth and Hatfield)

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6 [Introduced January 24, 2011; referred to the
7 Committee on Government Organization then the Judiciary.]

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9
10 A BILL to amend and reenact §22-11-4 of the Code of West Virginia,
11 1931, as amended, relating to water pollution control; and
12 requiring the West Virginia Department of Environmental
13 Protection to develop specific standards to control levels of
14 total dissolved solids in the state's rivers and streams.

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

16 That §22-11-4 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

19 **§22-11-4. General powers and duties of director with respect to**
20 **pollution.**

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

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

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

21 (3) To encourage the formulation and execution of plans by
22 cooperative groups or associations of municipal corporations,
23 industries, industrial users, and other users of waters of the
24 state, who, jointly or severally, are or may be the source of

1 pollution of such waters, for the control and reduction of
2 pollution;

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

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

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

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

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

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

24 (10) To exercise general supervision over the administration

1 and enforcement of the provisions of this article, and all rules,
2 permits and orders issued pursuant to the provisions of this
3 article, article eleven-a of this chapter and article one, chapter
4 twenty-two-b of this code;

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

22 (12) To require the prior submission of plans, specifications,
23 and other data relative to, and to inspect the construction and
24 operation of, any activity or activities in connection with the

1 issuance and revocation of such permits as are required by this
2 article, article eleven-a of this chapter or the rules promulgated
3 thereunder;

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

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

23 (15) To cooperate with interstate agencies for the purpose of
24 formulating, for submission to the Legislature, interstate compacts

1 and agreements relating to: (A) The control and reduction of water
2 pollution; and (B) the state's share of waters in watercourses
3 bordering the state;

4 (16) To adopt, modify, repeal and enforce rules, in accordance
5 with the provisions of chapter twenty-nine-a of this code: (A)
6 Implementing and making effective the declaration of policy
7 contained in section one of this article and the powers, duties and
8 responsibilities vested in the director and the chief by the
9 provisions of this article and otherwise by law; (B) preventing,
10 controlling and abating pollution; and (C) facilitating the state's
11 participation in the "National Pollutant Discharge Elimination
12 System" pursuant to the "Federal Water Pollution Control Act," as
13 amended: *Provided*, That no rule adopted by the director shall
14 specify the design of equipment, type of construction or particular
15 method which a person shall use to reduce the discharge of a
16 pollutant; and

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

20 (b) Whenever required to carry out the objectives of this
21 article or article eleven-a of this chapter the director shall
22 require the owner or operator of any point source or establishment
23 to: (i) Establish and maintain such records; (ii) make such
24 reports; (iii) install, use and maintain such monitoring equipment

1 or methods; (iv) sample such effluents in accordance with such
2 methods, at such locations, at such intervals and in such manner as
3 the director shall prescribe; and (v) provide such other
4 information as the director may reasonably require.

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

16 (d) The director is hereby authorized and empowered to
17 investigate and ascertain the need and factual basis for the
18 establishment of public service districts as a means of controlling
19 and reducing pollution from unincorporated communities and areas of
20 the state, investigate and ascertain, with the assistance of the
21 Public Service Commission, the financial feasibility and projected
22 financial capability of the future operation of any such public
23 service district or districts, and to present reports and
24 recommendations thereon to the county commissions of the areas

1 concerned, together with a request that such county commissions
2 create a public service district or districts, as therein shown to
3 be needed and required and as provided in article thirteen-a,
4 chapter sixteen of this code. In the event a county commission
5 fails to act to establish a county-wide public service district or
6 districts, the director shall act jointly with the Commissioner of
7 the Bureau of Public Health to further investigate and ascertain
8 the financial feasibility and projected financial capability and,
9 subject to the approval of the Public Service Commission, order the
10 county commission to take action to establish such public service
11 district or districts as may be necessary to control, reduce or
12 abate the pollution, and when so ordered the county commission
13 members must act to establish such a county-wide public service
14 district or districts.

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

1 subdivision, and before making any survey, examination,
2 investigation and study, such person shall immediately present
3 himself or herself to the person in charge of the operation, and if
4 he or she is not available, to a managerial employee. All persons
5 shall cooperate fully with the person entering such property for
6 such purposes. Upon refusal of the person owning or controlling
7 such property to permit such entrance or the making of such
8 surveys, examinations, investigations and studies, the director may
9 apply to the circuit court of the county in which such property is
10 located, or to the judge thereof in vacation, for an order
11 permitting such entrance or the making of such surveys,
12 examinations, investigations and studies; and jurisdiction is
13 hereby conferred upon such court to enter such order upon a showing
14 that the relief asked is necessary for the proper enforcement of
15 this article: *Provided*, That nothing in this subsection eliminates
16 any obligation to follow any process that may be required by law.

17 (f) The director shall develop comprehensive standards to
18 control the levels of total dissolved solids in the state's rivers
19 and streams, which standards shall include requiring:

20 (1) Submission of information regarding the source, schedule
21 and conditions for water withdrawals;

22 (2) Disclosure of the make-up of fracturing fluids and
23 limitation of hazardous chemicals such as benzene and other
24 hazardous chemicals used in drilling operations;

- 1 (3) Water discharge plans detailing treatment, location,
2 schedule and conditions for discharge of fracturing liquids;
- 3 (4) Specifying penalties for noncompliance, including
4 revocation of drilling permits;
- 5 (5) Establishment of total dissolved solids water quality
6 standards at or below the Pennsylvania standard of 500 mg/l; and
- 7 (6) All mining, drilling and other discharges within any river
8 or stream to be in compliance with the total dissolved solids
9 standard, even in periods of low flow water throughout the year.

NOTE: The purpose of this bill is to require the West Virginia Department of Environmental Protection to develop specific standards to control levels of total dissolved solids in the state's rivers and streams.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.