

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 121

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

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

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; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management systems; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of perfor-

mance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution which cause or contribute to nonattainment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing groundwater standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring well design standards.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

11 (b) The legislative rule filed in the state register on the
12 thirtieth day of July, two thousand ten, authorized under the
13 authority of section four, article three, chapter twenty-two
14 of this code, modified by the Department of Environmental
15 Protection to meet the objections of the Legislative Rule-
16 Making Review Committee and refiled in the state register

17 on the eighteenth day of January, two thousand eleven,
18 relating to the Department of Environmental Protection
19 (surface mining reclamation, 38 CSR 2), is authorized with
20 the following amendments:

21 On page fifty-four, subdivision 3.32.b., by striking out the
22 words “For the purposes of W.Va. Code §22-3-19(a)(1)(B), an
23 operator shall be considered in compliance with the applica-
24 ble environmental performance standards referenced therein
25 unless it has unabated cessation orders, notices of violations
26 that are not in the process of being abated to the Secretary’s
27 satisfaction, delinquent civil penalties, or bond forfeitures.”;

28 On pages one hundred fifty-four and one hundred fifty-
29 five, paragraph 12.2.a.1., by striking out all of paragraph
30 12.2.a.1. and inserting in lieu thereof a new paragraph
31 12.2.a.1. to read as follows:

32 “12.2.a.1. The permittee may file an application with the
33 Secretary for the release of all or part of a bond. Applica-
34 tions may be filed only at times or during seasons established
35 by the Secretary which allow proper evaluation of the
36 completed reclamation operations.”;

37 And,

38 On page one hundred seventy-seven, subdivision 14.11.h.,
39 by striking out the words “e. and f.” and inserting in lieu
40 thereof the words “e., f. and g.”.

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

47 (d) The legislative rule filed in the state register on the
48 twenty-eighth day of July, two thousand ten, authorized
49 under the authority of section four, article five, chapter
50 twenty-two of this code, modified by the Department of
51 Environmental Protection to meet the objections of the
52 Legislative Rule-Making Review Committee and refiled in
53 the state register on the eleventh day of January, two
54 thousand eleven, relating to the Department of Environmen-
55 tal Protection (permits for construction and major modifica-
56 tion of major stationary sources of air pollution for the
57 prevention of significant deterioration, 45 CSR 14), is
58 authorized with the following amendment:

59 On page twenty, after paragraph 2.80.e.2., by adding the
60 following:

61 “2.80.f. Notwithstanding subdivisions 2.80.d. and 2.80.e.,
62 and subject to the public notice requirements set forth in
63 subdivision 2.80.g., the preconstruction permit requirements
64 of this rule shall not apply to a source’s GHG emissions if
65 any of the following actions result in GHGs not being subject
66 to regulation under the otherwise applicable federal preven-
67 tion of significant deterioration requirements set forth in 40
68 CFR §51.166:

69 2.80.f.1. A US EPA final rule;

70 2.80.f.2. An act of the United States Congress;

71 2.80.f.3. A Presidential Executive Order;

72 2.80.f.4. A final order of the District of Columbia Circuit
73 Court of Appeals, if the specified time for appealing the
74 order has lapsed and no appeals, petitions seeking clarifica-
75 tion or rehearing, or other petitions regarding the order have
76 been filed, or, if any appeals or petitions are filed, the
77 resolution of any and all appeals and petitions regarding the
78 final order are complete and have upheld the relevant
79 determination(s). Moreover, a stay shall also create an
80 exemption during the effective length of the stay. These two

81 specific exemptions shall become effective only if US EPA
82 does not object in writing by the end of the notice period set
83 forth in subdivision 2.80.g.; or

84 2.80.f.5. An order of the United States Supreme Court.

85 2.80.g. The exemption set forth in subdivision 2.80.f. shall
86 become effective after the Secretary provides a thirty day
87 notice of such exemption to US EPA and the public. Such
88 notice shall be published in the West Virginia Register and
89 explain the circumstances justifying the exemption.”

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

96 (f) The legislative rule filed in the state register on the
97 twenty-eighth day of July, two thousand ten, authorized
98 under the authority of section four, article five, chapter
99 twenty-two of this code, modified by the Department of
100 Environmental Protection to meet the objections of the
101 Legislative Rule-Making Review Committee and refiled in
102 the state register on the eleventh day of January, two

103 thousand eleven, relating to the Department of Environmen-
104 tal Protection (control of air pollution from combustion of
105 solid waste, 45 CSR 18), is authorized.

106 (g) The legislative rule filed in the state register on the
107 twenty-eighth day of July, two thousand ten, authorized
108 under the authority of section four, article five, chapter
109 twenty-two of this code, relating to the Department of
110 Environmental Protection (permits for construction and
111 major modification of major stationary sources of air
112 pollution which cause or contribute to nonattainment, 45
113 CSR 19), is authorized.

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

121 (i) The legislative rule filed in the state register on the
122 twenty-eighth day of July, two thousand ten, authorized
123 under the authority of section four, article five, chapter
124 twenty-two of this code, relating to the Department of

125 Environmental Protection (emission standards for hazardous
126 air pollutants, 45 CSR 34), is authorized.

127 (j) The legislative rule filed in the state register on the
128 thirtieth day of July, two thousand ten, authorized under the
129 authority of section four, article eleven, chapter twenty-two
130 of this code, relating to the Department of Environmental
131 Protection (requirements governing water quality standards,
132 47 CSR 2), is authorized with the following amendments:

133 On pages two and three, subsection 3.1, by striking out the
134 words “and certain water withdrawal activities”;

135 On page three, subsection 3.2, by striking out the words “or
136 water withdrawal activities”;

137 On page fourteen, subdivision 8.2.b., striking out all of
138 subdivision 8.2.b. and inserting in lieu thereof a new subdivi-
139 sion 8.2.b. to read as follows:

140 “8.2.b. For waters other than the Ohio River between river
141 mile points 68.0 and 70.0, a final determination on the
142 critical design flow for carcinogens is not made in this rule,
143 in order to permit further review and study of that issue.
144 Following the conclusion of such review and study, the
145 Legislature may again take up the authorization of this rule
146 for purposes of addressing the critical design flow for

147 carcinogens: Provided, That until such time as the review
148 and study of the issue is concluded or until such time as the
149 Legislature may again take up the authorization of this rule,
150 the regulatory requirements for determining effluent limits
151 for carcinogens shall remain as they were on the date this
152 rule was proposed.”;

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

155 “8.2.b.1. For the Ohio River between river mile points 68.0
156 and 70.0 the critical design flow for determining effluent
157 limits for carcinogens shall be harmonic mean flow.”;

158 On page fourteen, subdivision 8.3.b., by striking out all of
159 subdivision 8.3.b.;

160 On page fourteen, paragraph 8.3.b.1., by striking out all of
161 paragraph 8.3.b.1.;

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

164 And,

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

167 (k) The legislative rule filed in the State Register on April
168 8, 2010, authorized under the authority of section four,

169 article eleven, chapter twenty-two of this code, approved for
170 promulgation by the Legislature on March 13, 2010, relating
171 to the Department of Environmental Protection (National
172 Pollutant Discharge Elimination System (NPDES) Program,
173 47 CSR 10), is authorized with the following amendments:

174 On page forty-four, part 13.1.b.4.A.13., by striking out all
175 of part 13.1.b.4.A.13. and inserting in lieu thereof a new part
176 13.1.b.4.A.13. to read as follows:

177 “13.1.b.4.A.13. Five thousand (5,000) ducks, if the AFO
178 uses a liquid manure handling system.”;

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

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

183 And,

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

186 (l) The legislative rule filed in the state register on the
187 twenty-third day of July, two thousand ten, authorized under
188 the authority of section four, article twelve, chapter twenty-
189 two of this code, modified by the Department of Environ-
190 mental Protection to meet the objections of the Legislative

191 Rule-Making Review Committee and refiled in the state
192 register on the fourteenth day of September, two thousand
193 ten, relating to the Department of Environmental Protection
194 (requirements governing groundwater standards, 47 CSR 12),
195 is authorized.

196 (m) The legislative rule filed in the state register on the
197 twenty-sixth day of July, two thousand ten, authorized under
198 the authority of section five, article twelve, chapter twenty-
199 two of this code, modified by the Department of Environ-
200 mental Protection to meet the objections of the Legislative
201 Rule-Making Review Committee and refiled in the state
202 register on the twenty-second day of September, two thou-
203 sand ten, relating to the Department of Environmental
204 Protection (monitoring well design standards, 47 CSR 60), is
205 authorized.