

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 615**

5 (SENATORS KIRKENDOLL, HALL, WELLS AND STOLLINGS, *original sponsors*)

6 _____
7 [Passed March 10, 2012; in effect from passage.]
8 _____
9

10 AN ACT to amend and reenact §22-11-6 of the Code of West Virginia,
11 1931, as amended, relating to making West Virginia's Water
12 Pollution Control Act consistent with the federal Water
13 Pollution Control Act, also known as the Clean Water Act, by
14 clarifying that compliance with the effluent limits contained
15 in a National Pollution Discharge Elimination System permit is
16 deemed compliant with West Virginia's Water Pollution Control
17 Act.

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

19 That §22-11-6 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

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

22 **§22-11-6. Requirement to comply with standards of water quality**
23 **and effluent limitations.**

24 All persons affected by rules establishing water quality
25 standards and effluent limitations shall promptly comply therewith:

1 *Provided, That:*

2 (1) Where necessary and proper, the secretary may specify a
3 reasonable time for persons not complying with such standards and
4 limitations to comply therewith, and upon the expiration of any
5 such period of time, the secretary shall revoke or modify any
6 permit previously issued which authorized the discharge of treated
7 or untreated sewage, industrial wastes or other wastes into the
8 waters of this state which result in reduction of the quality of
9 such waters below the standards and limitations established
10 therefor by rules of the board or secretary;

11 (2) Notwithstanding any rule or permit condition to the
12 contrary, and except for any standard imposed under section 307 of
13 the federal Water Pollution Control Act for a toxic pollutant
14 injurious to human health, compliance with a permit issued pursuant
15 to this article shall be deemed compliance for purposes of both
16 this article and sections 301, 302, 306, 307 and 403 of the federal
17 Water Pollution Control Act. Nothing in this section, however,
18 prevents the secretary from modifying, reissuing or revoking a
19 permit during its term. The provisions of this section addressing
20 compliance with a permit are intended to apply to all existing and
21 future discharges and permits without the need for permit
22 modifications. However, should any such modification be necessary
23 under the terms of this article, then the secretary shall
24 immediately commence the process to effect such modifications; and

25 (3) The Legislature finds that there are concerns within West
26 Virginia regarding the applicability of the research underlying the

1 federal selenium criteria to a state such as West Virginia which
2 has high precipitation rates and free-flowing streams and that the
3 alleged environmental impacts that were documented in applicable
4 federal research have not been observed in West Virginia and,
5 further, that considerable research is required to determine if
6 selenium is having an impact on West Virginia streams, to validate
7 or determine the proper testing methods for selenium and to better
8 understand the chemical reactions related to selenium mobilization
9 in water. For existing NPDES permits, the department may extend
10 the time period for achieving water quality-based effluent limits
11 for selenium discharges into waters supporting aquatic life uses to
12 July 1, 2012, upon compliance with all federally required public
13 notice requirements for such modifications, upon a finding that the
14 permittee cannot comply with its existing compliance schedule and
15 that an extension is not in violation of any state or federal laws,
16 rules or regulations. The West Virginia Department of
17 Environmental Protection is hereby directed to undertake a
18 comprehensive study relating to selenium and prepare a report
19 detailing such findings and submitting the report to the Joint
20 Committee on Government and Finance no later than January 1, 2010.
21 In conducting such study, the West Virginia Department of
22 Environmental Protection shall consult with, among others, West
23 Virginia University and the West Virginia Water Research Institute.