

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 2579**

5 (By Delegates R. Phillips, Stowers, Eldridge, Tomblin,  
6 White, Marcum, Caputo, Boggs, Craig, Sumner and Nelson, J.)

7  
8 [Passed April 12, 2013; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §22-11-6 of the Code of West Virginia,  
11 1931, as amended, relating to protecting state waters;  
12 providing legislative findings; acknowledging the scientific  
13 uncertainty regarding the applicability of the current  
14 selenium standard in this state; directing the secretary to  
15 develop an implementation plan within certain time period for  
16 selenium discharges in certain situations; requiring certain  
17 minimum requirements in implementation plan; requiring  
18 secretary to promulgate legislative rule within certain time  
19 period which establishes a state-specific selenium standard;  
20 requiring secretary to submit state-specific selenium standard  
21 to EPA administrator; and directing secretary to consult with  
22 and solicit research and data from certain groups in  
23 developing selenium standard.

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

25 That §22-11-6 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted to read as follows:

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

3 **§22-11-6. Requirement to comply with standards of water quality**  
4 **and effluent limitations.**

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

7 *Provided, That:*

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

17 (2) Notwithstanding any rule or permit condition to the  
18 contrary, and except for any standard imposed under section 307 of  
19 the federal Water Pollution Control Act for a toxic pollutant  
20 injurious to human health, compliance with a permit issued pursuant  
21 to this article shall be deemed compliance for purposes of both  
22 this article and sections 301, 302, 306, 307 and 403 of the federal  
23 Water Pollution Control Act. Nothing in this section, however,  
24 prevents the secretary from modifying, reissuing or revoking a

1 permit during its term. The provisions of this section addressing  
2 compliance with a permit are intended to apply to all existing and  
3 future discharges and permits without the need for permit  
4 modifications. However, should any such modification be necessary  
5 under the terms of this article, then the secretary shall  
6 immediately commence the process to effect such modifications; and

7 (3) The Legislature finds that there are concerns within West  
8 Virginia regarding the applicability of the research underlying the  
9 federal selenium criteria to a state such as West Virginia which  
10 has high precipitation rates and free-flowing streams and that the  
11 alleged environmental impacts that were documented in applicable  
12 federal research have not been observed in West Virginia and,  
13 further, that considerable research is required to determine if  
14 selenium is having an impact on West Virginia streams, to validate  
15 or determine the proper testing methods for selenium and to better  
16 understand the chemical reactions related to selenium mobilization  
17 in water.

18 (4) The Legislature finds that EPA has been contemplating a  
19 revision to the federally recommended criteria for several years  
20 but has yet to issue a revised standard.

21 (5) Because of the uncertainty regarding the applicability of  
22 the current selenium standard, the secretary is hereby directed to  
23 develop within six months of the effective date of this subdivision  
24 an implementation plan for the current selenium standard that will

1 include, at minimum, the following:

2 (A) Implementing the criteria as a threshold standard;

3 (B) A monitoring plan that will include chemical speciation of  
4 any selenium discharge;

5 (C) A fish population survey and monitoring plan that will be  
6 implemented at a representative location to assess any possible  
7 impacts from selenium discharges if the threshold criteria are  
8 exceeded; and

9 (D) The results of the monitoring will be reported to the  
10 department for use in the development of state-specific selenium  
11 criteria.

12 (6) Within twenty-four months of the effective date of this  
13 subdivision, the secretary shall propose rules for legislative  
14 approval in accordance with the provisions of article three,  
15 chapter twenty-nine of this code which establish a state-specific  
16 selenium standard that protects aquatic life. Concurrent with  
17 proposing a legislative rule, the secretary shall also submit the  
18 proposed standard and supporting documentation to the Administrator  
19 of the Environmental Protection Agency. The secretary shall also  
20 consult with and consider research and data from the West Virginia  
21 Water Research Institute at West Virginia University, the regulated  
22 community, and other appropriate groups in developing the state-  
23 specific selenium standard.