

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2579**

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

6
7 (Originating in the House Committee on the Judiciary)

8 [March 5, 2013]

9
10 A BILL 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; revising implementation plan
13 to establish state specific selenium criteria; and directing
14 study to develop state-specific selenium criteria.

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

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

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

23 *Provided, That:*

24 (1) Where necessary and proper, the secretary may specify a
25 reasonable time for persons not complying with such standards and

1 limitations to comply therewith, and upon the expiration of any
2 such period of time, the secretary shall revoke or modify any
3 permit previously issued which authorized the discharge of treated
4 or untreated sewage, industrial wastes or other wastes into the
5 waters of this state which result in reduction of the quality of
6 such waters below the standards and limitations established
7 therefor by rules of the board or secretary;

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

22 (3) The Legislature finds that there are concerns within West
23 Virginia regarding the applicability of the research underlying the
24 federal selenium criteria to a state such as West Virginia which

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

23 (4) The Legislature finds that EPA has been contemplating a
24 revision to the federally recommended criteria for several years

1 but has yet to issue a revised standard.

2 (5) Because of the uncertainty regarding the applicability of
3 the current selenium standard, the West Virginia Department of
4 Environmental Protection is hereby directed to develop an
5 implementation plan for the selenium current criteria within two
6 months of the effective date of the amendment of this section
7 enacted during the 2012 Regular Legislative Session, that will
8 include:

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

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

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

16 (D) The results of the monitoring will be reported to the
17 department for use in the development of state-specific selenium
18 criteria.

19 (6) The Legislature directs the West Virginia Department of
20 Environmental Protection to provide the results of the monitoring
21 required in subsection (5) to the West Virginia Water Research
22 Institute at West Virginia University to assist with the
23 development of a state-specific selenium criteria that is
24 protective of state waters.