

1 Department of Environmental Protection to promulgate a
2 legislative rule relating to covered electronic devices
3 recycling; authorizing the Department of Environmental
4 Protection to promulgate a legislative rule relating to
5 hazardous waste administrative proceedings and civil penalty
6 assessment; authorizing the Department of Environmental
7 Protection to promulgate a legislative rule relating to
8 horizontal well development; authorizing the Department of
9 Environmental Protection to promulgate a legislative rule
10 relating to permits for construction and major modification of
11 major stationary sources for the prevention of significant
12 deterioration of air quality; authorizing the Department of
13 Environmental Protection to promulgate a legislative rule
14 relating to standards of performance for new stationary
15 sources; authorizing the Department of Environmental
16 Protection to promulgate a legislative rule relating to the
17 control of air pollution from the combustion of solid waste;
18 authorizing the Department of Environmental Protection to
19 promulgate a legislative rule relating to the control of air
20 pollution from hazardous waste treatment, storage and disposal
21 facilities; authorizing the Department of Environmental
22 Protection to promulgate a legislative rule relating to
23 requirements for operating permits; authorizing the Department
24 of Environmental Protection to promulgate a legislative rule

1 relating to emission standards for hazardous air pollutants;
2 authorizing the Department of Environmental Protection to
3 promulgate a legislative rule relating to water pollution
4 control permit fee schedules; and authorizing the Department
5 of Environmental Protection to promulgate a legislative rule
6 relating to the WV/NPDES regulations for coal mining
7 facilities.

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

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

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

13 **§64-3-1. Department of Environmental Protection.**

14 (a) The legislative rule filed in the State Register on August
15 30, 2012, authorized under the authority of section twenty-nine,
16 article fifteen-a, chapter twenty-two of this code, modified by the
17 Department of Environmental Protection to meet the objections of
18 the Legislative Rule-Making Review Committee and refiled in the
19 State Register on December 13, 2012, relating to the Department of
20 Environmental Protection (covered electronic devices recycling, 33
21 CSR 12), is authorized with the following amendment:

22 On page two, paragraph 4.1.b.1., by striking out all of
23 paragraph 4.1.b.1. and inserting in lieu thereof a new paragraph
24 4.1.b.1., to read as follows:

1 4.1.b.1. Within one year after the effective date of this
2 rule, receiving, storage, operations and shipping areas must be
3 under a roof or in an enclosed area sufficient to prevent
4 stormwater contamination.

5 (b) The legislative rule filed in the State Register on August
6 24, 2012, authorized under the authority of section seventeen,
7 article eighteen, chapter twenty-two of this code, relating to the
8 Department of Environmental Protection (hazardous waste
9 administrative proceedings and civil penalty assessment, 33 CSR
10 27), is authorized.

11 (c) The legislative rule filed in the State Register on
12 September 4, 2012, authorized under the authority of section six,
13 article six-a, chapter twenty-two of this code, modified by the
14 Department of Environmental Protection to meet the objections of
15 the Legislative Rule-Making Review Committee and refiled in the
16 State Register on February 14, 2013, relating to the Department of
17 Environmental Protection (horizontal well development, 35 CSR 8),
18 is authorized with the following amendments:

19 On page two, after subsection 2.12., by inserting a new
20 subsection 2.13. to read as follows:

21 2.13. "Health care professional" means a physician, physician
22 assistant, nurse practitioner, registered nurse, or emergency
23 medical technician licensed by the State of West Virginia.

24 And renumbering the remaining subsections;

1 And,

2 On page 10, Section 5.6.e., line 1 and 2, by deleting the
3 sentence that reads, "A copy of the approved Water Management Plan
4 shall be available upon request." and inserting in lieu thereof the
5 following:

6 "Signage shall be posted at each water withdraw site that
7 provides how to obtain the Water Management Plan, the phone number
8 of the company conducting the withdraw, the Office's web site name
9 and phone number, and the permit number."

10 And,

11 On page 10, subsection 5.7.a, line 5, following the words "is
12 sought," by inserting the words "the anticipated MSDS Sheets, and"

13 And,

14 On page 10, subsection 5.7.1, line 12, following the words
15 "emergency services." by inserting the following:

16 "The operator shall also provide the Well Site Safety Plan to
17 the surface owner and any water purveyor or surface owner subject
18 to notice and water testing as provided in subsection 15 of this
19 rule.

20 And,

21 On page 19, Section 9.1.b.2, line 3, following the words "will
22 be utilized" by striking out the period and inserting a comma and
23 the following:

24 "and the telephone number for the Department of Environmental

1 Protection."

2 And,

3 On pages 23 and 24, by striking out all of subsection 10.1.
4 and inserting in lieu thereof a new subsection 10.1. to read as
5 follows:

6 10.1. Well Records Made During Permitted Work - The well
7 operator or its contractor (service provider, drilling contractor
8 or other contractor, as appropriate) shall keep at the well
9 location a copy of the application as permitted, including the
10 associated plat and plans required by section 5 of this rule. The
11 well operator or its contractor (service provider, drilling
12 contractor or other contractor, as appropriate) shall also make and
13 preserve at the well location accurate records of all well work
14 performed pursuant to the permit, including documentation by the
15 contractor or person performing the cementing services of the time
16 of completion of cementing and the volume of cement used for the
17 cementing of all casing operations. The records shall be complete
18 enough to support, as applicable, the entries of well work done and
19 related data on Form WR-35, "Well Operator's Report of Well Work",
20 Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test",
21 and Form WR-38, "Affidavit of Plugging and Filling Well", but these
22 forms shall reflect information discovered or changes made after
23 the permitted well work has been finished and before the reports
24 are filed. The records made and preserved at the well location and

1 the recordings made on Form WR-35 shall include, but not be limited
2 to, indications of caverns, open mines or other voids, whether the
3 freshwater casing cement circulated to the surface, and the efforts
4 made to fill the annular space and the results. Unless the records
5 of well work performed are prepared by the well operator or owner,
6 a copy of all the records shall be delivered to the well owner or
7 operator, except for those records the contractor (service
8 provider, drilling contractor or other contractor, as appropriate)
9 designates as a confidential trade secret.

10 10.1.a. As part of the well completion report (Form WR-35),
11 the operator or its service provider shall list all the additives
12 used in the hydraulic fracturing or stimulation process, including
13 each additive's specific trade name, supplier, and purpose. The
14 operator or its service provider shall also list each chemical of
15 each additive intentionally added to a base fluid for the purpose
16 of preparing a fracturing fluid, along with each chemical's CAS
17 registry number, if applicable, its maximum concentration in the
18 additive, and its maximum concentration as added to the base fluid,
19 and the volume of the base fluid used. The concentrations shall be
20 expressed as a mass percent. The operator or service provider may
21 designate the information regarding the specific identity or
22 concentration or both of a chemical as a confidential trade secret
23 not to be disclosed to the agency or anyone else except in the
24 event of an investigation by the office, medical emergency, or for

1 diagnostic or treatment purposes involving the designated chemical,
2 pursuant to subdivisions 10.1.d. and 10.1.e. below.

3 10.1.b. The operator or service provider shall fulfill the
4 additive reporting requirement of subdivision 10.1.a. above by
5 submitting the information to the office and the FracFocus Chemical
6 Disclosure Registry.

7 10.1.c. As part of the well completion report (Form WR-35),
8 the operator shall report the volumes of fluids pumped and
9 treatment pressures recorded throughout the hydraulic fracturing
10 process.

11 10.1.d. In the event of an investigation by the office
12 involving a chemical designated as a confidential trade secret, the
13 operator or service provider shall provide the specific identity of
14 the chemical, the concentration of the chemical, or both the
15 specific identity and concentration of the chemical, as needed, to
16 the agency upon receipt of notification from the chief or his or
17 her designee stating that such information is necessary in
18 connection with an investigation by the office. Upon receipt of
19 such notification of need, such information shall be disclosed by
20 the operator or service provider, as applicable, directly to the
21 chief or his or her designee and shall in no way be construed as
22 publicly available. The chief or designee may disclose information
23 regarding the specific identity of a chemical, the concentration of
24 a chemical, or both the specific identity and concentration of a

1 chemical claimed to be a confidential trade secret to additional
2 agency staff members to the extent that such disclosure is
3 necessary to allow the agency staff member receiving the
4 information to assist in such an investigation by the office,
5 provided that such individuals shall not disseminate the
6 information further and such information shall at all times be
7 considered confidential and shall not be construed as publicly
8 available. Upon request by the operator or service provider, and
9 where a notification of need is provided orally, the chief shall
10 execute a written statement of need indicating that the information
11 was necessary in connection with an investigation by the office.

12 10.1.e. The operator or service provider shall provide the
13 specific identity of a chemical designated as a confidential trade
14 secret, the concentration of the chemical designated as a
15 confidential trade secret, or both the specific identity and
16 concentration of the chemical designated as a confidential trade
17 secret, as needed, upon request to a health care professional in a
18 medical emergency, or for diagnostic or treatment purposes. The
19 health care professional shall only use the information provided by
20 the operator or service provider for diagnosis or treatment of an
21 individual, and the operator or service provider may provide notice
22 to the health care professional at the time of release of the
23 information, that the information provided is solely for diagnosis
24 or treatment of the individual, that the information may be a trade

1 secret, and disclosure to others for any other purpose may subject
2 that health care professional to a legal action by the operator or
3 service provider for violating its trade secret.”

4 And,

5 On page 30, by striking out all of subsection 13.5.”

6 (d) The legislative rule filed in the State Register on August
7 15, 2012, authorized under the authority of section four, article
8 five, chapter twenty-two of this code, relating to the Department
9 of Environmental Protection (permits for construction and major
10 modification of major stationary sources for the prevention of
11 significant deterioration of air quality, 45 CSR 14), is
12 authorized.

13 (e) The legislative rule filed in the State Register on
14 August 14, 2012, authorized under the authority of section four,
15 article five, chapter twenty-two of this code, relating to the
16 Department of Environmental Protection (standards of performance
17 for new stationary sources, 45 CSR 16), is authorized.

18 (f) The legislative rule filed in the State Register on August
19 15, 2012, authorized under the authority of section four, article
20 five, chapter twenty-two of this code, relating to the Department
21 of Environmental Protection (control of air pollution from
22 combustion of solid waste, 45 CSR 18), is authorized.

23 (g) The legislative rule filed in the State Register on August
24 15, 2012, authorized under the authority of section four, article

1 five, chapter twenty-two of this code, relating to the Department
2 of Environmental Protection (control of air pollution from
3 hazardous waste treatment, storage or disposal facilities, 45 CSR
4 25), is authorized.

5 (h) The legislative rule filed in the State Register on August
6 15, 2012, authorized under the authority of section four, article
7 five, chapter twenty-two of this code, relating to the Department
8 of Environmental Protection (requirements for operating permits, 45
9 CSR 30), is authorized.

10 (i) The legislative rule filed in the State Register on August
11 15, 2012, authorized under the authority of section four, article
12 five, chapter twenty-two of this code, relating to the Department
13 of Environmental Protection (emission standards for hazardous air
14 pollutants, 45 CSR 34), is authorized.

15 (j) The legislative rule filed in the State Register on August
16 30, 2012, authorized under the authority of section ten, article
17 eleven, chapter twenty-two of this code, relating to the Department
18 of Environmental Protection (water pollution control permit fee
19 schedules, 47 CSR 26), is authorized.

20 (k) The legislative rule filed in the State Register on August
21 28, 2012, authorized under the authority of section four, article
22 eleven, chapter twenty-two of this code, relating to the Department
23 of Environmental Protection (WV/NPDES regulations for coal mining
24 facilities, 47 CSR 30), is authorized.