

1 **H. B. 2362**

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3 (By Delegates Fleischauer, Manypenny and Marshall)  
4 [Introduced February 13, 2013; referred to the  
5 Committee on Government Organization then the Judiciary.]  
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10 A BILL to amend and reenact §22-11-4 of the Code of West Virginia,  
11 1931, as amended, relating to water pollution control; and  
12 requiring the West Virginia Department of Environmental  
13 Protection to develop specific standards to control levels of  
14 total dissolved solids in the state's rivers and streams.

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

16 That §22-11-4 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 **§22-11-4. General powers and duties of director with respect to**  
20 **pollution.**

21 (a) In addition to all other powers and duties the director  
22 has and may exercise, subject to specific grants of authority to  
23 the chief or the board in this article or elsewhere in this code,

1 the director has the following powers and authority and shall  
2 perform the following duties:

3       (1) To perform any and all acts necessary to carry out the  
4 purposes and requirements of this article and of the "Federal Water  
5 Pollution Control Act," 33 U.S.C. §1251, *et seq.*, as amended,  
6 relating to this state's participation in the "National Pollutant  
7 Discharge Elimination System," 33 U.S.C. §1342, established under  
8 that act;

9       (2) To encourage voluntary cooperation by all persons in the  
10 conservation, improvement and development of water resources and in  
11 controlling and reducing the pollution of the waters of this state,  
12 and to advise, consult and cooperate with all persons, all agencies  
13 of this state, the federal government or other states, and with  
14 interstate agencies in the furtherance of the purposes of this  
15 article, and to this end and for the purpose of studies, scientific  
16 or other investigations, research, experiments and demonstrations  
17 pertaining thereto, the division may receive moneys from such  
18 agencies, officers and persons on behalf of the state. The  
19 division shall pay all moneys so received into a special fund  
20 hereby created in the State Treasury, which fund shall be expended  
21 under the direction of the director solely for the purpose or  
22 purposes for which the grant, gift or contribution was made;

23       (3) To encourage the formulation and execution of plans by  
24 cooperative groups or associations of municipal corporations,

1 industries, industrial users, and other users of waters of the  
2 state, who, jointly or severally, are or may be the source of  
3 pollution of such waters, for the control and reduction of  
4 pollution;

5 (4) To encourage, participate in, or conduct or cause to be  
6 conducted studies, scientific or other investigations, research,  
7 experiments and demonstrations relating to the water resources of  
8 the state and water pollution and its causes, control and  
9 reduction, and to collect data with respect thereto, all as may be  
10 deemed advisable and necessary to carry out the purposes of this  
11 article;

12 (5) To study and investigate all problems concerning water  
13 flow, water pollution and the control and reduction of pollution of  
14 the waters of the state, and to make reports and recommendations  
15 with respect thereto;

16 (6) To collect and disseminate information relating to water  
17 pollution and the control and reduction thereof;

18 (7) To develop a public education and promotion program to aid  
19 and assist in publicizing the need for, and securing support for,  
20 pollution control and abatement;

21 (8) To sample ground and surface water with sufficient  
22 frequency to ascertain the standards of purity or quality from time  
23 to time of the waters of the state;

24 (9) To develop programs for the control and reduction of the

1 pollution of the waters of the state;

2       (10) To exercise general supervision over the administration  
3 and enforcement of the provisions of this article, and all rules,  
4 permits and orders issued pursuant to the provisions of this  
5 article, article eleven-a of this chapter and article one, chapter  
6 twenty-two-b of this code;

7       (11) In cooperation with the college of engineering at West  
8 Virginia University and the schools and departments of engineering  
9 at other institutions of higher education operated by this state,  
10 to conduct studies, scientific or other investigations, research,  
11 experiments and demonstrations in an effort to discover economical  
12 and practical methods for the elimination, disposal, control and  
13 treatment of sewage, industrial wastes, and other wastes, and the  
14 control and reduction of water pollution, and to this end, the  
15 director may cooperate with any public or private agency and  
16 receive therefrom, on behalf of the state, and for deposit in the  
17 State Treasury, any moneys which such agency may contribute as its  
18 part of the expenses thereof, and all gifts, donations or  
19 contributions received as aforesaid shall be expended by the  
20 director according to the requirements or directions of the donor  
21 or contributor without the necessity of an appropriation therefor,  
22 except that an accounting thereof shall be made in the fiscal  
23 reports of the division;

24       (12) To require the prior submission of plans, specifications,

1 and other data relative to, and to inspect the construction and  
2 operation of, any activity or activities in connection with the  
3 issuance and revocation of such permits as are required by this  
4 article, article eleven-a of this chapter or the rules promulgated  
5 thereunder;

6       (13) To require any and all persons directly or indirectly  
7 discharging, depositing or disposing of treated or untreated  
8 sewage, industrial wastes or other wastes, or the effluent  
9 therefrom, into or near any waters of the state or into any  
10 underground strata, and any and all persons operating an  
11 establishment which produces or which may produce or from which  
12 escapes, releases or emanates or may escape, release or emanate  
13 treated or untreated sewage, industrial wastes or other wastes, or  
14 the effluent therefrom, into or near any waters of the state or  
15 into any underground strata, to file with the division such  
16 information as the director may require in a form or manner  
17 prescribed for such purpose, including, but not limited to, data as  
18 to the kind, characteristics, amount and rate of flow of any such  
19 discharge, deposit, escape, release or disposition;

20       (14) To adopt, modify, or repeal procedural rules and  
21 interpretive rules in accordance with the provisions of chapter  
22 twenty-nine-a of this code administering and implementing the  
23 powers, duties and responsibilities vested in the director by the  
24 provisions of this article and article eleven-a of this chapter;

1           (15) To cooperate with interstate agencies for the purpose of  
2 formulating, for submission to the Legislature, interstate compacts  
3 and agreements relating to: (A) The control and reduction of water  
4 pollution; and (B) the state's share of waters in watercourses  
5 bordering the state;

6           (16) To adopt, modify, repeal and enforce rules, in accordance  
7 with the provisions of chapter twenty-nine-a of this code: (A)  
8 Implementing and making effective the declaration of policy  
9 contained in section one of this article and the powers, duties and  
10 responsibilities vested in the director and the chief by the  
11 provisions of this article and otherwise by law; (B) preventing,  
12 controlling and abating pollution; and (C) facilitating the state's  
13 participation in the "National Pollutant Discharge Elimination  
14 System" pursuant to the "Federal Water Pollution Control Act," as  
15 amended: *Provided*, That no rule adopted by the director shall  
16 specify the design of equipment, type of construction or particular  
17 method which a person shall use to reduce the discharge of a  
18 pollutant; and

19           (17) To advise all users of water resources as to the  
20 availability of water resources and the most practicable method of  
21 water diversion, use, development and conservation.

22           (b) Whenever required to carry out the objectives of this  
23 article or article eleven-a of this chapter the director shall  
24 require the owner or operator of any point source or establishment

1 to: (i) Establish and maintain such records; (ii) make such  
2 reports; (iii) install, use and maintain such monitoring equipment  
3 or methods; (iv) sample such effluents in accordance with such  
4 methods, at such locations, at such intervals and in such manner as  
5 the director shall prescribe; and (v) provide such other  
6 information as the director may reasonably require.

7 (c) The director upon presentation of credentials: (i) Has a  
8 right of entry to, upon or through any premises in which an  
9 effluent source is located or in which any records required to be  
10 maintained under subsection (b) of this section are located; and  
11 (ii) may at reasonable times have access to and copy any records,  
12 inspect any monitoring equipment or method required under  
13 subsection (b) of this section and sample any streams in the area  
14 as well as sample any effluents which the owner or operator of such  
15 source is required to sample under subsection (b) of this section.  
16 Nothing in this subsection eliminates any obligation to follow any  
17 process that may be required by law.

18 (d) The director is hereby authorized and empowered to  
19 investigate and ascertain the need and factual basis for the  
20 establishment of public service districts as a means of controlling  
21 and reducing pollution from unincorporated communities and areas of  
22 the state, investigate and ascertain, with the assistance of the  
23 Public Service Commission, the financial feasibility and projected  
24 financial capability of the future operation of any such public

1 service district or districts, and to present reports and  
2 recommendations thereon to the county commissions of the areas  
3 concerned, together with a request that such county commissions  
4 create a public service district or districts, as therein shown to  
5 be needed and required and as provided in article thirteen-a,  
6 chapter sixteen of this code. In the event a county commission  
7 fails to act to establish a county-wide public service district or  
8 districts, the director shall act jointly with the Commissioner of  
9 the Bureau of Public Health to further investigate and ascertain  
10 the financial feasibility and projected financial capability and,  
11 subject to the approval of the Public Service Commission, order the  
12 county commission to take action to establish such public service  
13 district or districts as may be necessary to control, reduce or  
14 abate the pollution, and when so ordered the county commission  
15 members must act to establish such a county-wide public service  
16 district or districts.

17 (e) The director has the authority to enter at all reasonable  
18 times upon any private or public property for the purpose of making  
19 surveys, examinations, investigations and studies needed in the  
20 gathering of facts concerning the water resources of the state and  
21 their use, subject to responsibility for any damage to the property  
22 entered. Upon entering, and before making any survey, examination,  
23 investigation and study, such person shall immediately present  
24 himself or herself to the occupant of the property. Upon entering



1 property used in any manufacturing, mining or other commercial  
2 enterprise, or by any municipality or governmental agency or  
3 subdivision, and before making any survey, examination,  
4 investigation and study, such person shall immediately present  
5 himself or herself to the person in charge of the operation, and if  
6 he or she is not available, to a managerial employee. All persons  
7 shall cooperate fully with the person entering such property for  
8 such purposes. Upon refusal of the person owning or controlling  
9 such property to permit such entrance or the making of such  
10 surveys, examinations, investigations and studies, the director may  
11 apply to the circuit court of the county in which such property is  
12 located, or to the judge thereof in vacation, for an order  
13 permitting such entrance or the making of such surveys,  
14 examinations, investigations and studies; and jurisdiction is  
15 hereby conferred upon such court to enter such order upon a showing  
16 that the relief asked is necessary for the proper enforcement of  
17 this article: *Provided*, That nothing in this subsection eliminates  
18 any obligation to follow any process that may be required by law.

19 (f) The director shall develop comprehensive standards to  
20 control the levels of total dissolved solids in the state's rivers  
21 and streams, which standards shall include requiring:

22 (1) Submission of information regarding the source, schedule  
23 and conditions for water withdrawals;

24 (2) Disclosure of the make-up of fracturing fluids and

1 limitation of hazardous chemicals such as benzene and other  
2 hazardous chemicals used in drilling operations;  
3 (3) Water discharge plans detailing treatment, location,  
4 schedule and conditions for discharge of fracturing liquids;  
5 (4) Specification of penalties for noncompliance, including  
6 revocation of drilling permits;  
7 (5) Establishment of total dissolved solids water quality  
8 standards at or below the Pennsylvania standard of 500 mg/l; and  
9 (6) All mining, drilling and other discharges within any river  
10 or stream to be in compliance with the total dissolved solids  
11 standard, even in periods of low flow water throughout the year.

NOTE: The purpose of this bill is to require the West Virginia Department of Environmental Protection to develop specific standards to control levels of total dissolved solids in the state's rivers and streams.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.