

Senate Bill No. 472

1
2 (By Senators Kirkendoll, Beach, Blair, Cann, Carmichael, Chafin,
3 Cole, Edgell, Facemire, Fitzsimmons, Green, D. Hall, M. Hall,
4 Jenkins, Laird, McCabe, Plymale, Prezioso, Snyder, Stollings,
5 Sypolt, Tucker, Unger, Walters, Wells, Williams, Kessler (Mr.
6 President) and Yost)

7
8 [Introduced March 7, 2013; referred to the Committee on Energy,
9 Industry and Mining; and then to the Committee on the Judiciary.]

10
11 A BILL to amend and reenact §22-11-6 of the Code of West Virginia,
12 1931, as amended, relating to protecting state waters;
13 legislative findings; and an implementation plan to establish
14 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:

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

1 immediately commence the process to effect such modifications; and

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

1 ~~In conducting such study, the West Virginia Department of~~
2 ~~Environmental Protection shall consult with, among others, West~~
3 ~~Virginia University and the West Virginia Water Research Institute.~~

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

7 (5) Because of the uncertainty regarding the applicability of
8 the current selenium standard, the West Virginia Department of
9 Environmental Protection is hereby directed to develop an
10 implementation plan for the selenium current criteria within two
11 months of the effective date of this article that will include:

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

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

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

19 (D) The results of the monitoring will be reported to the
20 department for use in the development of state-specific selenium
21 criteria;

22 (6) The Legislature directs the West Virginia Department of
23 Environmental Protection to provide the results of the monitoring

1 required in subsection (5) to the West Virginia Water Research
2 Institute at West Virginia University to assist with the
3 development of a state-specific selenium criteria that is
4 protective of state waters.

NOTE: The purpose of this bill is to protect state waters by creating an implementation plan to establish state specific selenium criteria.

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