

COMMITTEE SUBSTITUTE

FOR

H. B. 2579

(BY DELEGATES R. PHILLIPS, STOWERS, ELDRIDGE,
TOMBLIN, WHITE, MARCUM, CAPUTO, BOGGS, CRAIG,
SUMNER AND NELSON, J.)

(Originating in the House Committee on the Judiciary)

[March 5, 2013]

A BILL to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to protecting state waters; providing legislative findings; revising implementation plan to establish state specific selenium criteria; and directing study to develop state-specific selenium criteria.

Be it enacted by the Legislature of West Virginia:

That §22-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

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

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply
3 therewith: *Provided*, That:

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

13 (2) Notwithstanding any rule or permit condition to the
14 contrary, and except for any standard imposed under section 307
15 of the federal Water Pollution Control Act for a toxic pollutant
16 injurious to human health, compliance with a permit issued
17 pursuant to this article shall be deemed compliance for purposes
18 of both this article and sections 301, 302, 306, 307 and 403 of

19 the federal Water Pollution Control Act. Nothing in this section,
20 however, prevents the secretary from modifying, reissuing or
21 revoking a permit during its term. The provisions of this section
22 addressing compliance with a permit are intended to apply to all
23 existing and future discharges and permits without the need for
24 permit modifications. However, should any such modification be
25 necessary under the terms of this article, then the secretary shall
26 immediately commence the process to effect such modifications;
27 and

28 (3) The Legislature finds that there are concerns within West
29 Virginia regarding the applicability of the research underlying
30 the federal selenium criteria to a state such as West Virginia
31 which has high precipitation rates and free-flowing streams and
32 that the alleged environmental impacts that were documented in
33 applicable federal research have not been observed in West
34 Virginia and, further, that considerable research is required to
35 determine if selenium is having an impact on West Virginia
36 streams, to validate or determine the proper testing methods for
37 selenium and to better understand the chemical reactions related
38 to selenium mobilization in water. ~~For existing NPDES permits,~~

~~39 the department may extend the time period for achieving water
40 quality-based effluent limits for selenium discharges into waters
41 supporting aquatic life uses to July 1, 2012, upon compliance
42 with all federally required public notice requirements for such
43 modifications, upon a finding that the permittee cannot comply
44 with its existing compliance schedule and that an extension is
45 not in violation of any state or federal laws, rules or regulations.
46 The West Virginia Department of Environmental Protection is
47 hereby directed to undertake a comprehensive study relating to
48 selenium and prepare a report detailing such findings and
49 submitting the report to the Joint Committee on Government and
50 Finance no later than January 1, 2010. In conducting such study,
51 the West Virginia Department of Environmental Protection shall
52 consult with, among others, West Virginia University and the
53 West Virginia Water Research Institute.~~

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

57 (5) Because of the uncertainty regarding the applicability of
58 the current selenium standard, the West Virginia Department of

59 Environmental Protection is hereby directed to develop an
60 implementation plan for the selenium current criteria within two
61 months of the effective date of the amendment of this section
62 enacted during the 2012 Regular Legislative Session, that will
63 include:

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

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

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

71 (D) The results of the monitoring will be reported to the
72 department for use in the development of state-specific selenium
73 criteria.

74 (6) The Legislature directs the West Virginia Department of
75 Environmental Protection to provide the results of the monitor-
76 ing required in subsection (5) to the West Virginia Water
77 Research Institute at West Virginia University to assist with the
78 development of a state-specific selenium criteria that is protec-
79 tive of state waters.

