

WEST VIRGINIA LEGISLATURE
2016 FIRST EXTRAORDINARY SESSION

ENROLLED

Committee Substitute

for

House Bill 117

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

BY REQUEST OF THE EXECUTIVE

[Passed June 2, 2016; in effect from passage.]

1 AN ACT to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931,
2 as amended, relating generally to administrative rules of the Department of Environmental
3 Protection; legislatively mandating or authorizing for the promulgation of certain legislative
4 rules by various executive or administrative agencies of the state; authorizing certain of
5 the agencies to promulgate certain legislative rules in the form that the rules were filed in
6 the State Register; authorizing certain of the agencies to promulgate certain legislative
7 rules with various modifications presented to and recommended by the Legislative Rule-
8 Making Review Committee; repealing certain legislative, procedural or interpretive rules
9 promulgated by certain agencies, boards and commissions which are no longer authorized
10 or are obsolete; repealing certain legislative, procedural and interpretive rules
11 promulgated by certain agencies and boards under the Department of Environmental
12 Protection; repealing the Department of Environmental Protection legislative rule relating
13 to requiring the submission of emission statements for volatile organic compound
14 emissions and oxides; repealing the Department of Environmental Protection legislative
15 rule relating to bona fide future use; repealing the Department of Environmental Protection
16 legislative rule relating to abandoned wells; repealing the Department of Environmental
17 Protection legislative rule relating to the Environmental Excellence Program; repealing the
18 Department of Environmental Protection legislative rule relating to oil and gas operations
19 – solid waste; repealing the Department of Environmental Protection legislative rule
20 relating to the Recycling Assistance Fund Grant Program; repealing the Department of
21 Environmental Protection legislative rule relating to commercial hazardous waste
22 management facility siting fees; repealing the Department of Environmental Protection
23 legislative rule relating to groundwater protection standards; repealing the Department of
24 Environmental Protection legislative rule relating to Underground Storage Tank Insurance
25 Trust Fund; repealing the Department of Environmental Protection legislative rule relating
26 to hazardous waste management; repealing the Department of Environmental Protection

27 legislative rule relating to solid waste management; repealing the Department of
28 Environmental Protection legislative rule relating to waste tire management; repealing the
29 Department of Environmental Protection legislative rule relating to sewage sludge
30 management; repealing the Department of Environmental Protection legislative rule
31 relating to Hazardous Waste Emergency Response Fund regulations; repealing the
32 Department of Environmental Protection interpretive rule relating to initial inspection,
33 certification and spill prevention response plan requirements; repealing the Department of
34 Environmental Protection legislative rule relating to the Office of the Environmental
35 Advocate; repealing the Department of Environmental Protection legislative rule relating
36 to coal refuse; repealing the Department of Environmental Protection procedural rule
37 relating to administrative procedures and civil administrative penalty assessment – Water
38 Resources Protection Act; repealing the Department of Environmental Protection
39 procedural rule relating to procedures and practice before the Department of Energy;
40 authorizing the Department of Environmental Protection to promulgate a legislative rule
41 relating to the control of annual nitrogen oxide emissions; authorizing the Department of
42 Environmental Protection to promulgate a legislative rule relating to the control of air
43 pollution from combustion of solid waste; authorizing the Department of Environmental
44 Protection to promulgate a legislative rule relating to the control of air pollution from
45 hazardous waste treatment, storage and disposal facilities; authorizing the Department of
46 Environmental Protection to promulgate a legislative rule relating to emission standards
47 for hazardous air pollutants; authorizing the Department of Environmental Protection to
48 promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions;
49 authorizing the Department of Environmental Protection to promulgate a legislative rule
50 relating to control of annual sulfur dioxide emissions; authorizing the Department of
51 Environmental Protection to promulgate a legislative rule relating to surface mining
52 reclamation; authorizing the Department of Environmental Protection to promulgate a

53 legislative rule relating to administrative proceedings and civil penalty assessment;
54 authorizing the Department of Environmental Protection to promulgate a legislative rule
55 relating to above ground storage tank fee assessments; authorizing the Department of
56 Environmental Protection to promulgate a legislative rule relating to above ground storage
57 tank administrative proceedings and civil penalty assessment; authorizing the Department
58 of Environmental Protection to promulgate a legislative rule relating to requirements
59 governing water quality standards; authorizing the Department of Environmental
60 Protection to promulgate a legislative rule relating to above ground storage tanks,
61 authorizing the Department of Environmental Protection to promulgate a legislative rule
62 relating to horizontal well development; repealing the Commercial Hazardous Waste
63 Management Facility Siting Board legislative rule relating to certification requirements;
64 repealing the Environmental Quality Board legislative rule relating to requirements
65 governing water quality standards; repealing the Environmental Quality Board procedural
66 rule relating to requests for information; repealing the Environmental Quality Board
67 procedural rule relating to rules governing the notice of open meetings under the Open
68 Governmental Proceedings Act; repealing the Miner Training, Education and Certification
69 Board legislative rule relating to certification of blasters for surface coal mines and surface
70 areas of underground mines; repealing the Miner Training, Education and Certification
71 Board legislative rule relating to standards for certification of blasters for surface coal
72 mines and surface areas of underground mines; repealing the Miner Training, Education
73 and Certification Board procedural rule relating to temporary suspension of certificates
74 issued to persons pending full hearing before the board of appeals; repealing the Water
75 Resources Board legislative rule relating to the State National Pollutant Discharge
76 Elimination System Program; repealing the Water Resources Board legislative rule
77 relating to requirements governing the State National Pollutant Discharge Elimination
78 System; repealing the Air Quality Board procedural rule relating to requests for

79 information; and repealing the Oil and Gas Inspectors Examining Board procedural rule
80 relating to matters pertaining to the rules and regulations dealing with the Oil and Gas
81 Inspectors Examining Board.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL
PROTECTION TO PROMULGATE LEGISLATIVE RULES AND REPEAL OF
UNAUTHORIZED AND OBSOLETE LEGISLATIVE RULES OF THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

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

3 (a) The legislative rule effective on July 7, 1993, authorized under the authority of section
4 five, article twenty, chapter sixteen of this code, relating to the Department of Environmental
5 Protection (requiring the submission of emission statements for volatile organic compound
6 emissions and oxides, 45 CSR 29), is repealed.

7 (b) The legislative rule effective on July 1, 1993, authorized under the authority of section
8 one, article one, chapter twenty-two-b of this code, relating to the Department of Environmental
9 Protection (bona fide future use, 38 CSR 21), is repealed.

10 (c) The legislative rule effective on July 1, 1993, authorized under the authority of section
11 thirteen, article one, chapter twenty-two of this code, relating to the Department of Environmental
12 Protection (abandoned wells, 38 CSR 22), is repealed.

13 (d) The legislative rule effective on July 1, 2008, authorized under the authority of section
14 four, article twenty-five, chapter twenty-two of this code, relating to the Department of
15 Environmental Protection (Environmental Excellence Program, 60 CSR 8), is repealed.

16 (e) The legislative rule effective on June 12, 1987, authorized under the authority of

17 section three, article one, chapter twenty-two of this code, relating to the Department of
18 Environmental Protection (oil and gas operations – solid waste, 35 CSR 2), is repealed.

19 (f) The legislative rule effective on May 1, 2000, authorized under the authority of section
20 five-a, article eleven, chapter twenty of this code, relating to the Department of Environmental
21 Protection (Recycling Assistance Fund Grant Program, 58 CSR 5), is repealed.

22 (g) The legislative rule effective on June 1, 1994, authorized under the authority of section
23 six, article five, chapter twenty-two-c of this code, relating to the Department of Environmental
24 Protection (commercial hazardous waste management facility siting fees, 33 CSR 21), is
25 repealed.

26 (h) The legislative rule effective on April 25, 1984, authorized under the authority of article
27 eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection
28 (groundwater protection standards, 33 CSR 23), is repealed.

29 (i) The legislative rule effective on July 1, 1999, authorized under the authority of section
30 six, article seventeen, chapter twenty-two of this code, relating to the Department of
31 Environmental Protection (Underground Storage Tank Insurance Trust Fund, 33 CSR 32), is
32 repealed.

33 (j) The legislative rule effective on June 1, 1996, authorized under the authority of section
34 one, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental
35 Protection (hazardous waste management, 47 CSR 35), is repealed.

36 (k) The legislative rule effective on June 2, 1996, authorized under the authority of section
37 five, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental
38 Protection (solid waste management, 47 CSR 38), is repealed.

39 (l) The legislative rule effective on June 2, 1996, authorized under the authority of section
40 three, article one, chapter twenty-two of this code, relating to the Department of Environmental
41 Protection (waste tire management, 47 CSR 38G), is repealed.

42 (m) The legislative rule effective on May 1, 1996, authorized under the authority of section

43 twenty, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental
44 Protection (sewage sludge management, 47 CSR 38D), is repealed.

45 (n) The legislative rule effective on April 14, 1997, authorized under the authority of section
46 five, article five-g, chapter twenty of this code, relating to the Department of Environmental
47 Protection (Hazardous Waste Emergency Response Fund regulations, 47 CSR 40B), is repealed.

48 (o) The interpretive rule effective on November 20, 2014, authorized under the authority
49 of section twenty-three, article thirty, chapter twenty-two of this code, relating to the Department
50 of Environmental Protection (initial inspection, certification and spill prevention response plan
51 requirements, 47 CSR 62), is repealed.

52 (p) The legislative rule effective on July 1, 1997, authorized under the authority of section
53 three, article one, chapter twenty-two of this code, relating to the Department of Environmental
54 Protection (Office of the Environmental Advocate, 60 CSR 1), is repealed.

55 (q) The legislative rule effective on June 13, 1985, authorized under the authority of article
56 six, chapter twenty of this code, relating to the Department of Environmental Protection (coal
57 refuse, 38 CSR 2B), is repealed.

58 (r) The procedural rule effective on May 16, 2005, authorized under the authority of section
59 six, article one, chapter twenty-two of this code, relating to the Department of Environmental
60 Protection (administrative procedures and civil administrative penalty assessment – Water
61 Resources Protection Act, 60 CSR 6), is repealed.

62 (s) The procedural rule effective on January 30, 1983, authorized under the authority of
63 section one, article three, chapter twenty-two-a of this code, relating to the Department of
64 Environmental Protection (procedures and practice before the Department of Energy, 38 CSR 1),
65 is repealed.

66 (t) The legislative rule filed in the State Register on July 24, 2015, authorized under the
67 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
68 of Environmental Protection, Air Quality (control of annual nitrogen oxide emissions, 45 CSR 39),

69 is authorized.

70 (u) The legislative rule filed in the State Register on July 24, 2015, authorized under the
71 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
72 of Environmental Protection, Air Quality (control of air pollution from combustion of solid waste,
73 45 CSR 18), is authorized.

74 (v) The legislative rule filed in the State Register on July 24, 2015, authorized under the
75 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
76 of Environmental Protection, Air Quality (control of air pollution from hazardous waste treatment,
77 storage and disposal facilities, 45 CSR 25), is authorized.

78 (w) The legislative rule filed in the State Register on July 24, 2015, authorized under the
79 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
80 of Environmental Protection, Air Quality (emission standards for hazardous air pollutants, 45 CSR
81 34), is authorized.

82 (x) The legislative rule filed in the State Register on July 24, 2015, authorized under the
83 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
84 of Environmental Protection, Air Quality (control of ozone season nitrogen oxides emissions, 45
85 CSR 40), is authorized.

86 (y) The legislative rule filed in the State Register on July 24, 2015, authorized under the
87 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
88 of Environmental Protection, Air Quality (control of annual sulfur dioxide emissions, 45 CSR 41),
89 is authorized.

90 (z) The legislative rule filed in the State Register on July 27, 2015, authorized under the
91 authority of section thirteen, article three, chapter twenty-two, of this code, relating to the
92 Department of Environmental Protection, Division of Mining and Reclamation (surface mining
93 reclamation, 38 CSR 2), is authorized with the following amendments set forth below:

94 On page 48, subdivision 3.27, after the word “ongoing” by inserting the following: “Once
95 an operation has received a waiver of the renewal requirement, it is exempt from the restriction
96 contained in paragraph 11.4.a.2 of this rule regarding changing from full permit bonding to
97 incremental bonding, and the operation may submit a bonding revision to the Secretary for
98 approval.”

99 And,

100 On page 135, paragraph 11.4.a.2.after the words “terms of the permit” by adding the
101 following proviso: “*Provided*, That operations that have received a waiver of the renewal
102 requirement are exempt, and the operation may submit a bonding revision to the Secretary for
103 approval.”

104 (aa) The legislative rule filed in the State Register on July 27, 2015, authorized under the
105 authority of section twenty-two, article eleven, chapter twenty-two, of this code, relating to the
106 Department of Environmental Protection, Water and Waste Management (administrative
107 proceedings and civil penalty assessment, 47 [CSR 30B](#)), is authorized.

108 (bb) The legislative rule filed in the State Register on July 31, 2015, authorized under the
109 authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department
110 of Environmental Protection, Water and Waste Management (above ground storage tank fee
111 assessments, 47 [CSR 64](#)), is authorized.

112 (cc) The legislative rule filed in the State Register on July 31, 2015, authorized under the
113 authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department
114 of Environmental Protection, Department of Environmental Protection, Water and Waste
115 Management (above ground storage tank administrative proceedings and civil penalty
116 assessment, 47 [CSR 65](#)), is authorized.

117 (dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the
118 authority of section four, article eleven, chapter twenty-two, of this code, modified by the
119 Department of Environmental Protection, Water and Waste Management to meet the objections

120 of the Legislative Rule-making Review Committee and refiled in the State Register on November
121 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management
122 (requirements governing water quality standards, 47 [CSR 2](#)), is authorized with the following
123 amendments set forth below:

124 On page 46, in the column labeled “parameter”, immediately following “8.27.1 Selenium
125 (ug/g)” by inserting the following: “^g (based on instantaneous measurement)

126 8.0 ug/g Fish Whole-body Concentration or
127 11.3 ug/g Fish muscle (skinless, boneless filet);

128 On page 46, in the column labeled “parameter”, immediately following “8.27.2 Selenium
129 (ug/g) Fish Egg/Ovary Concentration^h” by inserting the following: “(based on instantaneous
130 measurement)”

131 On page 47, in the columns labeled “Chron²” by inserting the following in each of the two
132 vacant spaces: “X”;

133 On page 51, note g., after the words “concentration when” by striking the words “both fish
134 tissue and”;

135 On page 51, note g, immediately following the words “water concentrations” by inserting
136 the following: “and either whole body or fish muscle (skinless, boneless filet)”;

137 On page 51, note h, immediately following the word “any” by inserting the following: “fish”;
138 And,

139 On page 51, note h, immediately following the word “whole-body” by inserting the
140 following: “fish muscle (skinless, boneless filet)”;

141 (ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the
142 authority of section five, article thirty, chapter twenty-two, of this code, modified by the Department
143 of Environmental Protection, Water and Waste Management to meet the objections of the
144 Legislative Rule-making Review Committee and refiled in the State Register on November 24,
145 2015, relating to the Department of Environmental Protection, Water and Waste Management

146 (above ground storage tanks, 47 [CSR 63](#)), is authorized with the following amendments set forth
147 below:

148 On page one, paragraph 1.5.a.2., after the word “equipment;” by striking out the word
149 “and”;

150 On page one, paragraph 1.5.a.3., after the word “motors”, by changing the period to a
151 semicolon;

152 On page one, after paragraph 1.5.a.3., by adding the following new paragraphs:

153 “1.5.a.4. Tanks containing blasting agents or explosives as defined in 199 CSR 1; and

154 1.5.a.5. Aboveground storage tanks that contain water treatment chemicals used for
155 maintaining compliance with NPDES permit effluent limits in treatment systems that are located
156 at facilities subject to either the Groundwater Protection Rules for Coal Mining Operations (38
157 CSR 2F) or a Coal Mining NPDES permit issued pursuant to 47 CSR 30 are not Level 1 tanks for
158 the purpose of this rule unless the tank is located within a zone of critical concern.”

159 And,

160 On page forty-one, after paragraph 8.2.e.4., by adding the following new subdivision:

161 “8.2.f. For any new regulated AST to be constructed in karst terrain, which are areas
162 generally underlain by limestone or dolomite, in which the topography is formed chiefly by the
163 dissolving of rock and which may be characterized by sinkholes, sinking streams, closed
164 depressions, subterranean drainage and caves, as such areas are identified, mapped and
165 published by the West Virginia Geological and Economic Survey, the tank owner must submit to
166 the Secretary documentation of the new construction design criteria and engineering
167 specifications to indicate that surface or subsurface conditions will not result in excessive settling
168 or unstable support of the proposed regulated AST, as approved by a professional engineering
169 or an individual certified by API or STI to perform installations or a person holding certification
170 under another program.”

171 (ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the
172 authority of section six, article six-a, chapter twenty-two, of this code, modified by the Department
173 of Environmental Protection, Oil and Gas to meet the objections of the Legislative Rule-making
174 Review Committee and refiled in the State Register on November 23, 2015 relating to the
175 Department of Environmental Protection, Oil and Gas (horizontal well development, 35 [CSR 8](#)),
176 is authorized.

§64-3-2. Commercial Hazardous Waste Management Facility Siting Board.

1 The legislative rule effective on May 19, 1994, authorized under the authority of section
2 three, article ten, chapter twenty of this code, relating to the Commercial Hazardous Waste
3 Management Facility Siting Board (certification requirements, 57 [CSR 1](#)), is repealed.

§64-3-3. Environmental Quality Board.

1 (a) The legislative rule effective on June 30, 2005, authorized under the authority of
2 section four, article three, chapter twenty-two-b of this code, relating to the Environmental Quality
3 Board (requirements governing water quality standards, 46 [CSR 1](#)), is repealed.

4 (b) The procedural rule effective on February 19, 1996, authorized under the authority of
5 section three, article three, chapter twenty-nine-a of this code, relating to the Environmental
6 Quality Board (requests for information, 46 [CSR 8](#)), is repealed.

7 (c) The procedural rule effective on July 27, 1984, authorized under the authority of section
8 three, article one, chapter twenty-two-b of this code, relating to the Environmental Quality Board
9 (rules governing the notice of open meetings under the Open Governments Proceedings Act, 46
10 [CSR 5](#)), is repealed.

§64-3-4. Miner Training, Education and Certification Board.

1 (a) The legislative rule effective on June 1, 1992, authorized under the authority of section
2 six, article nine, chapter twenty-two of this code, relating to the Miner Training, Education and
3 Certification Board (certification of blasters for surface coal mines and surface areas of
4 underground mines, 48 [CSR 5](#)), is repealed.

5 (b) The legislative rule effective on July 1, 1993, authorized under the authority of section
6 six, article nine, chapter twenty-nine of this code, relating to the Miner Training, Education and
7 Certification Board (standards for certification of blasters for surface coal mines and surface areas
8 of underground mines, 56 CSR 5), is repealed.

9 (c) The procedural rule effective on September 11, 1983, authorized under the authority
10 of section eight, article three, chapter twenty-nine-a of this code, relating to the Miner Training,
11 Education and Certification Board (temporary suspension of certificates issued to persons
12 pending full hearing before the board of appeals, 48 CSR 16), is repealed.

§64-3-5 Water Resources Board.

1 (a) The legislative rule effective on August 25, 1993, authorized under the authority of
2 article five-a, chapter twenty of this code, relating to the Water Resources Board (State National
3 Pollutant Discharge Elimination System Program, 46 CSR 2), is repealed.

4 (b) The legislative rule effective on July 1, 1987, authorized under the authority of article
5 five-a, chapter twenty of this code, relating to the Water Resources Board (requirements
6 governing the State National Pollutant Discharge Elimination System, 46 CSR 3), is repealed.

§64-3-6. Air Quality Board.

1 The procedural rule effective on February 2, 1996, authorized under the authority of
2 section three, article three, chapter twenty-nine-a of this code, relating to the Air Quality Board
3 (requests for information, 52 CSR 2), is repealed.

§64-3-7. Oil and Gas Inspectors Examining Board.

1 The procedural rule effective on January 18, 2009, authorized under the authority of
2 section three, article seven, chapter twenty-two-c of this code, relating to the Oil and Gas
3 Inspectors Examining Board (matters pertaining to the rules and regulations dealing with the Oil
4 and Gas Inspectors Examining Board, 40 CSR 1), is repealed.

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