

**WEST VIRGINIA LEGISLATURE**  
**2016 FIRST EXTRAORDINARY SESSION**

**Introduced**  
**Senate Bill 1009**

BY SENATORS COLE (MR. PRESIDENT) AND KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Introduced June 1, 2016]

1 A BILL to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as  
2 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 standards of  
43 performance for new stationary sources; authorizing the Department of Environmental  
44 Protection to promulgate a legislative rule relating to the control of air pollution from  
45 combustion of solid waste; authorizing the Department of Environmental Protection to  
46 promulgate a legislative rule relating to the control of air pollution from hazardous waste  
47 treatment, storage and disposal facilities; authorizing the Department of Environmental  
48 Protection to promulgate a legislative rule relating to emission standards for hazardous air  
49 pollutants; authorizing the Department of Environmental Protection to promulgate a  
50 legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing  
51 the Department of Environmental Protection to promulgate a legislative rule relating to  
52 control of annual sulfur dioxide emissions; authorizing the Department of Environmental

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

79 relating to requirements governing the State National Pollutant Discharge Elimination  
80 System; repealing the Air Quality Board procedural rule relating to requests for  
81 information; and repealing the Oil and Gas Inspectors Examining Board procedural rule  
82 relating to matters pertaining to the rules and regulations dealing with the Oil and Gas  
83 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 (standards of performance for new stationary sources,  
73 45 CSR 16), 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 combustion of solid waste,  
77 45 CSR 18), 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 (control of air pollution from hazardous waste treatment,  
81 storage and disposal facilities, 45 CSR 25), 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 (emission standards for hazardous air pollutants, 45 CSR  
85 34), 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 ozone season nitrogen oxides emissions, 45  
89 CSR 40), is authorized.

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



93 is authorized.

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

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

103 And,

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

108 (bb) The legislative rule filed in the State Register on July 27, 2015, authorized under the  
109 authority of section twenty-two, article eleven, chapter twenty-two, of this code, relating to the  
110 Department of Environmental Protection, Water and Waste Management (administrative  
111 proceedings and civil penalty assessment, 47 CSR 30B), 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, Water and Waste Management (above ground storage tank fee  
115 assessments, 47 CSR 64), is authorized.

116 (dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the  
117 authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department  
118 of Environmental Protection, Department of Environmental Protection, Water and Waste

119 Management (above ground storage tank administrative proceedings and civil penalty  
120 assessment, 47 CSR 65), is authorized.

121 (ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the  
122 authority of section four, article eleven, chapter twenty-two, of this code, modified by the  
123 Department of Environmental Protection, Water and Waste Management to meet the objections  
124 of the Legislative Rule-making Review Committee and refiled in the State Register on November  
125 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management  
126 (requirements governing water quality standards, 47 CSR 2), is authorized with the following  
127 amendments set forth below:

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

130 8.0 ug/g Fish Whole-body Concentration or

131 11.3 ug/g Fish muscle (skinless, boneless filet)”;

132 On page 46, in the column labeled “parameter”, immediately following “8.27.2 Selenium  
133 (ug/g) Fish Egg/Ovary Concentration<sup>h</sup>” by inserting the following: “(based on instantaneous  
134 measurement)”

135 On page 47, in the columns labeled “Chron<sup>2</sup>” by inserting the following in each of the two  
136 vacant spaces: “X”;

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

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

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

142 And,

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

145 (ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the  
146 authority of section five, article thirty, chapter twenty-two, of this code, modified by the Department  
147 of Environmental Protection, Water and Waste Management to meet the objections of the  
148 Legislative Rule-making Review Committee and refiled in the State Register on November 24,  
149 2015, relating to the Department of Environmental Protection, Water and Waste Management  
150 (above ground storage tanks, 47 CSR 63), is authorized with the following amendments set forth  
151 below:

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

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

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

157 “1.5.a.4. Tanks containing blasting agents or explosives as defined in 199 CSR 1; and

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

163 And,

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

165 “8.2.f. For any new regulated AST to be constructed in karst terrain, which are areas  
166 generally underlain by limestone or dolomite, in which the topography is formed chiefly by the  
167 dissolving of rock and which may be characterized by sinkholes, sinking streams, closed  
168 depressions, subterranean drainage and caves, as such areas are identified, mapped and  
169 published by the West Virginia Geological and Economic Survey, the tank owner must submit to  
170 the Secretary documentation of the new construction design criteria and engineering

171 specifications to indicate that surface or subsurface conditions will not result in excessive settling  
172 or unstable support of the proposed regulated AST, as approved by a professional engineering  
173 or an individual certified by API or STI to perform installations or a person holding certification  
174 under another program.”

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

**§64-12-2. 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.

**§64-12-3. 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.

**§64-12-4. 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.

**§64-12-5 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.

**§64-12-6. 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.

**§64-12-7. 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.

NOTE: The purpose of this bill is to legislatively mandate or authorize for the promulgation of certain legislative rules by various executive or administrative agencies of the state; to repeal certain legislative, procedural or interpretive rules promulgated by certain agencies, boards and commissions which are no longer authorized or are obsolete; and to repeal certain legislative, procedural and interpretive rules promulgated by certain agencies and boards under the Department of Environmental Protection.

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