

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4053

(BY DELEGATES SOBONYA, FRICH AND MOFFATT)

[Introduced January 18, 2016;

referred to the Committee on Energy then the Judiciary.]

1 A BILL to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as
2 amended, relating generally to the promulgation of administrative rules by the Department
3 of Environmental Protection; legislative mandate or authorization for the promulgation of
4 certain legislative rules by various executive or administrative agencies of the state;
5 authorizing certain of the agencies to promulgate certain legislative rules in the form that
6 the rules were filed in the State Register; authorizing certain of the agencies to promulgate
7 certain legislative rules with various modifications presented to and recommended by the
8 Legislative Rule-Making Review Committee; authorizing the Department of Environmental
9 Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide
10 emissions, authorizing the Department of Environmental Protection to promulgate a
11 legislative rule relating to standards of performance for new stationary sources,
12 authorizing the Department of Environmental Protection to promulgate a legislative rule
13 relating to the control of air pollution from combustion of solid waste, authorizing the
14 Department of Environmental Protection to promulgate a legislative rule relating to the
15 control of air pollution from hazardous waste treatment, storage and disposal facilities,
16 authorizing the Department of Environmental Protection to promulgate a legislative rule
17 relating to emission standards for hazardous air pollutants, authorizing the Department of
18 Environmental Protection to promulgate a legislative rule relating to control of ozone
19 season nitrogen oxides emissions, authorizing the Department of Environmental
20 Protection to promulgate a legislative rule relating to control of annual sulfur dioxide
21 emissions, authorizing the Department of Environmental Protection to promulgate a
22 legislative rule relating to surface mining reclamation, authorizing the Department of
23 Environmental Protection to promulgate a legislative rule relating to administrative
24 proceedings and civil penalty assessment, authorizing the Department of Environmental
25 Protection to promulgate a legislative rule relating to above ground storage tank fee
26 assessments, authorizing the Department of Environmental Protection to promulgate a

27 legislative rule relating to above ground storage tank administrative proceedings and civil
28 penalty assessment, authorizing the Department of Environmental Protection to
29 promulgate a legislative rule relating to above ground storage tanks, authorizing the
30 Department of Environmental Protection to promulgate a legislative rule relating to
31 requirements governing water quality standards, and authorizing the Department of
32 Environmental Protection to promulgate a legislative rule relating to horizontal well
33 development.

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.**

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

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

5 (b) The legislative rule filed in the State Register on July 24, 2015, authorized under the
6 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
7 of Environmental Protection, Air Quality (standards of performance for new stationary sources,
8 45 CSR 16), is authorized.

9 (c) The legislative rule filed in the State Register on July 24, 2015, authorized under the
10 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
11 of Environmental Protection, Air Quality (control of air pollution from combustion of solid waste,
12 45 CSR 18), is authorized.

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

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

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

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

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

33 On page 60, paragraph 3.27., immediately following the word “ongoing” by inserting the
34 following: “Once an operation has received a waiver of the renewal requirement, it is exempt
35 from the restriction contained in paragraph 11.4.a.2 below regarding changing from full permit
36 bonding to incremental bonding, and the operation may submit a bonding revision to the
37 Secretary for approval.”

38 And,

39 On page 147, paragraph 11.4.a.2., immediately following the second occurrence of the
40 word “permit” by inserting the following: “:Provided, That operations that have received a waiver
41 of the renewal requirement are exempt, and the operation may submit a bonding revision to the
42 Secretary for approval.”

43 (i) The legislative rule filed in the State Register on July 27, 2015, authorized under the
44 authority of section twenty-two, article eleven, chapter twenty-two, of this code, relating to the
45 Department of Environmental Protection, Water and Waste Management (administrative
46 proceedings and civil penalty assessment, 47 CSR 30B), is authorized.

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

51 (k) The legislative rule filed in the State Register on July 31, 2015, authorized under the
52 authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department
53 of Environmental Protection, Department of Environmental Protection, Water and Waste
54 Management (above ground storage tank administrative proceedings and civil penalty
55 assessment, 47 CSR 65), is authorized.

56 (l) The legislative rule filed in the State Register on July 31, 2015, authorized under the
57 authority of section four, article eleven, chapter twenty-two, of this code, modified by the
58 Department of Environmental Protection, Water and Waste Management to meet the objections
59 of the Legislative Rule-making Review Committee and refiled in the State Register on November
60 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management
61 (requirements governing water quality standards, 47 CSR 2), is authorized with the following
62 amendments set forth below:

63 On page 51, note g., immediately following the words “concentration when” by striking the
64 words “both fish tissue and”

65 AND

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

68 AND

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

70 AND

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

73 AND

74 On page 52, in the column labeled “parameter”, immediately following “8.27.1 (Selenium
75 ug/g)” by inserting the following: “^g (based on instantaneous measurement)

76 8.0 ug/g Fish Whole-body Concentration or

77 11.3 ug/g Fish muscle (skinless, boneless filet)”

78 AND

79 On page 52, in the column labeled “parameter”, immediately following “8.27.2 (Selenium
80 ug/g) Fish Egg/Ovary Concentration^h” by inserting the following: “(based on instantaneous
81 measurement)”

82 AND

83 On page 52, in the columns labeled “Chron²” by inserting the following in each of the two
84 vacant spaces: “X”

85 (m) The legislative rule filed in the State Register on July 31, 2015, authorized under the
86 authority of section five, article thirty, chapter twenty-two, of this code, modified by the Department
87 of Environmental Protection, Water and Waste Management to meet the objections of the
88 Legislative Rule-making Review Committee and refiled in the State Register on November 24,
89 2015, relating to the Department of Environmental Protection, Water and Waste Management
90 (above ground storage tanks, 47 CSR 63), is authorized with the following amendments set forth
91 below:

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

94 And,

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

97 And,

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

99 “1.5.a.4. Tanks containing blasting agents or explosives as defined in 199 CSR 1; and

100 1.5.a.5. Aboveground storage tanks that contain water treatment chemicals used for
101 maintaining compliance with NPDES permit effluent limits in treatment systems that are located
102 at facilities subject to either the Groundwater Protection Rules for Coal Mining Operations (38
103 CSR 2F) or a Coal Mining NPDES permit issued pursuant to 47 CSR 30 are not Level 1 tanks
104 for the purpose of this rule unless the tank is located within a zone of critical concern.”

105 And,

106 On page forty-one, after paragraph 8.2.e.4., by inserting the following new paragraph:

107 “8.2.f. The tank owner or operator must submit to the Secretary documentation of new
108 construction design criteria and engineering specifications approved by a professional engineer
109 or by an individual certified by API or STI to perform installations or by a person holding
110 certification under another program approved by the Secretary as follows:

111 8.2.f.1. If the new construction is for a Level 1 AST, these new construction design
112 criteria and engineering specifications must indicate that sufficient controls are present to
113 protect water supplies.

114 8.2.f.2. If the new construction is located at a site with karst topography, these new
115 construction design criteria and engineering specifications must indicate that surface or
116 subsurface conditions will not result in excessive tank system settlement or unstable support of
117 the proposed regulated AST system.”

118 (n) The legislative rule filed in the State Register on July 31, 2015, authorized under the
119 authority of section six, article six-a, chapter twenty-two, of this code, modified by the Department
120 of Environmental Protection, Oil and Gas to meet the objections of the Legislative Rule-making
121 Review Committee and refiled in the State Register on November 23, 2015 relating to the
122 Department of Environmental Protection, Oil and Gas (horizontal well development, 35 CSR 8),
123 is authorized.

NOTE: The purpose of this bill is to authorize the Department of Environmental Protection,
Air Quality to promulgate a series of legislative rules.

This section is new; therefore, strike-throughs and underscoring have been omitted.