

H. B. 2579

(By Delegates R. Phillips, Stowers, Eldridge, Tomblin,
White, Marcum, Caputo, Boggs, Craig, Sumner and Nelson, J.)

[Introduced February 20, 2013; referred to the
Committee on the Judiciary.]

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

All persons affected by rules establishing water quality
standards and effluent limitations shall promptly comply therewith:

Provided, That:

(1) Where necessary and proper, the secretary may specify a
reasonable time for persons not complying with such standards and
limitations to comply therewith, and upon the expiration of any

1 such period of time, the secretary shall revoke or modify any
2 permit previously issued which authorized the discharge of treated
3 or untreated sewage, industrial wastes or other wastes into the
4 waters of this state which result in reduction of the quality of
5 such waters below the standards and limitations established
6 therefor by rules of the board or secretary;

7 (2) Notwithstanding any rule or permit condition to the
8 contrary, and except for any standard imposed under section 307 of
9 the federal Water Pollution Control Act for a toxic pollutant
10 injurious to human health, compliance with a permit issued pursuant
11 to this article shall be deemed compliance for purposes of both
12 this article and sections 301, 302, 306, 307 and 403 of the federal
13 Water Pollution Control Act. Nothing in this section, however,
14 prevents the secretary from modifying, reissuing or revoking a
15 permit during its term. The provisions of this section addressing
16 compliance with a permit are intended to apply to all existing and
17 future discharges and permits without the need for permit
18 modifications. However, should any such modification be necessary
19 under the terms of this article, then the secretary shall
20 immediately commence the process to effect such modifications; and

21 (3) The Legislature finds that there are concerns within West
22 Virginia regarding the applicability of the research underlying the
23 federal selenium criteria to a state such as West Virginia which
24 has high precipitation rates and free-flowing streams and that the

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

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

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

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

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

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

13 (D) The results of the monitoring will be reported to the
14 department for use in the development of state-specific selenium
15 criteria;

16 (6) The Legislature directs the West Virginia Department of
17 Environmental Protection to provide the results of the monitoring
18 required in subsection (5) to the West Virginia Water Research
19 Institute at West Virginia University to assist with the
20 development of a state-specific selenium criteria that is
21 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.