

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2506

BY DELEGATES ZATEZALO, FOSTER, G., KESSINGER,
SUMMERS, ATKINSON, AMBLER, PHILLIPS, WESTFALL AND
MILEY

[Introduced February 16, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §22-11-7b and §22-11-11 of the Code of West Virginia, 1931, as
 2 amended, all relating to the implementation of water quality standards for the protection
 3 of drinking water; requiring permits limits to be calculated using design flows
 4 recommended by the United States Environmental Protection Agency for protection of
 5 human health; requiring the Secretary of the Department of Environmental Protection to
 6 propose emergency revisions to its water quality standards; and providing that draft
 7 permits and fact sheets are to be made available to permit applicants prior to public notice
 8 of the issuance or reissuance of any permit.

Be it enacted by the Legislature of West Virginia:

1 That §22-11-7b and §22-11-11 of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted, all to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

**§22-11-7b. Water quality standards; implementation of antidegradation procedures;
 procedure to determine comp1iance with the biologic component of the narrative
 water quality standard.**

1 (a) All authority ~~to promulgate~~ to propose rules for legislative approval and implement
 2 water quality standards is vested in the Secretary of the Department of Environmental Protection.

3 (b) All meetings with the secretary or any employee of the department and any interested
 4 party which are convened for the purpose of making a decision or deliberating toward a decision
 5 as to the form and substance of the rule governing water quality standards or variances thereto
 6 shall be held in accordance with ~~the provisions of~~ article nine-a, chapter six of this code. When
 7 the secretary is considering the form and substance of the rules governing water quality
 8 standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i)
 9 Consultations between the department's employees or its consultants, contractors or agents; (ii)
 10 consultations with other state or federal agencies and the department's employees or its
 11 consultants, contractors or agents; or (iii) consultations between the secretary, the department's

12 employees or its consultants, contractors or agents with any interested party for the purpose of
13 collecting facts and explaining state and federal requirements relating to a site specific change or
14 variance.

15 (c) In order to carry out the purposes of this chapter, the secretary shall ~~promulgate~~
16 ~~legislative~~ propose rules for legislative approval in accordance with ~~the provisions of~~ article three,
17 chapter twenty-nine-a of this code setting standards of water quality applicable to both the surface
18 waters and groundwaters of this state. Standards of quality with respect to surface waters shall
19 protect the public health and welfare, wildlife, fish and aquatic life and the present and prospective
20 future uses of the water for domestic, agricultural, industrial, recreational, scenic and other
21 legitimate beneficial uses thereof. The water quality standards of the secretary may not specify
22 the design of equipment, type of construction or particular method which a person shall use to
23 reduce the discharge of a pollutant. For implementing human health criteria for the protection of
24 drinking water, permit limits shall be calculated using design flows recommended by the United
25 States Environmental Protection Agency for protection of human health in chapter four of its
26 Technical Support Document for Water Quality-based Toxics Control (1991), and the point of
27 compliance for a permittee's discharge shall be determined at the downstream boundary of an
28 unrestricted (no limitation of spatial area or overlapping discharges) mixing of the discharge and
29 the receiving stream that extends to, but not beyond, a point one-half mile upstream of a public
30 water supply, unless the public water supply agrees in writing to an extension of the mixing zone
31 to a point no less than five hundred yards upstream of its intake. The secretary shall propose
32 emergency revisions to its water quality standards to implement the design flows and mixing zone
33 requirements for implementation of human health criteria for the protection of drinking water.

34 (d) The secretary shall establish the antidegradation implementation procedures as
35 required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to
36 affect water quality. The secretary shall propose for legislative approval, pursuant to article three,
37 chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which

38 include specifics of the review depending upon the existing uses of the water body segment that
39 would be affected, the level of protection or "tier" assigned to the applicable water body segment,
40 the nature of the activity and the extent to which existing water quality would be degraded. Any
41 final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does
42 not become effective until that determination is approved by the Legislature through the legislative
43 rule-making process as provided in article three, chapter twenty-nine-a of the code.

44 (e) All remining variances shall be applied for and considered by the secretary and any
45 variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control
46 Act. At a minimum, when considering an application for a remining variance the secretary shall
47 consider the data and information submitted by the applicant for the variance; and comments
48 received at a public comment period and public hearing. The secretary may not grant a variance
49 without requiring the applicant to improve the instream water quality as much as is reasonably
50 possible by applying best available technology economically achievable using best professional
51 judgment. Any such requirement ~~will~~ shall be included as a permit condition. The secretary may
52 not grant a variance without a demonstration by the applicant that the coal remining operation will
53 result in the potential for improved instream water quality as a result of the remining operation.
54 The secretary may not grant a variance where he or she determines that degradation of the
55 instream water quality will result from the remining operation.

56 (f) The secretary shall propose rules measuring compliance with the biologic component
57 of West Virginia's narrative water quality standard requires evaluation of the holistic health of the
58 aquatic ecosystem and a determination that the stream: (i) Supports a balanced aquatic
59 community that is diverse in species composition; (ii) contains appropriate trophic levels of fish,
60 in streams that have flows sufficient to support fish populations; and (iii) the aquatic community is
61 composed of benthic invertebrate assemblages sufficient to perform the biological functions
62 necessary to support fish communities within the assessed reach, or, if the assessed reach has
63 insufficient flows to support a fish community, in those downstream reaches where fish are

64 present. The secretary shall propose rules for legislative approval in accordance with ~~the~~
65 ~~provisions of~~ article three, chapter twenty-nine-a of this code that implement the provisions of this
66 subsection. Rules promulgated pursuant to this subsection may not establish measurements for
67 biologic components of West Virginia's narrative water quality standards that would establish
68 standards less protective than requirements that exist at the time of enactment of the
69 amendments to this subsection by the Legislature during the 2012 regular session.

§22-11-11. Procedure concerning permits required under article; transfer of permits; prior permits.

1 (a) The chief or his or her duly authorized representatives shall conduct ~~such~~
2 investigations ~~as is deemed~~ considered necessary and proper in order to determine whether any
3 ~~such~~ application should be granted or denied. In making ~~such~~ the investigation and determination
4 as to any application pertaining solely to sewage, the chief shall consult with the director of the
5 office of environmental health services of the state bureau of public health, and in making ~~such~~
6 the investigation and determination as to any application pertaining to any activity specified in
7 subdivision (7), subsection (b), section eight of this article, the chief shall consult with the director
8 of the state geological and economic survey and the chief of the office of oil and gas of the division,
9 and all ~~such~~ these persons shall cooperate with the chief and assist him or her in carrying out the
10 duties and responsibilities imposed upon him or her under ~~the provisions of~~ this article and the
11 rules of the director and board; ~~such~~ the cooperation shall include, but not be limited to, a written
12 recommendation approving or disapproving the granting of the permit and the reason or reasons
13 for ~~such~~ the recommendation, which recommendation and the reason or reasons therefor shall
14 be submitted to the chief within the specified time period prescribed by rules of the director.

15 (b) The division's permit shall be issued upon such reasonable terms and conditions as
16 the chief may direct if (1) the application, together with all supporting information and data and
17 other evidence, establishes that any and all discharges or releases, escapes, deposits and
18 disposition of treated or untreated sewage, industrial wastes or other wastes, or the effluent

19 therefrom, resulting from the activity or activities for which the application for a permit was made
20 will not cause pollution of the waters of this state or violate any effluent limitations or any rules of
21 the board or director: *Provided*, That the chief may issue a permit whenever in his or her judgment
22 the water quality standards of the state may be best protected by the institution of a program of
23 phased pollution abatement which under the terms of the permit may temporarily allow a limited
24 degree of pollution of the waters of the state; and (2) in cases wherein it is required, ~~such~~ the
25 applicant shall include the name and address of the responsible agent as set forth in subsection
26 (e), section six, article six of this chapter.

27 (c) Each permit issued under this article shall have a fixed term not to exceed five years:
28 *Provided*, That when the applicant, in accordance with agency rules, has made a timely and
29 complete application for permit reissuance, the permit term may be extended by the chief, at his
30 or her discretion. An extension may be granted for a period not to exceed twelve months beyond
31 its expiration date. Successive extensions may be granted for periods not to exceed twelve
32 months if the chief determines additional time is necessary in order to process the application for
33 permit reissuance. Upon expiration of a permit, a new permit may be issued by the chief upon
34 condition that the discharges or releases, escapes, deposits and disposition thereunder meet or
35 will meet all applicable state and federal water quality standards, effluent limitations and all other
36 requirements of this article.

37 (d) An application for a permit incident to remedial action in accordance with the provisions
38 of section sixteen of this article shall be processed and decided as any other application for a
39 permit required under ~~the provisions of~~ section eight of this article.

40 (e) A complete application for any permit shall be acted upon by the chief, and the
41 division's permit delivered or mailed, or a copy of any order of the chief denying any such
42 application delivered or mailed to the applicant by the chief, within a reasonable time period as
43 prescribed by rules of the director: *Provided*, That a permit for which a timely application for
44 renewal has been submitted shall be reissued on or before the expiration date of the existing

45 permit. For permits to be issued in accordance with the National Pollutant Discharge Elimination
46 System, the public and applicant shall receive notice of the availability of a draft permit and fact
47 sheet no less than forty-five days prior to the issuance or reissuance of any permit. At least forty-
48 five days prior to the public notice, the Secretary shall ensure that the draft permit and fact sheet
49 are available to the applicant for review and, if requested by the applicant, the secretary shall
50 meet and confer with the applicant regarding the draft permit and fact sheet prior to public notice.

51 (f) When it is established that an application for a permit should be denied, the chief shall
52 make and enter an order to that effect, which order shall specify the reasons for ~~such~~ the denial,
53 and shall cause a copy of ~~such~~ the order to be served on the applicant by registered or certified
54 mail. The chief shall also cause a notice to be served with a copy of ~~such~~ the order, which notice
55 shall advise the applicant of the right to appeal to the board by filing a notice of appeal on the
56 form prescribed by the board for ~~such~~ that purpose, with the board, in accordance with ~~the~~
57 ~~provisions of~~, and within the time specified in, section seven, article one, chapter twenty-two-b of
58 this code. However, an applicant may alter the plans and specifications for the proposed activity
59 and submit a new application for any such permit, in which event the procedure hereinbefore
60 outlined with respect to an original application ~~shall apply~~ applies.

61 (g) A permit is transferable to another person upon proper notification to the chief and in
62 accordance with applicable rules. ~~Such~~ A transfer does not become effective until it is reflected in
63 the records of the office of water resources.

64 (h) All permits for the discharge of sewage, industrial wastes or other wastes into any
65 waters of the state issued by the water resources board prior to July 1, 1964, and all permits
66 heretofore issued under ~~the provisions of~~ former article five-a, chapter twenty of this code, and
67 which have not been heretofore revoked, are subject to review, revocation, suspension,
68 modification and reissuance in accordance with the terms and conditions of this article and the
69 rules promulgated thereunder. Any order of revocation, suspension or modification made and
70 entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify

71 the reasons for such revocation, suspension or modification and the chief shall cause a copy of
72 such order, together with a copy of a notice of the right to appeal to the board as provided for in
73 section twelve of this article, to be served upon the permit holder as specified in said section
74 twelve.

NOTE: The purpose of this bill, in the implementation of water quality standards for the protection of drinking water; is to require permits limits to be calculated using design flows recommended by the United States Environmental Protection Agency for protection of human health. The bill requires the Secretary of the Department of Environmental Protection to propose emergency revisions to its water quality standards. And, the bill also provides that draft permits and fact sheets are to be made available to permit applicants prior to public notice of the issuance or reissuance of any permit.

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