

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 290

BY SENATORS SMITH, AZINGER, BOSO, CLEMENTS, AND

CLINE

[Originating in the Committee on the Judiciary;

Reported on February 7, 2018]

1 A BILL to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating
2 to standards of water quality and effluent limitations; providing that the secretary may issue
3 water pollution control permits that contain water quality-based effluent limits that are
4 adjusted to reflect credit for pollutants in the permittee's intake water; providing that the
5 secretary may not set benchmarks for substances in, or conditions of, discharges of
6 stormwater that are more restrictive than the acute aquatic life water quality criterion, the
7 federal benchmark, the chronic aquatic life water quality criterion, or the ambient aquatic
8 life advisory concentration; providing that the secretary shall establish effluent limits for
9 stormwater that are developed in accordance with mixing zones that are appropriate for
10 relevant conditions, upon request by a permit applicant; and providing that the secretary
11 shall promptly develop guidance for determining how benchmarks in permits demonstrate
12 the adequacy of stormwater best management practices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 (a) All persons affected by rules establishing water quality standards and effluent
2 limitations shall promptly comply with the rules: *Provided, That:*

3 (1) Where necessary and proper, the secretary may specify a reasonable time for persons
4 not complying with the standards and limitations to comply with the rules and, upon the expiration
5 of that period of time, the secretary shall revoke or modify any permit previously issued which
6 authorized the discharge of treated or untreated sewage, industrial wastes, or other wastes into
7 the waters of this state which result in reduction of the quality of the waters below the standards
8 and limitations established therefor by rules of the board or secretary;

9 (2) For purposes of both this article and sections 309 and 505 of the federal Water
10 Pollution Control Act, compliance with a permit issued pursuant to this article shall be considered
11 compliance for purposes of both this article and sections 301, 302, 303, 306, 307 and 403 of the

12 federal Water Pollution Control Act and with all applicable state and federal water quality
13 standards, except for any standard imposed under section 307 of the federal Water Pollution
14 Control Act for a toxic pollutant injurious to human health. Notwithstanding any provision of this
15 code or rule or permit condition to the contrary, water quality standards themselves shall not be
16 considered effluent standards or limitations for the purposes of both this article and sections 309
17 and 505 of the federal Water Pollution Control Act and ~~shall~~ may not be independently or directly
18 enforced or implemented except through the development of terms and conditions of a permit
19 issued pursuant to this article. Nothing in this section, however, prevents the secretary from
20 modifying, reissuing, or revoking a permit during its term. The provisions of this section addressing
21 compliance with a permit are intended to apply to all existing and future discharges and permits
22 without the need for permit modifications; and

23 (3) The Legislature finds that there are concerns within West Virginia regarding the
24 applicability of the research underlying the federal selenium criteria to a state such as West
25 Virginia which has high precipitation rates and free-flowing streams, and that the alleged
26 environmental impacts that were documented in applicable federal research have not been
27 observed in West Virginia and, further, that considerable research is required to determine if
28 selenium is having an impact on West Virginia streams, to validate or determine the proper testing
29 methods for selenium, and to better understand the chemical reactions related to selenium
30 mobilization in water.

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

33 (5) Because of the uncertainty regarding the applicability of the current selenium standard,
34 the secretary is hereby directed to develop within six months of the effective date of this
35 subdivision an implementation plan for the current selenium standard that will include, at
36 minimum, the following:

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

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

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

42 (D) The results of the monitoring will be reported to the department for use in the
43 development of state-specific selenium criteria.

44 (6) Within 24 months of the effective date of this subdivision, the secretary shall propose
45 rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code which establish a
46 state-specific selenium standard that protects aquatic life. Concurrent with proposing a legislative
47 rule, the secretary shall also submit the proposed standard and supporting documentation to the
48 administrator of the Environmental Protection Agency. The secretary shall also consult with and
49 consider research and data from the West Virginia Water Research Institute at West Virginia
50 University, the regulated community, and other appropriate groups in developing the state-specific
51 selenium standard.

52 (7) Within 30 days of the effective date of this section, the secretary shall promulgate an
53 emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic
54 life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with
55 issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting
56 documentation to the administrator of the Environmental Protection Agency.

57 (8) The secretary shall, within 90 days of receipt of any completed request for a site-
58 specific water quality criterion, approve or deny the request. Any denial or approval of an
59 application shall detail the specific basis for the denial or approval and any revisions needed to
60 the application. Any denial or approval of a request may be appealed to the environmental quality
61 board pursuant to §22-11-21 of this code.

62 (b) The secretary may issue water pollution control permits that contain water quality-
63 based effluent limits that are adjusted to reflect credit for pollutants in the permittee's intake water
64 (net limits).

65 (c) The secretary may not set benchmarks for substances in, or conditions of, discharges
66 of stormwater that are more restrictive than the acute aquatic life water quality criterion, the federal
67 benchmark, the chronic aquatic life water quality criterion, or the ambient aquatic life advisory
68 concentration.

69 (d) Upon request by an applicant for a permit issued in accordance with this article, the
70 secretary shall establish effluent limits for stormwater that are developed in accordance with
71 mixing zones that are appropriate for relevant conditions.

72 (e) The secretary shall promptly develop guidance for determining how benchmarks in
73 permits issued pursuant to this article demonstrate the adequacy of stormwater best management
74 practices.