

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4426

BY DELEGATES HARSHBARGER, KELLY, WESTFALL,
BUTLER, PAYNTER, HANSHAW, SOBONYA AND FOSTER

[Introduced February 5, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact § 22-11-6 of the Code of West Virginia, 1931, as amended, relating
2 to the Department of Environmental Protection; standards of water quality and effluent
3 limitations; establishing net permit limits; procedures for setting benchmarks and permit
4 limits for storm water discharges; setting a time for submittal of discharge monitoring
5 reports; and limiting reasons for major modification of permits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§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 ninety 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 section twenty-one of this article.

62 (b) The secretary may not establish water quality-based effluent limitations that are lower
63 than, or that require treatment for, the substances in, or conditions of, the surface water of the
64 state that is drawn into a permittee's intake. The secretary shall develop a final rule for the
65 implementation of this subsection by no later than June 1, 2020.

66 (c) The secretary may not set benchmarks for substances in, or conditions of, discharges
67 of storm water that are more restrictive than the acute aquatic life water quality criterion or, where
68 there is no acute aquatic life water quality criterion, may not set benchmarks more restrictive than
69 the chronic aquatic life water quality criterion or an ambient aquatic life advisory concentration,
70 and storm water benchmarks for any substance shall be expressed as the dissolved fraction of

71 that substance, if the water quality criterion for that substance is expressed as the dissolved
72 fraction.

73 (d) Upon request by an applicant for a permit issued in accordance with this article, the
74 secretary shall establish effluent limits or benchmarks for storm water that are developed in
75 accordance with mixing zones that are appropriate for relevant conditions.

76 (e) Permit limits and benchmarks for storm water may not be established where natural
77 background pollutant concentrations are higher than the corresponding benchmark value and
78 there is no net contribution of the pollutant by the permittee.

79 (f) Benchmarks for storm water in permits issued in accordance with this article may be
80 higher than water quality criteria, upon a demonstration that the storm water discharge will not
81 have an acute toxic effect (i.e., mortality) on aquatic life.

82 (g) Submittal of discharge monitoring reports for permits issued in accordance with this
83 article shall not be required prior to 28 days after the end of the monitoring period in which the
84 discharges occurred.

85 (h) Construction of, or changes to, wastewater treatment plants, operating parameters,
86 control equipment or any other aspect of a permitted facility, which results in no increase in the
87 discharge of any permitted substance or the discharge of any new substance, does not require a
88 major modification of a permit.

89 (i) This amendment to this section shall be known as the “Storm water, Netting and
90 Permitting Act of 2018”.

NOTE: The purpose of this bill is to allow the Department of Environmental Protection to issue water pollution control permits that contain water quality-based net limits; to allow the setting of storm water benchmarks that are no more stringent than water quality standards; to allow use of a mixing zone for storm water discharges; to prohibit benchmarks and permit limits where natural quality is lower than water quality criteria; to allow permittees to demonstrate that discharges of storm water in excess of water quality standards will not cause mortality to aquatic life; to allow submission of discharge monitoring reports on the 28th day of the month following the monitoring period; and to specify facility changes that do not require major modifications. This amendment shall be known as the “Storm water, Netting and Permitting Act of 2018”.

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