

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

House Bill 2233

BY Delegate D. Smith

[Originating in the Committee on Energy and Public

Works, March 6, 2025.]

1 A BILL to amend and reenact §64-3-1 *et seq.* of the Code of West Virginia, 1931, as amended,
2 relating to authorizing certain agencies of the Department of Environmental Protection to
3 promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by
4 the Legislative Rule-Making Review Committee, and as amended by the Legislature;
5 directing the Department of Environmental Protection to amend current legislative rules;
6 authorizing the Department of Environmental Protection to promulgate a legislative rule
7 relating to the hazardous waste management system; authorizing the Department of
8 Environmental Protection to promulgate a legislative rule relating to the ambient air quality
9 standards; authorizing the Department of Environmental Protection to promulgate a
10 legislative rule relating to the standards of performance for new stationary sources;
11 authorizing the Department of Environmental Protection to promulgate a legislative rule
12 relating to the control of air pollution from hazardous waste treatment, storage, and
13 disposal facilities; authorizing the Department of Environmental Protection to promulgate a
14 legislative rule relating to the emissions standards for hazardous air pollutants; authorizing
15 the Department of Environmental Protection to promulgate a legislative rule relating to the
16 requirements governing water quality standards; authorizing the Department of
17 Environmental Protection to promulgate a legislative rule relating to the underground
18 injection control; authorizing the Department of Environmental Protection to promulgate a
19 legislative rule relating to the water pollution control permit fee schedules; and directing the
20 Department of Environmental Protection to amend a legislative rule relating to the National
21 Pollutant Discharge Elimination System (NPDES) Program.

Be it enacted by the Legislature of West Virginia:

**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 August 28, 2024, authorized under
2 the authority of §22-18-6 of this code, relating to the Department of Environmental Protection
3 (hazardous waste management system, [33 CSR 20](#)), is authorized.

4 (b) The legislative rule filed in the State Register on August 23, 2024, authorized under
5 the authority of §22-5-4 of this code, relating to the Department of Environmental Protection
6 (ambient air quality standards, [45 CSR 08](#)), is authorized.

7 (c) The legislative rule filed in the State Register on August 23, 2024, authorized under
8 the authority of §22-5-4 of this code, relating to the Department of Environmental Protection
9 (standards of performance for new stationary sources, [45 CSR 16](#)), is authorized.

10 (d) The legislative rule filed in the State Register on August 23, 2024, authorized under
11 the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to
12 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
13 Register on November 18, 2024, relating to the Department of Environmental Protection (control
14 of air pollution from hazardous waste treatment, storage, and disposal facilities, [45 CSR 25](#)), is
15 authorized.

16 (e) The legislative rule filed in the State Register on August 23, 2024, authorized under
17 the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to
18 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
19 Register on November 18, 2024, relating to the Department of Environmental Protection (emission
20 standards for hazardous air pollutants, [45 CSR 34](#)), is authorized.

21 (f) The legislative rule filed in the State Register on August 29, 2024, authorized under
22 the authority of §22-11-4 of this code, modified by the Department of Environmental Protection to
23 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
24 Register on November 21, 2024, relating to the Department of Environmental Protection
25 (requirements governing water quality standards, [47 CSR 02](#)), is authorized with the amendments
26 set forth below:

On page 8, following subdivision 6.2.4. by adding a new subdivision designated 6.2.5. to read as follows:

6.2.5. Category A is a non-101(a)(2) use designation as defined by EPA Water Quality Standards 40 CFR 131.3(q) which can be considered for removal based on submitted documentation demonstrating surface waters are without the capacity or are of limited capacity to reliably and continually support the public water supply use.

6.2.5.a. A use and value demonstration to remove this use must supply sufficient information to support the conditions identified in sections 6.1.2.b or 6.1.2.c. Key additional information to be included is confirmation that the public water supply is not an existing use (e.g., there is no evidence that the water body is used for this purpose); the nearby population uses an alternative drinking water supply; and the current supply is sufficient to accommodate reasonably anticipated future growth.

6.2.5.b. Although a use and value demonstration does not require an evaluation of factors affecting attainability, a use attainability analysis (UAA) as required for federally protected uses may be submitted for consideration to determine Category A removal.

6.2.5.c. Removal of Category A must still be protective of downstream uses consistent with CWA Section 303(c)(2)(a).

6.2.5.d. Any Category A use removal proposed in accordance with this subsection will be subject to a 45 day public comment period and a public hearing and submitted to EPA for approval. Upon U.S. EPA approval, the removal will become effective for permitting and compliance purposes and added to the Department's Water Quality Standards website under Modifications to Water Quality Standards – Site Specific Criteria, and shall be promulgated as an emergency rule according to §29A-3-1 *et seq.* of this code;

And,

On page 43, by striking out all of subdivision 8.13.1. and inserting in lieu thereof a new subdivision 8.13.1. to read as follows:

8.13.1. Ohio River main stem (zone 1) – During the non-recreational season (November through April only) the maximum allowable level of fecal coliform for the Ohio River (either MPN or MF) shall not exceed 2000 /100 ml as a monthly geometric mean based on not less than 5 samples per month.

(g) The legislative rule filed in the State Register on April 5, 2024, authorized under the authority of §22-11-8 of this code, relating to the Department of Environmental Protection (underground injection control, 47 CSR 13), is authorized with the amendments set forth below:

On page 2, subdivision 1.2, immediately following the citation “W. Va. Code §22-11-8(B)(7)” by inserting the following: “and §22-11B-3”;

On page 41, by striking out all of subdivision 12.4.1. and inserting in lieu thereof a new subdivision 12.4.1. to read as follows:

12.4.1. Certain Class 5 wells may be authorized by rule pursuant to subsection 14.2. unless the Director requires an individual permit.;

On page 59, by striking out all of paragraph 14.2.1.b. and renumbering the remaining paragraph.;

And,

On page 82, by striking out the entirety of 14.13. and inserting in lieu thereof a new subsection 14.13. to read as follows:

14.13. Duration of Permits. UIC permits for Class 1 and 5 wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class 2 and 3 wells shall be issued for a period up to the operating life of the facility. UIC permits for Class 6 wells shall be issued for the operating life of the facility and the post-injection site care period. The Director shall review each issued Class 2, 3, and 6 well UIC permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated or a minor modification made.

(h) The legislative rule filed in the State Register on August 29, 2024, authorized under the authority of §22-11-10 of this code, modified by the Department of Environmental Protection to

79 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
80 Register on November 21, 2024, relating to the Department of Environmental Protection (water
81 pollution control permit fee schedules, [47 CSR 26](#)), is authorized.

82 (i) The Legislature directs the Department of Environmental Protection to amend the
83 legislative rule filed in the State Register on May 1, 2012, authorized under the authority of §22-11-
84 4 of this code, relating to the Department of Environmental Protection (National Pollutant
85 Discharge Elimination System (NPDES) Program, 47 CSR 10), with the amendments set forth
86 below:

87 On page 9, after paragraph 3.6.f.2. by adding a new subsection designated 3.7. to read as
88 follows:

89 3.7. It is the intention of the Director to re-issue permits before the termination of the
90 existing permit. Accordingly, absent agreement of the permittee to an alternative schedule, notice
91 of the draft permit and fact sheet shall be provided to the public in accordance with subdivision
92 10.1.d. and section 12 of this rule, no less than three months prior to the termination date, with final
93 permit re-issuance a month prior to permit termination: *Provided*, That an administratively
94 complete application is received 210 days prior to the expiration date of the permit.;

95 On page 30, after subdivision 7.9.c., by adding a new subsection designated 7.10. to read
96 as follows:

97 7.10. At the request of the permittee, the Director shall develop alternative permit limits and
98 conditions for alternative operating scenarios or conditions that are reasonably likely to occur and
99 are identified by the permit applicant.;

100 On page 33, by striking out all of paragraph 9.2.b.1. and inserting in lieu thereof a new
101 paragraph 9.2.b.1. to read as follows:

102 9.2.b.1. Alterations. There are material and substantial alterations or additions to the
103 permitted facility or activity that justify the application of permit conditions that are different or
104 absent in the existing permit, including the acceptance of wastes from an indirect discharger

pursuant to section 14 of this rule. Alterations or additions to a facility's equipment or activities that do not result in the discharge of a new pollutant, or in concentrations or amounts that are greater than allowed in the permit, are not material or substantial and do not require modification.;

On page 36, after subdivision 9.5.k., by adding a new subsection designated 9.6. to read as follows:

9.6. Permits that have exceeded their stated term and have been extended pending re-issuance may be modified in accordance with this section.;

And,

On page 37, after subdivision 10.1.d., by inserting a new subdivision designated 10.1.e. to read as follows:

10.1.e. All draft permits and fact sheets for individual NPDES permits shall be made available to the permittee at least 10 business days prior to being publicly noticed in accordance with subsection 3.7 of this rule, unless such opportunity for review is expressly waived by the permittee. The Director or the Director's designee shall meet with any permittee to discuss the draft permit at the request of the permittee before issuing the draft permit.