

SB 0287

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Com. Sub. For Com. Sub. For

SENATE BILL NO. 287

(By Senators WOODEN & LOVE)



PASSED MARCH 11, 1995

In Effect 20 DAYS FROM Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 287

(SENATORS WOOTON AND LOVE, *original sponsors*)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article three, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to environmental quality board rule-making authority; authorizing the promulgation of procedural rules granting site specific variances for water quality standards for coal remining operations; providing minimum requirements for procedures for granting variances; granting variance without requirement of best available technology and best professional judgment prohibited; granting variance without demonstration of potential for improvement prohibited; and granting variance if degradation will result prohibited.

Be it enacted by the Legislature of West Virginia:

That section four, article three, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-4. Environmental quality board rule-making authority.

1 (a) In order to carry out the purposes of this chapter
2 and chapter twenty-two of this code, the board shall
3 promulgate legislative rules setting standards of water
4 quality applicable to both the surface waters and
5 groundwaters of this state. Standards of quality with
6 respect to surface waters shall be such as to protect the
7 public health and welfare, wildlife, fish and aquatic life,
8 and the present and prospective future uses of such
9 water for domestic, agricultural, industrial, recreational,
10 scenic and other legitimate beneficial uses thereof.

11 (b) Except for the alternate procedures provided for in
12 subsection (c) of this section, the board shall promulgate
13 legislative rules setting water quality standards in
14 accordance with the provisions of article three, chapter
15 twenty-nine-a of this code and the declaration of policy
16 set forth in section two, article eleven, chapter twenty-
17 two of this code.

18 (c) The board may grant site specific variance only for
19 remined areas of coal remining operation from the
20 standards of water quality set forth in legislative rule
21 46-CSR-1, et seq., setting standards for iron manganese
22 and pH prior to the issuance of a national pollutant
23 discharge elimination system (NPDES) permit by the
24 division of environmental protection in accordance with
25 33 USC Section 1311(p) of the federal Water Pollution
26 Control Act. The standards established in the variance
27 will exist for the term of the NPDES permit. The board
28 will promulgate procedural rules on granting site
29 specific coal remining variances in accordance with the
30 provisions of article three, chapter twenty-nine-a of this
31 code on or before the first day of July, one thousand nine

32 hundred ninety-five. At a minimum, the procedures for
33 granting or denying a remining variance will include the
34 following: A description of the data and information to
35 be submitted to the board by the applicant for such
36 variance; the criteria to be employed by the board in its
37 decision; and provisions for a public comment period and
38 public hearing prior to the board's decision. The board
39 may not grant a variance without requiring the applicant
40 to improve the instream water quality as much as is
41 reasonably possible by applying best available technol-
42 ogy economically achievable using best professional
43 judgment which requirement will be included as a
44 permit condition. The board may not grant a variance
45 without a demonstration by the applicant that the coal
46 remining operation will result in the potential for
47 improved instream water quality as a result of the
48 remining operation. The board may not grant a variance
49 where the board determines that degradation of the
50 instream water quality will result from the remining
51 operation.

52 (d) No rule of the board may specify the design of
53 equipment, type of construction or particular method
54 which a person shall use to reduce the discharge of a
55 pollutant.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rocky Schorover
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David E. Brown
.....
Clerk of the Senate

Donald L. Kepp
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Paul Abner
.....
Speaker House of Delegates

The within *is approved* this the *24th*
day of *March*, 1995.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/23/95

Time

3:46 pm