WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED
Com. Sub. for Com. Sub. for
SENATE BILL NO. 287

(By Senator Wood & Love)

PASSED March 11, 1995
In Effect 90 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.

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

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

(c) The board may grant site specific variance only for remined areas of coal remining operation from the standards of water quality set forth in legislative rule 46-CSR-1, et seq., setting standards for iron manganese and pH prior to the issuance of a national pollutant discharge elimination system (NPDES) permit by the division of environmental protection in accordance with 33 USC Section 1311(p) of the federal Water Pollution Control Act. The standards established in the variance will exist for the term of the NPDES permit. The board will promulgate procedural rules on granting site specific coal remining variances in accordance with the provisions of article three, chapter twenty-nine-a of this code on or before the first day of July, one thousand nine
hundred ninety-five. At a minimum, the procedures for granting or denying a remining variance will include the following: A description of the data and information to be submitted to the board by the applicant for such variance; the criteria to be employed by the board in its decision; and provisions for a public comment period and public hearing prior to the board's decision. The board may not grant a variance without requiring the applicant to improve the instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment which requirement will be included as a permit condition. The board may not grant a variance without a demonstration by the applicant that the coal remining operation will result in the potential for improved instream water quality as a result of the remining operation. The board may not grant a variance where the board determines that degradation of the instream water quality will result from the remining operation.

(d) No rule of the board may specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor