WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

HOUSE BILL No. 2333

Douglas, Hunt, Compton,
Faircloth, Linch and Riggs

Passed April 12, 1997

In Effect From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2333

(BY DELEGATES DOUGLAS, HUNT, COMPTON, FAIRCLOTH, LINCH AND RIGGS)

[Passed April 12, 1997; in effect from passage.]

AN ACT to amend and reenact article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the division of environmental protection and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by the division of environmental protection; authorizing the division of environmental protection to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing the division of environmental protection to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing the division of environmental protection to promulgate a legislative rule; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR Part 60; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the under-
ground storage tank insurance trust fund; authorizing the division of environmental protection to promulgate a legislative rule relating to WV/NPDES regulations for coal mining facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to confidential information; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule amending a current legislative rule relating to the prevention and control of particulate air pollution from manufacturing process operations; and authorizing the division of environmental protection to promulgate an amendment to a legislative rule relating to yard waste composting.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULE.

§64-3-1. Division of environmental protection.

(a) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, relating to the division of environmental protection (hazardous waste management, 33 CSR 20), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four,
article five, chapter twenty-two of this code, relating to the
division of environmental protection (standards of
performance for new stationary sources pursuant to 40
CFR Part 60, 45 CSR 16), is authorized.

(c) The legislative rule filed in the state register on the
twenty-ninth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section four,
article five, chapter twenty-two of this code, relating to the
division of environmental protection (emission standards
for hazardous air pollutants pursuant to 40 CFR Part 63,
45 CSR 34), is authorized.

(d) The legislative rule filed in the state register on the
twenty-eighth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section six,
article seventeen, chapter twenty-two of this code,
modified by the division of environmental protection to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-
second day of October, one thousand nine hundred
ninety-six, relating to the division of environmental
protection (underground storage tank insurance trust
fund, 33 CSR 32), is authorized.

(e) The legislative rule filed in the state register on the
twenty-ninth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section three,
article one, chapter twenty-two of this code, modified by
the division of environmental protection to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the twentieth day of
December, one thousand nine hundred ninety-six, relating
to the division of environmental protection (WV/NPDES
regulations for coal mining facilities, 47 CSR 30), is
authorized.

(f) The legislative rule filed in the state register on the
thirtieth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section four,
article three, chapter twenty-two of this code, modified by
the division of environmental protection to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the twenty-first day of
February, one thousand nine hundred ninety-seven, relating to the division of environmental protection (surface mining and reclamation regulations, 38 CSR 2), is authorized, with the following amendments:

“On page three, subsection 2.4, by striking out the words "Coal seams commonly associated with such minerals may include, but are not limited to Waynesburg, Washington, Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and Stockton Lewiston";

On page three, subsection 2.4, line eight, by striking out the words "these seams are", and inserting in lieu thereof the words "the seam is";

On page nine, subsection 2.43, line two, after the word "highwall", by inserting the words "except in operations where the entire upper horizon above the lowest coal seam is proposed to be partly or entirely removed";

On page sixteen, subsection 2.95, line seven after the word "any", by inserting the word "substantial";

On page eighteen, subsection 2.108, line two, after the word "stream." by adding the following: Examples include wildlife ponds, settling basins and all ponds and facilities or structures used for water treatment.;

On page nineteen, subsection 2.120, line three, by striking the word "or" and inserting in lieu thereof the word "and";

On page twenty-nine, subsection 3.2.e., after the word "period" by striking the remainder of the subdivision 3.2.e.;

On page forty-nine, subsection 3.14.b.7., by striking the entire paragraph;

On page forty-nine, subsection 3.14.b.8., by striking the entire paragraph;

On page forty-nine, by renumbering the remaining paragraphs;
On page fifty-one, subparagraph 3.14.b.14E, line one, before the word “A”, by inserting the words “If requested by the Director”;

On page fifty-one, subsection 3.14.b.15.B., by striking the entire subparagraph, and inserting in lieu thereof the following: 3.14.b.15.B. Surface water must be diverted around or over the material by properly designed and stabilized diversion channels which have been designed using the best current technology to provide protection to the environment or the health, welfare and safety of the public. The channel shall be designed and constructed to ensure stability of the remaining material, control erosion, and minimize water infiltration into the remaining material.

On page seventy-two, subdivision 3.29.a, line five after the word “IBR”, by inserting the words “or where it has been demonstrated to the satisfaction of the Director that limited coal removal on areas immediately adjacent to the existing permit is the only practical alternative to recovery of unanticipated reserves or necessary to enhance reclamation efforts or environmental protection”;

On page eighty-six, by inserting a new subsection 3.35 to read as follows: 3.35. All grade measurements and linear measurements in this rule shall be subject to a tolerance of two percent (2%). All angles in this rule shall be measured from the horizontal and shall be subject to a tolerance of five percent (5%). Provided, however, this allowable deviation from the approved plan does not affect storage capacity and/or performance standards.

On page one hundred eight, subdivision 5.5.c., line two, after the word “landowner”, by striking the remainder of the paragraph and inserting in lieu thereof the words “requesting the permanent structures be left for recreational or wildlife propagation purposes or for any beneficial uses to the landowner”;

On page one hundred twelve, subdivision 6.5.a., line five, after the word “Sunday.” by adding the following: Provided, however, the Director may grant approval of a request for Sunday blasting if the operator demonstrates
to the satisfaction of the Director that the blasting is necessary and there has been an opportunity for a public hearing.

On page one hundred twenty-six, paragraph 9.2.i.2, after the word “achieved” by inserting: An alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetation species.

On page one hundred thirty, paragraph 9.3.h.1., by striking out the paragraph in its entirety, and inserting in lieu thereof: 9.3.h.1. The minimum stocking rate of commercial tree species shall be in accordance with the approved forest management plan prepared by a registered professional forester. In no case may the rate be less than four hundred fifty (450) stems per acre of commercial tree species;

On page one hundred thirty, paragraph 9.3.h.2., by striking out the paragraph in its entirety, and by renumbering the subsequent paragraphs;

On page one hundred thirty, in renumbered paragraph 9.3.h.2., after the word “than”, by striking out the words “four hundred fifty (450)”, and inserting in lieu thereof “three hundred (300);”

On page one hundred thirty, in renumbered paragraph 9.3.h.2., after the word “acre”, by inserting the words “or the rate specified in the forest management plan, whichever is greater,”;

On page two hundred twenty-two, subdivision 14.11.e, line 6, by striking out the word “operable” and by inserting in lieu thereof “such condition that operations could be resumed within sixty (60) days”;

On page two hundred twenty-three, subdivision 14.11.f., line four, by striking out the word “operative”, and by inserting in lieu thereof the words “such condition that the operations could be resumed within sixty (60) days”;
On page two hundred twenty-three, subdivision 14.11.f., line four, after the word “is”, by inserting the words “protected from unauthorized entry”;

On page two hundred thirty-eight, subparagraph 14.15.b.6.A., line five, after the word “exceed”, by striking out the words “fifty (50) percent of the total permit acreage, or four hundred (400) acres, whichever is less, on operations which consist of at least three spreads of equipment”, and inserting in lieu thereof the words “five hundred (500) acres on operations which consist of multiple spreads of equipment”;

On page two hundred thirty-nine, subsection 14.15.c., line three, after the word “regraded”, by inserting the words “and stabilized”;

On page two hundred thirty-nine, subsection 14.15.c., line four, after the word “plan”, by striking out the “comma” and the remainder of the subparagraph, and inserting in lieu thereof the words: The following shall not be included in the calculation of disturbed area.;

On page two hundred forty, paragraph 14.15.c.2., line seven, after the word “benches”, by inserting the words “without regard to like thickness”;

On page two hundred forty, paragraph 14.15.c.5, line two, after the word “graded”, by inserting the words “with material placed in a stable, controlled manner which will not subsequently be moved”;

(g) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section ten, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, one thousand nine hundred ninety-six, relating to the division of environmental protection (confidential information, 45 CSR 31), is authorized.

(h) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred ninety-seven, relating to the division of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(i) The legislative rule filed in the state register on the fifth day of February, one thousand nine hundred ninety-seven, authorized under the authority of section three, article twenty-two, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of February, one thousand nine hundred ninety-seven, relating to the division of environmental protection (voluntary remediation and redevelopment, 60 CSR 3), is authorized.

(j) That title sixty, series one of the code of state rules be amended by deleting the current interpretative rule for the office of environmental advocate and inserting in lieu thereof the following legislative rule, to read as follows:

§61-10-1. General.

1.1. Scope. - This legislative rule governs and controls the appointment and qualifications of the position of Environmental Advocate within the Division of Environmental Protection.

1.2. Authority - West Virginia Code §22-1-3, 22-1-3a, 22-20.

1.3. Filing Date -

1.4. Effective Date - July 1, 1997.


2.1. Appointment. - The position of Environmental Advocate will be a full-time position, will be appointed by the Director, and will serve at the will and pleasure of the
Director of the Division of Environmental Protection in accordance with the West Virginia Code §22-20-1.

2.2. Salary. - The salary of the position of Environmental Advocate will be set by the Director and is subject to future adjustments at the discretion of the Director.

2.3. Qualifications. - The Director will receive or solicit applications for the position of Environmental Advocate from persons having the following minimum qualifications:

2.3.a. A citizen and resident of the State of West Virginia.

2.3.b. A graduate from an accredited college or university with a four-year degree in a field of study directly related to the qualifications, powers, and duties of the position as set forth by the director.

2.3.c. A minimum of two years full-time or cumulative experience in work directly related to environmental protection, or other public service work or experience which demonstrates the ability to carry out the powers and duties of the position as set forth by the director.

2.3.d. A working familiarity with some of the legal requirements and programmatic functions of the Division of Environmental Protection.

2.3.e. A demonstrated ability to skillfully verbally and by writing communicate in a public forum.

2.3.f. A demonstrated ability to use word processing software for a computer and other necessary computer skills as determined by the director.

2.3.g. A valid West Virginia driver’s license.

§61-10-3. Powers and Limitations - The Environmental Advocate will carry out the duties of the position as set forth in this rule, and as prescribed by the Director in accordance with the following:
3.1. The Environmental Advocate will be guided in all actions by the policy statement and the nine purposes set forth in West Virginia Code §22-1-1 (b).

3.2. The Environmental Advocate may not in any official capacity represent any person in, or file on behalf of any person, legal or quasi-legal actions, either in support of or opposed to the Division of Environmental Protection without the expressed approval of the Director, and under supervision of the Division of Environmental Protection’s General Counsel.

3.3. The Environmental Advocate may not in any official capacity organize public campaigns in support of, or in opposition to official positions taken by the Division of Environmental Protection on environmental matters, and will not in any official capacity actively participate in any such organized campaign.”

(k) The director of the division of environmental protection is hereby authorized to propose for promulgation an emergency rule to amend a current legislative rule relating to monitoring of air quality (to prevent and control particulate air pollution from manufacturing process operation, 45 CSR 7).

(l) The legislative rule filed in the state register on the eighteenth day of March, one thousand nine hundred ninety-seven, relating to the division of environmental protection (yard waste composting, 47 CSR 38E) is authorized.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of May, 1997.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/23/97
Time 2:05 PM