ENROLLED

House Bill No. 3240

(By Delegates Mahan, Manuel, Amores, Wills, Smirl, Givens and Hrutkay)

Passed April 14, 2001

In Effect from Passage
AN ACT to amend article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b; and to amend and reenact section four, article three, chapter twenty-two-b of said code, all relating to moving rulemaking authority for the antidegradation implementation procedures from the environmental quality board to the director of the bureau of environment; and granting emergency and legislative rulemaking authority.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b; and that section four, article three, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:
CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Implementation of antidegradation procedures.

(a) The director of the bureau of the environment shall establish the antidegradation implementation procedures as required by 40 C.F.R. 131.12(a) which apply to regulated activities that have the potential to affect water quality. The director shall propose for legislative approval pursuant to article three, chapter twenty-nine-a of the code, emergency and legislative rules to establish implementation procedures which include specifics of the review depending upon the existing uses of the water body segment that would be affected, the level of protection “tier” assigned to the applicable water body segment, the nature of the activity, and the extent to which existing water quality would be degraded.

(b) The legislative rule filed by the environmental quality board as 46 CSR 1 in the state register on the first day of September, two thousand, authorized under the authority of section four, article three, chapter twenty-two-b, of this code, as amended by the legislature during the two thousand one legislative session, establishes standards of water quality for waters of the state. Appendices F, F-1, F-2 and F-3 of the rule contain the antidegradation implementation procedures for the State. The authority and responsibility to develop and implement antidegradation procedures for West Virginia is, effective the first day of July, two thousand one, transferred from the environmental quality board to the director. The provisions of Appendices F, F-1, F-2 and F-3 shall remain in full force and effect as if promulgated by the director until such time as the director files the rules authorized herein. The initial rule filed by the director shall contain the same provisions as Appendices F, F-1, F-2 and F-3, 46 CSR 1 approved by the legislature during the two thousand one regular session. Notwithstanding any provision of the code to the contrary, the initial rule filed by the director shall be effective from filing.
CHAPTER 22B. ENVIRONMENTAL BOARDS.

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: Provided, That the director of the bureau of environment shall establish the antidegradation implementation procedures which apply to regulated activities that have the potential to affect water quality, pursuant to section seven-b, article eleven of chapter twenty two of this code.

(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 equip-
ment, 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

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

In effect from passage.

[Signature]

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

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President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within is approved this the 1st day of January, 2001.

[Signature]

Governor