

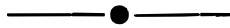
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WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 4163

(By Delegates Mahan, Wills, Cann,  
Kominar, Faircloth and Riggs)



Passed March 9, 2002

In Effect from Passage

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WEST VIRGINIA  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

## H. B. 4163

(BY DELEGATES MAHAN, WILLS, CANN,  
KOMINAR, FAIRCLOTH AND RIGGS)

[Passed March 9, 2002; 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, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to

and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing department of environmental protection to promulgate legislative rule relating to ambient air quality standards for sulfur oxides and particulate matter; authorizing department of environmental protection to promulgate legislative rule relating to ambient air quality standards for carbon monoxide and ozone; authorizing department of environmental protection to promulgate legislative rule relating to emission standards for hazardous air pollutants; authorizing department of environmental protection to promulgate legislative rule relating to standard of performance for new stationary sources; authorizing department of environmental protection to promulgate legislative rule relating to prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing department of environmental protection to promulgate legislative rule relating to acid rain provisions and permits; authorizing department of environmental protection to promulgate legislative rule relating to nitrogen oxide budget trading program as means of control and reduction of nitrogen oxides; authorizing department of environmental protection to promulgate legislative rule relating to prevention and control of emissions from commercial and industrial solid waste incineration units; authorizing department of environmental protection to promulgate legislative rule relating to nitrogen oxide budget trading program as means of control and reduction of nitrogen oxides from electric generating units; authorizing department of environmental protection to promulgate legislative rule relating to emission standards for hazardous air pollutants for source categories; authorizing department of environmental protection to promulgate legislative rule relating to awarding West Virginia stream partners program grants; authorizing department of environmental protection to promulgate legislative rule relating to voluntary remediation and redevelopment; authorizing department of environmental protection to promulgate legislative rule relating to surface

mining and reclamation; authorizing department of environmental protection to promulgate legislative rule relating to coal-related dam safety; authorizing department of environmental protection to promulgate legislative rule relating to hazardous waste management; authorizing department of environmental protection to promulgate legislative rule relating to administrative proceedings and civil penalty assessment; authorizing department of environmental protection to promulgate legislative rule relating to state certification of activities requiring federal licenses and permits; authorizing department of environmental protection to promulgate legislative rule relating to underground injection control; authorizing department of environmental protection to promulgate legislative rule relating to groundwater protection standards at Dominion "Generation" steam electric generation facility at Mount Storm, West Virginia; authorizing department of environmental protection to promulgate legislative rule relating to WVNPDES rules for coal mining facilities; authorizing environmental quality board to promulgate legislative rule relating to requirements governing water quality standards; authorizing environmental quality board to promulgate legislative rule relating to requirements governing groundwater standards; and authorizing solid waste management board to promulgate legislative rule relating to disbursement of grants to solid waste authorities.

*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, all to read as follows:

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENT  
TO PROMULGATE LEGISLATIVE RULES.**

**§64-3-1. Department of environmental protection.**

- 1 (a) The legislative rule filed in the state register on the

2 twenty-seventh day of July, two thousand one, authorized under  
3 the authority of section four, article five, chapter twenty-two of  
4 this code, relating to the department of environmental protec-  
5 tion (ambient air quality standards for sulfur oxides and  
6 particulate matter, 45 CSR 8), is authorized.

7 (b) The legislative rule filed in the state register on the  
8 twenty-seventh day of July, two thousand one, authorized under  
9 the authority of section four, article five, chapter twenty-two of  
10 this code, relating to the department of environmental protec-  
11 tion (ambient air quality standards for carbon monoxide and  
12 ozone, 45 CSR 9), is authorized.

13 (c) The legislative rule filed in the state register on the  
14 twenty-seventh day of July, two thousand one, authorized under  
15 the authority of section four, article five, chapter twenty-two of  
16 this code, relating to the department of environmental protec-  
17 tion (emission standards for hazardous air pollutants pursuant  
18 to 40 CFR Part 61, 45 CSR 15), is authorized.

19 (d) The legislative rule filed in the state register on the  
20 twenty-seventh day of July, two thousand one, authorized under  
21 the authority of section four, article five, chapter twenty-two of  
22 this code, relating to the department of environmental protec-  
23 tion (standards of performance for new stationary sources  
24 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

25 (e) The legislative rule filed in the state register on the  
26 twenty-seventh day of July, two thousand one, authorized under  
27 the authority of section four, article five, chapter twenty-two of  
28 this code, relating to the department of environmental protec-  
29 tion (to prevent and control air pollution from hazardous waste  
30 treatment, storage or disposal facilities, 45 CSR 25), is autho-  
31 rized.

32 (f) The legislative rule filed in the state register on the  
33 twenty-seventh day of July, two thousand one, authorized under

34 the authority of section four, article five, chapter twenty-two of  
35 this code, relating to the department of environmental protec-  
36 tion (acid rain provisions and permits, 45 CSR 33), is autho-  
37 rized.

38 (g) The legislative rule filed in the state register on the  
39 twenty-seventh day of July, two thousand one, authorized under  
40 the authority of section four, article five, chapter twenty-two of  
41 this code, modified by the department of environmental  
42 protection to meet the objections of the legislative rule-making  
43 review committee and refiled in the state register on the twenty-  
44 eighth day of November, two thousand one, relating to the  
45 department of environmental protection (NOx budget trading  
46 program as a means of control and reduction of nitrogen oxides,  
47 45 CSR 1), is authorized.

48 (h) The legislative rule filed in the state register on the  
49 twenty-seventh day of July, two thousand one, authorized under  
50 the authority of section four, article five, chapter twenty-two of  
51 this code, modified by the department of environmental  
52 protection to meet the objections of the legislative rule-making  
53 review committee and refiled in the state register on the twenty-  
54 sixth day of December, two thousand one, relating to the  
55 department of environmental protection (to prevent and control  
56 emissions from commercial and industrial solid waste incinera-  
57 tion units, 45 CSR 18), is authorized.

58 (i) The legislative rule filed in the state register on the  
59 twenty-seventh day of July, two thousand one, authorized under  
60 the authority of section four, article five, chapter twenty-two of  
61 this code, modified by the department of environmental  
62 protection to meet the objections of the legislative rule-making  
63 review committee and refiled in the state register on the twenty-  
64 eighth day of November, two thousand one, relating to the  
65 department of environmental protection (NOx budget trading  
66 program as a means of control and reduction of nitrogen oxides

67 from electric generating units, 45 CSR 26), is authorized with  
68 the following amendments:

69 On page sixteen, subsection 40.1, by striking out the words  
70 “37,125 tons” and inserting in lieu thereof the words “the  
71 number of NOx tons apportioned to electric generating units in  
72 the State of West Virginia as set forth in paragraph (g)(2)(ii) of  
73 40 CFR §51.121, as amended from time to time,”;

74 On page eighteen, subsection 42.2, in the first sentence,  
75 after the words “a total number of NOx allowances equal to,”  
76 by striking out the remainder of the sentence and by inserting  
77 in lieu thereof the words “95 percent of the portion of the state  
78 NOx trading program budget under section 40, covering such  
79 units.”;

80 On page eighteen, subdivision 42.2.b, by striking out  
81 subdivision 42.2.b in its entirety and inserting in lieu thereof a  
82 new subdivision 42.2.b to read as follows:

83 “42.2.b. If the initial total number of NOx allowances  
84 allocated to all NOx Budget units under subsection 4.1. for an  
85 ozone season under subdivision 42.2.a. does not equal 95  
86 percent of the portion of the state NOx trading program budget  
87 under section 40, covering such units, the Secretary will adjust  
88 the total number of NOx allowances allocated to all such NOx  
89 Budget units for the ozone season under subdivision 42.2.a. so  
90 that the total number of NOx allowances allocated equals 95  
91 percent of the portion of the state NOx trading program budget  
92 under section 40, covering such units. This adjustment will be  
93 made by multiplying each unit’s allocation by 95 percent of the  
94 portion of the state NOx trading program budget under section  
95 40, covering such units; dividing by the total number of NOx  
96 allowances allocated under subdivision 42.2.a. for the ozone  
97 season; and rounding to the nearest whole number of NOx  
98 allowances as appropriate.”

99           On page eighteen, subdivision 42.4.a, by striking out the  
100 number “5,833” and inserting in lieu thereof the words “5  
101 percent of the”;

102           And,

103           On page twenty, subsection 42.6, in the definition of the  
104 term “State NOx trading program budget excluding allocation  
105 set-aside,” by striking out the words “less the allocation set-  
106 aside set forth in subdivision 42.4.a” and inserting in lieu  
107 thereof the words “multiplied by 95 percent,”.

108           (j) The legislative rule filed in the state register on the  
109 twenty-seventh day of July, two thousand one, authorized under  
110 the authority of section four, article five, chapter twenty-two of  
111 this code, modified by the department of environmental  
112 protection to meet the objections of the legislative rule-making  
113 review committee and refiled in the state register on the twenty-  
114 sixth day of December, two thousand one, relating to the  
115 department of environmental protection (emission standards for  
116 hazardous air pollutants for source categories pursuant to 40  
117 CFR Part 63, 45 CSR 34), is authorized.

118           (k) The legislative rule filed in the state register on the  
119 twenty-fourth day of July, two thousand one, authorized under  
120 the authority of section four, article thirteen, chapter twenty of  
121 this code, relating to the department of environmental protec-  
122 tion (awarding of the West Virginia stream partners program  
123 grant, 60 CSR 4), is authorized.

124           (l) The legislative rule filed in the state register on the  
125 twenty-sixth day of July, two thousand one, authorized under  
126 the authority of section three, article twenty-two, chapter  
127 twenty-two of this code, modified by the department of  
128 environmental protection to meet the objections of the legisla-  
129 tive rule-making review committee and refiled in the state



130 register on the twenty-first day of November, two thousand one,  
131 relating to the department of environmental protection (volun-  
132 tary remediation and redevelopment, 60 CSR 3), is authorized  
133 with the following amendment:

134 On page forty-six, section 9.2.a. after the words “to the  
135 satisfaction of the” by striking out the word “director” and  
136 inserting in lieu thereof the word “secretary”.

137 (m) The legislative rule filed in the state register on the  
138 twenty-fourth day of July, two thousand one, authorized under  
139 the authority of sections four and twelve, article three, chapter  
140 twenty-two of this code, modified by the department of  
141 environmental protection to meet the objections of the legisla-  
142 tive rule-making review committee and refiled in the state  
143 register on the sixteenth day of January, two thousand two,  
144 relating to the department of environmental protection (surface  
145 mining and reclamation rule, 38 CSR 2), is authorized with the  
146 following amendments:

147 On page one hundred sixty-nine, at the beginning of the  
148 second paragraph of subdivision 14.15.a. by designating the  
149 second paragraph as 14.15.a.1. and the third paragraph as  
150 14.15.a.2.;

151 On page one hundred sixty-nine, newly designated para-  
152 graph 14.15.a.2., by striking out the word “Incorporate” and by  
153 inserting in lieu thereof “All permit applications shall incorpo-  
154 rate”;

155 On page one hundred seventy, paragraph 14.15.b.5. at the  
156 end of the paragraph by adding the following: “Regardless of  
157 the allowable limits contained in this section, any disturbed area  
158 other than those specified in subdivision 14.15.c. of this rule  
159 must complete backfilling and rough grading within 180 days  
160 of final mineral removal.”;

161 On page one hundred seventy, at the end of subparagraph  
162 14.15.b.6.A. by adding the following: “Where operations  
163 contemplated under this section are approved with incidental  
164 contour mining, which may include augering or highwall  
165 mining, the acreage must be calculated in the allowable  
166 disturbance authorized in this paragraph. The incidental contour  
167 pit length cannot exceed 3000 feet and backfilling/grading shall  
168 follow mineral removal within 180 days. Regardless of the  
169 allowable limits contained in section fourteen of this rule, any  
170 disturbed area other than those specified in subdivision 14.15.c.  
171 of this rule must complete backfilling and rough grading within  
172 180 days of final mineral removal. Operations required to  
173 comply with AOC+ guidelines or approved specific post-  
174 mining land use requirements must complete backfilling and  
175 rough grading within 270 days of final mineral removal unless  
176 a waiver is otherwise granted by the Secretary pursuant to this  
177 section.”;

178 On page one hundred seventy one, by striking out part  
179 14.15.b.6.B.1. in its entirety and inserting in lieu thereof a new  
180 part 14.15.b.6.B.1. to read as follows:

181 “14.15.b.6.B.1. Pre-stripping or benching operations cannot  
182 exceed four hundred (400) acres for any single permit and  
183 cannot precede dragline operations more than twenty-four (24)  
184 months unless otherwise approved by the Secretary or neces-  
185 sary to satisfy AOC+ requirements, specific post-mining land  
186 use requirements or special materials handling facilities  
187 requirements. All fill construction must occur during this phase  
188 of operation and be conducted in accordance with subdivision  
189 14.15.d. of this rule.”;

190 On page one hundred seventy-one, at the end of subpara-  
191 graph 14.15.c.1. by adding the following: “*Provided*, That with  
192 the exception of permanent haulroads, drainage control systems  
193 and material handling facilities (including but are not limited to

194 such facilities as preparation plants, fixed coal stock-  
195 piles/transfer areas and commercial forestry topsoil areas) the  
196 total acreage of all other semi-permanent ancillary facilities  
197 cannot exceed ten percent of the total permit acreage.”;

198 On page one hundred seventy-one, at the end of paragraph  
199 14.15.c.3. by adding the words: “The Secretary may consider  
200 larger acreage for clearing operations where it can be demon-  
201 strated that it is necessary to comply with applicable National  
202 Environmental Policy Act requirements.”;

203 On page one hundred seventy one, by striking out subdivi-  
204 sion 14.15.d. in its entirety and inserting in lieu thereof a new  
205 subdivision 14.15.d. to read as follows:

206 “14.15.d. Excess Spoil Disposal Fills. All fills must be  
207 constructed contemporaneously and contiguously with that  
208 segment of the operation that contains the material that is  
209 designated to be placed in the fill. In addition to all other  
210 standards in effect, the following shall apply to excess spoil  
211 disposal fills.”;

212 On pages one hundred seventy-one and one hundred  
213 seventy-two, by striking out the second paragraph of subdivi-  
214 sion 14.15.d. in its entirety and inserting in lieu thereof a newly  
215 designated paragraph 14.15.d.1. to read as follows:

216 “14.15.d.1. All fills must be planned for continuous  
217 material placement until designed capacity is reached and  
218 cannot have a period of inactivity that exceeds 180 days unless  
219 otherwise approved by the secretary on a permit specific basis  
220 to accommodate AOC+, post-mining land use or special  
221 material handling situations.”;

222 On page one hundred seventy-two, by striking out the third  
223 paragraph of subdivision 14.15.d. in its entirety and inserting in

224 lieu thereof a newly designated paragraph 14.15.d.2. to read as  
225 follows:

226 “14.15.d.3. The areas where contour mining is proposed  
227 within the confines of the fill are not eligible for the exemption  
228 contained in 14.15.c.2.”;

229 On page one hundred seventy-two, by striking out the  
230 fourth paragraph of subdivision 14.15.d. in its entirety and  
231 inserting in lieu thereof a newly designated paragraph  
232 14.15.d.3. to read as follows:

233 “14.15.d.3. Operations that propose fills that are designed  
234 to use single lift top-down construction shall bond the proposed  
235 fill areas based upon the maximum amount per acre specified  
236 in WV Code § 22-3-12(c)(1).”;

237 On page one hundred seventy-two by inserting a newly  
238 designated subdivision 14.15.e. to read as follows:

239 “14.15.e. Applicability. Permit applications pending  
240 approval on the first day of January, two thousand three, shall  
241 within 120 days of permit approval have a mining and reclama-  
242 tion plan which is consistent with the criteria set forth in this  
243 subdivision. Permit applications which are submitted after the  
244 first day of January, two thousand three shall not be issued a  
245 permit without a mining and reclamation plan which is consis-  
246 tent with the criteria set forth in this subdivision.”;

247 On page one hundred seventy-one and one hundred  
248 seventy-two, by inserting a newly designated paragraph  
249 14.15.e.1. to read as follows:

250 “14.15.e.1. After the first day of January, two thousand  
251 three, the mining and reclamation plan for all active mining  
252 operations must be consistent with the applicable time criteria  
253 set forth in this paragraph. Where permit revisions area

254 necessary to satisfy this requirement, the revisions shall be  
255 prepared and submitted to the Secretary for approval within 180  
256 days. Full compliance with the revised mining and reclamation  
257 plan shall be accomplished within twelve (12) months from the  
258 date of the Secretary's approval.”;

259 On page one hundred seventy two, by inserting a newly  
260 designated paragraph 14.15.e.2. to read as follows:

261 “14.15.e.2. After the first day of January, two thousand  
262 three, the mining and reclamation plan for mining operations  
263 which have approved inactive status or when permits have been  
264 issued but the operation has not started must be consistent with  
265 the applicable time criteria of this paragraph. Where permit  
266 revisions are necessary to satisfy this requirement, the revisions  
267 shall be prepared and submitted to the Secretary for approval  
268 within 180 days. Full compliance with the revised mining and  
269 reclamation plan shall be accomplished within twelve (12)  
270 months from the date of the Secretary's approval.”;

271 On page one hundred seventy-two, by inserting a newly  
272 designated paragraph 14.15.e.3. to read as follows:

273 “14.15.e.3. The Secretary may consider contemporaneous  
274 reclamation plans on multiple permitted areas with contiguous  
275 areas of disturbance to ensure that contemporaneous reclama-  
276 tion is practiced on a total operational basis. In order to  
277 establish a method of orderly transition between operations,  
278 plans submitted on multiple permitted areas cannot add  
279 allowable disturbed areas in such a manner as to result in  
280 increased disturbed areas on a single operation unless a  
281 variance is obtained pursuant to subdivision 14.15.g.”;

282 And by renumbering the remainder of the section;

283 On page one hundred seventy-two, by striking out current  
284 subdivision 14.15.f. in its entirety and by inserting a newly

285 designated subdivision 14.15.g. in lieu thereof to read as  
286 follows:

287 “14.15.g. Variance - Permit Applications. The Secretary  
288 may grant approval of a mining and reclamation plan for a  
289 permit which seeks a variance to one or more of the standards  
290 set forth in this subsection, if on the basis of site specific  
291 conditions and sound scientific and/or engineering data, the  
292 applicant can demonstrate that compliance with one or more of  
293 these standards is not technologically or economically feasible.  
294 The Secretary shall make written findings in accordance with  
295 the applicable provisions of section 3.32 of this rule when  
296 granting or denying a request for variance under this section.”;

297 And by renumbering the remainder of this section;

298 On page one hundred seventy-two, newly designated  
299 paragraph 14.15.g.2., after the word “infeasible”, by adding a  
300 comma and the words “including a discussion and feasibility  
301 analysis of alternatives that were considered.”;

302 On page one hundred seventy-two, newly designated  
303 subdivision 14.15.h., after the word “subdivision”, by striking  
304 out “14.15.f.” and inserting in lieu thereof “14.15.g.”;

305 And,

306 On page one hundred seventy-two, by striking out subdivi-  
307 sion 14.15.i. in its entirety and inserting in lieu thereof, a new  
308 subdivision 14.15.i. to read as follows:

309 “14.15.i. Notwithstanding any provision of this rule to the  
310 contrary, revision of the mining and reclamation plan contained  
311 in a permit is required prior to any change in mining methods  
312 which would substantially affect the standards contained in this  
313 section.”

314 (n) The legislative rule filed in the state register on the  
315 twenty-fourth day of July, two thousand one, authorized under  
316 the authority of section four, article fourteen, chapter twenty-  
317 two of this code, modified by the department of environmental  
318 protection to meet the objections of the legislative rule-making  
319 review committee and refiled in the state register on the  
320 sixteenth day of January, two thousand two, relating to the  
321 department of environmental protection (coal related dam  
322 safety, 38 CSR 4), is authorized.

323 (o) The legislative rule filed in the state register on the  
324 twenty-fourth day of July, two thousand one, authorized under  
325 the authority of section six, article eighteen, chapter twenty-two  
326 of this code, modified by the department of environmental  
327 protection to meet the objections of the legislative rule-making  
328 review committee and refiled in the state register on the fifth  
329 day of December, two thousand one, relating to the department  
330 of environmental protection (hazardous waste management, 33  
331 CSR 20), is authorized.

332 (p) The legislative rule filed in the state register on the  
333 twenty-sixth day of July, two thousand one, authorized under  
334 the authority of section twenty-two, article eleven, chapter  
335 twenty-two of this code, modified by the department of  
336 environmental protection to meet the objections of the legisla-  
337 tive rule-making review committee and refiled in the state  
338 register on the thirtieth day of October, two thousand one,  
339 relating to the department of environmental protection (admin-  
340 istrative proceedings and civil penalty assessment, 47 CSR 1),  
341 is authorized.

342 (q) The legislative rule filed in the state register on the  
343 twenty-sixth day of July, two thousand one, authorized under  
344 the authority of section four, article eleven, chapter twenty-two  
345 of this code, modified by the department of environmental  
346 protection to meet the objections of the legislative rule-making

347 review committee and refiled in the state register on the  
348 eighteenth day of January, two thousand two, relating to the  
349 department of environmental protection (state certification of  
350 activities requiring federal licenses and permits, 47 CSR 5A),  
351 is authorized with the following amendments:

352       On page two, subsection 2.12, following the words “stream  
353 loss” by striking out the remainder of the sentence;

354       On page two, at the end of subsection 2.13 following the  
355 words “or longer” by inserting a comma and the following:  
356 “except for structures defined as temporary structures in this  
357 section.”;

358       On page two, following subsection 2.15 by adding a new  
359 subsection, to read as follows: “2.16 ‘Temporary Structure’  
360 means, for structures permitted under § 22-3-1 et seq., any  
361 structure which will be removed before or upon final bond  
362 release; for structures not permitted under § 22-3-1 et seq.,  
363 temporary structure means any structure which will be removed  
364 upon completion of the project.”;

365       On page three, subsection 4.1, by striking the word  
366 “General” and inserting in lieu thereof, the following: “Infor-  
367 mation contained within environmental processes and reviews  
368 such as environmental assessments, environmental impact  
369 statements and mining and reclamation plans, may be used to  
370 meet part or all of the requirements of this rule.”

371       And, by renumbering the following subsection;

372       On page four, by striking out subdivision 4.2.a. in its  
373 entirety; and, by renumbering the remainder of the subsection;

374       On page six, after the newly designated subdivision 4.2.e.  
375 by adding a new subdivision 4.2.f. to read as follows:



376       “4.2.f. This subsection is only applicable to activities that  
377 meet the definition of a surface mining operation as defined in  
378 WV Code §22-3-3. This information shall accompany the state  
379 401 water quality certification application:

380       4.2.f.1. A No Practical Alternative Demonstration. A  
381 demonstration containing, but not limited to, the following:

382       4.2.f.1.A. Demonstrate that there is not a practical alterna-  
383 tive in the Water of the U.S., including other alternatives that  
384 were considered but eliminated.

385       4.2.f.1.B. That treatment facilities will be located as close  
386 as practical to the source(s) with which it is associated.

387       4.2.f.1.C. Such activity will impact Waters of the U.S. no  
388 more than is necessary to accommodate its proper construction  
389 and operation.

390       4.2.f.1.D. Maps, plans, specification and design analyses for  
391 the preferred alternative to the project.

392       4.2.f.2 An Impact Analysis - a detailed analysis of the  
393 potential impacts, the extent applicable, of the proposed project  
394 on water quality and quantity, fish and wildlife, aquatic habitat,  
395 parks, recreation, in-stream and downstream uses.

396       4.2.f.3. A Biological Survey of the Stream. - Each applicant  
397 will follow established and accepted protocols for collection,  
398 analysis, documentation and presentation of biological data  
399 from Waters of the U.S., i.e., U.S. Environmental Protection  
400 Agency’s ‘Rapid Bioassessment Protocols for Use in Wadeable  
401 Streams and Rivers’. Station locations shall be located one (1)  
402 above the proposed activity, one (1) at the proposed activity and  
403 one (1) downstream of the proposed activity or other station  
404 locations necessary to assess the activity’s impact. The Secre-  
405 tary, may at his or her discretion, request from the applicant

406 certain state preferred biologic indices to facility review. The  
407 survey requirement may be waived with the Department's  
408 concurrence.

409 4.2.f.4. A Delineation of the Stream to be Impacted. - The  
410 length, width and depth of the stream segment impacted shall  
411 be measured. Width and depth measurements shall be made at  
412 one hundred (100) foot intervals. The stream delineation shall  
413 indicate the ephemeral and intermittent/perennial segments to  
414 be impacted. The stream shall be measured from the farthest  
415 downstream disturbance, excluding stream crossings associated  
416 with haul roads for surface mining operations, upstream to the  
417 beginning of an intermittent stream, as defined in 46 CSR 1-2.9  
418 and/or 38 CSR 2-2.71. The applicant shall provide a table  
419 listing the station number with the corresponding acreage  
420 including the drainage area from the toe of the pond and the toe  
421 of the fill.

422 4.2.f.4.A. Submit all findings in an appendix to the report  
423 including, but not limited to, the following:

424 4.2.f.4.B. Name of person(s) conducting the stream  
425 delineation and his or her qualifications (i.e., DEP representa-  
426 tive, company representative, consultant, biologist, etc.).

427 4.2.f.4.C. Date delineation was conducted.

428 4.2.f.4.D. Recent weather conditions and those on the day  
429 of the delineation.

430 4.2.f.4.E. A statement verifying the October, 1999 DEP  
431 Stream Delineation Memorandum was followed in the determi-  
432 nation process.

433 4.2.f.4.F. Method used for determination (i.e., post-hold or  
434 benthic).

435 4.2.f.4.G. A copy of field notes, photographs and stream  
436 delineation map that indicates the results in relation to the  
437 proposed activity, if possible.”

438 5.1.a.1 The surface mining and NPDES permit numbers, if  
439 applicable and available.

440 On page nine, after paragraph 6.2.c.4. by adding a new  
441 paragraph 6.2.c.5. to read as follows: “6.2.c.5. An applicant for  
442 a proposed project who desires to provide compensatory in-kind  
443 mitigation prior to the disturbance of the mitigable resource,  
444 will comply with the following criteria:

445 A. Mitigation ration will be at one (1) unit created to every  
446 one (1) unit impacted.

447 B. Mitigation shall be completed 12 months prior to the  
448 impact of the resource.

449 C. Mitigation plans will meet the review and approval of  
450 the Department of Environmental Protection and Division of  
451 Natural Resources. Satisfactory completion will be determined  
452 by concurrence of DEP and DNR prior to final approval of  
453 mitigation obligation.”;

454 And,

455 By renumbering the remaining paragraphs in the subdivi-  
456 sion.

457 (r) The legislative rule filed in the state register on the  
458 nineteenth day of July, two thousand one, authorized under the  
459 authority of section four, article eleven, chapter twenty-two of  
460 this code, modified by the department of environmental  
461 protection to meet the objections of the legislative rule-making  
462 review committee and refiled in the state register on the twenty-

463 seventh day of September, two thousand one, relating to the  
464 department of environmental protection (underground injection  
465 control, 47 CSR 13), is authorized.

466 (s) The legislative rule filed in the state register on the  
467 nineteenth day of July, two thousand one, authorized under the  
468 authority of section five, article twelve, chapter twenty-two of  
469 this code, modified by the department of environmental  
470 protection to meet the objections of the legislative rule-making  
471 review committee and refiled in the state register on the twenty-  
472 seventh day of September, two thousand one, relating to the  
473 department of environmental protection (groundwater protec-  
474 tion standards at Dominion “Generation” steam electric  
475 generation facility, Mt. Storm, West Virginia, 47 CSR 57B), is  
476 authorized.

477 (t) The legislative rule filed in the state register on the  
478 twenty-fourth day of July, two thousand one, authorized under  
479 the authority of section one, article eleven, chapter twenty-two  
480 of this code, relating to the department of environmental  
481 protection (WVNPDES rules for coal mining facilities, 47 CSR  
482 30), is authorized with the following amendments:

483 On page one, subsection 1.1, after the word “Scope” by  
484 striking out the words “These rules establish” and inserting in  
485 lieu thereof the words “This rule establishes”;

486 On page one, subsection 1.9 after the word “his” by  
487 inserting the words “or her”;

488 On page one, the first paragraph in section 2 by striking out  
489 the word “shall”;

490 On page three, by inserting a newly designated subsection  
491 2.15. to read as follows:

492 “2.15. ‘Director’ means the director of the Division of  
493 Water Resources.”; And, by renumbering the remainder of the  
494 section;

495 On page five, in newly designated subsection 2.52. after the  
496 word “Code” by striking through “§22-3” and inserting in lieu  
497 thereof “§22-3-1 et seq.”;

498 On page seven, paragraph 3.5.b.1., line six, after the words  
499 “granted for” by striking out the word “no”;

500 On page eight, subdivision 3.5.c. by striking through the  
501 last sentence in its entirety and inserting the following: “The  
502 proposed permittee shall demonstrate that he or she has  
503 accepted all necessary permit responsibilities.”;

504 On page eight, subdivision 3.5.e. in the second sentence  
505 after the words “inclusion in” by striking out the word “that”  
506 and inserting in lieu thereof the word “the”;

507 On page eleven, subparagraph 4.5.a.6.L., after the words  
508 “must be” by inserting the words “notarized and”;

509 On page thirteen, part 4.5.b.1.A.2., line five after the words  
510 “request for” by striking out the word “such”;

511 On page thirteen, part 4.5.b.1.E.1., at the beginning of line  
512 one by striking out the word “He” and inserting in lieu thereof  
513 the words “The applicant”;

514 On page thirteen, subpart 4.5.b.1.E.2., at the beginning of  
515 line one by striking out the word “He” and inserting in lieu  
516 thereof the words “The applicant”;

517 On page fifteen, part 4.5.d.1.A.11., after the words “must  
518 be” by inserting the words “notarized and”;

519 On page sixteen, paragraph 4.5.d.3., after the words  
520 “required by” by striking out the words “Sections 4.5.a. of these  
521 rules” and inserting in lieu thereof the words “Section 4.5.a. of  
522 this rule”;

523 On page sixteen, part 4.5.d.4.A.3., in line three after the  
524 word “if” by striking out the word “such” and inserting in lieu  
525 thereof the word “the”;

526 On page sixteen, part 4.5.d.4.A.3., in line four after the  
527 word “unavailable,” by striking out the word “then”;

528 On page seventeen, subparagraph 4.5.f.2.A., line two after  
529 the words “to the” by striking out the words “Regional Admin-  
530 istrator” and by inserting in lieu thereof the words “Environ-  
531 mental Protection Agency Region III Administrator”;

532 On page eighteen, paragraph 4.7.a.1., line three after the  
533 words “purpose of” by striking out the words “Section 4.7 of  
534 these rules” and by inserting in lieu thereof the words “this  
535 section”;

536 On page nineteen, by striking out subsection 4.8 in its  
537 entirety.

538 On page twenty, subdivision 5.1.g., after the words  
539 “Environmental Quality Board” by inserting the words “Title  
540 60”;

541 On page twenty-five, subsection 5.17., line seven after the  
542 word “wastewaters” by striking out the word “and”;

543 On page twenty-five, subdivision 5.18.d., after the words  
544 “the expiration of the WV/NPDES permit,” by striking out the  
545 word “then”;

546 On page twenty-nine, paragraph 6.2.o.5., after the words  
547 “Section 6.2.e of” by striking out the words “these rules are”  
548 and by inserting in lieu thereof the words “this rule is”;

549 On page thirty-two, subparagraph 8.2.c.2.C., line one after  
550 the word “New” by striking the word “Regulations” and  
551 inserting in lieu thereof the word “Rules”;

552 On page thirty-two, subparagraph 8.2.c.2.C., line two after  
553 the word “standards” by striking the word “regulations” and  
554 inserting in lieu thereof the word “rules”;

555 On page thirty-two, subparagraph 8.2.c.2.C., line four after  
556 the word “standards” by striking the word “regulations” and  
557 inserting in lieu thereof a comma and the word “rules”;

558 On page thirty-two, part 8.2.c.2.C.1., line two after the  
559 word “standards” by striking the word “regulations” and  
560 inserting in lieu thereof the word “rules”;

561 On page thirty-two, part 8.2.c.2.C.2., line four after the  
562 word “promulgated” by striking the word “regulations” and  
563 inserting in lieu thereof the words “rules or”;

564 On page thirty-three, part 8.2.c.2.C.2., line five after the  
565 words “that portion of the” by striking the word “regulations”  
566 and inserting in lieu thereof inserting the words “rules”;

567 On page thirty-four, subdivision 9.1.a., line four after the  
568 words “major facilities by the” by striking out the words  
569 “Regional Administrator” and by inserting in lieu thereof the  
570 words “Environmental Protection Agency Regional III Admin-  
571 istrator”;

572 On page thirty-five, subdivision 9.2.a. by striking out the  
573 words “Regional Administrator” and by inserting in lieu thereof

574 the words “Environmental Protection Agency Regional III  
575 Administrator”;

576 On page thirty-five, paragraph 9.2.a.2. by striking out the  
577 words “Regional Administrator” and by inserting in lieu thereof  
578 the words “Environmental Protection Agency Regional III  
579 Administrator”;

580 On page forty-three, subdivision 15.1.a., line two after the  
581 words “in accordance with” by striking out the words “Sections  
582 11, 12, 15, and 19 of Article 11;” and by inserting in lieu  
583 thereof “W.Va. Code §§ 22-11-11, 12, 15 and 19”;

584 On page forty-three, subdivision 15.1.b., line three after the  
585 words “in accordance with” by striking out the words “Section  
586 22 of Article 11; and” and by inserting in lieu thereof the words  
587 “W.Va. Code § 22-11-22”;

588 And,

589 On page forty-three, subdivision 15.1.c., line two after the  
590 words “in accordance with” by striking out the words “Section  
591 24 of Article 11” and by inserting in lieu thereof the words  
592 “W.Va. Code § 22-11-24”.

**§64-3-2. Environmental quality board.**

1 (a) The legislative rule filed in the state register on the  
2 twenty-seventh day of July, two thousand one, authorized under  
3 the authority of section four, article three, chapter twenty-two-b  
4 of this code, modified by the environmental quality board to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the eleventh day  
7 of January, two thousand two, relating to the environmental  
8 quality board (requirements governing water quality standards,  
9 46 CSR 1), is authorized.

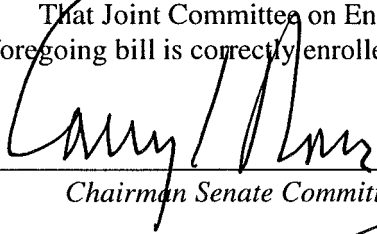


10 (b) The legislative rule filed in the state register on the  
11 twenty-seventh day of July, two thousand one, authorized under  
12 the authority of section four, article twelve, chapter twenty-two  
13 of this code, modified by the environmental quality board to  
14 meet the objections of the legislative rule-making review  
15 committee and refiled in the state register on the eleventh day  
16 of January, two thousand two, relating to the environmental  
17 quality board (requirements governing groundwater standards  
18 46 CSR 12), is authorized.

**§64-3-3. Solid waste management board.**

1 The legislative rule filed in the state register on the nine-  
2 tenth day of July, two thousand one, authorized under the  
3 authority of section six, article three, chapter twenty-two-c of  
4 this code, modified by the solid waste management board to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the tenth day of  
7 October, two thousand one, relating to the solid waste manage-  
8 ment board (disbursement of grants to solid waste authorities,  
9 54 CSR 5), is authorized.

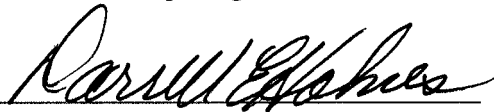
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

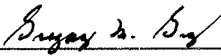
  
\_\_\_\_\_  
Chairman Senate Committee

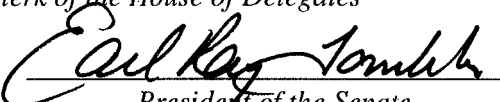
  
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Chairman House Committee

Originating in the House.

In effect from passage.

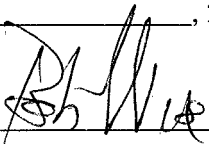
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 3rd  
day of April, 2002.

  
\_\_\_\_\_  
Governor

PREP BY: W/TOWNE

Date: 3/27/02

Time: 10:10a