WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2603

(By Delegates Mahan, Cann, Kominar and Faircloth)

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Passed March 6, 2003

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 commit-
tee and as amended by the legislature; authorizing the department of environmental protection to promulgate a legislative rule relating to the NOx budget trading program as a means of control and reduction of nitrogen oxides from nonelectric generating units; authorizing the department of environmental protection to promulgate a legislative rule relating to permits for the construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation; authorizing the department 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 department 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 department of environmental protection to promulgate a legislative rule related to the NOx budget trading program as a means of control and reduction of nitrogen oxides from electric generating units; authorizing the department of environmental protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the department of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the department of environmental protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the department of environmental protection to promulgate a legislative rule relating to surface mining and reclamation; authorizing the department of environmental protection to promulgate a legislative rule relating to coal related dam safety; authorizing the department of environmental protection to promulgate a legislative rule relating to standards for the beneficial use of materials similar to sewage sludge; authorizing the department of environmental protection to promulgate a legislative rule relating to hazardous waste management; autho-
rizing the department of environmental protection to promulgate a legislative rule relating to the hazardous waste management fund certification legislative rule concerning fee assessment; authorizing the department of environmental protection to promulgate a legislative rule relating to water pollution control permit fee schedules; authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards; and authorizing the oil and gas conservation commission to promulgate a legislative rule relating to rules of the commission.

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 BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

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

(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (NOx budget trading program as a means of control and reduction of nitrogen oxides from nonelectric generating units, 45 CSR 1), is authorized with the following amendment:

On page thirty-four, subsection 54.6, in the first sentence after the words “starting in” by inserting the word “2005 or” and after the word “2006,” by inserting the words “if the Secretary determines the Administrator is utilizing this later date for purposes of implementation under 40 CFR Part 96 or 40 CFR Part 52 in any state with a compliance date of May 31, 2004,”
(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation, 45 CSR 13), is authorized.

(c) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (standards of performance for new stationary sources pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

(d) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(e) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (NOx budget trading program as a means of control and reduction of nitrogen oxides from electric generating units, 45 CSR 26), is authorized with the following amendment:

On page thirty-two, subsection 54.6, in the first sentence after the words “starting in” by inserting the word “2005 or” and after the word “2006,” by inserting the words “if the
Secretary determines the Administrator has approved or promulgated this later date for purposes of implementation under 40 CFR Part 96 or 40 CFR Part 52 in any state with a compliance date of May 31, 2004,”

(f) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (requirements for operating permits, 45 CSR 30), is authorized.

(g) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

(h) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two thousand two, relating to the department of environmental protection (acid rain provisions and permits, 45 CSR 33), is authorized.

(i) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of sections four and twelve, article three, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state
register on the thirteenth day of January, two thousand three, relating to the department of environmental protection (surface mining and reclamation rule, 38 CSR 2), is authorized with the following amendments:

On page twenty-two, following paragraph 3.7.c.2. by inserting a new division 3.7.d to read as follows:

“3.7.d. A survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least thirty (30) days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit.”

On page twenty-five, subdivision 3.12.a.6. by following the words “to surface lands, structures,” by striking the remainder of the paragraph and inserting in lieu thereof “or facilities, due to subsidence;”;

On page twenty-five, subdivision 3.12.a.7. by striking in both places they appear in the paragraph the words “perennial streams or wetlands”;

On page twenty-six, paragraph 3.12.a.8.D. by striking the words “lands, perennial streams or wetlands.”;

On page thirty-five, subparagraph 3.22.f.5.A.2. by striking the words “been dedicated” and inserting in lieu thereof, the words “are available”;
indicating timing and sequence of construction over the life of
the fill.”;

On page fifty-eight, at the end of subdivision 5.4.b.11. by
adding the following: “The location of discharge points and the
volume to be released shall not cause a net increase in peak
runoff from the proposed permit area when compared to pre-
mining conditions and shall be compatible with the post-mining
configuration and adequately address watershed transfer.”

On page sixty-two, following division 5.5.1. by inserting a
new subsection 5.6, to read as follows:

“5.6 Storm Water Runoff. 5.6.a. Each application for a
permit shall contain a storm water runoff analysis which
includes the following:

5.6.a.1. An analysis showing the changes in storm runoff
caused by the proposed operation(s) using standard engineering
and hydrologic practices and assumptions.

5.6.a.2. The analysis will evaluate pre-mining, worst case
during mining, and post-mining (Phase III standards) condi-
tions. The storm used for the analysis will be the largest
required design storm for any sediment control or other water
retention structure proposed in the application. The analysis
must take into account all allowable operational clearing and
grubbing activities. The applicant will establish evaluation
points on a case-by case basis depending on site specific
conditions including, but not limited to, type of operation and
proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining
evaluations must show no net increase in peak runoff compared
to the pre-mining evaluation.
5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January, two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full compliance with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal.

5.6.d.1.a. Within 180 days from the first day of January, two thousand four, all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that
the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January, two thousand four, all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January, two thousand four, all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January, two thousand four, all active mining operations with permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January, two thousand four, all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be considered on a case by case basis. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement.

On page ninety-five, subsection 8.2.e., following the words “not to Impound water or” by inserting the following: “and shall not be placed in such manner or location to”;

On page ninety-five, subsection 9.1.a., at the end of the sentence, by adding the following: Reforestation opportunities must be maximized for all areas not directly associated with the
primary approved post mining land use. All revegetation plans
must include a map identifying areas to be reforested, planting
schedule and stocking rates.”;

On page one hundred fifty-eight, by revising the first
sentence in subdivision 14.14.g.1 to read as follows: “14.14.g.1.
For fills proposed after January 1, 2004, Secretary may only
approve the design, construction, and use of a single lift fill
with an erosion protection zone or a durable rock fill designed
to be reclaimed from the toe upward, both consisting of at least
eighty (80) percent durable rock if it can be determined, based
on information provided by the operator, that the following
conditions exist:”;

On page one hundred fifty-eight, following paragraph
14.14.g.1.b. by inserting new 14.14.g.2. and 14.14.g.3. to read
as follows:

“14.14.g.2. Design Specifications and Requirements of
Single Lift Fills with an Erosion Protection Zone. In addition to
the requirements of this subdivision, the design, specifications
and requirements of single lift fills with an erosion protection
zone shall be in accordance with the following:

14.14.g.2.A. Erosion Protection Zone.

The erosion protection zone is a designed structure con-
structed to provide energy dissipation to minimize erosion
vulnerability and may extend beyond the designed toe of the
fill.

14.14.g.2.A.1. The effective length of the erosion protection
zone shall be at least one half the height of the fill measured to
the target fill elevation or fill design elevation as defined in the
approximate original contour procedures and shall be designed
to provide a continuous underdrain extension from the fill
through and beneath the erosion protection zone.
14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.

14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regraded and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

14.14.g.2.B.1 Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley.
262. more than 300 feet ahead of the advancing toe. Exceptions
263 from side placement of material limits may be approved by the
264 Secretary if requested and the applicant can demonstrate
265 through sound engineering that it is necessary to facilitate
266 access to isolated coal seams, the head of the hollow or other-
267 wise facilitates fill stability, erosion, or drainage control.

268 14.14.g.2.B.2. During construction, the fill shall be de-
269 signed and maintained in such a manner as to prevent water
270 from discharging over the face of the fill.

271 14.14.g.2.B.2.(a) The top of the fill shall be configured to
272 prevent water from discharging over the face of the fill and to
273 direct water to the sides of the fill.

274 14.14.g.2.B.2.(b) Water discharging along the edges of the
275 fill shall be conveyed in such a manner to minimize erosion
276 along the edges of the fill.

277 14.14.g.2.B.3. Reclamation of the fill shall be initiated from
278 the top of the fill and progress to the toe with concurrent
279 construction of terraces and permanent drainage.

280 14.14.g.3. Design Specifications and Requirements for
281 Durable Rock Fills designed to be reclaimed from the toe
282 upward. Durable rock fills that are designed to be reclaimed
283 from the toe upward shall comply with all requirements of this
284 subdivision including the following:

285 14.14.g.3.A. Transportation of Material to toe of fill.
286 The method of transporting material to the toe of the fill shall
287 be specified in the application and shall include a plan for
288 inclement weather dumping. The means of transporting material
289 to the toe may be by any method authorized by the Act and this
290 rule and is not limited to the use of roads.
291 14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

295 14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included the permit.

299 14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.

306 On page one hundred fifty eight, by renumbering existing subdivision 14.14.g.2 as 14.14.g.4 and renumbering the subsequent subdivisions accordingly.

309 On page one hundred sixty, subdivision 14.15.a.2., following the words “unreclaimed area” by inserting the following: “minimize surface water runoff, comply with the storm water runoff plan and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.”

315 On page one hundred sixty-two, division 14.15.c., following the words “meets Phase I standards” by inserting the words “and seeding has occurred.”

318 On page one hundred sixty-three, division 14.15.g., following the words “or economically feasible” by inserting the words “and demonstrate that the variance being sought will comply with section 5.6 of this rule.”

On page one hundred eighty-seven, division 20.6.d. following the term “Notice of Informal Assessment Conference,” by striking the subsequent sentence and insert in lieu thereof, the following: “The Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within fifteen (15) days from the date the proposed assessment or reassessment is received. Provided, however, the operator shall forward the amount of proposed penalty assessment to the secretary for placement in an interest bearing escrow account.”;

On page one hundred eighty-eight, division 20.6.j., in the first sentence, following the words “persons request” by inserting the words “an informal conference or”, striking the words “continue to be” and following the words “completion of the” by inserting the words “conference or”;

On page one hundred ninety-eight, paragraph 22.4.g.3.A., at the end of the paragraph by inserting the following sentence: For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.”;

On page one hundred ninety-eight, subdivision 22.4.i.6., in the first sentence following the words “used or new” by inserting the words: “or unconstructed refuse”, and by following the word “impoundments” by inserting the words “or slurry cells”;

On page two hundred six, subsection 24.3., at the end subsection by striking the period and inserting the following: “or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.”;

And,
On page two hundred seven, subsection 24.4., following the words "subsection 12.2 of this rule" by striking the period and inserting the following: "and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended."

(j) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article fourteen, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, two thousand three, relating to the department of environmental protection (coal related dam safety, 38 CSR 4), is authorized with the following amendments:

On page eleven, paragraph 7.1.f.3.A., following the words "also be met." by inserting the following sentence: "For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs."

On page twelve, division 7.1.n. in the first sentence following the words "be used in new" by inserting the words "or unconstructed refuse" and following the word "impoundments" by inserting the words "or slurry cells.", in the second sentence by following the words "be either" by inserting the words "repaired or" and following the word "replaced" by inserting a colon, striking the reminder of the sentence and inserting the proviso: "Provided, That sediment control or other water retention structures used for the treatment of effluent and designated as Class A Dams under 3.4.b. of this rule are exempt from this prohibition.";
On page thirteen, subsection 8.1, in the second sentence following the words “demonstrated that” by inserting the word “the” and following the words “coal pillars” by inserting a comma and the words “roofs and”;

On page thirteen, division 8.2.a., in the third sentence following the words “by providing” by striking the words “a combination of”, following the words “construction barriers” striking the word “and”, following the word “grouting” inserting the words “or other means”, and following the words “establish equivalent” striking the word “distances” and inserting in lieu thereof the word “protection.” and in the last sentence following the word “secretary” by inserting the word “may”;

On page thirteen, division 8.2.b., in the third sentence following the words “by grouting,” by striking the word “or” and following the words “related voids” by striking the word “completely” and inserting in lieu thereof the words “or providing comparable protection.”;

On page thirteen, division 8.2.c., in the first sentence by striking the words “analyzed for all types of potential failures” and inserting in lieu thereof the words “3.4.c. of this rule.”;

On page fourteen, subsection 8.3., following the words “Major design” by striking the word “Components” and inserting in lieu thereof the word “considerations.”;

And,

On page twenty five, subsection 25.14, following the words “practical pool level” by inserting the words “based upon the design requirements and the AHCF”, by striking the sentence “The lowest practical pool level is obtained by removing all available clear water from the pool surface to the extent practical without violating effluent limits.” and, in the last
sentence following the word "The" by inserting the words "mechanical storm".

(k) The legislative rule filed in the state register on the twenty-third day of July, two thousand two, authorized under the authority of section twenty-two-b, article fifteen, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand two, relating to the department of environmental protection (standards for beneficial use of materials similar to sewage sludge, 33 CSR 8), is authorized.

(l) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of December, two thousand two, relating to the department of environmental protection (hazardous waste management, 33 CSR 20), is authorized.

(m) The legislative rule filed in the state register on the twenty-fifth day of October, two thousand two, authorized under the authority of section twenty-two, article eighteen, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, two thousand three, relating to the department of environmental protection (hazardous waste management fund certification legislative rule concerning fee assessment, 33 CSR 24), is authorized.
(n) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article eleven, chapter twenty-two of this code, modified by the department 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 January, two thousand three, relating to the department of environmental protection (water pollution control permit fee schedules, 47 CSR 26), is authorized with the following amendments:

"On page one, subsection 2.3, line two, following the words "of the", by striking out remainder of the subsection and inserting in lieu thereof the words "Department of Environmental Protection";

And,

On page two, subsection 2.11, line two, following the words "equal to", by inserting the words "or greater than".

§64-3-2. Environmental quality board.

The legislative rule filed in the state register on the second day of January, two thousand three, authorized under the authority of section four, article three, chapter twenty-two-b of this code, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is authorized.

§64-3-3. Oil and Gas Conservation Commission.

The legislative rule filed in the state register on the twenty-fourth day of July, two thousand two, authorized under the authority of section five, article nine, chapter twenty-two-c of this code, modified by the oil and gas conservation commission to meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the fifteenth day
7 of January, two thousand three, relating to the department of
8 environmental protection (oil and gas conservation commission,
9 39 CSR 1), is authorized.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

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 17th day of March, 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 3/11/03

Time 11:00 A.M.