WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 4193

(By Delegates Mahan, R. Thompson, Cann, Kominar, Armstead and Faircloth)

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Passed March 12, 2004

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4193

(BY DELEGATES MAHAN, R. THOMPSON, CANN, KOMINAR, ARMSTEAD AND FAIRCLOTH)

[Passed March 12, 2004; in effect from passage.]

AN ACT to amend and reenact article 3, chapter 64 of the code of West Virginia, 1931, 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 recom-
mended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules presented to the Legislature for authorization; 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 emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; 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 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 requirements for determining conformity of transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the federal transit laws applicable air quality implementation plans (transportation conformity); authorizing the department of environmental protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the department of environmental protection to promulgate a legislative rule relating to solid waste management; authorizing the department of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the department of environmental protection to promulgate a legislative rule relating to the West Virginia NPDES rule for coal mining facilities; authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards; and authorizing the environmental quality board to
promulgate emergency and legislative rules on or before the first
day of October, two thousand four to revise the aquatic life
aluminum criteria.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL
PROTECTION TO PROMULGATE LEGISLATIVE RULES.

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

1 (a) The legislative rule filed in the state register on the
twenty-ninth day of July, two thousand three, authorized under
the authority of section four, article five, chapter twenty-two of
this code, relating to the department of environmental protec-
tion (Nox budget trading program as a means of control and
reduction of nitrogen oxides from non-electric generating units,
45 CSR 1), is authorized.

8 (b) The legislative rule filed in the state register on the
thirtieth day of July, two thousand three, 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 pursuant to 40
CFR Part 61, 45 CSR 15), is authorized.

14 (c) The legislative rule filed in the state register on the
thirtieth day of July, two thousand three, 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 with the following
amendment:
Wherever the rule has been amended to insert the term “Division of Water and Waste Management” the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(d) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, 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 with the following amendment:

Wherever the rule has been amended to insert the term “Division of Water and Waste Management”, the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(e) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, 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 with the following amendment:

Wherever the rule has been amended to insert the term “Division of Water and Waste Management”, the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(f) The legislative rule filed in the state register on the thirtieth day of July, two thousand three, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (requirements for determining conformity of transportation plans, programs and projects developed, funded or approved
under Title 23 U.S.C. or the federal transit laws applicable to air
quality implementation plans (transportation conformity), 45
CSR 36), is authorized with the following amendment:

Wherever the rule has been amended to insert the term
“Division of Water and Waste Management”, the existing
language of the rule prior to the amendment denoting a change
in the name of the agency of reference shall be retained.

(g) The legislative rule filed in the state register on the
thirty-first day of July, two thousand three, authorized under the
authority of section four, 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
sixteenth day of January, two thousand four, relating to the
department of environmental protection (surface mining
reclamation, 38 CSR 2), is authorized.

(h) The legislative rule filed in the state register on the first
day of August, two thousand three, authorized under the
authority of section five, 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 second
day of December, two thousand three, relating to the depart-
ment of environmental protection (solid waste management, 33
CSR 1), is authorized with the following amendment:

Wherever the rule has been amended to insert the term
“Division of Water and Waste Management”, the existing
language of the rule prior to the amendment denoting a change
in the name of the agency of reference shall be retained.

(i) The legislative rule filed in the state register on the
thirty-first day of July, two thousand three, authorized under the
authority of section one, 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 second
day of December, two thousand three, relating to the depart-
ment of environmental protection (hazardous waste manage-
ment, 33 CSR 20), is authorized with the following amendment:

Wherever the rule has been amended to insert the term
“Division of Water and Waste Management”, the existing
language of the rule prior to the amendment denoting a change
in the name of the agency of reference shall be retained.

(j) The legislative rule filed in the state register on the
thirty-first day of July, two thousand three, 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
twentieth day of November, two thousand three, relating to the
department of environmental protection (West Virginia NPDES
rule for coal mining facilities, 47 CSR 30), is authorized with
the following amendment:

Wherever the rule has been amended to insert the term
“Division of Water and Waste Management”, the existing
language of the rule prior to the amendment denoting a change
in the name of the agency of reference shall be retained.

§64-3-2. Environmental quality board.

The legislative rule filed in the state register on the first day
of August, two thousand three, 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 not authorized.
(1) The legislative rule filed in the state register on the fourteenth day of April, two thousand three, and effective the twenty-fifth day of June, two thousand three, authorized under the authority of section four, article three, chapter twenty-two-b of this code, authorized by the Legislature during the regular session of the Legislature in two thousand three, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is reauthorized with the following amendments:

On page seven, section 6.2.d., after the words “(requirements for Category A waters.)”, by striking out the words “The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five miles upstream from a known drinking water source.” and inserting the following:

“The manganese human health criterion shall only apply within the five-mile zone immediately upstream above a known public or private water supply used for human consumption.”;

On page ten, section 7.2.a.2., after the words “(to its headwaters.)” by striking out the words “Until September 1, 2004, the one-half mile zone described in this section shall not apply to the Ohio River main channel (between Brown’s Island and the left descending bank) between river mile points 61.0 and 63.5.” and inserting in lieu thereof the words “Until September 1, 2010, or until action by the Environmental Quality Board to revise this provision, whichever comes first, the one-half (½) mile zone described in this section shall not apply to the Ohio River main channel (between Brown’s Island and the left descending bank) between river mile points 61.0 and 63.5 for the Category A criterion for iron as set forth in §8 herein. Weirton Steel Corporation shall conduct monthly monitoring of the treated water at its drinking water plant for iron and submit the results of such monitoring to the West
Virginia Bureau for Public Health and the Office of Water Resources of the West Virginia Department of Environmental Protection. In addition, Weirton Steel Corporation shall submit a written report regarding the status of its drinking water plant and the issues pertaining thereto to the Environmental Quality Board on or before March 1, 2007.”;

On pages twelve and thirteen, section 7.2.d.16.2. after the words “the following in stream criteria:” by striking the remainder of 7.2.d.16.2. and inserting in lieu thereof, the following:

“Lead 14 ug/l, Daily Maximum, Temperature 100 degree F (monitored per Footnote 12 of the permit); Iron 4.0 mg/l, monthly average and 8.0 mg/l Daily Maximum (monitored per Footnote 12 of the permit). Weirton Steel Corporation shall continue to submit to the Office of Water Resources of the West Virginia Department of Environmental Protection, on an annual basis summary reports on the water quality of the discharge from Outlet 004 and the efforts made by Weirton Steel Corporation during the previous year to improve the quality of the discharge. These exceptions shall be in effect until action by the Environmental Quality Board to revise the exceptions or until July 1, 2007, whichever comes first.”;

On page thirteen, section 7.2.d.19. By adding a new paragraph designated 7.2.d.19.3 to read as follows:

7.2.d.19.3. Except that in Ward Hollow of Davis Creek, the following site-specific numeric criterion for chloride shall apply for Category A and Category B1 (chronic aquatic life protection):310,000 ug/L;

On page 30, APPENDIX E, TABLE 1, column one, by striking out the words “The concentration of un-ionized ammonia (NH3) shall not exceed 50 ug/l.; and
On page 30, APPENDIX E, TABLE 1, by striking the all the provisions of 8.2. and on page 31, by renumbering 8.2.1 as 8.2..

(2) In addition to the forgoing amendments to the rule the environmental quality board shall, in cooperation with the regulated community and the department of environmental protection, propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, an emergency and legislative rule on or before the first day of October, two thousand four, to revise the aquatic life aluminum criteria.
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 5th day of April, 2004.

Governor
PRESENTED TO THE
GOVERNOR/

DATE 3/31/04
TIME 10:00 a.m.