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2005 APR 19 P 4: 16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

Committee Substitute for

SENATE BILL NO. 287

(By Senators Love and Fanning)

PASSED April 4, 2005

In Effect July 1, 2005 ~~Passage~~

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 287

(BY SENATORS LOVE AND FANNING, *original sponsors*)

[Passed April 4, 2005; to take effect July 1, 2005.]

AN ACT to repeal §22B-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-11-7b of said code; to amend and reenact §22-12-4 of said code; and to amend and reenact §22B-3-2 of said code, all relating to water quality standards generally; transferring authority to propose rules relating to water quality standards from the Environmental Quality Board to the Department of Environmental Protection; providing that the current rule remains in force and effect until amended by the Department of Environmental Protection; establishing some requirements for water protection; providing that meetings to develop water quality standards be open with certain exceptions; authorizing the Department of Environmental Protection to consider remaining variances; authorizing the Secretary to promulgate standards of purity and quality for groundwater; establishing the maximum containment levels permitted for groundwater;

providing that the current groundwater standard remains in effect until modified by the Secretary.

Be it enacted by the Legislature of West Virginia:

That §22B-3-4 of the Code of West Virginia, 1931, as amended, be repealed; that §22-11-7b of said code be amended and reenacted; that §22-12-4 of said code be amended and reenacted; and that §22B-3-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of anti-gradation procedures.

1 (a) All authority to promulgate rules and implement
2 water quality standards vested in the Environmental
3 Quality Board is hereby transferred from the Environmen-
4 tal Quality Board to the Secretary of the Department of
5 Environmental Protection as of the effective date of the
6 amendment and reenactment of this section during the two
7 thousand five regular session of the Legislature: *Provided,*
8 That the legislative rule containing the state's water
9 quality standards shall remain in force and effect as if
10 promulgated by the Department of Environmental Protec-
11 tion until the Secretary amends the rule in accordance
12 with the provisions of article three, chapter twenty-nine-a
13 of this code. Any proceedings, including notices of pro-
14 posed rulemaking pending before the Environmental
15 Quality Board, and any other functions, actions or author-
16 ity transferred to the Secretary shall continue in effect as
17 actions of the Secretary.

18 (b) All meetings with the Secretary or any employee of
19 the Department and any interested party which are
20 convened for the purpose of making a decision or deliber-
21 ating toward a decision as to the form and substance of the
22 rule governing water quality standards or variances

23 thereto shall be held in accordance with the provisions of
24 article nine-a, chapter six of this code. When the Secre-
25 tary is considering the form and substance of the rule
26 governing water quality standards, the following are not
27 meetings pursuant to article nine-a, chapter six of this
28 code: (i) Consultations between the Department's employ-
29 ees or its consultants, contractors or agents; (ii) consulta-
30 tions with other state or federal agencies and the Depart-
31 ment's employees or its consultants, contractors or agents;
32 or (iii) consultations between the Secretary, the Depart-
33 ment's employees or its consultants, contractors or agents
34 with any interested party for the purpose of collecting
35 facts and explaining state and federal requirements
36 relating to a site specific change or variance.

37 (c) In order to carry out the purposes of this chapter, the
38 Secretary shall promulgate legislative rules in accordance
39 with the provisions of article three, chapter twenty-nine-a
40 of this code setting standards of water quality applicable
41 to both the surface waters and groundwaters of this state.
42 Standards of quality with respect to surface waters shall
43 protect the public health and welfare, wildlife, fish and
44 aquatic life and the present and prospective future uses of
45 the water for domestic, agricultural, industrial, recre-
46 ational, scenic and other legitimate beneficial uses thereof.
47 The water quality standards of the Secretary may not
48 specify the design of equipment, type of construction or
49 particular method which a person shall use to reduce the
50 discharge of a pollutant.

51 (d) The Secretary shall establish the antidegradation
52 implementation procedures as required by 40 C. F. R.
53 131.12(a) which apply to regulated activities that have the
54 potential to affect water quality. The Secretary shall
55 propose for legislative approval, pursuant to article three,
56 chapter twenty-nine-a of the code, legislative rules to
57 establish implementation procedures which include
58 specifics of the review depending upon the existing uses of
59 the water body segment that would be affected, the level

60 of protection or "tier" assigned to the applicable water
61 body segment, the nature of the activity and the extent to
62 which existing water quality would be degraded.

63 (e) All remining variances shall be applied for and
64 considered by the Secretary and any variance granted
65 shall be consistent with 33 U. S. C. Section 1311(p) of the
66 Federal Water Control Act. At a minimum, when consid-
67 ering an application for a remining variance the Secretary
68 shall consider the data and information submitted by the
69 applicant for the variance; and comments received at a
70 public comment period and public hearing. The Secretary
71 may not grant a variance without requiring the applicant
72 to improve the instream water quality as much as is
73 reasonably possible by applying best available technology
74 economically achievable using best professional judgment.
75 Any such requirement will be included as a permit condi-
76 tion. The Secretary may not grant a variance without a
77 demonstration by the applicant that the coal remining
78 operation will result in the potential for improved
79 instream water quality as a result of the remining opera-
80 tion. The Secretary may not grant a variance where he or
81 she determines that degradation of the instream water
82 quality will result from the remining operation.

ARTICLE 12. GROUNDWATER PROTECTION ACT.

**§22-12-4. Authority of Secretary to promulgate standards of
purity and quality.**

1 (a) The Secretary has the sole and exclusive authority to
2 promulgate standards of purity and quality for groundwa-
3 ter of the state.

4 (b) These standards shall establish the maximum con-
5 taminant levels permitted for groundwater, but in no event
6 shall the standards allow contaminant levels in groundwa-
7 ter to exceed the maximum contaminant levels adopted by
8 the United States Environmental Protection Agency
9 pursuant to the federal Safe Drinking Water Act. The
10 Secretary may set standards more restrictive than the

11 maximum contaminant levels where it finds that such
12 standards are necessary to protect drinking water use
13 where scientifically supportable evidence reflects factors
14 unique to West Virginia or some area thereof, or to protect
15 other beneficial uses of the groundwater. For contami-
16 nants not regulated by the federal Safe Drinking Water
17 Act, standards for such contaminants shall be established
18 by the Secretary to be no less stringent than may be
19 reasonable and prudent to protect drinking water or any
20 other beneficial use. Where the concentration of a certain
21 constituent exceeds such standards due to natural condi-
22 tions, the natural concentration is the standard for that
23 constituent. Where the concentration of a certain consti-
24 tuent exceeds such standard due to human-induced con-
25 tamination, no further contamination by that constituent
26 is allowed and every reasonable effort shall be made to
27 identify, remove or mitigate the source of such contamina-
28 tion and to strive where practical to reduce the level of
29 contamination over time to support drinking water use.

30 (c) The standards of purity and quality for groundwater
31 promulgated by the Secretary shall recognize the degree to
32 which groundwater is hydrologically connected with
33 surface water and other groundwater and such standards
34 shall provide protection for such surface water and other
35 groundwater.

36 (d) In the promulgation of such standards the Secretary
37 shall consult with the Department of Agriculture and the
38 Bureau for Public Health, as appropriate.

39 (e) Any groundwater standard that is in effect on the
40 effective date of this article shall remain in effect until
41 modified by the Secretary. Notwithstanding any other
42 provisions of this code to the contrary, the authority of the
43 Secretary to adopt standards of purity and quality for
44 groundwater granted by the provisions of this article is
45 exclusive, and to the extent that any other provisions of
46 this code grant such authority to any person, body, agency

47 or entity other than the Secretary, those other provisions
48 are void.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-2. Authority of board; additional definitions.

1 (a) In addition to all other powers and duties of the
2 Environmental Quality Board, as prescribed in this
3 chapter or elsewhere by law, the Board may receive any
4 money as a result of the resolution of any case on appeal
5 which shall be deposited in the State Treasury to the credit
6 of the Water Quality Management Fund created pursuant
7 to section ten, article eleven, chapter twenty-two of this
8 code.

9 (b) All the terms defined in section three, article eleven,
10 chapter twenty-two of this code are applicable to this
11 article and have the meanings ascribed to them therein.

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

Chammy White
.....
Chairman Senate Committee

W. Keith Burt
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

Darrell Holmes
.....
Clerk of the Senate

Suzanne Burt
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert K. Ross
.....
Speaker House of Delegates

The within *is approved* this the *19th*
Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/13/05

Time 10:50 am