ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4135

(By Delegates Mahan, Palumbo, Cann, Pino, Armstead and Overington)

Passed March 11, 2006

In Effect from Passage
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FOR

H. B. 4135

(BY DELEGATES MAHAN, PALUMBO, CANN, PINO, ARMSTEAD AND OVERINGTON)

[Passed March 11, 2006: 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; directing studies and reports to the
Legislature and further rulemaking in certain circumstances;
authorizing the Department of Environmental Protection to
promulgate a legislative rule relating to the Nox Budget Trading
Program as a means of the control and reduction of nitrogen
oxides from non-electric generating units as a means to mitigate
the transport of ozone precursors; 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 acid rain provisions and
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 the Mercury Budget
Trading Program to reduce mercury emissions; authorizing the
Department of Environmental Protection to promulgate a
legislative rule relating to the control of annual nitrogen oxide
emissions to mitigate interstate transport of fine particulate matter
and nitrogen oxides; authorizing the Department of Environmental
Protection to promulgate a legislative rule relating to the control of ozone season nitrogen oxide emissions to mitigate
interstate transport of ozone and nitrogen oxides; authorizing the
Department of Environmental Protection to promulgate a
legislative rule relating to the control of annual sulfur dioxide
emissions to mitigate interstate transport of fine particulate matter
and sulfur dioxides; 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 coalbed
methane wells; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Oil and Gas Conservation Commission; 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; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the requirements governing water quality standards; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Community Infrastructure Investment Program;

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; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Environmental Excellence Program.

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 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-second day of March, two thousand five, 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 the control and reduction of nitrogen oxides from non-electric
generating units as a means to mitigate the transport of ozone precursors, 45 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, 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.

(c) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, 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-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (acid rain provisions and permits, 45 CSR 33), is authorized.

(e) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, 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.

(f) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protec-
tion (Mercury Budget Trading Program to reduce mercury emissions, 45 CSR 37), is authorized.

(g) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (control of annual nitrogen oxide emissions to mitigate interstate transport of fine particulate matter and nitrogen oxides, 45 CSR 39), is authorized.

(h) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (control of ozone season nitrogen oxide emissions to mitigate interstate transport of ozone and nitrogen oxides, 45 CSR 40), is authorized.

(i) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (control of annual sulfur dioxide emissions to mitigate interstate transport of fine particulate matter and sulfur dioxides, 45 CSR 41), is authorized.

(j) The legislative rule filed in the state register on the second day of November, two thousand five, authorized under the authority of section four, article three, chapter twenty-two, of this code, relating to the Department of Environmental Protection (West Virginia surface mining reclamation, 38 CSR 2), is authorized, with the following amendments:

On page seventy-one, section two, paragraph §38-2.7.2.e.1, after line five, by inserting a new paragraph, designated §38-2.7.2.e.1, to read as follows:
§38-2.7.2.e.1. Bio-oil Cropland. Agricultural production of renewable energy crops through long-term intensive cultivation of close-growing commercial biological oil species (such as soybeans, rapeseed or canola) for harvest and ultimate production of bio-fuels as an alternative to petroleum based fuels and other valuable products;

On page seventy-one, section two, paragraph §38-2.7.3.c, by inserting a new paragraph, designated §38-2.7.3.d, to read as follows:

§38-2.7.3.d. A change in postmining land use to bio-oil cropland constitutes an equal or better use of the affected land, as compared with pre-mining use for purposes of W. Va. Code §22-3-13(c) in the determination of variances of approximate original contour for mountaintop removal operations subject to §38-2-7.8 of this rule;

On page one hundred two, after §38-2-7.7.f.3, by inserting a new subsection, designated §38-2-7.8, to read as follows:


7.8.1.a. An alternative postmining land use for bio-oil cropland may be approved by the secretary after consultation with the landowner and or land management agency having jurisdiction over state or federal lands: Provided, That the following conditions have been met.

7.8.1.a.1. There is a reasonable likelihood for the achievement of bio-oil crop production (such as soybeans, rapeseed or canola) as witnessed by a contract between the landowner and a commercially viable individual or entity, binding the parties to the production of bio-oil crops for a measurement period of
at least two years after the competition of all restoration activity
within the permitted boundaries;

7.8.1.a.2. The bio-oil crop reclamation plan is reviewed
and approved by an agronomist employed by the West Virginia
Department of Agriculture. The applicants shall pay for any
review under this section;

7.8.1.a.3. The use does not present any actual or probable
hazard to the public health or safety or threat of water diminu-
tion or pollution;

7.8.1.a.4. Bio-oil crop production is not:

7.8.1.a.4.A. Impractical or unreasonable;

7.8.1.a.4.B. Inconsistent with applicable land use policies
or plans;

7.8.1.a.4.C. Going to involve unreasonable delays in
implementation; or

7.8.1.a.4.D. In violation of any applicable law.

7.8.2. Soil reconstruction specifications for bio-oil crop
postmining land use shall be established by the W. Va. Depart-
ment of Agriculture in consultation with the U. S. Natural
Resources Conservation Service and based upon the standards
of the National Cooperative Soil Survey and shall include, at a
minimum, physical and chemical characteristics of recon-
structed soils and soil descriptions containing soil-horizon
depths, soil densities, soil pH, and other specifications such that
constructed soils will have the capability of achieving levels of
yield equal to, or higher that, those required for the production
of commercial seed oils species (such as soybeans, rapeseed or
canola) and meets the requirement of 14.3 of this rule.
7.8.3. Bond Release.

7.8.3.a. Phase I bond release shall not be approved until W. Va. Department of Agriculture certifies and the secretary finds that the soil meets the criteria established in this rule and has been placed in accordance with this rule. The applicants shall pay for any review under this section.

7.8.3.b. The secretary may authorize in consultation with the W. Va. Department of Agriculture, the Phase III bond release only after the applicant affirmatively demonstrates, and the secretary finds, that the reclaimed land can support bio-oil production; and there is a binding contract for production which meets the requirements of subdivision 7.8.1.a of this rule; and the requirements of paragraph 9.3.f.2 of this rule are met. The applicant shall pay for any review under this section.

7.8.3.c. Once final bond release is authorized, the permittee’s responsibility for implementing the bio-oil cropland reclamation plan shall cease.

(k) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand five, authorized under the authority of section four, article twenty-one, chapter twenty-two, of this code, relating to the Department of Environmental Protection (coalbed methane wells, 35 CSR 3), is authorized.

(l) The legislative rule filed in the state register on the nineteenth day of July, two thousand five, authorized under the authority of section five, article fifteen, chapter twenty-two, of this code, relating to the Department of Environmental Protection (solid waste management, 33 CSR 1), is authorized.

(m) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand five, authorized under the authority of section six, article eighteen, chapter twenty-two, of this code, relating to the Department of Environmental
Protection (hazardous waste management, 33 CSR 20), is authorized.

(n) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven-b, article eleven, chapter twenty-two, of this code, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 2), is authorized.

(o) The legislative rule filed in the state register on the twenty-sixth day of October, two thousand five, authorized under the authority of section nine, article twenty-eight, chapter twenty-two, of this code, relating to the Department of Environmental Protection (Community Infrastructure Investment Program, 47 CSR 61), is authorized.

(p) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, 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 twenty-first day of November, two thousand five, 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.

(q) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article twenty-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 eighteenth day of January, two thousand six,
§64-3-2. Oil and Gas Conservation Commission.

The legislative rule filed in the state register on the twenty-eighth day of July, two thousand five, authorized under the authority of section five, article nine, chapter twenty-two-c, of this code, relating to the Department of Environmental Protection (rules of the Commission, 39 CSR 1), is authorized.

§64-3-3. Directing further study of 45CSR37.

(a) The Legislature declares that mercury is highly toxic, persistent and bioaccumulates in the food chain and is transported through the atmosphere and deposits on land and water bodies, and according to the Environmental Protection Agency, other serious human health risks, known and unknown, may result from human exposure of mercury in any amount. Emissions from electric utility coal fired steam generating units and other industrial activities cause significant discharges of mercury in West Virginia, therefore, it is appropriate to closely monitor these activities and study this pollutant.

(b) The Commissioner of the Bureau for Public Health, pursuant to and consistent with section six, article one, chapter sixteen of this code, is directed to participate with the Department of Environmental Protection to conduct an assessment on the actual and potential human health pathways and risks from mercury consumption and make appropriate recommendations to the Department of Environmental Protection.

(c) Pursuant to and consistent with section three-a, article one, chapter twenty-two if this code, The Division of Air Quality and the Department of Environmental Protection are directed to further study 45CSR37 [Mercury Budget Trading Program to Reduce Mercury Emissions] to evaluate scientific
evidence, considering specific environmental characteristics of West Virginia, hold public hearings and accept and review appropriate evidence regarding mercury exposure, including recommendations from the Bureau for Public Health. The Department of Environmental Protection shall also conduct an assessment which is also to include an evaluation of the available mercury control technologies for coal-fired steam generating units and other industrial activities that emit mercury, the availability and cost of mercury measurements technology and an analysis of feasibility of implementation of these technologies. The Division of Air Quality shall also consider and address any Bureau for Public Health recommendations considering health risks of West Virginians, and enter a finding as to whether the citizens of West Virginia or regions of West Virginia are exposed to a potential health risk because of mercury contamination, and if so, to propose for legislative promulgation prior to the first day of January, two thousand seven, revisions to 45 CSR 37 and any other appropriate rulemaking to effectuate its findings. The division may also recommend legislation that may be necessary to protect human health and the environment consistent with the division's findings.

§64-3-4. Directing further study of 35CSR3.

(a) Department of Environmental Protection's Office of Oil and Gas's Legislative Rule 35CSR3, [Coalbed Methane Wells] authorized pursuant to section one of this article, addresses the new technology of horizontal drilling of coalbed methane, the process of drilling along coal seams to increase production of a single coalbed methane well. However, the Legislature finds, because of the newness of the technology and drilling methods, further review and study is required to consider and address any potential adverse environmental impacts from coalbed methane wells. The Office of Oil and Gas is directed to conduct a study of this new process as follows:
(1) Conduct an analysis of literature and seek input from experts in hydrology, geology and engineering, to develop a thorough understanding of coalbed methane drilling, how the drilling is physically done, the type of equipment utilized, fluids used or encountered, and pressures induced or encountered in the drilling process;

(2) Review the regulatory scheme of other states in the Appalachian basin to determine if innovative regulatory approaches would be instructive and should be incorporated into West Virginia’s regulatory scheme;

(3) Review the potential effect of drilling coalbed methane wells in areas where abandoned or active gas or oil wells are located; and

(4) Assess whether special requirements should be adopted providing protections for groundwater and water wells, to prevent contamination and other adverse impacts.

(b) The Office of Oil and Gas shall call upon other divisions of the Department of Environmental Protection as needed to assist in this review, and report to the Legislature by the first of January, two thousand seven, and propose further legislative rule amendments to the rule as are necessary and appropriate.
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 4th day of April, 2006.

Governor