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**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**REGULAR SESSION, 2011**

WEST VIRGINIA  
SECRETARY OF STATE

—●—  
**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 121**

(SENATORS MINARD, SNYDER, PREZIOSO, UNGER,  
BOLEY AND K. FACEMYER, ORIGINAL SPONSORS)

[PASSED MARCH 11, 2011; IN EFFECT FROM PASSAGE.]

SB 121 (veto)

the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management systems; 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 ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution which cause or contribute to nonattainment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing groundwater standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring well design standards.

*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  
2 thirtieth day of July, two thousand ten, authorized under the  
3 authority of section six, article eighteen, chapter twenty-two  
4 of this code, modified by the Department of Environmental  
5 Protection to meet the objections of the Legislative Rule-  
6 Making Review Committee and refiled in the state register  
7 on the twenty-first day of September, two thousand ten,  
8 relating to the Department of Environmental Protection  
9 (hazardous waste management system, 33 CSR 20), is  
10 authorized.

11 (b) The legislative rule filed in the state register on the  
12 thirtieth day of July, two thousand ten, authorized under the  
13 authority of section four, article three, chapter twenty-two  
14 of this code, modified by the Department of Environmental  
15 Protection to meet the objections of the Legislative Rule-  
16 Making Review Committee and refiled in the state register  
17 on the eighteenth day of January, two thousand eleven,  
18 relating to the Department of Environmental Protection  
19 (surface mining reclamation, 38 CSR 2), is authorized with  
20 the following amendments:

21 On page fifty-four, subdivision 3.32.b., by striking out the  
22 words "For the purposes of W.Va. Code §22-3-19(a)(1)(B), an  
23 operator shall be considered in compliance with the applica-  
24 ble environmental performance standards referenced therein  
25 unless it has unabated cessation orders, notices of violations  
26 that are not in the process of being abated to the Secretary's  
27 satisfaction, delinquent civil penalties, or bond forfeitures.";

28 On pages one hundred fifty-four and one hundred fifty-  
29 five, paragraph 12.2.a.1., by striking out all of paragraph  
30 12.2.a.1. and inserting in lieu thereof a new paragraph  
31 12.2.a.1. to read as follows:

32 "12.2.a.1. The permittee may file an application with the  
33 Secretary for the release of all or part of a bond. Applica-  
34 tions may be filed only at times or during seasons established  
35 by the Secretary which allow proper evaluation of the  
36 completed reclamation operations.”;

37 And,

38 On page one hundred seventy-seven, subdivision 14.11.h.,  
39 by striking out the words “e. and f.” and inserting in lieu  
40 thereof the words “e., f. and g.”.

41 (c) The legislative rule filed in the state register on the  
42 twenty-eighth day of July, two thousand ten, authorized  
43 under the authority of section four, article five, chapter  
44 twenty-two of this code, relating to the Department of  
45 Environmental Protection (ambient air quality standards, 45  
46 CSR 8), is authorized.

47 (d) The legislative rule filed in the state register on the  
48 twenty-eighth day of July, two thousand ten, authorized  
49 under the authority of section four, article five, chapter  
50 twenty-two of this code, modified by the Department of  
51 Environmental Protection to meet the objections of the  
52 Legislative Rule-Making Review Committee and refiled in  
53 the state register on the eleventh day of January, two  
54 thousand eleven, relating to the Department of Environmen-  
55 tal Protection (permits for construction and major modifica-  
56 tion of major stationary sources of air pollution for the  
57 prevention of significant deterioration, 45 CSR 14), is  
58 authorized with the following amendment:

59 On page twenty, after paragraph 2.80.e.2., by adding the  
60 following:

61 “2.80.f. Notwithstanding subdivisions 2.80.d. and 2.80.e.,  
62 and subject to the public notice requirements set forth in  
63 subdivision 2.80.g., the preconstruction permit requirements  
64 of this rule shall not apply to a source’s GHG emissions if  
65 any of the following actions result in GHGs not being subject

66 to regulation under the otherwise applicable federal preven-  
67 tion of significant deterioration requirements set forth in 40  
68 CFR §51.166:

69 2.80.f.1. A US EPA final rule;

70 2.80.f.2. An act of the United States Congress;

71 2.80.f.3. A Presidential Executive Order;

72 2.80.f.4. A final order of the District of Columbia Circuit  
73 Court of Appeals, if the specified time for appealing the  
74 order has lapsed and no appeals, petitions seeking clarifica-  
75 tion or rehearing, or other petitions regarding the order have  
76 been filed, or, if any appeals or petitions are filed, the  
77 resolution of any and all appeals and petitions regarding the  
78 final order are complete and have upheld the relevant  
79 determination(s). Moreover, a stay shall also create an  
80 exemption during the effective length of the stay. These two  
81 specific exemptions shall become effective only if US EPA  
82 does not object in writing by the end of the notice period set  
83 forth in subdivision 2.80.g.; or

84 2.80.f.5. An order of the United States Supreme Court.

85 2.80.g. The exemption set forth in subdivision 2.80.f. shall  
86 become effective after the Secretary provides a thirty day  
87 notice of such exemption to US EPA and the public. Such  
88 notice shall be published in the West Virginia Register and  
89 explain the circumstances justifying the exemption.”

90 (e) The legislative rule filed in the state register on the  
91 twenty-eighth day of July, two thousand ten, authorized  
92 under the authority of section four, article five, chapter  
93 twenty-two of this code, relating to the Department of  
94 Environmental Protection (standards of performance for new  
95 stationary sources, 45 CSR 16), is authorized.

96 (f) The legislative rule filed in the state register on the  
97 twenty-eighth day of July, two thousand ten, authorized

98 under the authority of section four, article five, chapter  
99 twenty-two of this code, modified by the Department of  
100 Environmental Protection to meet the objections of the  
101 Legislative Rule-Making Review Committee and refiled in  
102 the state register on the eleventh day of January, two  
103 thousand eleven, relating to the Department of Environmen-  
104 tal Protection (control of air pollution from combustion of  
105 solid waste, 45 CSR 18), is authorized.

106 (g) The legislative rule filed in the state register on the  
107 twenty-eighth day of July, two thousand ten, authorized  
108 under the authority of section four, article five, chapter  
109 twenty-two of this code, relating to the Department of  
110 Environmental Protection (permits for construction and  
111 major modification of major stationary sources of air  
112 pollution which cause or contribute to nonattainment, 45  
113 CSR 19), is authorized.

114 (h) The legislative rule filed in the state register on the  
115 twenty-eighth day of July, two thousand ten, authorized  
116 under the authority of section four, article five, chapter  
117 twenty-two of this code, relating to the Department of  
118 Environmental Protection (control of air pollution from  
119 hazardous waste treatment, storage or disposal facilities, 45  
120 CSR 25), is authorized.

121 (i) The legislative rule filed in the state register on the  
122 twenty-eighth day of July, two thousand ten, authorized  
123 under the authority of section four, article five, chapter  
124 twenty-two of this code, relating to the Department of  
125 Environmental Protection (emission standards for hazardous  
126 air pollutants, 45 CSR 34), is authorized.

127 (j) The legislative rule filed in the state register on the  
128 thirtieth day of July, two thousand ten, authorized under the  
129 authority of section four, article eleven, chapter twenty-two  
130 of this code, relating to the Department of Environmental  
131 Protection (requirements governing water quality standards,  
132 47 CSR 2), is authorized with the following amendments:

133 On pages two and three, subsection 3.1, by striking out the  
134 words "and certain water withdrawal activities";

135 On page three, subsection 3.2, by striking out the words "or  
136 water withdrawal activities";

137 On page fourteen, subdivision 8.2.b., striking out all of  
138 subdivision 8.2.b. and inserting in lieu thereof a new subdivi-  
139 sion 8.2.b. to read as follows:

140 "8.2.b. For waters other than the Ohio River between river  
141 mile points 68.0 and 70.0, a final determination on the  
142 critical design flow for carcinogens is not made in this rule,  
143 in order to permit further review and study of that issue.  
144 Following the conclusion of such review and study, the  
145 Legislature may again take up the authorization of this rule  
146 for purposes of addressing the critical design flow for  
147 carcinogens: Provided, That until such time as the review  
148 and study of the issue is concluded or until such time as the  
149 Legislature may again take up the authorization of this rule,  
150 the regulatory requirements for determining effluent limits  
151 for carcinogens shall remain as they were on the date this  
152 rule was proposed.";

153 On page fourteen, after subdivision 8.2.b., by adding a new  
154 paragraph 8.2.b.1. to read as follows:

155 "8.2.b.1. For the Ohio River between river mile points 68.0  
156 and 70.0 the critical design flow for determining effluent  
157 limits for carcinogens shall be harmonic mean flow.";

158 On page fourteen, subdivision 8.3.b., by striking out all of  
159 subdivision 8.3.b.;

160 On page fourteen, paragraph 8.3.b.1., by striking out all of  
161 paragraph 8.3.b.1.;

162 On page fourteen, subparagraph 8.3.b.1.A., by striking out  
163 all of subparagraph 8.3.b.1.A.;

164 And,

165 On page forty-seven, by striking out all of parameter 8.32  
166 and renumbering the remaining parameters.

167 (k) The legislative rule filed in the State Register on April  
168 8, 2010, authorized under the authority of section four,  
169 article eleven, chapter twenty-two of this code, approved for  
170 promulgation by the Legislature on March 13, 2010, relating  
171 to the Department of Environmental Protection (National  
172 Pollutant Discharge Elimination System (NPDES) Program,  
173 47 CSR 10), is authorized with the following amendments:

174 On page forty-four, part 13.1.b.4.A.13., by striking out all  
175 of part 13.1.b.4.A.13. and inserting in lieu thereof a new part  
176 13.1.b.4.A.13. to read as follows:

177 "13.1.b.4.A.13. Five thousand (5,000) ducks, if the AFO  
178 uses a liquid manure handling system.";

179 On page forty-four, subparagraph 13.1.b.4.B, by striking  
180 out all of subparagraph 13.1.b.4.B;

181 On page forty-four, part 13.1.b.4.B.1, by striking out all of  
182 part 13.1.b.4.B.1.;

183 And,

184 On page forty-four, part 13.1.b.4.B.2, by striking out all of  
185 part 13.1.b.4.B.2.

186 (l) The legislative rule filed in the state register on the  
187 twenty-third day of July, two thousand ten, authorized under  
188 the authority of section four, article twelve, chapter twenty-  
189 two of this code, modified by the Department of Environ-  
190 mental Protection to meet the objections of the Legislative  
191 Rule-Making Review Committee and refiled in the state  
192 register on the fourteenth day of September, two thousand  
193 ten, relating to the Department of Environmental Protection



194 (requirements governing groundwater standards, 47 CSR 12),  
195 is authorized.

196 (m) The legislative rule filed in the state register on the  
197 twenty-sixth day of July, two thousand ten, authorized under  
198 the authority of section five, article twelve, chapter twenty-  
199 two of this code, modified by the Department of Environ-  
200 mental Protection to meet the objections of the Legislative  
201 Rule-Making Review Committee and refiled in the state  
202 register on the twenty-second day of September, two thou-  
203 sand ten, relating to the Department of Environmental  
204 Protection (monitoring well design standards, 47 CSR 60), is  
205 authorized.


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


  
.....  
Chairman Senate Committee

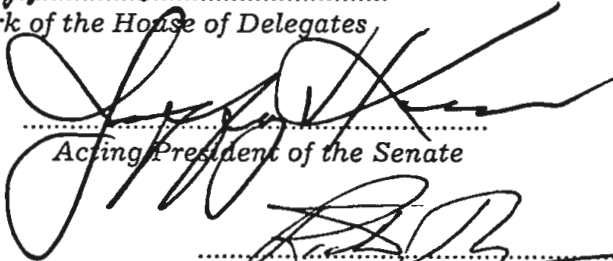
  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.


  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
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Acting President of the Senate

  
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Speaker of the House of Delegates

The within *is disapproved* this the *17<sup>th</sup>*  
*May* Day of ....., 2011.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2011

Time 9:15am