WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 121
(Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer, original sponsors)

[Passed March 18, 2011; in effect ninety days from passage.]
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(SENATORS MINARD, SNYDER, PREZIOSO, UNGER,
BOLEY AND K. FACEMYER, original sponsors)

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AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; 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 in the form that the rules were filed in the State Register and 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 Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules as amended by
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 requirements governing water quality standards; 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.

(a) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, 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 twenty-first day of September, two thousand ten, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, 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 eighteenth day of January, two thousand eleven, relating to the Department of Environmental Protection (surface mining reclamation, 38 CSR 2), is authorized with the following amendments:

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

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

"12.2.a.1. The permittee may file an application with the Secretary for the release of all or part of a bond. Applications may be filed only at times or during seasons established by the Secretary which allow proper evaluation of the completed reclamation operations."

And,

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

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

(d) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, 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 eleventh day of January, two thousand eleven, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration, 45 CSR 14), is authorized with the following amendment:

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

"2.80.f. Notwithstanding subdivisions 2.80.d. and 2.80.e., and subject to the public notice requirements set forth in
subdivision 2.80.g., the preconstruction permit requirements of this rule shall not apply to a source's GHG emissions if any of the following actions result in GHGs not being subject to regulation under the otherwise applicable federal prevention of significant deterioration requirements set forth in 40 CFR §51.166:

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

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

2.80.f.3. A Presidential Executive Order;

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

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

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

(e) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, 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, 45 CSR 16), is authorized.
(f) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, 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 eleventh day of January, two thousand eleven, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(g) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, 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 and major modification of major stationary sources of air pollution which cause or contribute to nonattainment, 45 CSR 19), is authorized.

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

(i) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, 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, 45 CSR 34), is authorized.

(j) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section four, 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 with the following amendments:

On pages two and three, subsection 3.1, by striking out the words “and certain water withdrawal activities”;

On page three, subsection 3.2, by striking out the words “or water withdrawal activities”;

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

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

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

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

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

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

And,

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

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


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


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

And,


(l) The legislative rule filed in the state register on the twenty-third day of July, two thousand ten, authorized under the authority of section four, article twelve, 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 fourteenth day of September, two thousand
ten, relating to the Department of Environmental Protection
(requirements governing groundwater standards, 47 CSR 12),
is authorized.

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

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within...................................... this the ..............

Day of .............................................., 2011.

Earl Ray Tomblin

Governor
PRESENTED TO THE GOVERNOR

MAR 28 2011

Time 3:33 pm