WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2579

(By Delegate(s) R. Phillips, Stowers, Eldridge, Tomblin, White, Marcum, Caputo, Boggs, Craig, Sumner and Nelson, J.)

Passed April 12, 2013

In effect ninety days from passage.
AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to protecting state waters; providing legislative findings; acknowledging the scientific uncertainty regarding the applicability of the current selenium standard in this state; directing the secretary to develop an implementation plan within certain time period for selenium discharges in certain situations; requiring certain minimum requirements in implementation plan; requiring secretary to promulgate legislative rule within certain time period which establishes a state-specific selenium standard; requiring secretary to submit state-specific selenium standard to EPA administrator; and directing secretary to consult with and solicit research and data from certain groups in developing selenium standard.
Be it enacted by the Legislature of West Virginia:

That §22-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, That:

(1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with such standards and limitations to comply therewith, and upon the expiration of any such period of time, the secretary shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of such waters below the standards and limitations established therefor by rules of the board or secretary;

(2) Notwithstanding any rule or permit condition to the contrary, and except for any standard imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious to human health, compliance with a permit issued pursuant to this article shall be deemed compliance for purposes of both this article and sections 301, 302, 306, 307 and 403 of the federal Water Pollution Control Act. Nothing in this section, however, prevents the secretary from modifying, reissuing or revoking a permit during its term. The provisions of this section addressing compliance with a permit are intended to apply to all existing and future discharges and permits without the need for permit modifications. However, should any such modification be necessary under the terms of this article, then the secretary shall immediately commence the process to effect such modifications; and
(3) The Legislature finds that there are concerns within West Virginia regarding the applicability of the research underlying the federal selenium criteria to a state such as West Virginia which has high precipitation rates and free-flowing streams and that the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia and, further, that considerable research is required to determine if selenium is having an impact on West Virginia streams, to validate or determine the proper testing methods for selenium and to better understand the chemical reactions related to selenium mobilization in water.

(4) The Legislature finds that EPA has been contemplating a revision to the federally recommended criteria for several years but has yet to issue a revised standard.

(5) Because of the uncertainty regarding the applicability of the current selenium standard, the secretary is hereby directed to develop within six months of the effective date of this subdivision an implementation plan for the current selenium standard that will include, at minimum, the following:

(A) Implementing the criteria as a threshold standard;

(B) A monitoring plan that will include chemical speciation of any selenium discharge;

(C) A fish population survey and monitoring plan that will be implemented at a representative location to assess any possible impacts from selenium discharges if the threshold criteria are exceeded; and

(D) The results of the monitoring will be reported to the department for use in the development of state-specific selenium criteria.

(6) Within twenty-four months of the effective date of this subdivision, the secretary shall propose rules for legislative
approval in accordance with the provisions of article three, chapter twenty-nine of this code which establish a state-specific selenium standard that protects aquatic life. Concurrent with proposing a legislative rule, the secretary shall also submit the proposed standard and supporting documentation to the Administrator of the Environmental Protection Agency. The secretary shall also consult with and consider research and data from the West Virginia Water Research Institute at West Virginia University, the regulated community, and other appropriate groups in developing the state-specific selenium standard.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 29th day of April, 2013.

Governor