

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 243

(SENATOR SNYDER, ORIGINAL SPONSOR)

[PASSED APRIL 12, 2013; IN EFFECT FROM PASSAGE.]

SB 243

OFFICE OF THE CLERK
WEST VIRGINIA
STATE

2013 APR 30 PM 2:42

FILED

FILED
2013 APR 30 PM 2:42

ENROLLED
COMMITTEE SUBSTITUTE
FOR

CLERK OF SENATE
STATE OF WEST VIRGINIA

Senate Bill No. 243

(SENATOR SNYDER, *original sponsor*)

[Passed April 12, 2013; in effect from passage.]

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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; 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 and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to covered electronic devices recycling; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; authorizing the Department of Environmental

Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; 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 the control of air pollution from the combustion of solid waste; 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 requirements for operating permits; 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 water pollution control permit fee schedules; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES regulations for coal mining facilities.

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
- 2 August 30, 2012, authorized under the authority of section
- 3 twenty-nine, article fifteen-a, chapter twenty-two of this

4 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 December 13, 2012, relating to the Department of
8 Environmental Protection (covered electronic devices
9 recycling, 33 CSR 12), is authorized with the following
10 amendment:

11 On page two, paragraph 4.1.b.1., by striking out all of
12 paragraph 4.1.b.1. and inserting in lieu thereof a new
13 paragraph 4.1.b.1., to read as follows:

14 4.1.b.1. Within one year after the effective date of this
15 rule, receiving, storage, operations and shipping areas must
16 be under a roof or in an enclosed area sufficient to prevent
17 stormwater contamination.

18 (b) The legislative rule filed in the State Register on
19 August 24, 2012, authorized under the authority of section
20 seventeen, article eighteen, chapter twenty-two of this code,
21 relating to the Department of Environmental Protection
22 (hazardous waste administrative proceedings and civil
23 penalty assessment, 33 CSR 27), is authorized.

24 (c) The legislative rule filed in the State Register on
25 September 4, 2012, authorized under the authority of section
26 six, article six-a, chapter twenty-two of this code, modified
27 by the Department of Environmental Protection to meet the
28 objections of the Legislative Rule-Making Review
29 Committee and refiled in the State Register on February 14,
30 2013, relating to the Department of Environmental Protection
31 (horizontal well development, 35 CSR 8), is authorized with
32 the following amendments:

33 On page two, after subsection 2.12., by inserting a new
34 subsection 2.13. to read as follows:

35 2.13. "Health care professional" means a physician,
36 physician assistant, nurse practitioner, registered nurse or
37 emergency medical technician licensed by the State of West
38 Virginia.

39 And renumbering the remaining subsections;

40 And,

41 On page 10, Section 5.6.e., line 1 and 2, by deleting the
42 sentence that reads, "A copy of the approved Water
43 Management Plan shall be available upon request." and
44 inserting in lieu thereof the following:

45 "Signage shall be posted at each water withdraw site that
46 provides how to obtain the Water Management Plan, the
47 phone number of the company conducting the withdraw, the
48 Office's web site name and phone number, and the permit
49 number."

50 And,

51 On page 10, subsection 5.7.a, line 5, following the words
52 "is sought," by inserting the words "the anticipated MSDS
53 Sheets, and"

54 And,

55 On page 10, subsection 5.7.1, line 12, following the
56 words "emergency services." by inserting the following:

57 "The operator shall also provide the Well Site Safety Plan
58 to the surface owner and any water purveyor or surface
59 owner subject to notice and water testing as provided in
60 subsection 15 of this rule.

61 And,

62 On page 19, Section 9.1.b.2, line 3, following the words
63 “will be utilized” by striking out the period and inserting a
64 comma and the following:

65 “and the telephone number for the Department of
66 Environmental Protection.”

67 And,

68 On pages 23 and 24, by striking out all of subsection
69 10.1. and inserting in lieu thereof a new subsection 10.1. to
70 read as follows:

71 10.1. Well Records Made During Permitted Work - The
72 well operator or its contractor (service provider, drilling
73 contractor or other contractor, as appropriate) shall keep at
74 the well location a copy of the application as permitted,
75 including the associated plat and plans required by section 5
76 of this rule. The well operator or its contractor (service
77 provider, drilling contractor or other contractor, as
78 appropriate) shall also make and preserve at the well location
79 accurate records of all well work performed pursuant to the
80 permit, including documentation by the contractor or person
81 performing the cementing services of the time of completion
82 of cementing and the volume of cement used for the
83 cementing of all casing operations. The records shall be
84 complete enough to support, as applicable, the entries of well
85 work done and related data on Form WR-35, “Well
86 Operator’s Report of Well Work”, Form WR-36, “Well
87 Operator’s Report of Initial Gas-Oil Ratio Test”, and Form
88 WR-38, “Affidavit of Plugging and Filling Well”, but these
89 forms shall reflect information discovered or changes made
90 after the permitted well work has been finished and before the
91 reports are filed. The records made and preserved at the well
92 location and the recordings made on Form WR-35 shall
93 include, but not be limited to, indications of caverns, open
94 mines or other voids, whether the freshwater casing cement

95 circulated to the surface, and the efforts made to fill the
96 annular space and the results. Unless the records of well work
97 performed are prepared by the well operator or owner, a copy
98 of all the records shall be delivered to the well owner or
99 operator, except for those records the contractor (service
100 provider, drilling contractor or other contractor, as
101 appropriate) designates as a confidential trade secret.

102 10.1.a. As part of the well completion report (Form WR-
103 35), the operator or its service provider shall list all the
104 additives used in the hydraulic fracturing or stimulation
105 process, including each additive's specific trade name,
106 supplier, and purpose. The operator or its service provider
107 shall also list each chemical of each additive intentionally
108 added to a base fluid for the purpose of preparing a fracturing
109 fluid, along with each chemical's CAS registry number, if
110 applicable, its maximum concentration in the additive, and its
111 maximum concentration as added to the base fluid, and the
112 volume of the base fluid used. The concentrations shall be
113 expressed as a mass percent. The operator or service
114 provider may designate the information regarding the specific
115 identity or concentration or both of a chemical as a
116 confidential trade secret not to be disclosed to the agency or
117 anyone else except in the event of an investigation by the
118 office, medical emergency, or for diagnostic or treatment
119 purposes involving the designated chemical, pursuant to
120 subdivisions 10.1.d. and 10.1.e. below.

121 10.1.b. The operator or service provider shall fulfill the
122 additive reporting requirement of subdivision 10.1.a. above
123 by submitting the information to the office and the FracFocus
124 Chemical Disclosure Registry.

125 10.1.c. As part of the well completion report (Form WR-
126 35), the operator shall report the volumes of fluids pumped
127 and treatment pressures recorded throughout the hydraulic
128 fracturing process.

129 10.1.d. In the event of an investigation by the office
130 involving a chemical designated as a confidential trade secret,
131 the operator or service provider shall provide the specific
132 identity of the chemical, the concentration of the chemical, or
133 both the specific identity and concentration of the chemical,
134 as needed, to the agency upon receipt of notification from the
135 chief or his or her designee stating that such information is
136 necessary in connection with an investigation by the office.
137 Upon receipt of such notification of need, such information
138 shall be disclosed by the operator or service provider, as
139 applicable, directly to the chief or his or her designee and
140 shall in no way be construed as publicly available. The chief
141 or designee may disclose information regarding the specific
142 identity of a chemical, the concentration of a chemical, or
143 both the specific identity and concentration of a chemical
144 claimed to be a confidential trade secret to additional agency
145 staff members to the extent that such disclosure is necessary
146 to allow the agency staff member receiving the information
147 to assist in such an investigation by the office, provided that
148 such individuals shall not disseminate the information further
149 and such information shall at all times be considered
150 confidential and shall not be construed as publicly available.
151 Upon request by the operator or service provider, and where
152 a notification of need is provided orally, the chief shall
153 execute a written statement of need indicating that the
154 information was necessary in connection with an
155 investigation by the office.

156 10.1.e. The operator or service provider shall provide the
157 specific identity of a chemical designated as a confidential
158 trade secret, the concentration of the chemical designated as
159 a confidential trade secret, or both the specific identity and
160 concentration of the chemical designated as a confidential
161 trade secret, as needed, upon request to a health care
162 professional in a medical emergency, or for diagnostic or
163 treatment purposes. The health care professional shall only
164 use the information provided by the operator or service

165 provider for diagnosis or treatment of an individual, and the
166 operator or service provider may provide notice to the health
167 care professional at the time of release of the information,
168 that the information provided is solely for diagnosis or
169 treatment of the individual, that the information may be a
170 trade secret, and disclosure to others for any other purpose
171 may subject that health care professional to a legal action by
172 the operator or service provider for violating its trade secret.”

173 And,

174 On page 30, by striking out all of subsection 13.5.”

175 (d) The legislative rule filed in the State Register on
176 August 15, 2012, authorized under the authority of section
177 four, article five, chapter twenty-two of this code, relating to
178 the Department of Environmental Protection (permits for
179 construction and major modification of major stationary
180 sources for the prevention of significant deterioration of air
181 quality, 45 CSR 14), is authorized.

182 (e) The legislative rule filed in the State Register on
183 August 14, 2012, authorized under the authority of section
184 four, article five, chapter twenty-two of this code, relating to
185 the Department of Environmental Protection (standards of
186 performance for new stationary sources, 45 CSR 16), is
187 authorized.

188 (f) The legislative rule filed in the State Register on
189 August 15, 2012, authorized under the authority of section
190 four, article five, chapter twenty-two of this code, relating to
191 the Department of Environmental Protection (control of air
192 pollution from combustion of solid waste, 45 CSR 18), is
193 authorized.

194 (g) The legislative rule filed in the State Register on
195 August 15, 2012, authorized under the authority of section

196 four, article five, chapter twenty-two of this code, relating to
197 the Department of Environmental Protection (control of air
198 pollution from hazardous waste treatment, storage or disposal
199 facilities, 45 CSR 25), is authorized.

200 (h) The legislative rule filed in the State Register on
201 August 15, 2012, authorized under the authority of section
202 four, article five, chapter twenty-two of this code, relating to
203 the Department of Environmental Protection (requirements
204 for operating permits, 45 CSR 30), is authorized.

205 (i) The legislative rule filed in the State Register on
206 August 15, 2012, authorized under the authority of section
207 four, article five, chapter twenty-two of this code, relating to
208 the Department of Environmental Protection (emission
209 standards for hazardous air pollutants, 45 CSR 34), is
210 authorized.

211 (j) The legislative rule filed in the State Register on
212 August 30, 2012, authorized under the authority of section
213 ten, article eleven, chapter twenty-two of this code, relating
214 to the Department of Environmental Protection (water
215 pollution control permit fee schedules, 47 CSR 26), is
216 authorized.

217 (k) The legislative rule filed in the State Register on
218 August 28, 2012, authorized under the authority of section
219 four, article eleven, chapter twenty-two of this code, relating
220 to the Department of Environmental Protection (WV/NPDES
221 regulations for coal mining facilities, 47 CSR 30), is
222 authorized.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

2013 APR 30 PM 2:42
FILED
SECRETARY OF STATE

The within *is approved* this the *30th*
Day of *April*, 2013.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

APR 23 2013

Time 1:20 pm