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.]
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
Enr. Com. Sub. for S. B. No. 243] 2

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 August 30, 2012, authorized under the authority of section twenty-nine, article fifteen-a, 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 December 13, 2012, relating to the Department of Environmental Protection (covered electronic devices recycling, 33 CSR 12), is authorized with the following amendment:

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

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

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

(c) The legislative rule filed in the State Register on September 4, 2012, authorized under the authority of section six, article six-a, 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 February 14, 2013, relating to the Department of Environmental Protection (horizontal well development, 35 CSR 8), is authorized with the following amendments:

On page two, after subsection 2.12., by inserting a new subsection 2.13. to read as follows:
2.13. “Health care professional” means a physician, physician assistant, nurse practitioner, registered nurse or emergency medical technician licensed by the State of West Virginia.

And renumbering the remaining subsections;

And;

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

“Signage shall be posted at each water withdraw site that provides how to obtain the Water Management Plan, the phone number of the company conducting the withdraw, the Office’s web site name and phone number, and the permit number.”

And,

On page 10, subsection 5.7.a, line 5, following the words “is sought,” by inserting the words “the anticipated MSDS Sheets, and”

And,

On page 10, subsection 5.7.1, line 12, following the words “emergency services.” by inserting the following:

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

And,
On page 19, Section 9.1.b.2, line 3, following the words "will be utilized" by striking out the period and inserting a comma and the following:

"and the telephone number for the Department of Environmental Protection."

And,

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

10.1. Well Records Made During Permitted Work - The well operator or its contractor (service provider, drilling contractor or other contractor, as appropriate) shall keep at the well location a copy of the application as permitted, including the associated plat and plans required by section 5 of this rule. The well operator or its contractor (service provider, drilling contractor or other contractor, as appropriate) shall also make and preserve at the well location accurate records of all well work performed pursuant to the permit, including documentation by the contractor or person performing the cementing services of the time of completion of cementing and the volume of cement used for the cementing of all casing operations. The records shall be complete enough to support, as applicable, the entries of well work done and related data on Form WR-35, "Well Operator's Report of Well Work", Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test", and Form WR-38, "Affidavit of Plugging and Filling Well", but these forms shall reflect information discovered or changes made after the permitted well work has been finished and before the reports are filed. The records made and preserved at the well location and the recordings made on Form WR-35 shall include, but not be limited to, indications of caverns, open mines or other voids, whether the freshwater casing cement
circulated to the surface, and the efforts made to fill the
annular space and the results. Unless the records of well work
performed are prepared by the well operator or owner, a copy
of all the records shall be delivered to the well owner or
operator, except for those records the contractor (service
provider, drilling contractor or other contractor, as
appropriate) designates as a confidential trade secret.

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

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

10.1.c. As part of the well completion report (Form WR­
35), the operator shall report the volumes of fluids pumped
and treatment pressures recorded throughout the hydraulic
fracturing process.
10.1.d. In the event of an investigation by the office involving a chemical designated as a confidential trade secret, the operator or service provider shall provide the specific identity of the chemical, the concentration of the chemical, or both the specific identity and concentration of the chemical, as needed, to the agency upon receipt of notification from the chief or his or her designee stating that such information is necessary in connection with an investigation by the office. Upon receipt of such notification of need, such information shall be disclosed by the operator or service provider, as applicable, directly to the chief or his or her designee and shall in no way be construed as publicly available. The chief or designee may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a confidential trade secret to additional agency staff members to the extent that such disclosure is necessary to allow the agency staff member receiving the information to assist in such an investigation by the office, provided that such individuals shall not disseminate the information further and such information shall at all times be considered confidential and shall not be construed as publicly available. Upon request by the operator or service provider, and where a notification of need is provided orally, the chief shall execute a written statement of need indicating that the information was necessary in connection with an investigation by the office.

10.1.e. The operator or service provider shall provide the specific identity of a chemical designated as a confidential trade secret, the concentration of the chemical designated as a confidential trade secret, or both the specific identity and concentration of the chemical designated as a confidential trade secret, as needed, upon request to a health care professional in a medical emergency, or for diagnostic or treatment purposes. The health care professional shall only use the information provided by the operator or service
Enr. Com. Sub. for S. B. No. 243]

165 provider for diagnosis or treatment of an individual, and the
166 operator or service provider may provide notice to the health
care professional at the time of release of the information,
that the information provided is solely for diagnosis or
treatment of the individual, that the information may be a
trade secret, and disclosure to others for any other purpose
may subject that health care professional to a legal action by
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
the Department of Environmental Protection (permits for
construction and major modification of major stationary
sources for the prevention of significant deterioration of air
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
the Department of Environmental Protection (standards of
performance for new stationary sources, 45 CSR 16), is
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
the Department of Environmental Protection (control of air
pollution from combustion of solid waste, 45 CSR 18), is
authorized.

194 (g) The legislative rule filed in the State Register on
195 August 15, 2012, 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.

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

(i) The legislative rule filed in the State Register on
August 15, 2012, 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
August 30, 2012, authorized under the authority of section
ten, article eleven, chapter twenty-two of this code, relating
to the Department of Environmental Protection (water
pollution control permit fee schedules, 47 CSR 26), is
authorized.

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

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor
PRESENTED TO THE GOVERNOR

APR 23 2013

Time 1:20