

WEST VIRGINIA LEGISLATURE
2016 FIRST EXTRAORDINARY SESSION

ENROLLED

Committee Substitute

for

House Bill 117

(BY MR. SPEAKER (MR. ARMSTEAD) AND

DELEGATE MILEY)

[BY REQUEST OF THE EXECUTIVE]

[Passed June 2, 2016; in effect from passage.]

HB 117

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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FILED

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[Passed June 2, 2016; in effect from passage.]

1 AN ACT to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931,
2 as amended, relating generally to administrative rules of the Department of Environmental
3 Protection; legislatively mandating or authorizing for the promulgation of certain legislative
4 rules by various executive or administrative agencies of the state; authorizing certain of
5 the agencies to promulgate certain legislative rules in the form that the rules were filed in
6 the State Register; authorizing certain of the agencies to promulgate certain legislative
7 rules with various modifications presented to and recommended by the Legislative Rule-
8 Making Review Committee; repealing certain legislative, procedural or interpretive rules
9 promulgated by certain agencies, boards and commissions which are no longer authorized
10 or are obsolete; repealing certain legislative, procedural and interpretive rules
11 promulgated by certain agencies and boards under the Department of Environmental
12 Protection; repealing the Department of Environmental Protection legislative rule relating
13 to requiring the submission of emission statements for volatile organic compound
14 emissions and oxides; repealing the Department of Environmental Protection legislative
15 rule relating to bona fide future use; repealing the Department of Environmental Protection
16 legislative rule relating to abandoned wells; repealing the Department of Environmental
17 Protection legislative rule relating to the Environmental Excellence Program; repealing the
18 Department of Environmental Protection legislative rule relating to oil and gas operations
19 – solid waste; repealing the Department of Environmental Protection legislative rule
20 relating to the Recycling Assistance Fund Grant Program; repealing the Department of
21 Environmental Protection legislative rule relating to commercial hazardous waste
22 management facility siting fees; repealing the Department of Environmental Protection
23 legislative rule relating to groundwater protection standards; repealing the Department of
24 Environmental Protection legislative rule relating to Underground Storage Tank Insurance
25 Trust Fund; repealing the Department of Environmental Protection legislative rule relating
26 to hazardous waste management; repealing the Department of Environmental Protection

27 legislative rule relating to solid waste management; repealing the Department of
28 Environmental Protection legislative rule relating to waste tire management; repealing the
29 Department of Environmental Protection legislative rule relating to sewage sludge
30 management; repealing the Department of Environmental Protection legislative rule
31 relating to Hazardous Waste Emergency Response Fund regulations; repealing the
32 Department of Environmental Protection interpretive rule relating to initial inspection,
33 certification and spill prevention response plan requirements; repealing the Department of
34 Environmental Protection legislative rule relating to the Office of the Environmental
35 Advocate; repealing the Department of Environmental Protection legislative rule relating
36 to coal refuse; repealing the Department of Environmental Protection procedural rule
37 relating to administrative procedures and civil administrative penalty assessment – Water
38 Resources Protection Act; repealing the Department of Environmental Protection
39 procedural rule relating to procedures and practice before the Department of Energy;
40 authorizing the Department of Environmental Protection to promulgate a legislative rule
41 relating to the control of annual nitrogen oxide emissions; authorizing the Department of
42 Environmental Protection to promulgate a legislative rule relating to the control of air
43 pollution from combustion of solid waste; authorizing the Department of Environmental
44 Protection to promulgate a legislative rule relating to the control of air pollution from
45 hazardous waste treatment, storage and disposal facilities; authorizing the Department of
46 Environmental Protection to promulgate a legislative rule relating to emission standards
47 for hazardous air pollutants; authorizing the Department of Environmental Protection to
48 promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions;
49 authorizing the Department of Environmental Protection to promulgate a legislative rule
50 relating to control of annual sulfur dioxide emissions; authorizing the Department of
51 Environmental Protection to promulgate a legislative rule relating to surface mining
52 reclamation; authorizing the Department of Environmental Protection to promulgate a

53 legislative rule relating to administrative proceedings and civil penalty assessment;
54 authorizing the Department of Environmental Protection to promulgate a legislative rule
55 relating to above ground storage tank fee assessments; authorizing the Department of
56 Environmental Protection to promulgate a legislative rule relating to above ground storage
57 tank administrative proceedings and civil penalty assessment; authorizing the Department
58 of Environmental Protection to promulgate a legislative rule relating to requirements
59 governing water quality standards; authorizing the Department of Environmental
60 Protection to promulgate a legislative rule relating to above ground storage tanks,
61 authorizing the Department of Environmental Protection to promulgate a legislative rule
62 relating to horizontal well development; repealing the Commercial Hazardous Waste
63 Management Facility Siting Board legislative rule relating to certification requirements;
64 repealing the Environmental Quality Board legislative rule relating to requirements
65 governing water quality standards; repealing the Environmental Quality Board procedural
66 rule relating to requests for information; repealing the Environmental Quality Board
67 procedural rule relating to rules governing the notice of open meetings under the Open
68 Governmental Proceedings Act; repealing the Miner Training, Education and Certification
69 Board legislative rule relating to certification of blasters for surface coal mines and surface
70 areas of underground mines; repealing the Miner Training, Education and Certification
71 Board legislative rule relating to standards for certification of blasters for surface coal
72 mines and surface areas of underground mines; repealing the Miner Training, Education
73 and Certification Board procedural rule relating to temporary suspension of certificates
74 issued to persons pending full hearing before the board of appeals; repealing the Water
75 Resources Board legislative rule relating to the State National Pollutant Discharge
76 Elimination System Program; repealing the Water Resources Board legislative rule
77 relating to requirements governing the State National Pollutant Discharge Elimination
78 System; repealing the Air Quality Board procedural rule relating to requests for

40 (m) The legislative rule effective on May 1, 1996, authorized under the authority of section
41 twenty, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental
42 Protection (sewage sludge management, 47 CSR 38D), is repealed.

43 (n) The legislative rule effective on April 14, 1997, authorized under the authority of section
44 five, article five-g, chapter twenty of this code, relating to the Department of Environmental
45 Protection (Hazardous Waste Emergency Response Fund regulations, 47 CSR 40B), is repealed.

46 (o) The interpretive rule effective on November 20, 2014, authorized under the authority
47 of section twenty-three, article thirty, chapter twenty-two of this code, relating to the Department
48 of Environmental Protection (initial inspection, certification and spill prevention response plan
49 requirements, 47 CSR 62), is repealed.

50 (p) The legislative rule effective on July 1, 1997, authorized under the authority of section
51 three, article one, chapter twenty-two of this code, relating to the Department of Environmental
52 Protection (Office of the Environmental Advocate, 60 CSR 1), is repealed.

53 (q) The legislative rule effective on June 13, 1985, authorized under the authority of article
54 six, chapter twenty of this code, relating to the Department of Environmental Protection (coal
55 refuse, 38 CSR 2B), is repealed.

56 (r) The procedural rule effective on May 16, 2005, authorized under the authority of section
57 six, article one, chapter twenty-two of this code, relating to the Department of Environmental
58 Protection (administrative procedures and civil administrative penalty assessment – Water
59 Resources Protection Act, 60 CSR 6), is repealed.

60 (s) The procedural rule effective on January 30, 1983, authorized under the authority of
61 section one, article three, chapter twenty-two-a of this code, relating to the Department of
62 Environmental Protection (procedures and practice before the Department of Energy, 38 CSR 1),
63 is repealed.

64 (t) The legislative rule filed in the State Register on July 24, 2015, authorized under the
65 authority of section four, article five, chapter twenty-two, of this code, relating to the Department

66 of Environmental Protection, Air Quality (control of annual nitrogen oxide emissions, 45 CSR 39),
67 is authorized.

68 (u) The legislative rule filed in the State Register on July 24, 2015, authorized under the
69 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
70 of Environmental Protection, Air Quality (control of air pollution from combustion of solid waste,
71 45 CSR 18), is authorized.

72 (v) The legislative rule filed in the State Register on July 24, 2015, authorized under the
73 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
74 of Environmental Protection, Air Quality (control of air pollution from hazardous waste treatment,
75 storage and disposal facilities, 45 CSR 25), is authorized.

76 (w) The legislative rule filed in the State Register on July 24, 2015, authorized under the
77 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
78 of Environmental Protection, Air Quality (emission standards for hazardous air pollutants, 45 CSR
79 34), is authorized.

80 (x) The legislative rule filed in the State Register on July 24, 2015, authorized under the
81 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
82 of Environmental Protection, Air Quality (control of ozone season nitrogen oxides emissions, 45
83 CSR 40), is authorized.

84 (y) The legislative rule filed in the State Register on July 24, 2015, authorized under the
85 authority of section four, article five, chapter twenty-two, of this code, relating to the Department
86 of Environmental Protection, Air Quality (control of annual sulfur dioxide emissions, 45 CSR 41),
87 is authorized.

88 (z) The legislative rule filed in the State Register on July 27, 2015, authorized under the
89 authority of section thirteen, article three, chapter twenty-two, of this code, relating to the
90 Department of Environmental Protection, Division of Mining and Reclamation (surface mining
91 reclamation, 38 CSR 2), is authorized with the following amendments set forth below:

92 On page 48, subdivision 3.27, after the word “ongoing” by inserting the following: “Once
93 an operation has received a waiver of the renewal requirement, it is exempt from the restriction
94 contained in paragraph 11.4.a.2 of this rule regarding changing from full permit bonding to
95 incremental bonding, and the operation may submit a bonding revision to the Secretary for
96 approval.”

97 And,

98 On page 135, paragraph 11.4.a.2.after the words “terms of the permit” by adding the
99 following proviso: “*Provided*, That operations that have received a waiver of the renewal
100 requirement are exempt, and the operation may submit a bonding revision to the Secretary for
101 approval.”

102 (aa) The legislative rule filed in the State Register on July 27, 2015, authorized under the
103 authority of section twenty-two, article eleven, chapter twenty-two, of this code, relating to the
104 Department of Environmental Protection, Water and Waste Management (administrative
105 proceedings and civil penalty assessment, 47 CSR 30B), is authorized.

106 (bb) The legislative rule filed in the State Register on July 31, 2015, authorized under the
107 authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department
108 of Environmental Protection, Water and Waste Management (above ground storage tank fee
109 assessments, 47 CSR 64), is authorized.

110 (cc) The legislative rule filed in the State Register on July 31, 2015, authorized under the
111 authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department
112 of Environmental Protection, Water and Waste Management (above ground storage tank
113 administrative proceedings and civil penalty assessment, 47 CSR 65), is authorized.

114 (dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the
115 authority of section four, article eleven, chapter twenty-two, of this code, modified by the
116 Department of Environmental Protection, Water and Waste Management to meet the objections
117 of the Legislative Rule-making Review Committee and refiled in the State Register on November

118 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management
119 (requirements governing water quality standards, 47 CSR 2), is authorized with the following
120 amendments set forth below:

121 On page 46, in the column labeled "parameter", immediately following "8.27.1 Selenium
122 (ug/g)" by inserting the following: "g (based on instantaneous measurement)

123 8.0 ug/g Fish Whole-body Concentration or
124 11.3 ug/g Fish muscle (skinless, boneless filet);

125 On page 46, in the column labeled "parameter", immediately following "8.27.2 Selenium
126 (ug/g) Fish Egg/Ovary Concentration^h" by inserting the following: "(based on instantaneous
127 measurement)"

128 On page 47, in the columns labeled "Chron²" by inserting the following in each of the two
129 vacant spaces: "X";

130 On page 51, note g., after the words "concentration when" by striking the words "both fish
131 tissue and";

132 On page 51, note g, immediately following the words "water concentrations" by inserting
133 the following: "and either whole body or fish muscle (skinless, boneless filet)";

134 On page 51, note h, immediately following the word "any" by inserting the following: "fish";
135 And,

136 On page 51, note h, immediately following the word "whole-body" by inserting the
137 following: "fish muscle (skinless, boneless filet)";

138 (ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the
139 authority of section five, article thirty, chapter twenty-two, of this code, modified by the Department
140 of Environmental Protection, Water and Waste Management to meet the objections of the
141 Legislative Rule-making Review Committee and refiled in the State Register on November 24,
142 2015, relating to the Department of Environmental Protection, Water and Waste Management

143 (above ground storage tanks, 47 CSR 63), is authorized with the following amendments set forth
144 below:

145 On page one, paragraph 1.5.a.2., after the word "equipment;" by striking out the word
146 "and";

147 On page one, paragraph 1.5.a.3., after the word "motors", by changing the period to a
148 semicolon;

149 On page one, after paragraph 1.5.a.3., by adding the following new paragraphs:

150 "1.5.a.4. Tanks containing blasting agents or explosives as defined in 199 CSR 1; and

151 1.5.a.5. Aboveground storage tanks that contain water treatment chemicals used for
152 maintaining compliance with NPDES permit effluent limits in treatment systems that are located
153 at facilities subject to either the Groundwater Protection Rules for Coal Mining Operations (38
154 CSR 2F) or a Coal Mining NPDES permit issued pursuant to 47 CSR 30 are not Level 1 tanks for
155 the purpose of this rule unless the tank is located within a zone of critical concern."

156 And,

157 On page forty-one, after paragraph 8.2.e.4., by adding the following new subdivision:

158 "8.2.f. For any new regulated AST to be constructed in karst terrain, which are areas
159 generally underlain by limestone or dolomite, in which the topography is formed chiefly by the
160 dissolving of rock and which may be characterized by sinkholes, sinking streams, closed
161 depressions, subterranean drainage and caves, as such areas are identified, mapped and
162 published by the West Virginia Geological and Economic Survey, the tank owner must submit to
163 the Secretary documentation of the new construction design criteria and engineering
164 specifications to indicate that surface or subsurface conditions will not result in excessive settling
165 or unstable support of the proposed regulated AST, as approved by a professional engineering
166 or an individual certified by API or STI to perform installations or a person holding certification
167 under another program."

168 (ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the
169 authority of section six, article six-a, chapter twenty-two, of this code, modified by the Department
170 of Environmental Protection, Oil and Gas to meet the objections of the Legislative Rule-making
171 Review Committee and refiled in the State Register on November 23, 2015 relating to the
172 Department of Environmental Protection, Oil and Gas (horizontal well development, 35 CSR 8),
173 is authorized.

§64-3-2. Commercial Hazardous Waste Management Facility Siting Board.

1 The legislative rule effective on May 19, 1994, authorized under the authority of section
2 three, article ten, chapter twenty of this code, relating to the Commercial Hazardous Waste
3 Management Facility Siting Board (certification requirements, 57 CSR 1), is repealed.

§64-3-3. Environmental Quality Board.

1 (a) The legislative rule effective on June 30, 2005, authorized under the authority of
2 section four, article three, chapter twenty-two-b of this code, relating to the Environmental Quality
3 Board (requirements governing water quality standards, 46 CSR 1), is repealed.

4 (b) The procedural rule effective on February 19, 1996, authorized under the authority of
5 section three, article three, chapter twenty-nine-a of this code, relating to the Environmental
6 Quality Board (requests for information, 46 CSR 8), is repealed.

7 (c) The procedural rule effective on July 27, 1984, authorized under the authority of section
8 three, article one, chapter twenty-two-b of this code, relating to the Environmental Quality Board
9 (rules governing the notice of open meetings under the Open Governments Proceedings Act, 46
10 CSR 5), is repealed.

§64-3-4. Miner Training, Education and Certification Board.

1 (a) The legislative rule effective on June 1, 1992, authorized under the authority of section
2 six, article nine, chapter twenty-two of this code, relating to the Miner Training, Education and
3 Certification Board (certification of blasters for surface coal mines and surface areas of
4 underground mines, 48 CSR 5), is repealed.

5 (b) The legislative rule effective on July 1, 1993, authorized under the authority of section
6 six, article nine, chapter twenty-nine of this code, relating to the Miner Training, Education and
7 Certification Board (standards for certification of blasters for surface coal mines and surface areas
8 of underground mines, 56 CSR 5), is repealed.

9 (c) The procedural rule effective on September 11, 1983, authorized under the authority
10 of section eight, article three, chapter twenty-nine-a of this code, relating to the Miner Training,
11 Education and Certification Board (temporary suspension of certificates issued to persons
12 pending full hearing before the board of appeals, 48 CSR 16), is repealed.

§64-3-5 Water Resources Board.

1 (a) The legislative rule effective on August 25, 1993, authorized under the authority of
2 article five-a, chapter twenty of this code, relating to the Water Resources Board (State National
3 Pollutant Discharge Elimination System Program, 46 CSR 2), is repealed.

4 (b) The legislative rule effective on July 1, 1987, authorized under the authority of article
5 five-a, chapter twenty of this code, relating to the Water Resources Board (requirements
6 governing the State National Pollutant Discharge Elimination System, 46 CSR 3), is repealed.

§64-3-6. Air Quality Board.

1 The procedural rule effective on February 2, 1996, authorized under the authority of
2 section three, article three, chapter twenty-nine-a of this code, relating to the Air Quality Board
3 (requests for information, 52 CSR 2), is repealed.

§64-3-7. Oil and Gas Inspectors Examining Board.

1 The procedural rule effective on January 18, 2009, authorized under the authority of
2 section three, article seven, chapter twenty-two-c of this code, relating to the Oil and Gas
3 Inspectors Examining Board (matters pertaining to the rules and regulations dealing with the Oil
4 and Gas Inspectors Examining Board, 40 CSR 1), is repealed.

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


.....
Chairman, House Committee


.....
Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect 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 8th
day of June, 2016.


.....
Governor

PRESENTED TO THE GOVERNOR

JUN 07 2016

Time 10:17 am