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.]
WEST VIRGINIA LEGISLATURE

2016 FIRST EXTRAORDINARY SESSION

ENROLLED

Committee Substitute

for

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(By Mr. Speaker (Mr. Armstead) and Delegate Miley)

[By Request of the Executive]

[Passed June 2, 2016; in effect from passage.]
AN ACT to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Environmental Protection; legislatively mandating or authorizing 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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, boards and commissions which are no longer authorized or are obsolete; repealing certain legislative, procedural and interpretive rules promulgated by certain agencies and boards under the Department of Environmental Protection; repealing the Department of Environmental Protection legislative rule relating to requiring the submission of emission statements for volatile organic compound emissions and oxides; repealing the Department of Environmental Protection legislative rule relating to bona fide future use; repealing the Department of Environmental Protection legislative rule relating to abandoned wells; repealing the Department of Environmental Protection legislative rule relating to the Environmental Excellence Program; repealing the Department of Environmental Protection legislative rule relating to oil and gas operations - solid waste; repealing the Department of Environmental Protection legislative rule relating to the Recycling Assistance Fund Grant Program; repealing the Department of Environmental Protection legislative rule relating to commercial hazardous waste management facility siting fees; repealing the Department of Environmental Protection legislative rule relating to groundwater protection standards; repealing the Department of Environmental Protection legislative rule relating to Underground Storage Tank Insurance Trust Fund; repealing the Department of Environmental Protection legislative rule relating to hazardous waste management; repealing the Department of Environmental Protection
legislative rule relating to solid waste management; repealing the Department of Environmental Protection legislative rule relating to waste tire management; repealing the Department of Environmental Protection legislative rule relating to sewage sludge management; repealing the Department of Environmental Protection legislative rule relating to Hazardous Waste Emergency Response Fund regulations; repealing the Department of Environmental Protection interpretive rule relating to initial inspection, certification and spill prevention response plan requirements; repealing the Department of Environmental Protection legislative rule relating to the Office of the Environmental Advocate; repealing the Department of Environmental Protection legislative rule relating to coal refuse; repealing the Department of Environmental Protection procedural rule relating to administrative procedures and civil administrative penalty assessment – Water Resources Protection Act; repealing the Department of Environmental Protection procedural rule relating to procedures and practice before the Department of Energy; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from 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 emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of annual sulfur dioxide emissions; 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
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legislative rule relating to administrative proceedings and civil penalty assessment; 
authorizing the Department of Environmental Protection to promulgate a legislative rule 
relating to above ground storage tank fee assessments; authorizing the Department of 
Environmental Protection to promulgate a legislative rule relating to above ground storage 
tank administrative proceedings and civil penalty assessment; 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 above ground storage tanks, 
authorizing the Department of Environmental Protection to promulgate a legislative rule 
relating to horizontal well development; repealing the Commercial Hazardous Waste 
Management Facility Siting Board legislative rule relating to certification requirements; 
repealing the Environmental Quality Board legislative rule relating to requirements 
governing water quality standards; repealing the Environmental Quality Board procedural 
rule relating to requests for information; repealing the Environmental Quality Board 
procedural rule relating to rules governing the notice of open meetings under the Open 
Governmental Proceedings Act; repealing the Miner Training, Education and Certification 
Board legislative rule relating to certification of blasters for surface coal mines and surface 
areas of underground mines; repealing the Miner Training, Education and Certification 
Board legislative rule relating to standards for certification of blasters for surface coal 
mines and surface areas of underground mines; repealing the Miner Training, Education 
and Certification Board procedural rule relating to temporary suspension of certificates 
issued to persons pending full hearing before the board of appeals; repealing the Water 
Resources Board legislative rule relating to the State National Pollutant Discharge 
Elimination System Program; repealing the Water Resources Board legislative rule 
relating to requirements governing the State National Pollutant Discharge Elimination 
System; repealing the Air Quality Board procedural rule relating to requests for
(m) The legislative rule effective on May 1, 1996, authorized under the authority of section twenty, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (sewage sludge management, 47 CSR 38D), is repealed.

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

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

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

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

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

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

(t) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department
of Environmental Protection, Air Quality (control of annual nitrogen oxide emissions, 45 CSR 39),
is authorized.

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

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

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

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

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

(z) The legislative rule filed in the State Register on July 27, 2015, authorized under the
authority of section thirteen, article three, chapter twenty-two, of this code, relating to the
Department of Environmental Protection, Division of Mining and Reclamation (surface mining
reclamation, 38 CSR 2), is authorized with the following amendments set forth below:
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On page 48, subdivision 3.27, after the word "ongoing" by inserting the following: "Once an operation has received a waiver of the renewal requirement, it is exempt from the restriction contained in paragraph 11.4.a.2 of this rule regarding changing from full permit bonding to incremental bonding, and the operation may submit a bonding revision to the Secretary for approval."

And,

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

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

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

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

(dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article eleven, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Water and Waste Management to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November
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24, 2015, relating to the Department of Environmental Protection, Water and Waste Management (requirements governing water quality standards, 47 CSR 2), is authorized with the following amendments set forth below:

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

8.0 ug/g Fish Whole-body Concentration or

11.3 ug/g Fish muscle (skinless, boneless filet)”;

On page 46, in the column labeled “parameter”, immediately following “8.27.2 Selenium (ug/g) Fish Egg/Ovary Concentration” by inserting the following: “(based on instantaneous measurement)”

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

On page 51, note g., after the words “concentration when” by striking the words “both fish tissue and”;

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

On page 51, note h, immediately following the word “any” by inserting the following: “fish”;

And,

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

(ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article thirty, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Water and Waste Management to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management
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(above ground storage tanks, 47 CSR 63), is authorized with the following amendments set forth below:

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

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

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

1.5.a.4. Tanks containing blasting agents or explosives as defined in 199 CSR 1; and
1.5.a.5. Aboveground storage tanks that contain water treatment chemicals used for maintaining compliance with NPDES permit effluent limits in treatment systems that are located at facilities subject to either the Groundwater Protection Rules for Coal Mining Operations (38 CSR 2F) or a Coal Mining NPDES permit issued pursuant to 47 CSR 30 are not Level 1 tanks for the purpose of this rule unless the tank is located within a zone of critical concern.

And,

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

8.2.f. For any new regulated AST to be constructed in karst terrain, which are areas generally underlain by limestone or dolomite, in which the topography is formed chiefly by the dissolving of rock and which may be characterized by sinkholes, sinking streams, closed depressions, subterranean drainage and caves, as such areas are identified, mapped and published by the West Virginia Geological and Economic Survey, the tank owner must submit to the Secretary documentation of the new construction design criteria and engineering specifications to indicate that surface or subsurface conditions will not result in excessive settling or unstable support of the proposed regulated AST, as approved by a professional engineering or an individual certified by API or STI to perform installations or a person holding certification under another program."
The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section six, article six-a, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Oil and Gas to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 23, 2015 relating to the Department of Environmental Protection, Oil and Gas (horizontal well development, 35 CSR 8), is authorized.

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

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

§64-3-3. Environmental Quality Board.

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

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

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

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

(a) The legislative rule effective on June 1, 1992, authorized under the authority of section six, article nine, chapter twenty-two of this code, relating to the Miner Training, Education and Certification Board (certification of blasters for surface coal mines and surface areas of underground mines, 48 CSR 5), is repealed.
(b) The legislative rule effective on July 1, 1993, authorized under the authority of section six, article nine, chapter twenty-nine of this code, relating to the Miner Training, Education and Certification Board (standards for certification of blasters for surface coal mines and surface areas of underground mines, 56 CSR 5), is repealed.

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

§64-3-5 Water Resources Board.

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

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

§64-3-6. Air Quality Board.

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

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

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

[Signatures]

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within bill is approved this the 8th day of June, 2016.

Governor
PRESENTED TO THE GOVERNOR

JUN 07 2016

Time 10:17 am