WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled
Committee Substitute
for
Senate Bill 163

SENATOR MAYNARD, original sponsor

[Passed February 16, 2018; in effect from passage]
Enrolled

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Senate Bill 163

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[Passed February 16, 2018; in effect from passage]
AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating generally to authorizing the Department of Environmental Protection to promulgate certain legislative rules as filed, as modified, and as amended and to repeal certain legislative and procedural rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to underground storage tanks; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to West Virginia surface mining reclamation; 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 control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from municipal solid waste landfills; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to 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 voluntary remediation and redevelopment; directing the Department of Environmental Protection to repeal a legislative rule relating to state construction grants program rule; and directing the Department of Environmental Protection to repeal a procedural rule relating to Freedom of Information Act requests.

Be it enacted by the Legislature of West Virginia:
ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-18-6 of this code, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2017, authorized under the authority of §22-17-6 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 4, 2017, relating to the Department of Environmental Protection (underground storage tanks, 33 CSR 30), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2017, authorized under the authority of §22-3-13 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 January 22, 2018, relating to the Department of Environmental Protection (West Virginia surface mining reclamation, 38 CSR 2), is authorized with the following amendments:

On page 147, by striking out all of paragraph 12.2.a.4. and inserting in lieu thereof a new paragraph 12.2.a.4. to read as follows:

12.2.a.4. Notwithstanding any other provisions of this rule to the contrary, the Secretary will not release or reduce the bond if, at the time, water discharged from or affected by the operation requires chemical or passive treatment in order to comply with applicable effluent limitations standards. Permit-approved measures taken during operations to prevent the formation of acid drainage shall not be considered passive treatment: Provided, That the Secretary may approve a request for release if the applicant demonstrates to the satisfaction of the Secretary that either:
And,

On page 148, by striking out all of subparagraph 12.2.a.4.B. and inserting in lieu thereof a new subparagraph 12.2.a.4.B. to read as follows:

12.2.a.4.B. The operator has provided irrevocable financial assurances in a form satisfactory to the Secretary through a contract or other mechanism enforceable under provisions of law, such as delineated in subsection 11.3 of this rule, adequate to provide for long term treatment of the drainage as required by the federal Clean Water Act at 33 U.S.C 1251 et seq., the West Virginia Water Pollution Control Act at §22-11-1 et seq. of this code and the operator's National Pollutant Discharge Elimination System permit issued under 47 CSR 30. Default on a treatment obligation under this paragraph will subject the operator to penalties and sanctions, including permit blocking.

In order to make this demonstration, the applicant shall address, at a minimum, the current and projected quantity and quality of drainage to be treated, the anticipated duration of treatment, the estimated capital and operating cost of the treatment facility, and the calculations that demonstrate the adequacy of the remaining bond or other financial assurance.

(d) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(e) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 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 August 24, 2017, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(f) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control of air pollution from municipal solid waste landfills, 45 CSR 23), is authorized.
(g) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 8), is authorized.

(h) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage, and disposal facilities, 45 CSR 25), is authorized.

(i) The legislative rule filed in the State Register on July 21, 2017, authorized under the authority of §22-5-4 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 July 11, 2017, authorized under the authority of §22-22-3 of this code, relating to the Department of Environmental Protection (voluntary remediation and redevelopment, 60 CSR 3), is authorized with the following amendment:

On page 53, by striking out all of subdivision 15.7.b. and inserting in lieu thereof a new subdivision 15.7.b. to read as follows:

15.7.b. Public Notice of Application for the Voluntary Remediation Program. – The applicant shall produce and circulate a public notice of its application to the Voluntary Remediation program in accordance with subsection 7.1 of this rule, which shall also include the following:

15.7.b.1. A summary of the proposed future use of the site; and

15.7.b.2. A summary of the public’s right under the Act to become involved in the development and remediation and reuse of the site, as well as the time, date, and location of an informational meeting the applicant will hold with regard to the application.

(k) The legislative rule effective on May 7, 1999, authorized under the authority of §22C-2-6 of this code, relating to the Department of Environmental Protection (state construction grants program rule, 47 CSR 33), is repealed.
75 (I) The procedural rule effective on July 30, 2010, authorized under the authority of §29A-
76 3-3 of this code, relating to the Department of Environmental Protection (Freedom of Information
77 Act requests, 60 CSR 2), is repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect from passage.

[Signatures]

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 ... day of ... February ... 2018.

[Signature]

Governor