

HB 2333

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

HOUSE BILL No. 2333

(By Delegate S Douglas, Hunt, Compton,  
Faircloth, Linch and Riggs )



Passed \_\_\_\_\_ April 12, \_\_\_\_\_ 1997

In Effect \_\_\_\_\_ From \_\_\_\_\_ Passage

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# H. B. 2333

(BY DELEGATES DOUGLAS, HUNT, COMPTON,  
FAIRCLOTH, LINCH AND RIGGS)

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[Passed April 12, 1997; in effect from passage.]

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AN ACT to amend and reenact article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the division of environmental protection and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by the division of environmental protection; authorizing the division of environmental protection to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing the division of environmental protection to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing the division of environmental protection to promulgate a legislative rule; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR Part 60; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the under-

ground storage tank insurance trust fund; authorizing the division of environmental protection to promulgate a legislative rule relating to WV/NPDES regulations for coal mining facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to confidential information; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to voluntary remediation and redevelopment; creating a legislative rule relating to the office of environmental advocate; authorizing the division of environmental protection to promulgate an emergency legislative rule amending a current legislative rule relating to the prevention and control of particulate air pollution from manufacturing process operations; and authorizing the division of environmental protection to promulgate an amendment to a legislative rule relating to yard waste composting.

*Be it enacted by the Legislature of West Virginia:*

That article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULE.**

**§64-3-1. Division of environmental protection.**

1 (a) The legislative rule filed in the state register on the  
2 thirtieth day of August, one thousand nine hundred  
3 ninety-six, authorized under the authority of section six,  
4 article eighteen, chapter twenty-two of this code, relating  
5 to the division of environmental protection (hazardous  
6 waste management, 33 CSR 20), is authorized.

7 (b) The legislative rule filed in the state register on the  
8 twenty-ninth day of August, one thousand nine hundred  
9 ninety-six, authorized under the authority of section four,

10 article five, chapter twenty-two of this code, relating to the  
11 division of environmental protection (standards of  
12 performance for new stationary sources pursuant to 40  
13 CFR Part 60, 45 CSR 16), is authorized.

14 (c) The legislative rule filed in the state register on the  
15 twenty-ninth day of August, one thousand nine hundred  
16 ninety-six, authorized under the authority of section four,  
17 article five, chapter twenty-two of this code, relating to the  
18 division of environmental protection (emission standards  
19 for hazardous air pollutants pursuant to 40 CFR Part 63,  
20 45 CSR 34), is authorized.

21 (d) The legislative rule filed in the state register on the  
22 twenty-eighth day of August, one thousand nine hundred  
23 ninety-six, authorized under the authority of section six,  
24 article seventeen, chapter twenty-two of this code,  
25 modified by the division of environmental protection to  
26 meet the objections of the legislative rule-making review  
27 committee and refiled in the state register on the twenty-  
28 second day of October, one thousand nine hundred  
29 ninety-six, relating to the division of environmental  
30 protection (underground storage tank insurance trust  
31 fund, 33 CSR 32), is authorized.

32 (e) The legislative rule filed in the state register on the  
33 twenty-ninth day of August, one thousand nine hundred  
34 ninety-six, authorized under the authority of section three,  
35 article one, chapter twenty-two of this code, modified by  
36 the division of environmental protection to meet the  
37 objections of the legislative rule-making review committee  
38 and refiled in the state register on the twentieth day of  
39 December, one thousand nine hundred ninety-six, relating  
40 to the division of environmental protection (WV/NPDES  
41 regulations for coal mining facilities, 47 CSR 30), is  
42 authorized.

43 (f) The legislative rule filed in the state register on the  
44 thirtieth day of August, one thousand nine hundred  
45 ninety-six, authorized under the authority of section four,  
46 article three, chapter twenty-two of this code, modified by  
47 the division of environmental protection to meet the  
48 objections of the legislative rule-making review committee  
49 and refiled in the state register on the twenty-first day of

50 February, one thousand nine hundred ninety-seven,  
51 relating to the division of environmental protection  
52 (surface mining and reclamation regulations, 38 CSR 2), is  
53 authorized, with the following amendments:

54 “On page three, subsection 2.4, by striking out the  
55 words “Coal seams commonly associated with such  
56 minerals may include, but are not limited to Waynesburg,  
57 Washington, Freeport, Sewickley, Redstone, Pittsburgh,  
58 Kittanning, Elk Lick, Peerless, No. 2 Gas, Upper Eagle,  
59 No. 5 Block and Stockton Lewiston”;

60 On page three, subsection 2.4, line eight, by striking  
61 out the words “these seams are”, and inserting in lieu  
62 thereof the words “the seam is”;

63 On page nine, subsection 2.43, line two, after the word  
64 “highwall”, by inserting the words “except in operations  
65 where the entire upper horizon above the lowest coal seam  
66 is proposed to be partly or entirely removed”;

67 On page sixteen, subsection 2.95, line seven after the  
68 “any”, by inserting the word “substantial”;

69 On page eighteen, subsection 2.108, line two, after the  
70 word “stream.” by adding the following: Examples  
71 include wildlife ponds, settling basins and all ponds and  
72 facilities or structures used for water treatment.;

73 On page nineteen, subsection 2.120, line three, by  
74 striking the word “or” and inserting in lieu thereof the  
75 word “and”;

76 On page twenty-nine, subsection 3.2.e., after the word  
77 “period” by striking the remainder of the subdivision  
78 3.2.e.;

79 On page forty-nine, subsection 3.14.b.7., by striking  
80 the entire paragraph;

81 On page forty-nine, subsection 3.14.b.8., by striking  
82 the entire paragraph;

83 On page forty-nine, by renumbering the remaining  
84 paragraphs;

85 On page fifty-one, subparagraph 3.14.b.14E, line one,  
86 before the word “A”, by inserting the words “If  
87 requested by the Director”;

88 On page fifty-one, subsection 3.14.b.15.B., by striking  
89 the entire subparagraph, and inserting in lieu thereof the  
90 following: 3.14.b.15.B. Surface water must be diverted  
91 around or over the material by properly designed and  
92 stabilized diversion channels which have been designed  
93 using the best current technology to provide protection to  
94 the environment or the health, welfare and safety of the  
95 public. The channel shall be designed and constructed to  
96 ensure stability of the remaining material, control erosion,  
97 and minimize water infiltration into the remaining  
98 material.;

99 On page seventy-two, subdivision 3.29.a, line five after  
100 the word “IBR”, by inserting the words “or where it has  
101 been demonstrated to the satisfaction of the Director that  
102 limited coal removal on areas immediately adjacent to the  
103 existing permit is the only practical alternative to recovery  
104 of unanticipated reserves or necessary to enhance  
105 reclamation efforts or environmental protection”;

106 On page eighty-six, by inserting a new subsection 3.35  
107 to read as follows: 3.35. All grade measurements and  
108 linear measurements in this rule shall be subject to a  
109 tolerance of two percent (2%). All angles in this rule shall  
110 be measured from the horizontal and shall be subject to a  
111 tolerance of five percent (5%). *Provided, however,* this  
112 allowable deviation from the approved plan does not  
113 affect storage capacity and/or performance standards.

114 On page one hundred eight, subdivision 5.5.c., line  
115 two, after the word “landowner”, by striking the  
116 remainder of the paragraph and inserting in lieu thereof  
117 the words “requesting the permanent structures be left for  
118 recreational or wildlife propagation purposes or for any  
119 beneficial uses to the landowner”;

120 On page one hundred twelve, subdivision 6.5.a., line  
121 five, after the word “Sunday.” by adding the following:  
122 *Provided, however,* the Director may grant approval of a  
123 request for Sunday blasting if the operator demonstrates

124 to the satisfaction of the Director that the blasting is  
125 necessary and there has been an opportunity for a public  
126 hearing.;

127 On page one hundred twenty-six, paragraph 9.2.i.2,  
128 after the word “achieved” by inserting: An alternate  
129 maximum or minimum soil pH may be approved based  
130 on the optimum pH for the revegetation species.;

131 On page one hundred thirty, line one, paragraph  
132 9.3.h.1., by striking out the paragraph in its entirety, and  
133 inserting in lieu thereof: 9.3.h.1. The minimum stocking  
134 rate of commercial tree species shall be in accordance with  
135 the approved forest management plan prepared by a  
136 registered professional forester. In no case may the rate  
137 be less than four hundred fifty (450) stems per acre of  
138 commercial tree species;

139 On page one hundred thirty, paragraph 9.3.h.2., by  
140 striking out the paragraph in its entirety, and by  
141 renumbering the subsequent paragraphs;

142 On page one hundred thirty, in renumbered paragraph  
143 9.3.h.2., after the word “than”, by striking out the words  
144 “four hundred fifty (450)”, and inserting in lieu thereof  
145 “three hundred (300);”

146 On page one hundred thirty, in renumbered paragraph  
147 9.3.h.2., after the word “acre”, by inserting the words  
148 “or the rate specified in the forest management plan,  
149 whichever is greater.”;

150 On page two hundred twenty-two, subdivision 14.11.e,  
151 line 6, by striking out the word “operable” and by  
152 inserting in lieu thereof “such condition that operations  
153 could be resumed within sixty (60) days”;

154 On page two hundred twenty-three, subdivision  
155 14.11.f., line four, by striking out the word “operative”,  
156 and by inserting in lieu thereof the words “such condition  
157 that the operations could be resumed within sixty (60)  
158 days”;

159 On page two hundred twenty-three, subdivision  
160 14.11.f., line four, after the word “is”, by inserting the  
161 words “protected from unauthorized entry”;

162 On page two hundred thirty-eight, subparagraph  
163 14.15.b.6.A., line five, after the word “exceed”, by  
164 striking out the words “fifty (50) percent of the total  
165 permit acreage, or four hundred (400) acres, whichever is  
166 less, on operations which consist of at least three spreads  
167 of equipment”, and inserting in lieu thereof the words  
168 “five hundred (500) acres on operations which consist of  
169 multiple spreads of equipment”;

170 On page two hundred thirty-nine, subsection 14.15.c.,  
171 line three, after the word “regraded”, by inserting the  
172 words “and stabilized”;

173 On page two hundred thirty-nine, subsection 14.15.c.,  
174 line four, after the word “plan”, by striking out the  
175 “comma” and the remainder of the subparagraph, and  
176 inserting in lieu thereof the words: The following shall  
177 not be included in the calculation of disturbed area.;

178 On page two hundred forty, paragraph 14.15.c.2., line  
179 seven, after the word “benches”, by inserting the words  
180 “without regard to like thickness”;

181 On page two hundred forty, paragraph 14.15.c.5, line  
182 two, after the word “graded”, by inserting the words  
183 “with material placed in a stable, controlled manner which  
184 will not subsequently be moved”.

185 (g) The legislative rule filed in the state register on the  
186 twenty-ninth day of August, one thousand nine hundred  
187 ninety-six, authorized under the authority of section ten,  
188 article five, chapter twenty-two of this code, modified by  
189 the division of environmental protection to meet the  
190 objections of the legislative rule-making review committee  
191 and refiled in the state register on the twenty-sixth day of  
192 November, one thousand nine hundred ninety-six, relating  
193 to the division of environmental protection (confidential  
194 information, 45 CSR 31), is authorized.

195 (h) The legislative rule filed in the state register on the  
196 twenty-ninth day of August, one thousand nine hundred



197 ninety-six, authorized under the authority of section four,  
198 article five, chapter twenty-two of this code, modified by  
199 the division of environmental protection to meet the  
200 objections of the legislative rule-making review committee  
201 and refiled in the state register on the sixteenth day of  
202 January, one thousand nine hundred ninety-seven, relating  
203 to the division of environmental protection (to prevent and  
204 control air pollution from hazardous waste treatment,  
205 storage or disposal facilities, 45 CSR 25), is authorized.

206 (i) The legislative rule filed in the state register on the  
207 fifth day of February, one thousand nine hundred  
208 ninety-seven, authorized under the authority of section  
209 three, article twenty-two, chapter twenty-two of this code,  
210 modified by the division of environmental protection to  
211 meet the objections of the legislative rule-making review  
212 committee and refiled in the state register on the twenty-  
213 fifth day of February, one thousand nine hundred  
214 ninety-seven, relating to the division of environmental  
215 protection (voluntary remediation and redevelopment, 60  
216 CSR 3), is authorized.

217 (j) That title sixty, series one of the code of state rules  
218 be amended by deleting the current interpretative rule for  
219 the office of environmental advocate and inserting in lieu  
220 thereof the following legislative rule, to read as follows:

221 **“§61-10-1. General.**

222 **1.1. Scope.** - This legislative rule governs and controls  
223 the appointment and qualifications of the position of  
224 Environmental Advocate within the Division of  
225 Environmental Protection.

226 **1.2. Authority** - West Virginia Code §22-1-3, 22-1-3a,  
227 22-20.

228 **1.3. Filing Date** -

229 **1.4. Effective Date** - July 1, 1997.

**§61-10-2. Appointment, Salary and Qualifications.**

1 **2.1. Appointment.** - The position of Environmental  
2 Advocate will be a full-time position, will be appointed by  
3 the Director, and will serve at the will and pleasure of the

4 Director of the Division of Environmental Protection in  
5 accordance with the West Virginia Code §22-20-1.

6 **2.2. Salary.** - The salary of the position of  
7 Environmental Advocate will be set by the Director and is  
8 subject to future adjustments at the discretion of the  
9 Director.

10 **2.3. Qualifications.** - The Director will receive or  
11 solicit applications for the position of Environmental  
12 Advocate from persons having the following minimum  
13 qualifications:

14 **2.3.a.** A citizen and resident of the State of West  
15 Virginia.

16 **2.3.b.** A graduate from an accredited college or  
17 university with a four-year degree in a field of study  
18 directly related to the qualifications, powers, and duties of  
19 the position as set forth by the director.

20 **2.3.c.** A minimum of two years full-time or  
21 cumulative experience in work directly related to  
22 environmental protection, or other public service work or  
23 experience which demonstrates the ability to carry out the  
24 powers and duties of the position as set forth by the  
25 director.

26 **2.3.d.** A working familiarity with some of the legal  
27 requirements and programmatic functions of the Division  
28 of Environmental Protection.

29 **2.3.e.** A demonstrated ability to skillfully verbally  
30 and by writing communicate in a public forum.

31 **2.3.f.** A demonstrated ability to use word processing  
32 software for a computer and other necessary computer  
33 skills as determined by the director.

34 **2.3.g.** A valid West Virginia driver's license.

35 **§61-10-3. Powers and Limitations** - The Environmental  
36 Advocate will carry out the duties of the position as set  
37 forth in this rule, and as prescribed by the Director in  
38 accordance with the following:

39       **3.1.** The Environmental Advocate will be guided in all  
40 actions by the policy statement and the nine purposes set  
41 forth in West Virginia Code §22-1-1 (b).

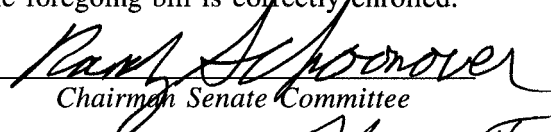
42       **3.2.** The Environmental Advocate may not in any  
43 official capacity represent any person in, or file on behalf  
44 of any person, legal or quasi-legal actions, either in  
45 support of or opposed to the Division of Environmental  
46 Protection without the expressed approval of the Director,  
47 and under supervision of the Division of Environmental  
48 Protection's General Counsel.

49       **3.3.** The Environmental Advocate may not in any  
50 official capacity organize public campaigns in support of,  
51 or in opposition to official positions taken by the Division  
52 of Environmental Protection on environmental matters,  
53 and will not in any official capacity actively participate in  
54 any such organized campaign.”

55       (k) The director of the division of environmental  
56 protection is hereby authorized to propose for  
57 promulgation an emergency rule to amend a current  
58 legislative rule relating to monitoring of air quality (to  
59 prevent and control particulate air pollution from  
60 manufacturing process operation, 45 CSR 7).

61       (l) The legislative rule filed in the state register on the  
62 eighteenth day of March, one thousand nine hundred  
63 ninety-seven, relating to the division of environmental  
64 protection (yard waste composting, 47 CSR 38E) is  
65 authorized.

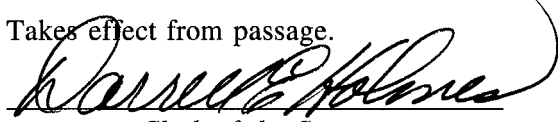
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

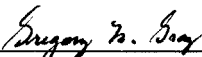
  
Chairman Senate Committee

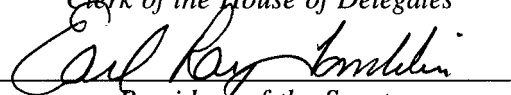
  
Chairman House Committee

Originating in the House.

Takes effect from passage.

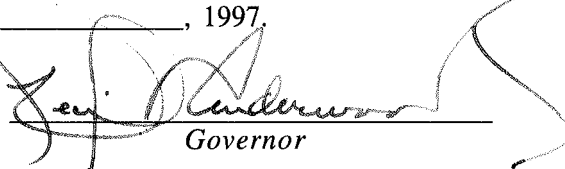
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 2nd  
day of May, 1997.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/25/97

Time 2:05 pm