

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 615**

4 (By Senators Kirkendoll, Hall, Wells and Stollings)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;

7 reported February 24, 2012.]

8 \_\_\_\_\_  
9  
10 A BILL to amend and reenact §22-11-6 of the Code of West Virginia,  
11 1931, as amended, relating to making West Virginia's Water  
12 Pollution Control Act consistent with the federal Water  
13 Pollution Control Act, also known as the Clean Water Act, by  
14 clarifying that compliance with the effluent limits contained  
15 in a National Pollution Discharge Elimination System permit is  
16 deemed compliant with West Virginia's Water Pollution Control  
17 Act.

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

19 That §22-11-6 of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted to read as follows:

21 **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

22 **§22-11-6. Requirement to comply with standards of water quality**  
23 **and effluent limitations.**

24 All persons affected by rules establishing water quality  
25 standards and effluent limitations shall promptly comply therewith:

1 *Provided, That:*

2       (1) Where necessary and proper, the chief may specify a  
3 reasonable time for persons not complying with such standards and  
4 limitations to comply therewith, and upon the expiration of any  
5 such period of time, the chief shall revoke or modify any permit  
6 previously issued which authorized the discharge of treated or  
7 untreated sewage, industrial wastes or other wastes into the waters  
8 of this state which result in reduction of the quality of such  
9 waters below the standards and limitations established therefor by  
10 rules of the board or director;

11       (2) Notwithstanding any rule or permit condition to the  
12 contrary, and except for any standard imposed under section 307 of  
13 the federal Water Pollution Control Act for a toxic pollutant  
14 injurious to human health, compliance with a permit issued pursuant  
15 to this article shall be deemed compliance for purposes of both  
16 this article and sections 301, 302, 306, 307 and 403 of the federal  
17 Water Pollution Control Act. Nothing in this section, however,  
18 prevents the director from modifying, reissuing or revoking a  
19 permit during its term. The provisions of this section addressing  
20 compliance with a permit are intended to apply to all existing and  
21 future discharges and permits without the need for permit  
22 modifications. However, should any such modification be necessary  
23 under the terms of this article, then the director shall  
24 immediately commence the process to effect such modifications; and

25       (3) The Legislature finds that there are concerns within West  
26 Virginia regarding the applicability of the research underlying the

1 federal selenium criteria to a state such as West Virginia which  
2 has high precipitation rates and free-flowing streams and that the  
3 alleged environmental impacts that were documented in applicable  
4 federal research have not been observed in West Virginia and,  
5 further, that considerable research is required to determine if  
6 selenium is having an impact on West Virginia streams, to validate  
7 or determine the proper testing methods for selenium and to better  
8 understand the chemical reactions related to selenium mobilization  
9 in water. For existing NPDES permits, the department may extend  
10 the time period for achieving water quality-based effluent limits  
11 for selenium discharges into waters supporting aquatic life uses to  
12 July 1, 2012, upon compliance with all federally required public  
13 notice requirements for such modifications, upon a finding that the  
14 permittee cannot comply with its existing compliance schedule and  
15 that an extension is not in violation of any state or federal laws,  
16 rules or regulations. The West Virginia Department of  
17 Environmental Protection is hereby directed to undertake a  
18 comprehensive study relating to selenium and prepare a report  
19 detailing such findings and submitting the report to the Joint  
20 Committee on Government and Finance no later than January 1, 2010.  
21 In conducting such study, the West Virginia Department of  
22 Environmental Protection shall consult with, among others, West  
23 Virginia University and the West Virginia Water Research Institute.

---

(NOTE: Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)

