

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 615

(By Senators Kirkendoll, Hall, Wells and Stollings)

[Originating in the Committee on the Judiciary;
reported February 24, 2012.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WATER POLLUTION CONTROL ACT.

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

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply
3 therewith: *Provided*, That:

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

14 (2) Notwithstanding any rule or permit condition to the
15 contrary, and except for any standard imposed under section
16 307 of the federal Water Pollution Control Act for a toxic
17 pollutant injurious to human health, compliance with a
18 permit issued pursuant to this article shall be deemed
19 compliance for purposes of both this article and sections 301,

20 302, 306, 307 and 403 of the federal Water Pollution Control
21 Act. Nothing in this section, however, prevents the director
22 from modifying, reissuing or revoking a permit during its
23 term. The provisions of this section addressing compliance
24 with a permit are intended to apply to all existing and future
25 discharges and permits without the need for permit modifi-
26 cations. However, should any such modification be necessary
27 under the terms of this article, then the director shall
28 immediately commence the process to effect such modifica-
29 tions; and

30 (3) The Legislature finds that there are concerns within
31 West Virginia regarding the applicability of the research
32 underlying the federal selenium criteria to a state such as
33 West Virginia which has high precipitation rates and free-
34 flowing streams and that the alleged environmental impacts
35 that were documented in applicable federal research have
36 not been observed in West Virginia and, further, that
37 considerable research is required to determine if selenium is
38 having an impact on West Virginia streams, to validate or
39 determine the proper testing methods for selenium and to
40 better understand the chemical reactions related to selenium
41 mobilization in water. For existing NPDES permits, the

42 department may extend the time period for achieving water
43 quality-based effluent limits for selenium discharges into
44 waters supporting aquatic life uses to July 1, 2012, upon
45 compliance with all federally required public notice require-
46 ments for such modifications, upon a finding that the
47 permittee cannot comply with its existing compliance
48 schedule and that an extension is not in violation of any state
49 or federal laws, rules or regulations. The West Virginia
50 Department of Environmental Protection is hereby directed
51 to undertake a comprehensive study relating to selenium and
52 prepare a report detailing such findings and submitting the
53 report to the Joint Committee on Government and Finance
54 no later than January 1, 2010. In conducting such study, the
55 West Virginia Department of Environmental Protection shall
56 consult with, among others, West Virginia University and the
57 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.)