

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 243**

4 (By Senator Snyder)

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

7 reported March 22, 2013.]

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9  
10 A BILL to amend and reenact article 3, chapter 64 of the Code of  
11 West Virginia, 1931, as amended, relating generally to the  
12 promulgation of administrative rules by the Department of  
13 Environmental Protection; legislative mandate or authorization  
14 for the promulgation of certain legislative rules by various  
15 executive or administrative agencies of the state; authorizing  
16 certain of the agencies to promulgate certain legislative  
17 rules with various modifications presented to and recommended  
18 by the Legislative Rule-Making Review Committee; authorizing  
19 certain of the agencies to promulgate certain legislative  
20 rules in the form that the rules were filed in the State  
21 Register; authorizing certain of the agencies to promulgate  
22 certain legislative rules with various modifications presented  
23 to and recommended by the Legislative Rule-Making Review  
24 Committee and as amended by the Legislature; authorizing the

1 Department of Environmental Protection to promulgate a  
2 legislative rule relating to covered electronic devices  
3 recycling; authorizing the Department of Environmental  
4 Protection to promulgate a legislative rule relating to  
5 hazardous waste administrative proceedings and civil penalty  
6 assessment; authorizing the Department of Environmental  
7 Protection to promulgate a legislative rule relating to  
8 horizontal well development; authorizing the Department of  
9 Environmental Protection to promulgate a legislative rule  
10 relating to permits for construction and major modification of  
11 major stationary sources for the prevention of significant  
12 deterioration of air quality; authorizing the Department of  
13 Environmental Protection to promulgate a legislative rule  
14 relating to standards of performance for new stationary  
15 sources; authorizing the Department of Environmental  
16 Protection to promulgate a legislative rule relating to the  
17 control of air pollution from the combustion of solid waste;  
18 authorizing the Department of Environmental Protection to  
19 promulgate a legislative rule relating to the control of air  
20 pollution from hazardous waste treatment, storage and disposal  
21 facilities; authorizing the Department of Environmental  
22 Protection to promulgate a legislative rule relating to  
23 requirements for operating permits; authorizing the Department  
24 of Environmental Protection to promulgate a legislative rule

1 relating to emission standards for hazardous air pollutants;  
2 authorizing the Department of Environmental Protection to  
3 promulgate a legislative rule relating to water pollution  
4 control permit fee schedules; and authorizing the Department  
5 of Environmental Protection to promulgate a legislative rule  
6 relating to the WV/NPDES regulations for coal mining  
7 facilities.

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

9 That article 3, chapter 64 of the Code of West Virginia, 1931,  
10 as amended, be amended and reenacted to read as follows:

11 **ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL**  
12 **PROTECTION TO PROMULGATE LEGISLATIVE RULES.**

13 **§64-3-1. Department of Environmental Protection.**

14 (a) The legislative rule filed in the State Register on August  
15 30, 2012, authorized under the authority of section twenty-nine,  
16 article fifteen-a, chapter twenty-two of this code, modified by the  
17 Department of Environmental Protection to meet the objections of  
18 the Legislative Rule-Making Review Committee and refiled in the  
19 State Register on December 13, 2012, relating to the Department of  
20 Environmental Protection (covered electronic devices recycling, 33  
21 CSR 12), is authorized with the following amendment:

22 On page two, paragraph 4.1.b.1., by striking out all of  
23 paragraph 4.1.b.1. and inserting in lieu thereof a new paragraph  
24 4.1.b.1., to read as follows:

1           4.1.b.1. Within one year after the effective date of this  
2 rule, receiving, storage, operations and shipping areas must be  
3 under a roof or in an enclosed area sufficient to prevent  
4 stormwater contamination.

5           (b) The legislative rule filed in the State Register on August  
6 24, 2012, authorized under the authority of section seventeen,  
7 article eighteen, chapter twenty-two of this code, relating to the  
8 Department of Environmental Protection (hazardous waste  
9 administrative proceedings and civil penalty assessment, 33 CSR  
10 27), is authorized.

11           (c) The legislative rule filed in the State Register on  
12 September 4, 2012, authorized under the authority of section six,  
13 article six-a, chapter twenty-two of this code, modified by the  
14 Department of Environmental Protection to meet the objections of  
15 the Legislative Rule-Making Review Committee and refiled in the  
16 State Register on February 14, 2013, relating to the Department of  
17 Environmental Protection (horizontal well development, 35 CSR 8),  
18 is authorized with the following amendments:

19           On page two, after subsection 2.12., by inserting a new  
20 subsection 2.13. to read as follows:

21           2.13. "Health care professional" means a physician, physician  
22 assistant, nurse practitioner, registered nurse, or emergency  
23 medical technician licensed by the State of West Virginia.

24           And renumbering the remaining subsections;

1           And,

2           On pages twenty-three and twenty-four, by striking out all of  
3 subsection 10.1. and inserting in lieu thereof a new subsection  
4 10.1. to read as follows:

5           10.1. Well Records Made During Permitted Work - The well  
6 operator or its contractor (service provider, drilling contractor  
7 or other contractor, as appropriate) shall keep at the well  
8 location a copy of the application as permitted, including the  
9 associated plat and plans required by section 5 of this rule. The  
10 well operator or its contractor (service provider, drilling  
11 contractor or other contractor, as appropriate) shall also make and  
12 preserve at the well location accurate records of all well work  
13 performed pursuant to the permit, including documentation by the  
14 contractor or person performing the cementing services of the time  
15 of completion of cementing and the volume of cement used for the  
16 cementing of all casing operations. The records shall be complete  
17 enough to support, as applicable, the entries of well work done and  
18 related data on Form WR-35, "Well Operator's Report of Well Work",  
19 Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test",  
20 and Form WR-38, "Affidavit of Plugging and Filling Well", but these  
21 forms shall reflect information discovered or changes made after  
22 the permitted well work has been finished and before the reports  
23 are filed. The records made and preserved at the well location and  
24 the recordings made on Form WR-35 shall include, but not be limited

1 to, indications of caverns, open mines or other voids, whether the  
2 freshwater casing cement circulated to the surface, and the efforts  
3 made to fill the annular space and the results. Unless the records  
4 of well work performed are prepared by the well operator or owner,  
5 a copy of all the records shall be delivered to the well owner or  
6 operator, except for those records the contractor (service  
7 provider, drilling contractor or other contractor, as appropriate)  
8 designates as a confidential trade secret.

9 10.1.a. As part of the well completion report (Form WR-35),  
10 the operator or its service provider shall list all the additives  
11 used in the hydraulic fracturing or stimulation process, including  
12 each additive's specific trade name, supplier, and purpose. The  
13 operator or its service provider shall also list each chemical of  
14 each additive intentionally added to a base fluid for the purpose  
15 of preparing a fracturing fluid, along with each chemical's CAS  
16 registry number, if applicable, its maximum concentration in the  
17 additive, and its maximum concentration as added to the base fluid,  
18 and the volume of the base fluid used. The concentrations shall be  
19 expressed as a mass percent. The operator or service provider may  
20 designate the information regarding the specific identity or  
21 concentration or both of a chemical as a confidential trade secret  
22 not to be disclosed to the agency or anyone else except in the  
23 event of an investigation by the office, medical emergency, or for  
24 diagnostic or treatment purposes involving the designated chemical,

1 pursuant to subdivisions 10.1.d. and 10.1.e. below.

2 10.1.b. The operator or service provider shall fulfill the  
3 additive reporting requirement of subdivision 10.1.a. above by  
4 submitting the information to the office and the FracFocus Chemical  
5 Disclosure Registry.

6 10.1.c. As part of the well completion report (Form WR-35),  
7 the operator shall report the volumes of fluids pumped and  
8 treatment pressures recorded throughout the hydraulic fracturing  
9 process.

10 10.1.d. In the event of an investigation by the office  
11 involving a chemical designated as a confidential trade secret, the  
12 operator or service provider shall provide the specific identity of  
13 the chemical, the concentration of the chemical, or both the  
14 specific identity and concentration of the chemical, as needed, to  
15 the agency upon receipt of notification from the chief or his or  
16 her designee stating that such information is necessary in  
17 connection with an investigation by the office. Upon receipt of  
18 such notification of need, such information shall be disclosed by  
19 the operator or service provider, as applicable, directly to the  
20 chief or his or her designee and shall in no way be construed as  
21 publicly available. The chief or designee may disclose information  
22 regarding the specific identity of a chemical, the concentration of  
23 a chemical, or both the specific identity and concentration of a  
24 chemical claimed to be a confidential trade secret to additional

1 agency staff members to the extent that such disclosure is  
2 necessary to allow the agency staff member receiving the  
3 information to assist in such an investigation by the office,  
4 provided that such individuals shall not disseminate the  
5 information further and such information shall at all times be  
6 considered confidential and shall not be construed as publicly  
7 available. Upon request by the operator or service provider, and  
8 where a notification of need is provided orally, the chief shall  
9 execute a written statement of need indicating that the information  
10 was necessary in connection with an investigation by the office.

11 10.1.e. The operator or service provider shall provide the  
12 specific identity of a chemical designated as a confidential trade  
13 secret, the concentration of the chemical designated as a  
14 confidential trade secret, or both the specific identity and  
15 concentration of the chemical designated as a confidential trade  
16 secret, as needed, upon request to a health care professional in a  
17 medical emergency, or for diagnostic or treatment purposes, so long  
18 as the requesting health care professional executes a  
19 confidentiality agreement and provides a written statement of need  
20 for the information, indicating that the information is necessary  
21 for the purpose of diagnosis or treatment of an individual and that  
22 knowledge of the requested information will assist in the diagnosis  
23 or treatment of an individual. In the case of an emergency, the  
24 operator or service provider shall immediately disclose the

1 information to the health care professional upon verbal  
2 acknowledgment by the health care professional that the information  
3 will not be used for purposes other than diagnosis or treatment and  
4 that the health care professional will maintain the information as  
5 confidential. Upon request by the operator or service provider,  
6 the health care professional shall execute a confidentiality  
7 agreement and written statement of need as provided above as soon  
8 as circumstances permit.

9 (d) The legislative rule filed in the State Register on August  
10 15, 2012, authorized under the authority of section four, article  
11 five, chapter twenty-two of this code, relating to the Department  
12 of Environmental Protection (permits for construction and major  
13 modification of major stationary sources for the prevention of  
14 significant deterioration of air quality, 45 CSR 14), is  
15 authorized.

16 (e) The legislative rule filed in the State Register on  
17 August 14, 2012, authorized under the authority of section four,  
18 article five, chapter twenty-two of this code, relating to the  
19 Department of Environmental Protection (standards of performance  
20 for new stationary sources, 45 CSR 16), is authorized.

21 (f) The legislative rule filed in the State Register on August  
22 15, 2012, authorized under the authority of section four, article  
23 five, chapter twenty-two of this code, relating to the Department  
24 of Environmental Protection (control of air pollution from

1 combustion of solid waste, 45 CSR 18), is authorized.

2 (g) The legislative rule filed in the State Register on August  
3 15, 2012, authorized under the authority of section four, article  
4 five, chapter twenty-two of this code, relating to the Department  
5 of Environmental Protection (control of air pollution from  
6 hazardous waste treatment, storage or disposal facilities, 45 CSR  
7 25), is authorized.

8 (h) The legislative rule filed in the State Register on August  
9 15, 2012, authorized under the authority of section four, article  
10 five, chapter twenty-two of this code, relating to the Department  
11 of Environmental Protection (requirements for operating permits, 45  
12 CSR 30), is authorized.

13 (i) The legislative rule filed in the State Register on August  
14 15, 2012, authorized under the authority of section four, article  
15 five, chapter twenty-two of this code, relating to the Department  
16 of Environmental Protection (emission standards for hazardous air  
17 pollutants, 45 CSR 34), is authorized.

18 (j) The legislative rule filed in the State Register on August  
19 30, 2012, authorized under the authority of section ten, article  
20 eleven, chapter twenty-two of this code, relating to the Department  
21 of Environmental Protection (water pollution control permit fee  
22 schedules, 47 CSR 26), is authorized.

23 (k) The legislative rule filed in the State Register on August  
24 28, 2012, authorized under the authority of section four, article

1 eleven, chapter twenty-two of this code, relating to the Department  
2 of Environmental Protection (WV/NPDES regulations for coal mining  
3 facilities, 47 CSR 30), is authorized.