

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2013**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 243**

(SENATOR SNYDER, *ORIGINAL SPONSOR*)

[PASSED APRIL 12, 2013; IN EFFECT FROM PASSAGE.]

**E N R O L L E D**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 243**

(SENATOR SNYDER, *original sponsor*)

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[Passed April 12, 2013; in effect from passage.]

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AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to covered electronic devices recycling; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; authorizing the Department of Environmental

Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; 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 the control of air pollution from the combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the 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 requirements for operating permits; 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 water pollution control permit fee schedules; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES regulations for coal mining facilities.

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

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

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

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

- 1 (a) The legislative rule filed in the State Register on
- 2 August 30, 2012, authorized under the authority of section
- 3 twenty-nine, article fifteen-a, chapter twenty-two of this

4 code, modified by the Department of Environmental  
5 Protection to meet the objections of the Legislative Rule-  
6 Making Review Committee and refiled in the State Register  
7 on December 13, 2012, relating to the Department of  
8 Environmental Protection (covered electronic devices  
9 recycling, 33 CSR 12), is authorized with the following  
10 amendment:

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

14 4.1.b.1. Within one year after the effective date of this  
15 rule, receiving, storage, operations and shipping areas must  
16 be under a roof or in an enclosed area sufficient to prevent  
17 stormwater contamination.

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

24 (c) The legislative rule filed in the State Register on  
25 September 4, 2012, authorized under the authority of section  
26 six, article six-a, chapter twenty-two of this code, modified  
27 by the Department of Environmental Protection to meet the  
28 objections of the Legislative Rule-Making Review  
29 Committee and refiled in the State Register on February 14,  
30 2013, relating to the Department of Environmental Protection  
31 (horizontal well development, 35 CSR 8), is authorized with  
32 the following amendments:

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

35       2.13. “Health care professional” means a physician,  
36 physician assistant, nurse practitioner, registered nurse or  
37 emergency medical technician licensed by the State of West  
38 Virginia.

39       And renumbering the remaining subsections;

40       And,

41       On page 10, Section 5.6.e., line 1 and 2, by deleting the  
42 sentence that reads, “A copy of the approved Water  
43 Management Plan shall be available upon request.” and  
44 inserting in lieu thereof the following:

45       “Signage shall be posted at each water withdraw site that  
46 provides how to obtain the Water Management Plan, the  
47 phone number of the company conducting the withdraw, the  
48 Office’s web site name and phone number, and the permit  
49 number.”

50       And,

51       On page 10, subsection 5.7.a, line 5, following the words  
52 “is sought,” by inserting the words “the anticipated MSDS  
53 Sheets, and”

54       And,

55       On page 10, subsection 5.7.1, line 12, following the  
56 words “emergency services.” by inserting the following:

57       “The operator shall also provide the Well Site Safety Plan  
58 to the surface owner and any water purveyor or surface  
59 owner subject to notice and water testing as provided in  
60 subsection 15 of this rule.

61       And,

62       On page 19, Section 9.1.b.2, line 3, following the words  
63 “will be utilized” by striking out the period and inserting a  
64 comma and the following:

65       “and the telephone number for the Department of  
66 Environmental Protection.”

67       And,

68       On pages 23 and 24, by striking out all of subsection  
69 10.1. and inserting in lieu thereof a new subsection 10.1. to  
70 read as follows:

71       10.1. Well Records Made During Permitted Work - The  
72 well operator or its contractor (service provider, drilling  
73 contractor or other contractor, as appropriate) shall keep at  
74 the well location a copy of the application as permitted,  
75 including the associated plat and plans required by section 5  
76 of this rule. The well operator or its contractor (service  
77 provider, drilling contractor or other contractor, as  
78 appropriate) shall also make and preserve at the well location  
79 accurate records of all well work performed pursuant to the  
80 permit, including documentation by the contractor or person  
81 performing the cementing services of the time of completion  
82 of cementing and the volume of cement used for the  
83 cementing of all casing operations. The records shall be  
84 complete enough to support, as applicable, the entries of well  
85 work done and related data on Form WR-35, “Well  
86 Operator’s Report of Well Work”, Form WR-36, “Well  
87 Operator’s Report of Initial Gas-Oil Ratio Test”, and Form  
88 WR-38, “Affidavit of Plugging and Filling Well”, but these  
89 forms shall reflect information discovered or changes made  
90 after the permitted well work has been finished and before the  
91 reports are filed. The records made and preserved at the well  
92 location and the recordings made on Form WR-35 shall  
93 include, but not be limited to, indications of caverns, open  
94 mines or other voids, whether the freshwater casing cement

95 circulated to the surface, and the efforts made to fill the  
96 annular space and the results. Unless the records of well work  
97 performed are prepared by the well operator or owner, a copy  
98 of all the records shall be delivered to the well owner or  
99 operator, except for those records the contractor (service  
100 provider, drilling contractor or other contractor, as  
101 appropriate) designates as a confidential trade secret.

102 10.1.a. As part of the well completion report (Form WR-  
103 35), the operator or its service provider shall list all the  
104 additives used in the hydraulic fracturing or stimulation  
105 process, including each additive's specific trade name,  
106 supplier, and purpose. The operator or its service provider  
107 shall also list each chemical of each additive intentionally  
108 added to a base fluid for the purpose of preparing a fracturing  
109 fluid, along with each chemical's CAS registry number, if  
110 applicable, its maximum concentration in the additive, and its  
111 maximum concentration as added to the base fluid, and the  
112 volume of the base fluid used. The concentrations shall be  
113 expressed as a mass percent. The operator or service  
114 provider may designate the information regarding the specific  
115 identity or concentration or both of a chemical as a  
116 confidential trade secret not to be disclosed to the agency or  
117 anyone else except in the event of an investigation by the  
118 office, medical emergency, or for diagnostic or treatment  
119 purposes involving the designated chemical, pursuant to  
120 subdivisions 10.1.d. and 10.1.e. below.

121 10.1.b. The operator or service provider shall fulfill the  
122 additive reporting requirement of subdivision 10.1.a. above  
123 by submitting the information to the office and the FracFocus  
124 Chemical Disclosure Registry.

125 10.1.c. As part of the well completion report (Form WR-  
126 35), the operator shall report the volumes of fluids pumped  
127 and treatment pressures recorded throughout the hydraulic  
128 fracturing process.

129           10.1.d. In the event of an investigation by the office  
130 involving a chemical designated as a confidential trade secret,  
131 the operator or service provider shall provide the specific  
132 identity of the chemical, the concentration of the chemical, or  
133 both the specific identity and concentration of the chemical,  
134 as needed, to the agency upon receipt of notification from the  
135 chief or his or her designee stating that such information is  
136 necessary in connection with an investigation by the office.  
137 Upon receipt of such notification of need, such information  
138 shall be disclosed by the operator or service provider, as  
139 applicable, directly to the chief or his or her designee and  
140 shall in no way be construed as publicly available. The chief  
141 or designee may disclose information regarding the specific  
142 identity of a chemical, the concentration of a chemical, or  
143 both the specific identity and concentration of a chemical  
144 claimed to be a confidential trade secret to additional agency  
145 staff members to the extent that such disclosure is necessary  
146 to allow the agency staff member receiving the information  
147 to assist in such an investigation by the office, provided that  
148 such individuals shall not disseminate the information further  
149 and such information shall at all times be considered  
150 confidential and shall not be construed as publicly available.  
151 Upon request by the operator or service provider, and where  
152 a notification of need is provided orally, the chief shall  
153 execute a written statement of need indicating that the  
154 information was necessary in connection with an  
155 investigation by the office.

156           10.1.e. The operator or service provider shall provide the  
157 specific identity of a chemical designated as a confidential  
158 trade secret, the concentration of the chemical designated as  
159 a confidential trade secret, or both the specific identity and  
160 concentration of the chemical designated as a confidential  
161 trade secret, as needed, upon request to a health care  
162 professional in a medical emergency, or for diagnostic or  
163 treatment purposes. The health care professional shall only  
164 use the information provided by the operator or service



165 provider for diagnosis or treatment of an individual, and the  
166 operator or service provider may provide notice to the health  
167 care professional at the time of release of the information,  
168 that the information provided is solely for diagnosis or  
169 treatment of the individual, that the information may be a  
170 trade secret, and disclosure to others for any other purpose  
171 may subject that health care professional to a legal action by  
172 the operator or service provider for violating its trade secret.”

173 And,

174 On page 30, by striking out all of subsection 13.5.”

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

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

188 (f) The legislative rule filed in the State Register on  
189 August 15, 2012, authorized under the authority of section  
190 four, article five, chapter twenty-two of this code, relating to  
191 the Department of Environmental Protection (control of air  
192 pollution from combustion of solid waste, 45 CSR 18), is  
193 authorized.

194 (g) The legislative rule filed in the State Register on  
195 August 15, 2012, authorized under the authority of section

196 four, article five, chapter twenty-two of this code, relating to  
197 the Department of Environmental Protection (control of air  
198 pollution from hazardous waste treatment, storage or disposal  
199 facilities, 45 CSR 25), is authorized.

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

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

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

217 (k) The legislative rule filed in the State Register on  
218 August 28, 2012, authorized under the authority of section  
219 four, article eleven, chapter twenty-two of this code, relating  
220 to the Department of Environmental Protection (WV/NPDES  
221 regulations for coal mining facilities, 47 CSR 30), is  
222 authorized.



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

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2013.

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*Governor*