

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2579

(BY DELEGATE(S) R. PHILLIPS, STOWERS, ELDRIDGE,
TOMBLIN, WHITE, MARCUM, CAPUTO, BOGGS, CRAIG,
SUMNER AND NELSON, J.)

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

AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to protecting state waters; providing legislative findings; acknowledging the scientific uncertainty regarding the applicability of the current selenium standard in this state; directing the secretary to develop an implementation plan within certain time period for selenium discharges in certain situations; requiring certain minimum requirements in implementation plan; requiring secretary to promulgate legislative rule within certain time period which establishes a state-specific selenium standard; requiring secretary to submit state-specific selenium standard to EPA administrator; and directing secretary to consult with and solicit research and data from certain groups in developing selenium standard.

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

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

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

39 (4) The Legislature finds that EPA has been contemplating
40 a revision to the federally recommended criteria for several years
41 but has yet to issue a revised standard.

42 (5) Because of the uncertainty regarding the applicability of
43 the current selenium standard, the secretary is hereby directed to
44 develop within six months of the effective date of this subdivi-
45 sion an implementation plan for the current selenium standard
46 that will include, at minimum, the following:

47 (A) Implementing the criteria as a threshold standard;

48 (B) A monitoring plan that will include chemical speciation
49 of any selenium discharge;

50 (C) A fish population survey and monitoring plan that will
51 be implemented at a representative location to assess any
52 possible impacts from selenium discharges if the threshold
53 criteria are exceeded; and

54 (D) The results of the monitoring will be reported to the
55 department for use in the development of state-specific selenium
56 criteria.

57 (6) Within twenty-four months of the effective date of this
58 subdivision, the secretary shall propose rules for legislative

59 approval in accordance with the provisions of article three,
60 chapter twenty-nine of this code which establish a state-specific
61 selenium standard that protects aquatic life. Concurrent with
62 proposing a legislative rule, the secretary shall also submit the
63 proposed standard and supporting documentation to the Admin-
64 istrator of the Environmental Protection Agency. The secretary
65 shall also consult with and consider research and data from the
66 West Virginia Water Research Institute at West Virginia
67 University, the regulated community, and other appropriate
68 groups in developing the state-specific selenium standard.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

