

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 243

(By Senator Snyder)

[Originating in the Committee on the Judiciary;
reported March 22, 2013.]

A BILL 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

31 Protection (horizontal well development, 35 CSR 8), is
32 authorized with 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 pages twenty-three and twenty-four, by striking out
42 all of subsection 10.1. and inserting in lieu thereof a new
43 subsection 10.1. to read as follows:

44 10.1. Well Records Made During Permitted Work - The
45 well operator or its contractor (service provider, drilling
46 contractor or other contractor, as appropriate) shall keep at
47 the well location a copy of the application as permitted,
48 including the associated plat and plans required by section 5

49 of this rule. The well operator or its contractor (service
50 provider, drilling contractor or other contractor, as
51 appropriate) shall also make and preserve at the well location
52 accurate records of all well work performed pursuant to the
53 permit, including documentation by the contractor or person
54 performing the cementing services of the time of completion
55 of cementing and the volume of cement used for the
56 cementing of all casing operations. The records shall be
57 complete enough to support, as applicable, the entries of well
58 work done and related data on Form WR-35, "Well
59 Operator's Report of Well Work", Form WR-36, "Well
60 Operator's Report of Initial Gas-Oil Ratio Test", and Form
61 WR-38, "Affidavit of Plugging and Filling Well", but these
62 forms shall reflect information discovered or changes made
63 after the permitted well work has been finished and before
64 the reports are filed. The records made and preserved at the
65 well location and the recordings made on Form WR-35 shall
66 include, but not be limited to, indications of caverns, open

67 mines or other voids, whether the freshwater casing cement
68 circulated to the surface, and the efforts made to fill the
69 annular space and the results. Unless the records of well
70 work performed are prepared by the well operator or owner,
71 a copy of all the records shall be delivered to the well owner
72 or operator, except for those records the contractor (service
73 provider, drilling contractor or other contractor, as
74 appropriate) designates as a confidential trade secret.

75 10.1.a. As part of the well completion report (Form WR-
76 35), the operator or its service provider shall list all the
77 additives used in the hydraulic fracturing or stimulation
78 process, including each additive's specific trade name,
79 supplier, and purpose. The operator or its service provider
80 shall also list each chemical of each additive intentionally
81 added to a base fluid for the purpose of preparing a fracturing
82 fluid, along with each chemical's CAS registry number, if
83 applicable, its maximum concentration in the additive, and
84 its maximum concentration as added to the base fluid, and

85 the volume of the base fluid used. The concentrations shall
86 be expressed as a mass percent. The operator or service
87 provider may designate the information regarding the
88 specific identity or concentration or both of a chemical as a
89 confidential trade secret not to be disclosed to the agency or
90 anyone else except in the event of an investigation by the
91 office, medical emergency, or for diagnostic or treatment
92 purposes involving the designated chemical, pursuant to
93 subdivisions 10.1.d. and 10.1.e. below.

94 10.1.b. The operator or service provider shall fulfill the
95 additive reporting requirement of subdivision 10.1.a. above
96 by submitting the information to the Office and the
97 FracFocus Chemical Disclosure Registry.

98 10.1.c. As part of the well completion report (Form WR-
99 35), the operator shall report the volumes of fluids pumped
100 and treatment pressures recorded throughout the hydraulic
101 fracturing process.

102 10.1.d. In the event of an investigation by the Office
103 involving a chemical designated as a confidential trade
104 secret, the operator or service provider shall provide the
105 specific identity of the chemical, the concentration of the
106 chemical, or both the specific identity and concentration of
107 the chemical, as needed, to the agency upon receipt of
108 notification from the chief or his or her designee stating that
109 such information is necessary in connection with an
110 investigation by the office. Upon receipt of such notification
111 of need, such information shall be disclosed by the operator
112 or service provider, as applicable, directly to the chief or his
113 or her designee and shall in no way be construed as publicly
114 available. The chief or designee may disclose information
115 regarding the specific identity of a chemical, the
116 concentration of a chemical, or both the specific identity and
117 concentration of a chemical claimed to be a confidential
118 trade secret to additional agency staff members to the extent

119 that such disclosure is necessary to allow the agency staff
120 member receiving the information to assist in such an
121 investigation by the office, provided that such individuals
122 shall not disseminate the information further and such
123 information shall at all times be considered confidential and
124 shall not be construed as publicly available. Upon request by
125 the operator or service provider, and where a notification of
126 need is provided orally, the chief shall execute a written
127 statement of need indicating that the information was
128 necessary in connection with an investigation by the Office.

129 10.1.e. The operator or service provider shall provide the
130 specific identity of a chemical designated as a confidential
131 trade secret, the concentration of the chemical designated as
132 a confidential trade secret, or both the specific identity and
133 concentration of the chemical designated as a confidential
134 trade secret, as needed, upon request to a health care
135 professional in a medical emergency, or for diagnostic or

136 treatment purposes, so long as the requesting health care
137 professional executes a confidentiality agreement and
138 provides a written statement of need for the information,
139 indicating that the information is necessary for the purpose
140 of diagnosis or treatment of an individual and that knowledge
141 of the requested information will assist in the diagnosis or
142 treatment of an individual. In the case of an emergency, the
143 operator or service provider shall immediately disclose the
144 information to the health care professional upon verbal
145 acknowledgment by the health care professional that the
146 information will not be used for purposes other than
147 diagnosis or treatment and that the health care professional
148 will maintain the information as confidential. Upon request
149 by the operator or service provider, the health care
150 professional shall execute a confidentiality agreement and
151 written statement of need as provided above as soon as
152 circumstances permit.

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

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

166 (f) The legislative rule filed in the State Register on
167 August 15, 2012, authorized under the authority of section
168 four, article five, chapter twenty-two of this code, relating to
169 the Department of Environmental Protection (control of air
170 pollution from combustion of solid waste, 45 CSR 18), is
171 authorized.

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

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

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

189 (j) The legislative rule filed in the State Register on
190 August 30, 2012, authorized under the authority of section

191 ten, article eleven, chapter twenty-two of this code, relating
192 to the Department of Environmental Protection (water
193 pollution control permit fee schedules, 47 CSR 26), is
194 authorized.

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