

Senate Bill No. 482

(By Senators Carmichael, Blair, D. Hall, Kirkendoll)

[Introduced February 13, 2015; referred to the Committee on the Judiciary.]

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9 A BILL to amend and reenact §22-5-11 of the Code of West Virginia, 1931, as amended, relating
10 to setting time periods for permit completion determinations and permit issuance;
11 establishing method of setting permit limits for certain oil and gas operations; and requiring
12 the Secretary of the Department of Environmental Protection to propose rules relating to the
13 calculation of potential to emit; and issuance of general permits.

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

15 That §22-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted
16 to read as follows:

17 **ARTICLE 5. AIR POLLUTION CONTROL.**

18 **§22-5-11. Construction, modification or relocation permits required for stationary sources of**
19 **air pollutants.**

20 (a) Unless otherwise specifically provided in this article, no person ~~shall~~ may construct,
21 modify or relocate any stationary source of air pollutants without first obtaining a construction,
22 modification or relocation permit as provided in this article.

1 (b) The secretary shall by rule specify the class or categories of stationary sources to which
2 this section applies. Application for permits shall be made ~~upon such~~ in the form, in ~~such the~~
3 manner, and within ~~such the~~ time as the rule prescribes and shall include ~~such~~ information, as in the
4 judgment of the secretary, will enable him or her to determine whether ~~such the~~ source will be so
5 designed as to operate in conformance with the provisions of this article or any rules of the secretary.

6 (c) Unless otherwise specifically provided in this article, the secretary shall issue a permit
7 for a major stationary source within a reasonable time not to exceed three hundred sixty-five calendar
8 days, after the secretary determines that the application is complete.

9 (d) Unless otherwise specifically provided in this article, the secretary shall issue a permit
10 for all other sources including modifications of existing major stationary sources which are not major
11 modifications within a reasonable time not to exceed ninety calendar days, after the date the secretary
12 determines the application is complete. The secretary may extend this time by thirty calendar days
13 to allow for public comment.

14 (e) A permit application will be denied if the secretary determines that the proposed
15 construction, modification or relocation will not be in accordance with this article or rules
16 promulgated thereunder.

17 (f) For purposes of this section, a modification is any physical change in, or change in the
18 method of operation of, a stationary source which increases the amount of any air pollutant
19 discharged by a source above the de minimis level set by the secretary.

20 (g) With respect to the construction of new nonmajor stationary sources, or modifications of
21 nonmajor stationary sources, or modifications which are not major modifications to existing major
22 stationary sources, or relocations of nonmajor stationary sources, the following requirements apply:

1 (1) The secretary shall issue an administrative update to a permit issued under this section
2 with respect to any of these sources, unless he or she determines that the proposed administrative
3 update will not be in accordance with this article or rules promulgated hereunder, in which case the
4 secretary shall issue an order denying the administrative update. Any administrative update shall be
5 issued by the secretary within a reasonable time not to exceed sixty calendar days after receipt of a
6 complete application. Administrative updates are minor revisions of existing permits as further
7 described and authorized by rule.

8 (2) The secretary shall, within a reasonable time not to exceed forty-five calendar days after
9 the date ~~the secretary determines~~ that an application is complete, issue a registration under a general
10 permit applicable to any of these sources, unless he or she determines that the proposed construction,
11 modification or relocation will not be in accordance with this article or rules promulgated hereunder:
12 Provided, That if the secretary has not acted upon a registration application in accordance with this
13 subdivision within forty-five calendar days after the date that an application has been determined to
14 be complete, the applicant may commence construction pursuant to the terms and conditions of the
15 general permit, notwithstanding any other provision of this article to the contrary. General permits
16 are permits authorizing the construction, modification or relocation of a category of sources by the
17 same owner or operator or involving the same or similar processes or pollutants upon the terms and
18 conditions specified in the general permit for those types of sources.

19 (3) The secretary shall, within a reasonable time not to exceed forty-five calendar days after
20 receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she
21 determines that the proposed construction, modification or relocation will not be in accordance with
22 this article or rules promulgated hereunder. Temporary permits are permits authorizing the owner

1 or operator to make limited changes for limited periods of time as further described and authorized
2 by rule.

3 (h) The secretary shall determine whether an application filed under this section is complete
4 within ~~thirty~~ ten calendar days after receipt of that application or any revision to an application at
5 which time the secretary shall notify the applicant in writing as to whether the application is
6 complete or specify any additional information required for the application to be complete:
7 Provided, That if no completeness determination has been made by the secretary and communicated
8 to the applicant pursuant to this subsection within ten calendar days after receipt of an application
9 or revision thereof, that application is considered complete and the applicable time period established
10 under this section for the review and issuance of the permit shall begin.

11 (i) The secretary, shall propose rules for legislative approval in accordance with the
12 provisions of article three, chapter twenty nine-a of this code, to implement the provisions of this
13 section. ~~by August 1, 2008~~

14 (j) On or before June 1, 2015, the secretary shall propose, in accordance with article three,
15 chapter twenty-nine-a of this code, a legislative rule that would allow the owner or operator of a
16 stationary source to calculate the potential to emit pollutants from emissions units at a stationary
17 source using alternative operating conditions or equipment that are described in, and made
18 enforceable by, the terms of the permit.

19 (k) Air emission limits for tanks, engines and other air emission units at oil and gas drilling,
20 production or gathering operations shall be calculated using the maximum potential emissions
21 expressed as pounds per day and/or pounds per hour for each unit or groups of units, but annual
22 emissions shall be calculated using average actual emissions for each unit or group of units. The

1 secretary may, by legislative rule, require rolling twelve month emission reporting to confirm
2 compliance with annual average emission limits.

3 (l) On or before June 1, 2015, the secretary shall develop general permits to construct and
4 operate one or more similar classes of stationary sources. The general permits shall set reasonable
5 terms and conditions for the construction and operation of the stationary sources and,
6 notwithstanding any other requirements of this article, shall allow the construction and operation of
7 the stationary sources thirty days after the filing of a notice of intent to be covered by the general
8 permit to be developed by the stationary source owner or operator. The first general permit to be
9 developed by the secretary shall be for oil and gas production facilities located at the well site.

10 (m) No application for the construction, modification or relocation of a nonmajor stationary
11 source is subject to more than one public notice period, which may not exceed thirty days.
12 Applicants for coverage under a general permit that has been subject to public notice when issued
13 are not subject to an additional notice period.

NOTE: The purpose of this bill is to require the Department of Environmental Protection's Division of Air Quality to issue flexible permits with alternative operating scenarios, and that would specify how emissions were to be limited at certain oil and gas facilities. It would set shorter time limits for making completeness determinations, start the time period running for permit issuance if a completeness determination is not promptly made, and allow construction without a permit if general permits were not promptly issued. It would also require the Division of Air Quality to develop general permits for similar types of sources that have similar emissions limitations and would not require an application process. The bill would prohibit duplicative public notice periods.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.