

HB2 506

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2506

BY DELEGATES ZATEZALO, G. FOSTER, KESSINGER,
SUMMERS, ATKINSON, AMBLER, PHILLIPS, WESTFALL AND
MILEY

[Passed March 28, 2017; in effect ninety days from passage]

SECRETARY OF STATE
STATE OF WEST VIRGINIA

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1 AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, all
2 relating to requiring permit limits to be calculated using the design flows recommended by
3 the United States Environmental Protection Agency for the protection of human health;
4 allowing overlapping mixing zones for calculating permit limits for drinking water criteria;
5 and clarifying posted signage requirements.

Be it enacted by the Legislature of West Virginia:

1 That §22-11-7b of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted, all to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

**§22-11-7b. Water quality standards; implementation of antidegradation procedures;
procedure to determine compliance with the biologic component of the narrative
water quality standard.**

1 (a) All authority to propose rules for legislative approval and implement water quality
2 standards is vested in the Secretary of the Department of Environmental Protection.

3 (b) All meetings with the secretary or any employee of the department and any interested
4 party which are convened for the purpose of making a decision or deliberating toward a decision
5 as to the form and substance of the rule governing water quality standards or variances thereto
6 shall be held in accordance with article nine-a, chapter six of this code. When the secretary is
7 considering the form and substance of the rules governing water quality standards, the following
8 are not meetings pursuant to article nine-a, chapter six of this code: (i) Consultations between the
9 department's employees or its consultants, contractors or agents; (ii) consultations with other
10 state or federal agencies and the department's employees or its consultants, contractors or
11 agents; or (iii) consultations between the secretary, the department's employees or its
12 consultants, contractors or agents with any interested party for the purpose of collecting facts and
13 explaining state and federal requirements relating to a site specific change or variance.

14 (c) In order to carry out the purposes of this chapter, the secretary shall propose rules for
15 legislative approval in accordance with article three, chapter twenty-nine-a of this code setting
16 standards of water quality applicable to both the surface waters and groundwaters of this state.
17 Standards of quality with respect to surface waters shall protect the public health and welfare,
18 wildlife, fish and aquatic life and the present and prospective future uses of the water for domestic,
19 agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof. The water
20 quality standards of the secretary may not specify the design of equipment, type of construction
21 or particular method which a person shall use to reduce the discharge of a pollutant. For
22 implementing human health criteria for the protection of drinking water, the Secretary shall
23 calculate permit limits using the harmonic mean flow and may determine the point of compliance
24 for a permittee's discharge pursuant to the mixing zone provisions of the Legislative rule entitled
25 Requirements Governing Water Quality Standards, 47 C.S.R. 2: *Provided*, That the Secretary
26 may allow mixing zones to overlap, but not to go beyond a point one-half mile upstream of a public
27 water supply. At locations where mixing zones are allowed to overlap, the Secretary shall require
28 permittees to indicate on their required signage an indication that mixing zones overlap in a
29 particular vicinity.

30 (d) The secretary shall establish the antidegradation implementation procedures as
31 required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to
32 affect water quality. The secretary shall propose for legislative approval, pursuant to article three,
33 chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which
34 include specifics of the review depending upon the existing uses of the water body segment that
35 would be affected, the level of protection or "tier" assigned to the applicable water body segment,
36 the nature of the activity and the extent to which existing water quality would be degraded. Any
37 final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does
38 not become effective until that determination is approved by the Legislature through the legislative
39 rule-making process as provided in article three, chapter twenty-nine-a of the code.

40 (e) All remaining variances shall be applied for and considered by the secretary and any
41 variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control
42 Act. At a minimum, when considering an application for a remaining variance the secretary shall
43 consider the data and information submitted by the applicant for the variance; and comments
44 received at a public comment period and public hearing. The secretary may not grant a variance
45 without requiring the applicant to improve the instream water quality as much as is reasonably
46 possible by applying best available technology economically achievable using best professional
47 judgment. Any such requirement shall be included as a permit condition. The secretary may not
48 grant a variance without a demonstration by the applicant that the coal remaining operation will
49 result in the potential for improved instream water quality as a result of the remaining operation.
50 The secretary may not grant a variance where he or she determines that degradation of the
51 instream water quality will result from the remaining operation.

52 (f) The secretary shall propose rules measuring compliance with the biologic component
53 of West Virginia's narrative water quality standard requires evaluation of the holistic health of the
54 aquatic ecosystem and a determination that the stream: (i) Supports a balanced aquatic
55 community that is diverse in species composition; (ii) contains appropriate trophic levels of fish,
56 in streams that have flows sufficient to support fish populations; and (iii) the aquatic community is
57 composed of benthic invertebrate assemblages sufficient to perform the biological functions
58 necessary to support fish communities within the assessed reach, or, if the assessed reach has
59 insufficient flows to support a fish community, in those downstream reaches where fish are
60 present. The secretary shall propose rules for legislative approval in accordance with article three,
61 chapter twenty-nine-a of this code that implement the provisions of this subsection. Rules
62 promulgated pursuant to this subsection may not establish measurements for biologic
63 components of West Virginia's narrative water quality standards that would establish standards
64 less protective than requirements that exist at the time of enactment of the amendments to this
65 subsection by the Legislature during the 2012 regular session.

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

Legn Tucker
.....
Chairman, House Committee

Mark P. Meyers
.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Scott J. Harris
.....
Clerk of the House of Delegates

Mark A. Barne
.....
Clerk of the Senate

Paul Rob
.....
Speaker of the House of Delegates

Walter B. Linnell
.....
President of the Senate

The within *is approved* this the *8th*
day of *April* 2017.

Jim Justice
.....
Governor

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STATE OF WEST VIRGINIA

PRESENTED TO THE GOVERNOR

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Time 2:41 pm