

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 163

BY SENATOR MAYNARD

[Originating in the Committee on the Judiciary;

reported on January 23, 2018]

1 A BILL to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating
2 generally to authorizing the Department of Environmental Protection to promulgate certain
3 legislative rules as filed, as modified, and as amended and to repeal certain legislative
4 and procedural rules; authorizing the Department of Environmental Protection to
5 promulgate a legislative rule relating to hazardous waste management system; authorizing
6 the Department of Environmental Protection to promulgate a legislative rule relating to
7 underground storage tanks; authorizing the Department of Environmental Protection to
8 promulgate a legislative rule relating to West Virginia surface mining reclamation;
9 authorizing the Department of Environmental Protection to promulgate a legislative rule
10 relating to standards of performance for new stationary sources; authorizing the
11 Department of Environmental Protection to promulgate a legislative rule relating to control
12 of air pollution from combustion of solid waste; authorizing the Department of
13 Environmental Protection to promulgate a legislative rule relating to control of air pollution
14 from municipal solid waste landfills; authorizing the Department of Environmental
15 Protection to promulgate a legislative rule relating to ambient air quality standards;
16 authorizing the Department of Environmental Protection to promulgate a legislative rule
17 relating to control of air pollution from hazardous waste treatment, storage, and disposal
18 facilities; authorizing the Department of Environmental Protection to promulgate a
19 legislative rule relating to emission standards for hazardous air pollutants; authorizing the
20 Department of Environmental Protection to promulgate a legislative rule relating to
21 voluntary remediation and redevelopment; directing the Department of Environmental
22 Protection to repeal a legislative rule relating to state construction grants program rule;
23 and directing the Department of Environmental Protection to repeal a procedural rule
24 relating to Freedom of Information Act requests.

Be it enacted by the Legislature of West Virginia:

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 July 21, 2017, authorized under the
2 authority of §22-18-6 of this code, relating to the Department of Environmental Protection
3 (hazardous waste management system, 33 CSR 20), is authorized.

4 (b) The legislative rule filed in the State Register on July 25, 2017, authorized under the
5 authority of §22-17-6 of this code, modified by the Department of Environmental Protection to
6 meet the objections of the Legislative Rule-Making Review Committee, and refiled in the State
7 Register on December 4, 2017, relating to the Department of Environmental Protection
8 (underground storage tanks, 33 CSR 30), is authorized.

9 (c) The legislative rule filed in the State Register on July 27, 2017, authorized under the
10 authority of §22-3-13 of this code, modified by the Department of Environmental Protection to
11 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
12 Register on January 22, 2018, relating to the Department of Environmental Protection (West
13 Virginia surface mining reclamation, 38 CSR 2), is authorized with the following amendments:

14 On page 147, by striking out all of paragraph 12.2.a.4. and inserting in lieu thereof a new
15 paragraph 12.2.a.4. to read as follows:

16 12.2.a.4. Notwithstanding any other provisions of this rule to the contrary, the Secretary
17 will not release or reduce the bond if, at the time, water discharged from or affected by the
18 operation requires chemical or passive treatment in order to comply with applicable effluent
19 limitations standards. Permit-approved measures taken during operations to prevent the formation
20 of acid drainage shall not be considered passive treatment: Provided, That the Secretary may
21 approve a request for release if the applicant demonstrates to the satisfaction of the Secretary that
22 either:

23 And,

24 On page 148, by striking out all of subparagraph 12.2.a.4.B. and inserting in lieu thereof a
25 new subparagraph 12.2.a.4.B. to read as follows:

26 12.2.a.4.B. The operator has provided irrevocable financial assurances in a form
27 satisfactory to the Secretary through a contract or other mechanism enforceable under
28 provisions of law, such as delineated in subsection 11.3 of this rule, adequate to provide for
29 long term treatment of the drainage as required by the federal Clean Water Act at 33 U.S.C 1251
30 *et seq.*, the West Virginia Water Pollution Control Act at §22-11-1 *et seq.* of this code and the
31 operator's National Pollutant Discharge Elimination System permit issued under 47 CSR 30.
32 Default on a treatment obligation under this paragraph will subject the operator to penalties and
33 sanctions, including permit blocking.

34 In order to make this demonstration, the applicant shall address, at a minimum, the
35 current and projected quantity and quality of drainage to be treated, the anticipated duration of
36 treatment, the estimated capital and operating cost of the treatment facility, and the calculations
37 that demonstrate the adequacy of the remaining bond or other financial assurance.

38 (d) The legislative rule filed in the State Register on July 21, 2017, authorized under the
39 authority of §22-5-4 of this code, relating to the Department of Environmental Protection
40 (standards of performance for new stationary sources, 45 CSR 16), is authorized.

41 (e) The legislative rule filed in the State Register on July 21, 2017, authorized under the
42 authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet
43 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
44 on August 24, 2017, relating to the Department of Environmental Protection (control of air pollution
45 from combustion of solid waste, 45 CSR 18), is authorized.

46 (f) The legislative rule filed in the State Register on July 21, 2017, authorized under the
47 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control
48 of air pollution from municipal solid waste landfills, 45 CSR 23), is authorized.

49 (g) The legislative rule filed in the State Register on July 21, 2017, authorized under the
50 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient
51 air quality standards, 45 CSR 8), is authorized.

52 (h) The legislative rule filed in the State Register on July 21, 2017, authorized under the
53 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control
54 of air pollution from hazardous waste treatment, storage, and disposal facilities, 45 CSR 25), is
55 authorized.

56 (i) The legislative rule filed in the State Register on July 21, 2017, authorized under the
57 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission
58 standards for hazardous air pollutants, 45 CSR 34), is authorized.

59 (j) The legislative rule filed in the State Register on July 11, 2017, authorized under the
60 authority of §22-22-3 of this code, relating to the Department of Environmental Protection
61 (voluntary remediation and redevelopment, 60 CSR 3), is authorized with the following
62 amendment:

63 On page 53, by striking out all of subdivision 15.7.b. and inserting in lieu thereof a new
64 subdivision 15.7.b. to read as follows:

65 15.7.b. Public Notice of Application for the Voluntary Remediation Program. – The applicant
66 shall produce and circulate a public notice of its application to the Voluntary Remediation program
67 in accordance with subsection 7.1 of this rule, which shall also include the following:

68 15.7.b.1. A summary of the proposed future use of the site; and

69 15.7.b.2. A summary of the public's right under the Act to become involved in the
70 development and remediation and reuse of the site, as well as the time, date, and location of an
71 informational meeting the applicant will hold with regard to the application.

72 (k) The legislative rule effective on May 7, 1999, authorized under the authority of §22C-
73 2-6 of this code, relating to the Department of Environmental Protection (state construction
74 grants program rule, 47 CSR 33), is repealed.

75 (l) The procedural rule effective on July 30, 2010, authorized under the authority of §29A-
76 3-3 of this code, relating to the Department of Environmental Protection (Freedom of Information
77 Act requests, 60 CSR 2), is repealed.