

WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 357

(SENATORS MULLINS, BLAIR, BOLEY, BOSO, FERNS, GAUNCH,
D. HALL, M. HALL, KARNES, CARMICHAEL, KIRKENDOLL,
LEONHARDT, MAYNARD, NOHE, PLYMALE, PREZIOSO,
STOLLINGS, SYPOLT, TAKUBO, TRUMP, WALTERS
AND WILLIAMS, *ORIGINAL SPONSORS*)

[PASSED MARCH 3, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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[Passed March 3, 2015; in effect ninety days from passage.]

AN ACT to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said code; to amend said code by adding thereto a new section, designated §22-11-22a; to amend said code by adding thereto a new section, designated §22A-1-41; to amend and reenact §22A-1A-1 of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said code; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code; and to amend said code by adding thereto a new section, designated §22A-2A-204a, all relating to coal mining generally; providing that discharges from waste piles do not

exceed applicable water quality standards; promulgating rules regarding procedures for requesting and obtaining inactive status and rules relating to requirements for contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation Act; abolishing West Virginia Diesel Equipment Commission; transferring duties and responsibilities of West Virginia Diesel Equipment Commission to Director of the Office of Miners' Health, Safety and Training; defining terms; providing rule-making authority; providing that rules previously approved by Diesel Equipment Commission continue in full force and effect; requiring rules for statewide hardness-based aluminum water quality criteria for protection of aquatic life; prohibiting wholesale incorporation of water quality standards into permits; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; requiring suspension or revocation of a certificate held by a certified person under certain circumstances; disallowing prescription as a defense if prescription is more than one year old; setting forth requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; increasing distance from the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail; requiring certain equipment be readily available in certain circumstances; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; establishing criteria for the use of sideboards on shuttle cars; changing distance of shelter holes along haulage entries; and setting requirements for riders on locomotives.

Be it enacted by the Legislature of West Virginia:

That §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended, be repealed; that §22-3-13 and §22-3-19 of said code be amended and reenacted; that §22-11-6 and §22-11-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-11-22a; that said code be amended by adding thereto a new section, designated §22A-1-41; that §22A-1A-1 of said code be amended and reenacted; that §22A-2-6, §22A-2-28 and §22A-2-37 of said code be amended and reenacted; that §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22A-2A-204a, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-13. General environmental protection performance standards for surface mining; variances.

1 (a) Any permit issued by the director pursuant to this
2 article to conduct surface mining operations shall require that
3 the surface mining operations meet all applicable
4 performance standards of this article and other requirements
5 set forth in legislative rules proposed by the director.

6 (b) The following general performance standards are
7 applicable to all surface mines and require the operation, at
8 a minimum, to:

9 (1) Maximize the utilization and conservation of the solid
10 fuel resource being recovered to minimize re-affecting the
11 land in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting prior
14 to any mining, or higher or better uses of which there is
15 reasonable likelihood so long as the use or uses do not
16 present any actual or probable hazard to public health or
17 safety or pose any actual or probable threat of water
18 diminution or pollution and the permit applicants' declared
19 proposed land use following reclamation is not considered to
20 be impractical or unreasonable, inconsistent with applicable
21 land use policies and plans, involves unreasonable delay in
22 implementation or is violative of federal, state or local law;

23 (3) Except as provided in subsection (c) of this section,
24 with respect to all surface mines, backfill, compact where
25 advisable to ensure stability or to prevent leaching of toxic
26 materials and grade in order to restore the approximate
27 original contour: *Provided*, That in surface mining which is
28 carried out at the same location over a substantial period of
29 time where the operation transects the coal deposit and the
30 thickness of the coal deposits relative to the volume of the
31 overburden is large and where the operator demonstrates that
32 the overburden and other spoil and waste materials at a
33 particular point in the permit area or otherwise available from
34 the entire permit area is insufficient, giving due consideration
35 to volumetric expansion, to restore the approximate original
36 contour, the operator, at a minimum, shall backfill, grade and
37 compact, where advisable, using all available overburden and
38 other spoil and waste materials to attain the lowest
39 practicable grade, but not more than the angle of repose, to
40 provide adequate drainage and to cover all acid-forming and
41 other toxic materials in order to achieve an ecologically
42 sound land use compatible with the surrounding region:
43 *Provided, however*, That in surface mining where the volume
44 of overburden is large relative to the thickness of the coal
45 deposit and where the operator demonstrates that due to
46 volumetric expansion the amount of overburden and other

47 spoil and waste materials removed in the course of the mining
48 operation is more than sufficient to restore the approximate
49 original contour, the operator shall, after restoring the
50 approximate contour, backfill, grade and compact, where
51 advisable, the excess overburden and other spoil and waste
52 materials to attain the lowest grade, but not more than the
53 angle of repose, and to cover all acid-forming and other toxic
54 materials in order to achieve an ecologically sound land use
55 compatible with the surrounding region and the overburden
56 or spoil shall be shaped and graded in a way as to prevent
57 slides, erosion and water pollution and revegetated in
58 accordance with the requirements of this article: *Provided*
59 *further*, That the director shall propose rules for legislative
60 approval in accordance with article three, chapter
61 twenty-nine-a of this code governing variances to the
62 requirements for return to approximate original contour or
63 highwall elimination and where adequate material is not
64 available from surface mining operations permitted after the
65 effective date of this article for: (A) Underground mining
66 operations existing prior to August 3, 1977; or (B) for areas
67 upon which surface mining prior to July 1, 1977, created
68 highwalls;

69 (4) Stabilize and protect all surface areas, including spoil
70 piles, affected by the surface mining operation to effectively
71 control erosion and attendant air and water pollution;

72 (5) Remove the topsoil from the land in a separate layer,
73 replace it on the backfill area or, if not utilized immediately,
74 segregate it in a separate pile from other spoil and, when the
75 topsoil is not replaced on a backfill area within a time short
76 enough to avoid deterioration of the topsoil, maintain a
77 successful vegetative cover by quick growing plants or by
78 other similar means in order to protect topsoil from wind and
79 water erosion and keep it free of any contamination by other
80 acid or toxic material: *Provided*, That if topsoil is of

81 insufficient quantity or of poor quality for sustaining
82 vegetation, or if other strata can be shown to be more suitable
83 for vegetation requirements, then the operator shall remove,
84 segregate and preserve in a like manner any other strata
85 which is best able to support vegetation;

86 (6) Restore the topsoil or the best available subsoil which
87 is best able to support vegetation;

88 (7) Ensure that all prime farmlands are mined and
89 reclaimed in accordance with the specifications for soil
90 removal, storage, replacement and reconstruction established
91 by the United States Secretary of Agriculture and the Soil
92 Conservation Service pertaining thereto. The operator, at a
93 minimum, shall: (A) Segregate the A horizon of the natural
94 soil, except where it can be shown that other available soil
95 materials will create a final soil having a greater productive
96 capacity and, if not utilized immediately, stockpile this
97 material separately from other spoil and provide needed
98 protection from wind and water erosion or contamination by
99 other acid or toxic material; (B) segregate the B horizon of the
100 natural soil, or underlying C horizons or other strata, or a
101 combination of the horizons or other strata that are shown to be
102 both texturally and chemically suitable for plant growth and
103 that can be shown to be equally or more favorable for plant
104 growth than the B horizon, in sufficient quantities to create in
105 the regraded final soil a root zone of comparable depth and
106 quality to that which existed in the natural soil and, if not
107 utilized immediately, stockpile this material separately from
108 other spoil and provide needed protection from wind and water
109 erosion or contamination by other acid or toxic material; (C)
110 replace and regrade the root zone material described in
111 paragraph (B) of this subdivision with proper compaction and
112 uniform depth over the regraded spoil material; and (D)
113 redistribute and grade in a uniform manner the surface soil
114 horizon described in paragraph (A) of this subdivision;

115 (8) Create, if authorized in the approved surface mining
116 and reclamation plan and permit, permanent impoundments
117 of water on mining sites as part of reclamation activities in
118 accordance with rules promulgated by the director;

119 (9) Where augering is the method of recovery, seal all
120 auger holes with an impervious and noncombustible material
121 in order to prevent drainage except where the director
122 determines that the resulting impoundment of water in the
123 auger holes may create a hazard to the environment or the
124 public welfare and safety: *Provided*, That the director may
125 prohibit augering if necessary to maximize the utilization,
126 recoverability or conservation of the mineral resources or to
127 protect against adverse water quality impacts;

128 (10) Minimize the disturbances to the prevailing
129 hydrologic balance at the mine site and in associated off-site
130 areas and to the quality and quantity of water in surface and
131 groundwater systems both during and after surface mining
132 operations and during reclamation by: (A) Avoiding acid or
133 other toxic mine drainage by such measures as, but not
134 limited to: (i) Preventing or removing water from contact
135 with toxic producing deposits; (ii) treating drainage to reduce
136 toxic content which adversely affects downstream water upon
137 being released to water courses; and (iii) casing, sealing or
138 otherwise managing boreholes, shafts and wells and keep
139 acid or other toxic drainage from entering ground and surface
140 waters; (B) conducting surface mining operations so as to
141 prevent to the extent possible, using the best technology
142 currently available, additional contributions of suspended
143 solids to streamflow or runoff outside the permit area, but in
144 no event may contributions be in excess of requirements set
145 by applicable state or federal law; (C) constructing an
146 approved drainage system pursuant to paragraph (B) of this
147 subdivision, prior to commencement of surface mining
148 operations, the system to be certified by a person approved by

149 the director to be constructed as designed and as approved in
150 the reclamation plan; (D) avoiding channel deepening or
151 enlargement in operations requiring the discharge of water
152 from mines; (E) unless otherwise authorized by the director,
153 cleaning out and removing temporary or large settling ponds
154 or other siltation structures after disturbed areas are
155 revegetated and stabilized, and depositing the silt and debris
156 at a site and in a manner approved by the director; (F)
157 restoring recharge capacity of the mined area to approximate
158 premining conditions; and (G) any other actions prescribed
159 by the director;

160 (11) With respect to surface disposal of mine wastes,
161 tailings, coal processing wastes and other wastes in areas
162 other than the mine working excavations: (A) Stabilize all
163 waste piles in designated areas through construction in
164 compacted layers, including the use of noncombustible and
165 impervious materials if necessary, and assure the final
166 contour of the waste pile will be compatible with natural
167 surroundings and that the site will be stabilized and
168 revegetated according to the provisions of this article; and (B)
169 assure that the construction of any coal waste pile or other
170 coal waste storage area utilizes appropriate technologies,
171 such as capping or the use of liners, or any other
172 demonstrated technologies or measures which are consistent
173 with good engineering practices, to prevent an acid mine
174 drainage discharge;

175 (12) Design, locate, construct, operate, maintain, enlarge,
176 modify and remove or abandon, in accordance with standards
177 and criteria developed pursuant to subsection (f) of this
178 section, all existing and new coal mine waste piles consisting
179 of mine wastes, tailings, coal processing wastes or other
180 liquid and solid wastes and used either temporarily or
181 permanently as dams or embankments;

182 (13) Refrain from surface mining within five hundred feet
183 of any active and abandoned underground mines in order to
184 prevent breakthroughs and to protect health or safety of
185 miners: *Provided*, That the director shall permit an operator
186 to mine near, through or partially through an abandoned
187 underground mine or closer to an active underground mine if:
188 (A) The nature, timing and sequencing of the approximate
189 coincidence of specific surface mine activities with specific
190 underground mine activities are coordinated jointly by the
191 operators involved and approved by the director; and (B) the
192 operations will result in improved resource recovery,
193 abatement of water pollution or elimination of hazards to the
194 health and safety of the public: *Provided, however*, That any
195 breakthrough which does occur shall be sealed;

196 (14) Ensure that all debris, acid-forming materials, toxic
197 materials or materials constituting a fire hazard are treated or
198 buried and compacted, or otherwise disposed of in a manner
199 designed to prevent contamination of ground or surface
200 waters, and that contingency plans are developed to prevent
201 sustained combustion: *Provided*, That the operator shall
202 remove or bury all metal, lumber, equipment and other debris
203 resulting from the operation before grading release;

204 (15) Ensure that explosives are used only in accordance
205 with existing state and federal law and the rules promulgated
206 by the director, which shall include provisions to:

207 (A) Maintain for a period of at least three years and make
208 available for public inspection, upon written request, a log
209 detailing the location of the blasts, the pattern and depth of
210 the drill holes, the amount of explosives used per hole and the
211 order and length of delay in the blasts; and

212 (B) Require that all blasting operations be conducted by
213 persons certified by the Office of Explosives and Blasting.

214 (16) Ensure that all reclamation efforts proceed in an
215 environmentally sound manner and as contemporaneously as
216 practicable with the surface mining operations. Time limits
217 shall be established by the director requiring backfilling,
218 grading and planting to be kept current: *Provided*, That
219 where surface mining operations and underground mining
220 operations are proposed on the same area, which operations
221 must be conducted under separate permits, the director may
222 grant a variance from the requirement that reclamation efforts
223 proceed as contemporaneously as practicable to permit
224 underground mining operations prior to reclamation:

225 (A) If the director finds in writing that:

226 (i) The applicant has presented, as part of the permit
227 application, specific, feasible plans for the proposed
228 underground mining operations;

229 (ii) The proposed underground mining operations are
230 necessary or desirable to assure maximum practical recovery
231 of the mineral resource and will avoid multiple disturbance of
232 the surface;

233 (iii) The applicant has satisfactorily demonstrated that the
234 plan for the underground mining operations conforms to
235 requirements for underground mining in the jurisdiction and
236 that permits necessary for the underground mining operations
237 have been issued by the appropriate authority;

238 (iv) The areas proposed for the variance have been shown
239 by the applicant to be necessary for the implementing of the
240 proposed underground mining operations;

241 (v) No substantial adverse environmental damage, either
242 on-site or off-site, will result from the delay in completion of
243 reclamation as required by this article; and

244 (vi) Provisions for the off-site storage of spoil will
245 comply with subdivision (22), subsection (b) of this section;

246 (B) If the director has promulgated specific rules to
247 govern the granting of the variances in accordance with the
248 provisions of this subparagraph and has imposed any
249 additional requirements as the director considers necessary;

250 (C) If variances granted under the provisions of this
251 paragraph are reviewed by the director not more than three
252 years from the date of issuance of the permit: *Provided*, That
253 the underground mining permit shall terminate if the
254 underground operations have not commenced within three
255 years of the date the permit was issued, unless extended as set
256 forth in subdivision (3), section eight of this article; and

257 (D) If liability under the bond filed by the applicant with
258 the director pursuant to subsection (b), section eleven of this
259 article is for the duration of the underground mining
260 operations and until the requirements of subsection (g),
261 section eleven of this article and section twenty-three of this
262 article have been fully complied with;

263 (17) Ensure that the construction, maintenance and
264 post-mining conditions of access and haul roads into and
265 across the site of operations will control or prevent erosion
266 and siltation, pollution of water, damage to fish or wildlife or
267 their habitat, or public or private property: *Provided*, That
268 access roads constructed for and used to provide infrequent
269 service to surface facilities, such as ventilators or monitoring
270 devices, are exempt from specific construction criteria
271 provided adequate stabilization to control erosion is achieved
272 through alternative measures;

273 (18) Refrain from the construction of roads or other
274 access ways up a stream bed or drainage channel or in

275 proximity to the channel so as to significantly alter the
276 normal flow of water;

277 (19) Establish on the regraded areas, and all other lands
278 affected, a diverse, effective and permanent vegetative cover
279 of the same seasonal variety native to the area of land to be
280 affected or of a fruit, grape or berry producing variety
281 suitable for human consumption and capable of
282 self-regeneration and plant succession at least equal in extent
283 of cover to the natural vegetation of the area, except that
284 introduced species may be used in the revegetation process
285 where desirable or when necessary to achieve the approved
286 post-mining land use plan;

287 (20) Assume the responsibility for successful
288 revegetation, as required by subdivision (19) of this
289 subsection, for a period of not less than five growing seasons,
290 as defined by the director, after the last year of augmented
291 seeding, fertilizing, irrigation or other work in order to assure
292 compliance with subdivision (19) of this subsection:
293 *Provided*, That when the director issues a written finding
294 approving a long-term agricultural post-mining land use as a
295 part of the mining and reclamation plan, the director may
296 grant exception to the provisions of subdivision (19) of this
297 subsection: *Provided, however*, That when the director
298 approves an agricultural post-mining land use, the applicable
299 five growing seasons of responsibility for revegetation begins
300 on the date of initial planting for the agricultural post-mining
301 land use;

302 On lands eligible for remining assume the responsibility
303 for successful revegetation, as required by subdivision (19)
304 of this subsection, for a period of not less than two growing
305 seasons, as defined by the director after the last year of
306 augmented seeding, fertilizing, irrigation or other work in
307 order to assure compliance with subdivision (19) of this
308 subsection;

309 (21) Protect off-site areas from slides or damage
310 occurring during surface mining operations and not deposit
311 spoil material or locate any part of the operations or waste
312 accumulations outside the permit area: *Provided*, That spoil
313 material may be placed outside the permit area if approved by
314 the director after a finding that environmental benefits will
315 result from the placing of spoil material outside the permit
316 area;

317 (22) Place all excess spoil material resulting from surface
318 mining activities in a manner that: (A) Spoil is transported
319 and placed in a controlled manner in position for concurrent
320 compaction and in a way as to assure mass stability and to
321 prevent mass movement; (B) the areas of disposal are within
322 the bonded permit areas and all organic matter is removed
323 immediately prior to spoil placements; (C) appropriate
324 surface and internal drainage system or diversion ditches are
325 used to prevent spoil erosion and movement; (D) the disposal
326 area does not contain springs, natural water courses or wet
327 weather seeps, unless lateral drains are constructed from the
328 wet areas to the main under drains in a manner that filtration
329 of the water into the spoil pile will be prevented; (E) if placed
330 on a slope, the spoil is placed upon the most moderate slope
331 among those upon which, in the judgment of the director, the
332 spoil could be placed in compliance with all the requirements
333 of this article, and is placed, where possible, upon, or above,
334 a natural terrace, bench or berm, if placement provides
335 additional stability and prevents mass movement; (F) where
336 the toe of the spoil rests on a downslope, a rock toe buttress,
337 of sufficient size to prevent mass movement, is constructed;
338 (G) the final configuration is compatible with the natural
339 drainage pattern and surroundings and suitable for intended
340 uses; (H) the design of the spoil disposal area is certified by
341 a qualified registered professional engineer in conformance
342 with professional standards; and (I) all other provisions of
343 this article are met: *Provided*, That where the excess spoil

344 material consists of at least eighty percent, by volume,
345 sandstone, limestone or other rocks that do not slake in water
346 and will not degrade to soil material, the director may
347 approve alternate methods for disposal of excess spoil
348 material, including fill placement by dumping in a single lift,
349 on a site-specific basis: *Provided, however*, That the services
350 of a qualified registered professional engineer experienced in
351 the design and construction of earth and rockfill embankment
352 are utilized: *Provided further*, That the approval may not be
353 unreasonably withheld if the site is suitable;

354 (23) Meet any other criteria necessary to achieve
355 reclamation in accordance with the purposes of this article,
356 taking into consideration the physical, climatological and
357 other characteristics of the site;

358 (24) To the extent possible, using the best technology
359 currently available, minimize disturbances and adverse
360 impacts of the operation on fish, wildlife and related
361 environmental values, and achieve enhancement of these
362 resources where practicable;

363 (25) Retain a natural barrier to inhibit slides and erosion
364 on permit areas where outcrop barriers are required:
365 *Provided*, That constructed barriers may be allowed where:
366 (A) Natural barriers do not provide adequate stability; (B)
367 natural barriers would result in potential future water quality
368 deterioration; and (C) natural barriers would conflict with the
369 goal of maximum utilization of the mineral resource:
370 *Provided, however*, That at a minimum, the constructed
371 barrier shall be of sufficient width and height to provide
372 adequate stability and the stability factor shall equal or
373 exceed that of the natural outcrop barrier: *Provided further*,
374 That where water quality is paramount, the constructed
375 barrier shall be composed of impervious material with
376 controlled discharge points; and

377 (26) The director shall promulgate for review and
378 consideration by the West Virginia Legislature legislative
379 rules or emergency rules during the 2016 Regular Session of
380 the West Virginia Legislature, revisions to rules for
381 contemporaneous reclamation as required under subdivision
382 (16), subsection (b) of this section. The secretary shall
383 specifically consider the adoption of federal standards
384 codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R.
385 §§817.100-116 (1983) when proposing revisions to the state
386 rule.

387 (c) (1) The director may prescribe procedures pursuant to
388 which he or she may permit surface mining operations for the
389 purposes set forth in subdivision (3) of this subsection.

390 (2) Where an applicant meets the requirements of
391 subdivisions (3) and (4) of this subsection, a permit without
392 regard to the requirement to restore to approximate original
393 contour set forth in subsection (b) or (d) of this section may
394 be granted for the surface mining of coal where the mining
395 operation will remove an entire coal seam or seams running
396 through the upper fraction of a mountain, ridge or hill, except
397 as provided in paragraph (A), subdivision (4) of this
398 subsection, by removing all of the overburden and creating a
399 level plateau or a gently rolling contour with no highwalls
400 remaining and capable of supporting post-mining uses in
401 accordance with the requirements of this subsection.

402 (3) In cases where an industrial, commercial, agricultural,
403 commercial forestry, residential or public facility including
404 recreational uses is proposed for the post-mining use of the
405 affected land, the director may grant a permit for a surface
406 mining operation of the nature described in subdivision (2) of
407 this subsection where: (A) The proposed post-mining land
408 use is determined to constitute an equal or better use of the
409 affected land, as compared with premining use; (B) the

410 applicant presents specific plans for the proposed post-mining
411 land use and appropriate assurances that the use will be: (i)
412 Compatible with adjacent land uses; (ii) practicable with
413 respect to achieving the proposed use; (iii) obtainable
414 according to data regarding expected need and market; (iv)
415 supported by commitments from public agencies where
416 appropriate; (v) practicable with respect to private financial
417 capability for completion of the proposed use; (vi) planned
418 pursuant to a schedule attached to the reclamation plan so as
419 to integrate the mining operation and reclamation with the
420 post-mining land use; and (vii) designed by a person
421 approved by the director in conformance with standards
422 established to assure the stability, drainage and configuration
423 necessary for the intended use of the site; (C) the proposed
424 use would be compatible with adjacent land uses, and
425 existing state and local land use plans and programs; (D) the
426 director provides the county commission of the county in
427 which the land is located and any state or federal agency
428 which the director, in his or her discretion, determines to
429 have an interest in the proposed use, an opportunity of not
430 more than sixty days to review and comment on the proposed
431 use; and (E) all other requirements of this article will be met.

432 (4) In granting any permit pursuant to this subsection, the
433 director shall require that: (A) A natural barrier be retained
434 to inhibit slides and erosion on permit areas where outcrop
435 barriers are required: *Provided*, That constructed barriers
436 may be allowed where: (i) Natural barriers do not provide
437 adequate stability; (ii) natural barriers would result in
438 potential future water quality deterioration; and (iii) natural
439 barriers would conflict with the goal of maximum utilization
440 of the mineral resource: *Provided, however*, That, at a
441 minimum, the constructed barrier shall be sufficient in width
442 and height to provide adequate stability and the stability
443 factor shall equal or exceed that of the natural outcrop
444 barrier: *Provided further*, That where water quality is

445 paramount, the constructed barrier shall be composed of
446 impervious material with controlled discharge points; (B) the
447 reclaimed area is stable; (C) the resulting plateau or rolling
448 contour drains inward from the out slopes except at specific
449 points; (D) no damage will be done to natural watercourses;
450 (E) spoil will be placed on the mountaintop bench as is
451 necessary to achieve the planned post-mining land use: *And*
452 *provided further*, That all excess spoil material not retained
453 on the mountaintop shall be placed in accordance with the
454 provisions of subdivision (22), subsection (b) of this section;
455 and (F) ensure stability of the spoil retained on the
456 mountaintop and meet the other requirements of this article.

457 (5) All permits granted under the provisions of this
458 subsection shall be reviewed not more than three years from
459 the date of issuance of the permit; unless the applicant
460 affirmatively demonstrates that the proposed development is
461 proceeding in accordance with the terms of the approved
462 schedule and reclamation plan.

463 (d) In addition to those general performance standards
464 required by this section, when surface mining occurs on
465 slopes of twenty degrees or greater, or on lesser slopes as
466 may be defined by rule after consideration of soil and
467 climate, no debris, abandoned or disabled equipment, spoil
468 material or waste mineral matter will be placed on the natural
469 downslope below the initial bench or mining cut: *Provided*,
470 That soil or spoil material from the initial cut of earth in a
471 new surface mining operation may be placed on a limited
472 specified area of the downslope below the initial cut if the
473 permittee can establish to the satisfaction of the director that
474 the soil or spoil will not slide and that the other requirements
475 of this section can still be met.

476 (e) The director may propose rules for legislative
477 approval in accordance with article three, chapter

478 twenty-nine-a of this code that permit variances from the
479 approximate original contour requirements of this section:
480 *Provided*, That the watershed control of the area is improved:
481 *Provided, however*, That complete backfilling with spoil
482 material is required to completely cover the highwall, which
483 material will maintain stability following mining and
484 reclamation.

485 (f) The director shall propose rules for legislative
486 approval in accordance with article three, chapter
487 twenty-nine-a of this code for the design, location,
488 construction, maintenance, operation, enlargement,
489 modification, removal and abandonment of new and existing
490 coal mine waste piles. In addition to engineering and other
491 technical specifications, the standards and criteria developed
492 pursuant to this subsection shall include provisions for review
493 and approval of plans and specifications prior to construction,
494 enlargement, modification, removal or abandonment;
495 performance of periodic inspections during construction;
496 issuance of certificates of approval upon completion of
497 construction; performance of periodic safety inspections; and
498 issuance of notices and orders for required remedial or
499 maintenance work or affirmative action: *Provided*, That
500 whenever the director finds that any coal processing waste
501 pile constitutes an imminent danger to human life, he or she
502 may, in addition to all other remedies and without the
503 necessity of obtaining the permission of any person prior or
504 present who operated or operates a pile or the landowners
505 involved, enter upon the premises where any coal processing
506 waste pile exists and may take or order to be taken any
507 remedial action that may be necessary or expedient to secure
508 the coal processing waste pile and to abate the conditions
509 which cause the danger to human life: *Provided, however*,
510 That the cost reasonably incurred in any remedial action
511 taken by the director under this subsection may be paid for
512 initially by funds appropriated to the division for these

513 purposes and the sums expended shall be recovered from any
514 responsible operator or landowner, individually or jointly, by
515 suit initiated by the Attorney General at the request of the
516 director. For purposes of this subsection, "operates" or
517 "operated" means to enter upon a coal processing waste pile,
518 or part of a coal processing waste pile, for the purpose of
519 disposing, depositing, dumping coal processing wastes on the
520 pile or removing coal processing waste from the pile, or to
521 employ a coal processing waste pile for retarding the flow of
522 or for the impoundment of water.

**§22-3-19. Permit revision and renewal requirements; incidental
boundary revisions; requirements for transfer; assignment
and sale of permit rights; operator reassignment; and
procedures to obtain inactive status.**

1 (a) (1) Any valid permit issued pursuant to this article
2 carries with it the right of successive renewal upon expiration
3 with respect to areas within the boundaries of the existing
4 permit. The holders of the permit may apply for renewal and
5 the renewal shall be issued: *Provided*, That on application
6 for renewal, the burden is on the opponents of renewal,
7 unless it is established that and written findings by the
8 secretary are made that: (A) The terms and conditions of the
9 existing permit are not being satisfactorily met: *Provided*,
10 *however*, That if the permittee is required to modify
11 operations pursuant to mining or reclamation requirements
12 which become applicable after the original date of permit
13 issuance, the permittee shall be provided an opportunity to
14 submit a schedule allowing a reasonable period to comply
15 with such revised requirements; (B) the present surface
16 mining operation is not in compliance with the applicable
17 environmental protection standards of this article; (C) the
18 renewal requested substantially jeopardizes the operator's
19 continuing responsibility on existing permit areas; (D) the
20 operator has not provided evidence that the bond in effect for

21 said operation will continue in effect for any renewal
22 requested as required pursuant to sections eleven or twelve of
23 this article; or (E) any additional revised or updated
24 information as required pursuant to rules promulgated by the
25 secretary has not been provided.

26 (2) If an application for renewal of a valid permit
27 includes a proposal to extend the surface mining operation
28 beyond the boundaries authorized in the existing permit, that
29 portion of the application for renewal which addresses any
30 new land area is subject to the full standards of this article,
31 which includes, but is not limited to: (A) Adequate bond; (B)
32 a map showing the disturbed area and facilities; and (C) a
33 reclamation plan.

34 (3) Any permit renewal shall be for a term not to exceed
35 the period of time for which the original permit was issued.
36 Application for permit renewal shall be made at least one
37 hundred twenty days prior to the expiration of the valid
38 permit.

39 (4) Any renewal application for an active permit shall be
40 on forms prescribed by the secretary and shall be
41 accompanied by a filing fee of \$3,000. The application shall
42 contain such information as the secretary requires pursuant to
43 rule.

44 (b) (1) During the term of the permit, the permittee may
45 submit to the secretary an application for a revision of the
46 permit, together with a revised reclamation plan.

47 (2) An application for a significant revision of a permit is
48 subject to all requirements of this article and rules
49 promulgated pursuant thereto and shall be accompanied by a
50 filing fee of \$2,000.

51 (3) Any extension to an area already covered by the
52 permit, except incidental boundary revisions, shall be made
53 by application for another permit. If the permittee desires to
54 add the new area to his or her existing permit in order to have
55 existing areas and new areas under one permit, the secretary
56 may so amend the original permit: *Provided*, That the
57 application for the new area is subject to all procedures and
58 requirements applicable to applications for original permits
59 under this article and a filing fee of \$550.

60 (c) The secretary shall review outstanding permits of a
61 five-year term before the end of the third year of the permit.
62 Other permits shall be reviewed within the time established
63 by rules. The secretary may require reasonable revision or
64 modification of the permit following review: *Provided*, That
65 such revision or modification shall be based upon written
66 findings and shall be preceded by notice to the permittee of
67 an opportunity for hearing.

68 (d) No transfer, assignment or sale of the rights granted
69 under any permit issued pursuant to this article may be made
70 without the prior written approval of the secretary,
71 application for which shall be accompanied by a filing fee of
72 \$1,500 for transfer or \$1,500 for assignment.

73 (e) Each request for inactive status shall be submitted on
74 forms prescribed by the secretary, shall be accompanied by
75 a filing fee of \$2,000, and shall be granted in accordance with
76 the procedure established in the Surface Mining and
77 Reclamation Rule.

78 (f) The secretary shall promulgate for review and
79 consideration by the West Virginia Legislature legislative
80 rules or emergency rules during the 2016 Regular Session of
81 the West Virginia Legislature revisions to rules for granting
82 inactive status under this article. The secretary shall

83 specifically consider the adoption of federal standards
84 codified at 30 C. F. R. §816.131 (1979) and 30 C. F. R.
85 §817.131 (1979).

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

14 (2) For purposes of both this article and sections 309 and
15 505 of the federal Water Pollution Control Act, compliance
16 with a permit issued pursuant to this article shall be deemed
17 compliance for purposes of both this article and sections 301,
18 302, 303, 306, 307 and 403 of the federal Water Pollution
19 Control Act and with all applicable state and federal water
20 quality standards, except for any such standard imposed
21 under section 307 of the federal Water Pollution Control Act
22 for a toxic pollutant injurious to human health.
23 Notwithstanding any provision of this code or rule or permit
24 condition to the contrary, water quality standards themselves
25 shall not be considered “effluent standards or limitations” for

26 the purposes of both this article and sections 309 and 505 of
27 the federal Water Pollution Control Act and shall not be
28 independently or directly enforced or implemented except
29 through the development of terms and conditions of a permit
30 issued pursuant to this article. Nothing in this section,
31 however, prevents the secretary from modifying, reissuing or
32 revoking a permit during its term. The provisions of this
33 section addressing compliance with a permit are intended to
34 apply to all existing and future discharges and permits
35 without the need for permit modifications; and

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

48 (4) The Legislature finds that EPA has been
49 contemplating a revision to the federally recommended
50 criteria for several years but has yet to issue a revised
51 standard.

52 (5) Because of the uncertainty regarding the applicability
53 of the current selenium standard, the secretary is hereby
54 directed to develop within six months of the effective date of
55 this subdivision an implementation plan for the current
56 selenium standard that will include, at minimum, the
57 following:

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

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

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

65 (D) The results of the monitoring will be reported to the
66 department for use in the development of state-specific
67 selenium criteria.

68 (6) Within twenty-four months of the effective date of
69 this subdivision, the secretary shall propose rules for
70 legislative approval in accordance with the provisions of
71 article three, chapter twenty-nine of this code which establish
72 a state-specific selenium standard that protects aquatic life.
73 Concurrent with proposing a legislative rule, the secretary
74 shall also submit the proposed standard and supporting
75 documentation to the administrator of the Environmental
76 Protection Agency. The secretary shall also consult with and
77 consider research and data from the West Virginia Water
78 Research Institute at West Virginia University, the regulated
79 community and other appropriate groups in developing the
80 state-specific selenium standard.

81 (7) Within thirty days of the effective date of this section,
82 the secretary shall promulgate an emergency rule revising the
83 statewide aluminum water quality criteria for the protection
84 of aquatic life to incorporate aluminum criteria values using
85 a hardness-based equation. Concurrent with issuing an
86 emergency rule, the secretary shall also submit the proposed
87 revisions and supporting documentation to the administrator
88 of the Environmental Protection Agency.

§22-11-8. Prohibitions; permits required.

1 (a) The secretary may, after public notice and opportunity
2 for public hearing, issue a permit for the discharge or
3 disposition of any pollutant or combination of pollutants into
4 waters of this state upon condition that the discharge or
5 disposition meets or will meet all applicable state and federal
6 water quality standards and effluent limitations and all other
7 requirements of this article and article three, chapter
8 twenty-two-b of this code. While permits shall contain
9 conditions that are designed to meet all applicable state and
10 federal water quality standards and effluent limitations, water
11 quality standards themselves shall not be incorporated
12 wholesale either expressly or by reference as effluent
13 standards or limitations in a permit issued pursuant to this
14 article.

15 (b) It is unlawful for any person, unless the person holds
16 a permit therefor from the department, which is in full force
17 and effect, to:

18 (1) Allow sewage, industrial wastes or other wastes, or
19 the effluent therefrom, produced by or emanating from any
20 point source, to flow into the waters of this state;

21 (2) Make, cause or permit to be made any outlet, or
22 substantially enlarge or add to the load of any existing outlet,
23 for the discharge of sewage, industrial wastes or other wastes,
24 or the effluent therefrom, into the waters of this state;

25 (3) Acquire, construct, install, modify or operate a
26 disposal system or part thereof for the direct or indirect
27 discharge or deposit of treated or untreated sewage, industrial
28 wastes or other wastes, or the effluent therefrom, into the
29 waters of this state, or any extension to or addition to the
30 disposal system;

31 (4) Increase in volume or concentration any sewage,
32 industrial wastes or other wastes in excess of the discharges
33 or disposition specified or permitted under any existing
34 permit;

35 (5) Extend, modify or add to any point source, the
36 operation of which would cause an increase in the volume or
37 concentration of any sewage, industrial wastes or other
38 wastes discharging or flowing into the waters of the state;

39 (6) Construct, install, modify, open, reopen, operate or
40 abandon any mine, quarry or preparation plant, or dispose of
41 any refuse or industrial wastes or other wastes from the mine
42 or quarry or preparation plant: *Provided*, That the
43 department's permit is only required wherever the
44 aforementioned activities cause, may cause or might
45 reasonably be expected to cause a discharge into or pollution
46 of waters of the state, except that a permit is required for any
47 preparation plant: *Provided, however*, That unless waived in
48 writing by the secretary, every application for a permit to
49 open, reopen or operate any mine, quarry or preparation plant
50 or to dispose of any refuse or industrial wastes or other
51 wastes from the mine or quarry or preparation plant shall
52 contain a plan for abandonment of the facility or operation,
53 which plan shall comply in all respects to the requirements of
54 this article. The plan of abandonment is subject to
55 modification or amendment upon application by the permit
56 holder to the secretary and approval of the modification or
57 amendment by the secretary; or

58 (7) Operate any disposal well for the injection or
59 reinjection underground of any industrial wastes, including,
60 but not limited to, liquids or gases, or convert any well into
61 such a disposal well or plug or abandon any such disposal
62 well.

63 (c) Where a person has a number of outlets emerging into
64 the waters of this state in close proximity to one another, the
65 outlets may be treated as a unit for the purposes of this
66 section, and only one permit issued for all the outlets.

§22-11-22a. Civil penalties and injunctive relief; civil administrative penalties for coal mining operations.

1 (a) Any person who holds a permit to operate a coal
2 mining operation issued under article three of this chapter
3 who violates any provision of any permit issued under or
4 subject to the provisions of this article or article eleven-a of
5 this chapter is subject to a civil penalty not to exceed \$25,000
6 per day of the violation and any person who violates any
7 provision of this article or of any rule or who violates any
8 standard or order promulgated or made and entered under the
9 provisions of this article, article eleven-a of this chapter or
10 article one, chapter twenty-two-b of this code is subject to a
11 civil penalty not to exceed \$25,000 per day of the violation:
12 *Provided*, That any penalty imposed pursuant to the Surface
13 Coal Mining and Reclamation Act [§§ 22-3-1 *et seq.*] shall be
14 credited against any enforcement action under this article for
15 violations of standards protecting state waters.

16 (1) Any such civil penalty may be imposed and collected
17 only by a civil action instituted by the secretary in the circuit
18 court of the county in which the violation occurred or is
19 occurring or of the county in which the waters thereof are
20 polluted as the result of such violation.

21 (2) In determining the amount of a civil penalty the
22 circuit court shall consider the seriousness of the violation or
23 violations, the economic benefit, if any, resulting from the
24 violation, any history of the violations, any good-faith efforts
25 to comply with the applicable requirements, cooperation by
26 the permittee with the secretary, the economic impact of the

27 penalty on the violator, and other matters as justice may
28 require.

29 (3) Upon application by the secretary, the circuit courts
30 of the state or the judges thereof in vacation may by
31 injunction compel compliance with and enjoin violations of
32 the provisions of this article, article eleven-a of this chapter,
33 the rules of the board or secretary, effluent limitations, the
34 terms and conditions of any permit granted under the
35 provisions of this article or article eleven-a of this chapter or
36 any order of the secretary or board, and the venue of any such
37 actions shall be the county in which the violations or
38 noncompliance exists or is taking place or in any county in
39 which the waters thereof are polluted as the result of the
40 violation or noncompliance. The court or the judge thereof in
41 vacation may issue a temporary or preliminary injunction in
42 any case pending a decision on the merits of any injunction
43 application filed. Any other section of this code to the
44 contrary notwithstanding, the state is not required to furnish
45 bond as a prerequisite to obtaining injunctive relief under this
46 article or article eleven-a of this chapter. An application for
47 an injunction under the provisions of this section may be filed
48 and injunctive relief granted notwithstanding that all of the
49 administrative remedies provided in this article have not been
50 pursued or invoked against the person or persons against
51 whom such relief is sought and notwithstanding that the
52 person or persons against whom such relief is sought have
53 not been prosecuted or convicted under the provisions of this
54 article.

55 (4) The judgment of the circuit court upon any
56 application filed or in any civil action instituted under the
57 provisions of this section is final unless reversed, vacated or
58 modified on appeal to the Supreme Court of Appeals. Any
59 such appeal shall be sought in the manner provided by law
60 for appeals from circuit courts in other civil cases, except that

61 the petition seeking review in any injunctive proceeding must
62 be filed with said Supreme Court of Appeals within ninety
63 days from the date of entry of the judgment of the circuit
64 court.

65 (5) Legal counsel and services for the director, secretary
66 or the board in all civil penalty and injunction proceedings in
67 the circuit court and in the Supreme Court of Appeals of this
68 state shall be provided by legal counsel employed by the
69 department, the Attorney General or his or her assistants and
70 by the prosecuting attorneys of the several counties as well,
71 all without additional compensation, or the director, secretary
72 or the board may employ counsel to represent him or her or
73 it in a particular proceeding.

74 (b) The secretary may assess a civil administrative
75 penalty whenever he or she finds that a person who holds a
76 permit to operate a coal mining operation issued under article
77 three of this chapter has violated any provision of this article
78 or article eleven-a of this chapter, any permit issued under or
79 subject to the provisions of this article or article eleven-a of
80 this chapter or any rule or order issued pursuant to this article
81 or article eleven-a of this chapter. A civil administrative
82 penalty may be assessed unilaterally by the director in
83 accordance with this subsection.

84 (1) Any civil administrative penalty assessed pursuant to
85 this section shall not exceed \$10,000 per violation and the
86 maximum amount of any civil administrative penalty
87 assessed pursuant to this section shall not exceed \$125,000:
88 *Provided*, That any stipulated penalties accrued after the date
89 of the draft order shall not be included for purposes of
90 determining the total amount of the civil administrative
91 penalty. For purposes of this section, a single operational
92 upset which leads to simultaneous violations of more than
93 one pollutant parameter shall be treated as a single violation.

94 (2) In determining the amount of any civil administrative
95 penalty assessed under this subsection, the secretary shall
96 take into account the nature, circumstances, extent and
97 gravity of the violation, or violations, and, with respect to the
98 violator, ability to pay, any prior history of such violations,
99 the degree of good faith, economic benefit or savings, if any,
100 resulting from the violation, cooperation of the alleged
101 violator, and such other matters as justice may require.

102 (3) No assessment may be levied pursuant to this
103 subsection until after the alleged violator has been notified by
104 certified mail or personal service pursuant to the West
105 Virginia rules of civil procedure. The notice shall include a
106 proposed order which refers to the provision of the statute,
107 rule, order or permit alleged to have been violated, a concise
108 statement of the facts alleged to constitute the violation, a
109 statement of the amount of the administrative penalty to be
110 imposed and a statement of the alleged violator's right to an
111 informal hearing prior to the issuance of the proposed order.

112 (A) The alleged violator has thirty calendar days from
113 receipt of the notice within which to deliver to the secretary
114 a written request for an informal hearing.

115 (B) If no hearing is requested, the proposed order
116 becomes a draft order after the expiration of the thirty-day
117 period.

118 (C) If an informal hearing is requested, the director shall
119 inform the alleged violator of the time and place of the
120 hearing. The secretary may appoint an assessment officer to
121 conduct the informal hearing and make a written
122 recommendation to the secretary concerning the proposed
123 order and the assessment of a civil administrative penalty.

124 (D) Within thirty days following the informal hearing, the
125 secretary shall render and furnish to the alleged violator a
126 written decision, and the reasons therefor, concerning the
127 assessment of a civil administrative penalty. The proposed
128 order shall be revised, if necessary, and shall become a draft
129 order.

130 (4) The secretary shall provide the opportunity for the
131 public to comment on any draft order by publishing a Class
132 II legal advertisement in the newspaper with the largest
133 circulation in the county in which the violation occurred, and
134 by other such means as the secretary deems appropriate,
135 which shall provide notice of the draft order, including the
136 civil administrative penalty assessment. The secretary shall
137 consider any comments received in determining whether to
138 revise the draft order before issuance of a final order. During
139 the thirty-day public comment period, any person may
140 request a public hearing regarding the draft order and the
141 secretary may grant or deny the request at his or her
142 discretion. If a request for a public hearing is denied, the
143 secretary shall provide notice to the person requesting a
144 hearing and reasons for such denial.

145 (5) Within thirty days of the close of the public comment
146 period on a draft order, the secretary shall issue a final order
147 or make a determination not to issue a final order, and shall
148 provide written notice by certified mail or personal service
149 pursuant to the West Virginia rules of civil procedure to the
150 alleged violator and shall provide notice by certified mail or
151 personal service pursuant to the West Virginia rules of civil
152 procedure to those persons who submitted written comments
153 on the draft order during the public comment period.

154 (6) The issuance of a final order assessing a civil
155 administrative penalty pursuant to subsection (b) of this
156 section may be appealed to the environmental quality board

157 pursuant to section twenty-one of this article. Any person
158 who submitted written comments on a draft order during the
159 public comment period shall have the right to file such an
160 appeal or intervene in any appeal filed by the alleged violator.

161 (7) The authority to levy a civil administrative penalty is
162 in addition to all other enforcement provisions of this article
163 and the payment of any assessment does not affect the
164 availability of any other enforcement provision in connection
165 with the violation for which the assessment is levied:
166 *Provided*, That no combination of assessments against a
167 violator under this section shall exceed \$25,000 for each
168 violation: *Provided, however*, That any violation for which
169 the violator has paid a civil administrative penalty assessed
170 under this section may not be the subject of a separate civil
171 penalty action. No assessment levied pursuant to this section
172 becomes due and payable until at least thirty days after
173 receipt of the final order or the procedures for review of the
174 assessment, including any appeals, have been completed,
175 whichever is later.

176 (c) In addition to the authorities set forth in this section,
177 the secretary may also enter into agreements, settlements and
178 other consent orders resolving alleged violations of this
179 chapter.

180 (d) The secretary shall propose, for legislative review,
181 rules, including emergency rules, in accordance with the
182 provisions of article three, chapter twenty-nine-a of this code
183 to establish procedures for assessing civil administrative
184 penalties in accordance with this section by no later than July
185 1, 2015.

**CHAPTER 22A. MINERS' HEALTH, SAFETY AND
TRAINING.**

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-41. The Coal Jobs and Safety Act of 2015; legislative findings.

(a) Legislative findings. –

1 (1) In the past six years, West Virginia's coal industry has
2 been battered by constant judicial and regulatory assaults,
3 which have disproportionately raised the cost of mining coal
4 in West Virginia compared with production costs in other
5 coal producing states. These increased costs of production
6 have caused West Virginia coal to become uncompetitive
7 with other coals in the declining worldwide and domestic
8 coal markets.

9 (2) Coal production in West Virginia has fallen from one
10 hundred sixty-five million tons in 2008 to approximately one
11 hundred fifteen million tons in 2014, a decline of thirty-one
12 percent. Much of this decline has been concentrated in the
13 southern coalfields.

14 (3) The number of active mines producing coal has
15 decreased by more than fifty-three percent, from two hundred
16 fifty-nine in 2008 to just one hundred twenty-one today.

17 (4) During that same period, direct coal mining
18 employment has decreased by approximately four thousand
19 jobs, from a high of twenty-two thousand three hundred
20 thirty-six in 2011 to just eighteen thousand two hundred
21 today, a decline of nineteen percent.

22 (5) When the coal-related jobs multiplier, established by
23 the West Virginia University and Marshall University
24 Colleges of Business, 2010 Joint Economic Impact Report, is

25 factored in the total direct and indirect jobs impact on the
26 West Virginia economy shows a twenty thousand six hundred
27 eighty-job decline in mining and mine-dependent
28 employment in the state from one hundred thousand eleven
29 six hundred eighty in 2011 to ninety-one thousand today. The
30 impact of this damage to the West Virginia economy is
31 demonstrated by the rapid rise of unemployment in the
32 coalfields with some counties now reporting an
33 unemployment rate of more than ten percent.

34 (6) The economic stress to the coal industry and to the
35 state as a whole is evident in the estimated loss of nearly
36 \$300 million in direct mining wages paid since 2011. This
37 loss is exponentially higher when you factor in indirect wages
38 lost as mining support jobs decline.

39 (7) As a direct result of the damage to the coal industry,
40 West Virginia has also lost significant tax revenues, as coal
41 severance taxes have declined by approximately twenty-four
42 percent in just the past two years – from a high of \$527
43 million in 2012 to an estimated \$406 million in 2014. This
44 damage reverberates through the total economy, with
45 reductions in money available to fund schools, highways,
46 basic services and health care – needs that increase when
47 income and health care is lost with the loss of jobs.

48 (8) All of these challenges must be addressed and
49 overcome if we are to continue to provide the economic
50 foundation for our state's economy. The encouragement of
51 economic growth and development in the coal industry in this
52 state is in the public interest and promotes the general welfare
53 of the people of this state.

54 (b) *Coal Jobs and Safety Act of 2015*. – Therefore, in
55 order to encourage the recovery of the West Virginia coal
56 industry and to increase direct and indirect employment thus

57 created, the Legislature enacts the Coal Jobs and Safety Act
58 of 2015 and it is collectively comprised of:

59 (1) This section;

60 (2) The amendments to:

61 (A) Sections thirteen and nineteen, article three, chapter
62 twenty-two of this code;

63 (B) Sections six and eight, article eleven, chapter twenty-
64 two of this code;

65 (C) Section one, article one-a of this chapter;

66 (D) Sections six, twenty-eight and thirty-seven, article
67 two of this chapter;

68 (E) Section one hundred one, article two-a, chapter
69 twenty-two-a of this code; and

70 (F) Sections three hundred one, three hundred eight, three
71 hundred nine, three hundred ten, four hundred two, four
72 hundred three, four hundred four, four hundred five, five
73 hundred one, six hundred one, six hundred two, six hundred
74 three and six hundred four, article two-a of this chapter; and

75 (3) The following new sections:

76 (A) Section twenty-two-a, article eleven, chapter twenty-
77 two of this code; and

78 (B) Section two hundred four-a, article two-a of this
79 chapter that were adopted and enacted during the 2015
80 Regular Session of the Legislature.

ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

1 (a) Every employer of certified persons, as defined in
2 section two, article one of this chapter, shall implement a
3 substance abuse screening policy and program that shall, at
4 a minimum, include:

5 (1) A preemployment, ten-panel urine test for the
6 following and any other substances as set out in rules adopted
7 by the Office of Miners' Health, Safety and Training:

8 (A) Amphetamines;

9 (B) Cannabinoids/THC;

10 (C) Cocaine;

11 (D) Opiates;

12 (E) Phencyclidine (PCP);

13 (F) Benzodiazepines;

14 (G) Propoxyphene;

15 (H) Methadone;

16 (I) Barbiturates; and

17 (J) Synthetic narcotics.

18 Split samples shall be collected by providers who are
19 certified as complying with standards and procedures set out
20 in the United States Department of Transportation's rule, 49
21 C. F. R. Part 40, which may be amended, from time to time,
22 by legislative rule of the Office of Miners' Health, Safety and
23 Training. Collected samples shall be tested by laboratories
24 certified by the United States Department of Health and
25 Human Services, Substance Abuse and Mental Health
26 Services Administration (SAMHSA) for collection and
27 testing. Notwithstanding the provisions of this subdivision,
28 the mine operator may implement a more stringent substance
29 abuse screening policy and program;

30 (2) A random substance abuse testing program covering
31 the substances referenced in subdivision (1) of this
32 subsection. "Random testing" means that each person subject
33 to testing has a statistically equal chance of being selected for
34 testing at random and at unscheduled times. The selection of
35 persons for random testing shall be made by a scientifically
36 valid method, such as a random number table or a
37 computer-based random number generator that is matched
38 with the persons' Social Security numbers, payroll
39 identification numbers or other comparable identifying
40 numbers; and

41 (3) Review of the substance abuse screening program
42 with all persons required to be tested at the time of
43 employment, upon a change in the program and annually
44 thereafter.

45 (b) For purposes of this subsection, preemployment
46 testing shall be required upon hiring by a new employer,
47 rehiring by a former employer following a termination of the
48 employer/employee relationship or transferring to a West
49 Virginia mine from an employer's out-of-state mine to the
50 extent that any substance abuse test required by the employer

51 in the other jurisdiction does not comply with the minimum
52 standards for substance abuse testing required by this article.
53 Furthermore, the provisions of this section apply to all
54 employers that employ certified persons who work in mines,
55 regardless of whether that employer is an operator,
56 contractor, subcontractor or otherwise.

57 (c) (1) Every employer shall notify the director, on a form
58 prescribed by the director, within seven days of any of the
59 following:

60 (A) A positive drug or alcohol test of a certified person,
61 whether it be a preemployment test, random test, reasonable
62 suspicion test or post-accident test. However, for purposes of
63 determining whether a drug test is positive the certified
64 employee may not rely on a prescription dated more than one
65 year prior to the date of the drug test result;

66 (B) The refusal of a certified person to submit a sample;

67 (C) A certified person possessing a substituted sample or
68 an adulterated sample; or

69 (D) A certified person submitting a substituted sample or
70 an adulterated sample.

71 (2) With respect to any certified person subject to a
72 collective bargaining agreement, the employer shall notify the
73 director, on a form prescribed by the director, within seven
74 days of any of the following:

75 (A) A positive drug or alcohol test of a certified person,
76 whether it be a preemployment test, random test, reasonable
77 suspicion test or post-accident test. However, for purposes of
78 determining whether a drug test is positive the certified
79 employee may not rely on a prescription dated more than one
80 year prior to the date of the drug test result;

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81 (B) The refusal of a certified person to submit a sample;

82 (C) A certified person possessing a substituted sample or
83 an adulterated sample; or

84 (D) A certified person submitting a substituted sample or
85 an adulterated sample.

86 (3) When the employer submits the completed
87 notification form prescribed by the director, the employer
88 shall also submit a copy of the laboratory test results showing
89 the substances tested for and the results of the test.

90 (4) Notice shall result in the immediate temporary
91 suspension of all certificates held by the certified person who
92 failed the screening, pending a hearing before the board of
93 appeals pursuant to section two of this article.

94 (d) Suspension or revocation of a certified person's
95 certificate as a miner or other miner specialty in another
96 jurisdiction by the applicable regulatory or licensing authority
97 for substance abuse-related matters shall result in the director
98 immediately and temporarily suspending the certified
99 person's West Virginia certificate until such time as the
100 certified person's certification is reinstated in the other
101 jurisdiction.

102 (e) The provisions of this article shall not be construed
103 to preclude an employer from developing or maintaining a
104 drug and alcohol abuse policy, testing program or substance
105 abuse program that exceeds the minimum requirements set
106 forth in this section. The provisions of this article shall also
107 not be construed to require an employer to alter, amend,
108 revise or otherwise change, in any respect, a previously
109 established substance abuse screening policy and program
110 that meets or exceeds the minimum requirements set forth

111 in this section. The provisions of this article shall require
112 an employer to subject its employees who as part of their
113 employment are regularly present at a mine and who are
114 employed in a safety-sensitive position to preemployment
115 and random substance abuse tests: *Provided*, That each
116 employer shall retain the discretion to establish the
117 parameters of its substance abuse screening policy and
118 program so long as it meets the minimum requirements of
119 this article. For purposes of this section, a “safety-sensitive
120 position” means an employment position where the
121 employee’s job responsibilities include duties and activities
122 that involve the personal safety of the employee or others
123 working at a mine.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

1 Mining equipment being transported or trammed
2 underground, other than ordinary sectional movements, shall
3 be transported or trammed by qualified personnel. When
4 equipment is being transported or trammed where trolley wire
5 is energized on the split of air in which said equipment is
6 being transported or trammed, no person shall be permitted
7 to be inby the equipment in the ventilating split that is
8 passing over such equipment, except those directly involved
9 with transporting or trampling the equipment, and shall be
10 under the supervision of a certified foreman. To avoid
11 accidental contact with power lines, face equipment shall be
12 insulated and assemblies removed, if necessary, so as to
13 provide clearance.

§22A-2-28. Equipment to conform with height of seam.

1 The use of underground mining equipment of a size that
2 does not conform to the height of the seam being mined, which
3 creates unsafe working conditions for the miner operating the
4 equipment or others, is prohibited: *Provided*, That the addition
5 of or use of sideboards on shuttle cars shall be permitted if the
6 shuttle car is equipped with cameras: *Provided, however*, That
7 shuttle cars with sideboards as manufactured by an equipment
8 manufacturer shall be permitted to be used without the use of
9 cameras if permitted by the director. The board of coal mine
10 health and safety shall promulgate such rules as are necessary
11 to effectuate this section.

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

1 (a) The roadbed, rails, joints, switches, frogs and other
2 elements of all haulage roads shall be constructed, installed
3 and maintained in a manner consistent with speed and type of
4 haulage operations being conducted to ensure safe operation.
5 Where transportation of personnel is exclusively by rail, track
6 shall be maintained to within one thousand five hundred feet
7 of the nearest working face, except that when any section is
8 fully developed and being prepared for retreating, then the
9 track shall be maintained to within one thousand five hundred
10 feet of that retreat mining section if a rubber tired vehicle is
11 readily available: *Provided*, That in any case where such
12 track is maintained to within a distance of more than five
13 hundred feet and not more than one thousand five hundred
14 feet of the nearest working face, a self-propelled rubber-tired
15 vehicle capable of transporting an injured worker shall be
16 readily available.

17 (b) Track switches, except room and entry development
18 switches, shall be provided with properly installed throws,
19 bridle bars and guard rails; switch throws and stands, where
20 possible, shall be placed on the clearance side.

21 (c) Haulage roads on entries shall have a continuous,
22 unobstructed clearance of at least twenty-four inches from the
23 farthest projection of any moving equipment on the clearance
24 side.

25 (d) On haulage roads where trolley lines are used, the
26 clearance shall be on the side opposite the trolley lines.

27 (e) On the trolley wire or “tight” side, there shall be at
28 least twelve inches of clearance from the farthest projection
29 of any moving equipment.

30 (f) Warning lights or reflective signs or tapes shall be
31 installed along haulage roads at locations of abrupt or sudden
32 changes in the overhead clearance.

33 (g) The clearance space on all haulage roads shall be kept
34 free of loose rock, coal, supplies or other material: *Provided,*
35 That not more than twenty-four inches need be kept free of
36 such obstructions.

37 (h) Ample clearance shall be provided at all points where
38 supplies are loaded or unloaded along haulage roads or
39 conveyors which in no event shall be less than twenty-four
40 inches.

41 (I) Shelter holes shall be provided along haulage entries.
42 Such shelter holes shall be spaced not more than one hundred
43 five feet apart, except when variances are authorized by the
44 director with unanimous agreement of the mine safety and
45 technical review committee. Shelter holes shall be on the
46 side of the entry opposite the trolley wire except that shelter
47 holes may be on the trolley wire and feeder wire side if the
48 trolley wire and feeder wire are guarded in a manner
49 approved by the director.

50 (j) Shelter holes shall be at least five feet in depth, not
51 more than four feet in width and as high as the traveling
52 space, unless the director with unanimous agreement of the
53 mine safety and technical review committee grants a waiver.
54 Room necks and crosscuts may be used as shelter holes even
55 though their width exceeds four feet.

56 (k) Shelter holes shall be kept clear of refuse and other
57 obstructions.

58 (l) Shelter holes shall be provided at switch throws and
59 manually operated permanent doors.

60 (m) No steam locomotive shall be used in mines where
61 miners are actually employed in the extraction of coal, but
62 this shall not prevent operation of a steam locomotive
63 through any tunnel haulway or part of a mine that is not in
64 actual operation and producing coal.

65 (n) Underground equipment powered by internal
66 combustion engines using petroleum products, alcohol, or
67 any other compound shall not be used in a coal mine, unless
68 the equipment is diesel-powered equipment approved,
69 operated and maintained as provided in article two-a of this
70 chapter.

71 (o) Locomotives, personnel carriers, mine cars, supply
72 cars, shuttle cars, and all other haulage equipment shall be
73 maintained in a safe operating condition. Each locomotive,
74 personnel carrier, barrier tractor and other related equipment
75 shall be equipped with a suitable lifting jack and handle. An
76 audible warning device and headlights shall be provided on
77 each locomotive and each shuttle car. All other mobile
78 equipment, using the face areas of the mine, shall be provided
79 with a conspicuous light or other approved device so as to
80 reduce the possibility of collision.

81 (p) No persons other than those necessary to operate a
82 trip or car shall ride on any loaded car or on the outside of
83 any car. Where pusher locomotives are not used, the
84 locomotive operator shall have an assistant to assist him or
85 her in his or her duties.

86 (q) The pushing of trips, except for switching purposes,
87 is prohibited on main haulage roads: *Provided*, That nothing
88 herein shall prohibit the use of a pusher locomotive to assist
89 the locomotive pulling a trip. Motormen and trip riders shall
90 use care in handling locomotives and cars. It shall be their
91 duty to see that there is a conspicuous light on the front and
92 rear of each trip or train of cars when in motion: *Provided*,
93 *however*, That trip lights need not be used on cars being
94 shifted to and from loading machines, or on cars being
95 handled at loading heads during gathering operations at
96 working faces. No person, other than the motorman and
97 brakeman, should ride on a locomotive unless authorized by
98 the mine foreman, and then only when safe riding facilities
99 are provided. An empty car or cars shall be used to provide
100 a safe distance between the locomotive and the material car
101 when rail, pipe or long timbers are being hauled. A safe
102 clearance shall be maintained between the end car or trips
103 placed on side tracks and moving traffic. On haulage roads
104 the clearance point shall be marked with an approved device.

105 (r) No motorman, trip rider or brakeman shall get on or
106 off cars, trips or locomotives while they are in motion, except
107 that a trip rider or brakeman may get on or off the rear end of
108 a slowly moving trip or the stirrup of a slowly moving
109 locomotive to throw a switch, align a derail or open or close
110 a door.

111 (s) Flying or running switches and riding on the front
112 bumper of a car or locomotive are prohibited. Back poling
113 shall be prohibited except with precaution to the nearest

114 turning point (not over eighty feet), or when going up
115 extremely steep grades and then only at slow speed. The
116 operator of a shuttle car shall face in the direction of travel
117 except during the loading operation when he or she shall face
118 the loading machine.

119 (t) (1) A system of signals, methods or devices shall be
120 used to provide protection for trips, locomotives and other
121 equipment coming out onto tracks used by other equipment.

122 (2) In any coal mine where more than three hundred fifty
123 tons of coal are produced on any shift in each 24-hour period,
124 a dispatcher shall be on duty when there are movements of
125 track equipment underground, including time when there is
126 no production of coal. Such traffic shall move only at the
127 direction of the dispatcher.

128 (3) The dispatcher's only duty shall be to direct traffic:
129 Provided, That the dispatcher's duties may also include those
130 of the responsible person required by section forty-two of this
131 article: *Provided, however,* That the dispatcher may perform
132 other duties which do not interfere with his or her dispatching
133 responsibilities and do not require him or her to leave the
134 dispatcher's station except as approved by the mine safety
135 and technical review committee.

136 (4) Any dispatcher's station shall be on the surface.

137 (5) All self-propelled track equipment shall be equipped
138 with two-way communications.

139 (u) Motormen shall inspect locomotives, and report any
140 mechanical defects found to the proper supervisor before a
141 locomotive is put in operation.

142 (v) A locomotive following another trip shall maintain a
143 distance of at least three hundred feet from the rear end of the
144 trip ahead, unless such locomotive is coupled to the trip
145 ahead.

146 (w) Positive stop blocks or derails shall be installed on all
147 tracks near the top and at landings of shafts, slopes and
148 surface inclines. Positive-acting stop blocks or derails shall
149 be used where necessary to protect persons from danger of
150 runaway haulage equipment.

151 (x) Shuttle cars shall not be altered by the addition of
152 sideboards so as to inhibit the view of the operator: *Provided,*
153 That the addition of or use of sideboards on shuttle cars shall
154 be permitted if the shuttle car is equipped with cameras:
155 *Provided, however,* That shuttle cars with sideboards as
156 manufactured by an equipment manufacturer shall be
157 permitted to be used without the use of cameras if permitted
158 by the director.

159 (y) Mining equipment shall not be parked within fifteen
160 feet of a check curtain or fly curtain.

161 (z) All self-propelled track haulage equipment shall be
162 equipped with an emergency stop switch, self centering
163 valves, or other devices designed to de-energize the traction
164 motor circuit in the event of an emergency. All track
165 mounted trolley equipment shall be equipped with trolley
166 pole swing limiters or other means approved by the mine
167 safety and technical review committee to restrict movement
168 of the trolley pole when it is disengaged from the trolley wire.
169 Battery-powered mobile equipment shall have the operating
170 controls clearly marked to distinguish the forward and
171 reverse positions.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

PART I. GENERAL PROVISIONS.

§22A-2A-101. Use of diesel-powered equipment authorized.

1 Diesel-powered equipment for use in underground coal
2 mines may only be approved, operated and maintained in
3 accordance with rules, requirements and standards
4 established pursuant to this article.

§22A-2A-204a. Director defined.

1 “Director” means the Director of the Office of Miners’
2 Health, Safety and Training established in section one, article
3 one of this chapter.

§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties and responsibilities; transfer of equipment and records; continuation of prior approvals of diesel equipment for use in underground coal mines; continuation of rules of the commission.

1 (a) The West Virginia Diesel Equipment Commission is
2 hereby abolished. All duties and responsibilities heretofore
3 imposed upon the commission are hereby imposed upon the
4 Director of the Office of Miners’ Health, Safety and
5 Training.

6 (b) On the effective date of the reenactment of this
7 section, all equipment and records necessary to effectuate the
8 purposes of this article shall be transferred to the director.

9 (c) The rules of the commission in effect immediately
10 prior to the effective date of the reenactment of this section
11 shall remain in force and effect until promulgation of new or

12 additional rules by the director pursuant to section three
13 hundred eight of this article. To the extent the director finds
14 that the commission rules in effect on the effective date of the
15 reenactment of this section adequately fulfill any of the duties
16 of the commission that are transferred to the director by the
17 reenactment of any of the provisions of this article, such rules
18 are deemed to be actions taken by the director to fulfill such
19 duties.

20 (d) All approvals of diesel-powered equipment, diesel
21 power packages or engines and exhaust emissions control and
22 conditioning systems made by the commission and in effect
23 prior to the effective date of this article shall remain in full
24 force and effect.

**§22A-2A-308. Director's authority to promulgate legislative rules;
continuation of rules adopted by the commission.**

1 (a) The director has the power and authority to propose
2 legislative rules to carry out and implement the provisions of
3 this article in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code. In proposing rules for
5 legislative approval, the director shall consider the highest
6 achievable measures of protection for miners' health and
7 safety through available technology, engineering controls and
8 performance requirements and shall further consider the cost,
9 availability, adaptability and suitability of any available
10 technology, engineering controls and performance
11 requirements as they relate to the use of diesel equipment in
12 underground coal mines.

13 (b) All rules promulgated and adopted by the commission
14 in effect prior to the effective date of this section shall remain
15 in effect until changed or superseded by legislative rule
16 enacted pursuant to subsection (a) of this section.

17 (c) The duties imposed upon the director in this article
18 that were previously required to be performed by the
19 adoption of rules by the commission and that were satisfied
20 or fulfilled by rules adopted by the commission are deemed
21 to be the acts of the director.

§22A-2A-309. Director's authority to approve site-specific experimental testing prior to initial rules.

1 The director may approve limited site-specific requests
2 for experimental and testing use of diesel-powered equipment
3 in underground coal mines prior to promulgation of initial
4 rules in accordance with subsections (b), (c), (d), (e), (f) and
5 (g), section three hundred ten of this article.

§22A-2A-310. Duties of director.

1 (a) It is the duty of the director to carry out and
2 implement this article and to evaluate and adopt state-of-the-
3 art technology and methods, reflected in engines and engine
4 components, emission control equipment and procedures,
5 which when applied to diesel-powered underground mining
6 machinery, shall reasonably reduce or eliminate diesel
7 exhaust emissions and enhance protections of the health and
8 safety of miners. The technology and methods adopted by
9 the director shall have been demonstrated to be reliable. In
10 making a decision to adopt new technology and methods, the
11 director shall consider the highest achievable measures of
12 protection for miners' health and safety through available
13 technology, engineering controls and performance
14 requirements and shall further consider the cost, availability,
15 adaptability and suitability of any available technology,
16 engineering controls and performance requirements as they
17 relate to the use of diesel equipment in underground coal
18 mines. Any state-of-the-art technology or methods adopted
19 by the director shall not reduce or compromise the level of
20 health and safety protection of miners.

21 (b) Upon application of a coal mine operator, the director
22 shall consider site-specific requests for the use of diesel
23 equipment in underground coal mines and for the use of
24 alternative diesel-related health and safety technologies and
25 methods. The director's action on applications submitted
26 under this subsection shall be on a mine-by-mine basis.
27 Upon receipt of a site-specific application, the director shall
28 conduct an investigation, which investigation shall include
29 consultation with the mine operator and the authorized
30 representatives of the miners at the mine. Authorized
31 representatives of the miners shall include a mine health and
32 safety committee elected by miners at the mine, a person or
33 persons employed by an employee organization representing
34 miners at the mine or a person or persons authorized as the
35 representative or representatives of miners of the mine in
36 accordance with MSHA regulations at 30 C. F. R. Pt. 40
37 (relating to representative of miners). Where there is no
38 authorized representative of the miners, the director shall
39 consult with a reasonable number of miners at the mine.
40 Upon completion of the investigation, the director may
41 approve the application for the site-specific request.

42 (1) Within one hundred eighty days of receipt of an
43 application for use of alternative technologies or methods, the
44 director shall complete its investigation. However, the
45 director has an additional one hundred eighty days to
46 complete investigations upon applications filed prior to the
47 effective date of the reenactment of this section. The time
48 period may be extended with the consent of the applicant.

49 (2) The director shall have thirty days upon completion
50 of the investigation in which to render a final decision
51 approving or rejecting the application.

52 (3) The director may not approve an application made
53 under this section if, at the conclusion of the investigation,

54 the director determines that the use of the alternative
55 technology or method will reduce or compromise the level of
56 health and safety protection of miners.

57 (4) The written approval of an application for the use of
58 alternative technologies or methods shall include the results
59 of the director's investigation and describe the specific
60 conditions of use for the alternative technology or method.

61 (5) The written decision to reject an application for the
62 use of alternative technologies or methods shall include the
63 results of the director's investigation and shall outline in
64 detail the basis for the rejection.

65 (c) The director shall establish conditions for the use of
66 diesel-powered equipment in shaft and slope construction
67 operations at coal mines.

68 (d) The director shall have access to the services of the
69 Board of Coal Mine Health and Safety necessary for the
70 director to implement and carry out the provisions of this
71 article. The board, at the request of the director, shall provide
72 administrative support and assistance pursuant to section six,
73 article six of this chapter to enable the director to carry out
74 the duties imposed upon the director in this article.

75 (e) Any action taken by the commission, prior to the
76 effective date of the reenactment of this section, or by the
77 director to either approve or reject the use of an alternative
78 technology or method, or establish conditions under
79 subsection (c) of this section shall be final and binding and
80 not subject to further review except where a decision by the
81 commission, prior to the effective date of the reenactment of
82 this section, or by the director may be deemed to be an abuse
83 of discretion or contrary to law. If any party affected by a
84 decision of the commission, prior to the effective date of the

85 reenactment of this section, or by the director believes that
86 the decision is an abuse of discretion or contrary to law, that
87 party may file a petition for review with the circuit court of
88 Kanawha County in accordance with the provisions of the
89 administrative procedures act relating to judicial review of
90 governmental determinations. The court, in finding that any
91 decision made by the commission, prior to the effective date
92 of the reenactment of this section, or by the director is an
93 abuse of discretion or contrary to law, shall vacate and, if
94 appropriate, remand the case.

95 (f) Appropriations for the funding of the commission and
96 to effectuate the purposes of this article shall be made to a
97 budget account hereby established for that purpose in the
98 General Revenue Fund. Expenditures from this fund are
99 provided for in section six, article six of this chapter.

§22A-2A-402. Approval of diesel power package or diesel engine.

1 Every diesel power package or diesel engine used in
2 underground coal mining shall be approved by the director
3 when it complies with applicable requirements, standards and
4 procedures established by this article, and be certified or
5 approved, as applicable, by MSHA and maintained in
6 accordance with MSHA certification or approval.

§22A-2A-403. Exhaust emissions control and conditioning systems.

1 (a) All exhaust emissions control and conditioning
2 systems and their component devices for diesel-powered
3 equipment for use in underground coal mines shall be
4 approved by the director. Such approval requires compliance
5 with applicable standards and procedures pursuant to this
6 article for the use of the system or device in reducing or
7 eliminating diesel particulate matter, carbon monoxide and
8 oxides of nitrogen.

9 All exhaust emissions control and conditioning systems
10 must undergo an initial series of laboratory tests, using test
11 equipment requirements and standard procedures approved
12 by the director for testing for gaseous and particulate
13 emissions. The director shall compile a list of acceptable
14 third-party laboratories where testing is performed
15 competently and reliable results are produced.

16 (b) Requirements and standards for exhaust emissions
17 control and conditioning systems include, but are not limited
18 to, the following:

19 (1) A minimum standard, stated as an average percentage,
20 for the reduction of diesel particulate matter emissions by a
21 diesel particulate matter filter or other comparably effective
22 emissions control device;

23 (2) A minimum standard, stated in parts per million, for
24 the reduction of emissions of undiluted carbon monoxide,
25 using an oxidation catalyst or other gaseous emissions control
26 device;

27 (3) A minimum standard, stated in parts per million, for
28 the reduction of emissions of oxides of nitrogen, using
29 advanced control technology such as catalytic control
30 technology or other comparably effective control methods;
31 and

32 (4) Any additional requirements established by the rules
33 of the commission prior to the enactment of this section, as
34 may be supplemented or amended by legislative rules
35 promulgated by the director or MSHA regulations relating to
36 requirements for permissible mobile diesel-powered
37 transportation equipment set forth in part 36, title thirty of the
38 code of federal regulations, 30 C. F. R. §36.1, *et seq.*

§22A-2A-404. Emissions monitoring and control.

1 The director shall establish procedures for monitoring and
2 controlling emissions from diesel-powered equipment. The
3 procedures shall include, but not be limited to, monitoring and
4 controlling activities to be performed by a qualified person.

§22A-2A-405. Exhaust gas monitoring and control.

1 (a) For monitoring and controlling exhaust gases, the
2 director shall establish the maximum allowable ambient
3 concentration of exhaust gases in the mine atmosphere.
4 Standards for exhaust gases, stated in parts per million, shall
5 be established for carbon monoxide and oxides of nitrogen.
6 The rules shall establish the location in the mine at which the
7 concentration of these exhaust gases is to be measured, the
8 frequency at which measurements are to be made, and
9 requirements prescribing the sampling instruments to be used
10 in the measurement of exhaust gases.

11 (b) The director shall establish the concentration of
12 exhaust gas, stated as a percentage of an exposure limit, that
13 when present will require changes to be made in the use of
14 diesel-powered equipment or the methods of mine
15 ventilation, or will require other modifications in the mining
16 process.

17 (c) The director shall provide for the remedial action to
18 be taken if the concentration of any of the gases listed in
19 subsection (a) of this section exceeds the exposure limit.

20 (d) In addition to the other maintenance requirements
21 required by this article, the director shall establish
22 requirements provide for service, maintenance and tests
23 which are specific to an engine's fuel delivery system, timing
24 or exhaust emissions control and conditioning system.

PART 5. VENTILATION.

§22A-2A-501. Ventilation.

1 (a) The director shall establish values to be maintained
2 for the minimum quantities of ventilating air where
3 diesel-powered equipment is operated. The purpose of these
4 rules is to ensure that necessary minimum ventilating air
5 quantity is provided where diesel-powered equipment is
6 operated.

7 (b) The director shall require that each specific model of
8 diesel-powered equipment shall be approved before it is
9 taken underground. Each diesel engine shall have an
10 assigned MSHA approval number securely attached to the
11 engine with the information required by 30 C. F. R. §§7.90
12 and 7.105, the approval plate shall also specify the minimum
13 ventilating air quantity required by the director for the
14 specific piece of diesel-powered equipment. The minimum
15 ventilating air quantity shall be determined by the director
16 based on the amount of air necessary at all times to maintain
17 the exhaust emissions at levels not exceeding the exposure
18 limits established pursuant to section four hundred six of this
19 article.

20 (c) The minimum quantities of air in any split where any
21 individual unit of diesel-powered equipment is being
22 operated shall be at least that specified on the approval plate
23 for that equipment. Air quantity measurements to determine
24 compliance with this requirement shall be made at the
25 individual unit of diesel-powered equipment.

26 (d) The director shall establish the minimum quantities of
27 air required in any split when multiple units are operated. Air
28 quantity measurements to determine compliance with this
29 requirement shall be made at the most downwind unit of

30 diesel-powered equipment that is being operated in that air
31 split.

32 (e) Minimum quantities of air in any split where any
33 diesel-powered equipment is operated shall not be less than
34 the minimum air quantities established pursuant to
35 subsections (a) and (b) of this section and shall be specified
36 in the mine diesel ventilation plan.

PART 6. FUEL.

§22A-2A-601. Specifications for fuel.

1 (a) The director shall establish standards for fuel to be
2 used in diesel-powered equipment in underground coal
3 mines. A purpose of these standards is to require the use of
4 low volatile fuels that will lower diesel engine gaseous and
5 particulate emissions and will reduce equipment maintenance
6 by limiting the amount of sulfur in the fuel. Another purpose
7 of the standards for fuel is to reduce the risk of fire in
8 underground mines by establishing a minimum flash point for
9 the diesel fuel used.

10 (b) Each coal mine using diesel equipment underground
11 shall establish a quality control plan for assuring that the
12 diesel fuel used complies with the standards established
13 pursuant to this section. The director shall also establish a
14 procedure under which each mine operator will provide
15 evidence that the diesel fuel used in diesel-powered
16 equipment underground meets the standards for fuel
17 established by the commission.

§22A-2A-602. Fuel storage facilities.

1 (a) The director shall establish requirements for the safe
2 storage of diesel fuel underground so as to minimize the risks

3 associated with fire hazards in areas where diesel fuel is
4 stored.

5 (b) (1) The director shall either provide:

6 (A) That all stationary underground diesel fuel tanks are
7 prohibited; or

8 (B) That a stationary underground diesel fuel tank may
9 only be authorized through a petitioning process that permits
10 a stationary underground diesel fuel tank to be located in a
11 permanent underground diesel fuel storage facility, on a
12 site-specific basis. Stationary underground diesel fuel tanks
13 may not be located in temporary underground diesel fuel
14 storage areas.

15 (c) The director shall establish requirements for the
16 transportation and storage of diesel fuel in diesel fuel tanks
17 and safety cans.

18 (d) The director shall establish limits on the total amount
19 of diesel fuel that may be stored in each permanent
20 underground diesel fuel storage facility and in each
21 temporary underground diesel fuel storage area.

§22A-2A-603. Dispensing of diesel fuel.

1 The director shall establish requirements governing the
2 refueling of diesel-powered equipment which shall, at a
3 minimum, comply with the provisions of part 75 of the Code
4 of Federal Regulations dealing with the dispensing of diesel
5 fuel, set forth in 30 C. F. R. §75.1905, effective April 25,
6 1997.

§22A-2A-604. Location of fueling.

1 (a) Fueling of diesel-powered equipment is not to be
2 conducted in the intake escapeways unless the mine design
3 and entry configuration make it necessary. For those cases
4 where fueling in the intake escapeways is necessary, the
5 director shall establish a procedure whereby the mine
6 operator shall submit a plan for approval, outlining the
7 special safety precautions that will be taken to insure the
8 protection of miners. The plan shall specify a fixed location
9 where fueling will be conducted in the intake escapeway and
10 all other safety precautions that will be taken, which shall
11 include an examination of the area for spillage or fire by a
12 qualified person.

13 (b) At least one person, specially trained in the cleanup
14 and disposal of diesel fuel spills, shall be on duty at the mine
15 when diesel-powered equipment or mobile fuel transportation
16 equipment is being used or when any fueling of
17 diesel-powered equipment is being conducted.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2015.

.....
Governor