

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 357**

5 (By Senators Mullins, Blair, Boley, Boso, Ferns, Gaunch, D. Hall, M. Hall, Karnes,  
6 Carmichael, Kirkendoll, Leonhardt, Maynard, Nohe, Plymale, Prezioso, Stollings,  
7 Sypolt, Takubo, Trump, Walters and Williams)

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9 [Originating in the Committee on the Judiciary; reported February 5, 2015.]  
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11 A BILL to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and  
12 §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact  
13 §22-3-13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said  
14 code; to amend said code by adding thereto a new section, designated §22-11-22a; to amend  
15 said code by adding thereto a new section, designated §22A-1-41; to amend and reenact  
16 §22A-1A-1 of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said  
17 code; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309,  
18 §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501,  
19 §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code; and to amend  
20 said code by adding thereto a new section, designated §22A-2A-204a, all relating to creating  
21 the Coal Jobs and Safety Act of 2015; providing methods of assuring that discharges from  
22 waste piles do not exceed applicable water quality standards; conforming rules regarding

1 procedures for requesting and obtaining inactive status and rules relating to requirements for  
2 contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation  
3 Act to corresponding federal requirements; abolishing West Virginia Diesel Equipment  
4 Commission; transferring duties and responsibilities of West Virginia Diesel Equipment  
5 Commission to Director of the Office of Miners' Health, Safety and Training; defining terms;  
6 providing rule-making authority; providing that rules previously approved by commission  
7 continue in full force and effect; developing emergency rules for statewide hardness-based  
8 aluminum water quality criteria for protection of aquatic life; prohibiting wholesale  
9 incorporation of water quality standards into permits rather than specifically developing  
10 terms and conditions on a permit-by-permit basis that are designed to protect water quality  
11 standards; modifying the scope of the permit shield as it relates to compliance with water  
12 quality standards; establishing an administrative and civil enforcement process for coal  
13 mining-related permits that conforms with corresponding federal requirements; making  
14 legislative findings; permitting immediate temporary suspension, suspension or revocation  
15 of a certificate held by a certified person who has tested positive for certain drugs or alcohol,  
16 refused to submit a sample for screening, possessed or submitted a substituted sample or  
17 possessed or submitted an adulterated sample for testing; providing that if a drug test is  
18 positive, a certified employee may not rely on the fact that the drug was prescribed if the  
19 prescription is more than one year old; setting forth requirements for movement of off-track  
20 mining equipment in areas of active workings where energized trolley wires or trolley feeder  
21 wires are present; establishing premovement requirements; increasing distance from five  
22 hundred feet to one thousand five hundred feet of the nearest working face where

1 transportation of certain personnel in certain instances is done exclusively by rail; requiring  
2 certain equipment be readily available when distance from track to face is between five  
3 hundred feet and one thousand five hundred feet; increasing distance of track to be  
4 maintained when a section is fully developed and being prepared for retreating; permitting  
5 use of sideboards on shuttle cars if they are equipped with cameras; requiring shelter holes  
6 be provided along haulage entries and be placed not more than one hundred five feet apart;  
7 providing exception; removing requirement that locomotives, personnel carriers, barrier  
8 tractors and other related equipment be equipped with lifting jacks and handles; and  
9 prescribing that no one, other than motorman and brakeman, should ride on a locomotive  
10 unless authorized by the mine foreman, and then only when safe riding facilities are  
11 provided.

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

13 That §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and  
14 §22A-2A-307 of the Code of West Virginia, 1931, as amended, be repealed; that §22-3-13 and  
15 §22-3-19 of said code be amended and reenacted; that §22-11-6 and §22-11-8 of said code be  
16 amended and reenacted; that said code be amended by adding thereto a new section, designated  
17 §22-11-22a; that said code be amended by adding thereto a new section, designated §22A-1-41; that  
18 §22A-1A-1 of said code be amended and reenacted; that §22A-2-6, §22A-2-28 and §22A-2-37 of  
19 said code be amended and reenacted; that §22A-2A-101, §22A-2A-301, §22A-2A-308,  
20 §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405,  
21 §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code be  
22 amended and reenacted; and that said code be amended by adding thereto a new section, designated

1 §22A-2A-204a, all to read as follows:

2 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

3 **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

4 **§22-3-13. General environmental protection performance standards for surface mining;**  
5 **variances.**

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

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

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

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

20 (3) Except as provided in subsection (c) of this section, with respect to all surface mines,  
21 backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials and  
22 grade in order to restore the approximate original contour: *Provided*, That in surface mining which

1 is carried out at the same location over a substantial period of time where the operation transects the  
2 coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large  
3 and where the operator demonstrates that the overburden and other spoil and waste materials at a  
4 particular point in the permit area or otherwise available from the entire permit area is insufficient,  
5 giving due consideration to volumetric expansion, to restore the approximate original contour, the  
6 operator, at a minimum, shall backfill, grade and compact, where advisable, using all available  
7 overburden and other spoil and waste materials to attain the lowest practicable grade, but not more  
8 than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic  
9 materials in order to achieve an ecologically sound land use compatible with the surrounding region:  
10 *Provided, however,* That in surface mining where the volume of overburden is large relative to the  
11 thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion  
12 the amount of overburden and other spoil and waste materials removed in the course of the mining  
13 operation is more than sufficient to restore the approximate original contour, the operator shall, after  
14 restoring the approximate contour, backfill, grade and compact, where advisable, the excess  
15 overburden and other spoil and waste materials to attain the lowest grade, but not more than the  
16 angle of repose, and to cover all acid-forming and other toxic materials in order to achieve an  
17 ecologically sound land use compatible with the surrounding region and the overburden or spoil shall  
18 be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated in  
19 accordance with the requirements of this article: *Provided further,* That the director shall propose  
20 rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code  
21 governing variances to the requirements for return to approximate original contour or highwall  
22 elimination and where adequate material is not available from surface mining operations permitted

1 after the effective date of this article for: (A) Underground mining operations existing prior to  
2 August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;

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

5 (5) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if  
6 not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not  
7 replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain  
8 a successful vegetative cover by quick growing plants or by other similar means in order to protect  
9 topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic  
10 material: *Provided*, That if topsoil is of insufficient quantity or of poor quality for sustaining  
11 vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the  
12 operator shall remove, segregate and preserve in a like manner any other strata which is best able to  
13 support vegetation;

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

15 (7) Ensure that all prime farmlands are mined and reclaimed in accordance with the  
16 specifications for soil removal, storage, replacement and reconstruction established by the United  
17 States Secretary of Agriculture and the Soil Conservation Service pertaining thereto. The operator,  
18 at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown  
19 that other available soil materials will create a final soil having a greater productive capacity and,  
20 if not utilized immediately, stockpile this material separately from other spoil and provide needed  
21 protection from wind and water erosion or contamination by other acid or toxic material; (B)  
22 segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination

1 of the horizons or other strata that are shown to be both texturally and chemically suitable for plant  
2 growth and that can be shown to be equally or more favorable for plant growth than the B horizon,  
3 in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality  
4 to that which existed in the natural soil and, if not utilized immediately, stockpile this material  
5 separately from other spoil and provide needed protection from wind and water erosion or  
6 contamination by other acid or toxic material; (C) replace and regrade the root zone material  
7 described in paragraph (B) of this subdivision with proper compaction and uniform depth over the  
8 regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon  
9 described in paragraph (A) of this subdivision;

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

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

19 (10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in  
20 associated off-site areas and to the quality and quantity of water in surface and groundwater systems  
21 both during and after surface mining operations and during reclamation by: (A) Avoiding acid or  
22 other toxic mine drainage by such measures as, but not limited to: (I) Preventing or removing water

1 from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which  
2 adversely affects downstream water upon being released to water courses; and (iii) casing, sealing  
3 or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from  
4 entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the  
5 extent possible, using the best technology currently available, additional contributions of suspended  
6 solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess  
7 of requirements set by applicable state or federal law; (C) constructing an approved drainage system  
8 pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations,  
9 the system to be certified by a person approved by the director to be constructed as designed and as  
10 approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations  
11 requiring the discharge of water from mines; (E) unless otherwise authorized by the director,  
12 cleaning out and removing temporary or large settling ponds or other siltation structures after  
13 disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a  
14 manner approved by the director; (F) restoring recharge capacity of the mined area to approximate  
15 premining conditions; and (G) any other actions prescribed by the director;

16 (11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and  
17 other wastes in areas other than the mine working excavations: (A) Stabilize all waste piles in  
18 designated areas through construction in compacted layers, including the use of noncombustible and  
19 impervious materials if necessary, and assure the final contour of the waste pile will be compatible  
20 with natural surroundings and that the site will be stabilized and revegetated according to the  
21 provisions of this article; and (B) assure that the construction of any coal waste pile or other coal  
22 waste storage area utilizes appropriate technologies, such as capping or the use of liners, or any other

1 demonstrated technologies or measures which are consistent with good engineering practices, to  
2 prevent an acid mine drainage discharge;

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

8 (13) Refrain from surface mining within five hundred feet of any active and abandoned  
9 underground mines in order to prevent breakthroughs and to protect health or safety of miners:  
10 *Provided*, That the director shall permit an operator to mine near, through or partially through an  
11 abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and  
12 sequencing of the approximate coincidence of specific surface mine activities with specific  
13 underground mine activities are coordinated jointly by the operators involved and approved by the  
14 director; and (B) the operations will result in improved resource recovery, abatement of water  
15 pollution or elimination of hazards to the health and safety of the public: *Provided, however*, That  
16 any breakthrough which does occur shall be sealed;

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

22 (15) Ensure that explosives are used only in accordance with existing state and federal law

1 and the rules promulgated by the director, which shall include provisions to:

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

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

7 (16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as  
8 contemporaneously as practicable with the surface mining operations. Time limits shall be  
9 established by the director requiring backfilling, grading and planting to be kept current: *Provided,*  
10 That where surface mining operations and underground mining operations are proposed on the same  
11 area, which operations must be conducted under separate permits, the director may grant a variance  
12 from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit  
13 underground mining operations prior to reclamation:

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

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

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

20 (iii) The applicant has satisfactorily demonstrated that the plan for the underground mining  
21 operations conforms to requirements for underground mining in the jurisdiction and that permits  
22 necessary for the underground mining operations have been issued by the appropriate authority;

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

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

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

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

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

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

19 (17) Ensure that the construction, maintenance and post-mining conditions of access and haul  
20 roads into and across the site of operations will control or prevent erosion and siltation, pollution of  
21 water, damage to fish or wildlife or their habitat, or public or private property: *Provided*, That access  
22 roads constructed for and used to provide infrequent service to surface facilities, such as ventilators

1 or monitoring devices, are exempt from specific construction criteria provided adequate stabilization  
2 to control erosion is achieved through alternative measures;

3 (18) Refrain from the construction of roads or other access ways up a stream bed or drainage  
4 channel or in proximity to the channel so as to significantly alter the normal flow of water;

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

11 (20) Assume the responsibility for successful revegetation, as required by subdivision (19)  
12 of this subsection, for a period of not less than five growing seasons, as defined by the director, after  
13 the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance  
14 with subdivision (19) of this subsection: *Provided*, That when the director issues a written finding  
15 approving a long-term agricultural post-mining land use as a part of the mining and reclamation plan,  
16 the director may grant exception to the provisions of subdivision (19) of this subsection: *Provided*,  
17 *however*, That when the director approves an agricultural post-mining land use, the applicable five  
18 growing seasons of responsibility for revegetation begins on the date of initial planting for the  
19 agricultural post-mining land use;

20 On lands eligible for remaining assume the responsibility for successful revegetation, as  
21 required by subdivision (19) of this subsection, for a period of not less than two growing seasons,  
22 as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other

1 work in order to assure compliance with subdivision (19) of this subsection;

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

7 (22) Place all excess spoil material resulting from surface mining activities in a manner that:

8 (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and  
9 in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are  
10 within the bonded permit areas and all organic matter is removed immediately prior to spoil  
11 placements; (C) appropriate surface and internal drainage system or diversion ditches are used to  
12 prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water  
13 courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main  
14 under drains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed  
15 on a slope, the spoil is placed upon the most moderate slope among those upon which, in the  
16 judgment of the director, the spoil could be placed in compliance with all the requirements of this  
17 article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement  
18 provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a  
19 downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the  
20 final configuration is compatible with the natural drainage pattern and surroundings and suitable for  
21 intended uses; (H) the design of the spoil disposal area is certified by a qualified registered  
22 professional engineer in conformance with professional standards; and (I) all other provisions of this

1 article are met: *Provided*, That where the excess spoil material consists of at least eighty percent,  
2 by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil  
3 material, the director may approve alternate methods for disposal of excess spoil material, including  
4 fill placement by dumping in a single lift, on a site-specific basis: *Provided, however*, That the  
5 services of a qualified registered professional engineer experienced in the design and construction  
6 of earth and rockfill embankment are utilized: *Provided further*, That the approval may not be  
7 unreasonably withheld if the site is suitable;

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

11 (24) To the extent possible, using the best technology currently available, minimize  
12 disturbances and adverse impacts of the operation on fish, wildlife and related environmental values,  
13 and achieve enhancement of these resources where practicable; ~~and~~

14 (25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop  
15 barriers are required: *Provided*, That constructed barriers may be allowed where: (A) Natural  
16 barriers do not provide adequate stability; (B) natural barriers would result in potential future water  
17 quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization  
18 of the mineral resource: *Provided, however*, That at a minimum, the constructed barrier shall be of  
19 sufficient width and height to provide adequate stability and the stability factor shall equal or exceed  
20 that of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the  
21 constructed barrier shall be composed of impervious material with controlled discharge points; and

22 (26) The director shall promulgate for review and consideration by the West Virginia

1 Legislature legislative rules or emergency rules during the 2016 Regular Session of the West  
2 Virginia Legislature, revisions to rules for contemporaneous reclamation as required under  
3 subdivision (16), subsection (b) of this section. The secretary shall specifically consider the adoption  
4 of federal standards codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R. §§817.100-116  
5 (1983) when proposing revisions to the state rule.

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

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

16 (3) In cases where an industrial, commercial, agricultural, commercial forestry, residential  
17 or public facility including recreational uses is proposed for the post-mining use of the affected land,  
18 the director may grant a permit for a surface mining operation of the nature described in subdivision  
19 (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an  
20 equal or better use of the affected land, as compared with premining use; (B) the applicant presents  
21 specific plans for the proposed post-mining land use and appropriate assurances that the use will be:  
22 (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use;

1 (iii) obtainable according to data regarding expected need and market; (iv) supported by  
2 commitments from public agencies where appropriate; (v) practicable with respect to private  
3 financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached  
4 to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining  
5 land use; and (vii) designed by a person approved by the director in conformance with standards  
6 established to assure the stability, drainage and configuration necessary for the intended use of the  
7 site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local  
8 land use plans and programs; (D) the director provides the county commission of the county in which  
9 the land is located and any state or federal agency which the director, in his or her discretion,  
10 determines to have an interest in the proposed use, an opportunity of not more than sixty days to  
11 review and comment on the proposed use; and (E) all other requirements of this article will be met.

12 (4) In granting any permit pursuant to this subsection, the director shall require that: (A) A  
13 natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are  
14 required: *Provided*, That constructed barriers may be allowed where: (I) Natural barriers do not  
15 provide adequate stability; (ii) natural barriers would result in potential future water quality  
16 deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the  
17 mineral resource: *Provided, however*, That, at a minimum, the constructed barrier shall be sufficient  
18 in width and height to provide adequate stability and the stability factor shall equal or exceed that  
19 of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the  
20 constructed barrier shall be composed of impervious material with controlled discharge points; (B)  
21 the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the  
22 outsoles except at specific points; (D) no damage will be done to natural watercourses; (E) spoil

1 will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use:  
2 *And provided further*, That all excess spoil material not retained on the mountaintop shall be placed  
3 in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure  
4 stability of the spoil retained on the mountaintop and meet the other requirements of this article.

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

9 (d) In addition to those general performance standards required by this section, when surface  
10 mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule  
11 after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material  
12 or waste mineral matter will be placed on the natural downslope below the initial bench or mining  
13 cut: *Provided*, That soil or spoil material from the initial cut of earth in a new surface mining  
14 operation may be placed on a limited specified area of the downslope below the initial cut if the  
15 permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that  
16 the other requirements of this section can still be met.

17 (e) The director may propose rules for legislative approval in accordance with article three,  
18 chapter twenty-nine-a of this code that permit variances from the approximate original contour  
19 requirements of this section: *Provided*, That the watershed control of the area is improved:  
20 *Provided, however*, That complete backfilling with spoil material is required to completely cover the  
21 highwall, which material will maintain stability following mining and reclamation.

22 (f) The director shall propose rules for legislative approval in accordance with article three,

1 chapter twenty-nine-a of this code for the design, location, construction, maintenance, operation,  
2 enlargement, modification, removal and abandonment of new and existing coal mine waste piles.  
3 In addition to engineering and other technical specifications, the standards and criteria developed  
4 pursuant to this subsection shall include provisions for review and approval of plans and  
5 specifications prior to construction, enlargement, modification, removal or abandonment;  
6 performance of periodic inspections during construction; issuance of certificates of approval upon  
7 completion of construction; performance of periodic safety inspections; and issuance of notices and  
8 orders for required remedial or maintenance work or affirmative action: *Provided*, That whenever  
9 the director finds that any coal processing waste pile constitutes an imminent danger to human life,  
10 he or she may, in addition to all other remedies and without the necessity of obtaining the permission  
11 of any person prior or present who operated or operates a pile or the landowners involved, enter upon  
12 the premises where any coal processing waste pile exists and may take or order to be taken any  
13 remedial action that may be necessary or expedient to secure the coal processing waste pile and to  
14 abate the conditions which cause the danger to human life: *Provided, however*, That the cost  
15 reasonably incurred in any remedial action taken by the director under this subsection may be paid  
16 for initially by funds appropriated to the division for these purposes and the sums expended shall be  
17 recovered from any responsible operator or landowner, individually or jointly, by suit initiated by  
18 the Attorney General at the request of the director. For purposes of this subsection, "operates" or  
19 "operated" means to enter upon a coal processing waste pile, or part of a coal processing waste pile,  
20 for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing  
21 coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow  
22 of or for the impoundment of water.

1 **§22-3-19. Permit revision and renewal requirements; incidental boundary revisions;**  
2 **requirements for transfer; assignment and sale of permit rights; operator**  
3 **reassignment; and procedures to obtain inactive status.**

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

19 (2) If an application for renewal of a valid permit includes a proposal to extend the surface  
20 mining operation beyond the boundaries authorized in the existing permit, that portion of the  
21 application for renewal which addresses any new land area is subject to the full standards of this  
22 article, which includes, but is not limited to: (A) Adequate bond; (B) a map showing the disturbed

1 area and facilities; and (C) a reclamation plan.

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

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

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

10 (2) An application for a significant revision of a permit is subject to all requirements of this  
11 article and rules promulgated pursuant thereto and shall be accompanied by a filing fee of \$2,00.

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

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

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

4 (e) Each request for inactive status shall be submitted on forms prescribed by the secretary,  
5 shall be accompanied by a filing fee of \$2,00, and shall be granted in accordance with the procedure  
6 established in the Surface Mining and Reclamation Rule.

7 (f) The secretary shall promulgate for review and consideration by the West Virginia  
8 Legislature legislative rules or emergency rules during the 2016 Regular Session of the West  
9 Virginia Legislature revisions to rules for granting inactive status under this article. The secretary  
10 shall specifically consider the adoption of federal standards codified at 30 C. F. R. §816.131 (1979)  
11 and 30 C. F. R. §817.131 (1979).

## 12 **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

### 13 **§22-11-6. Requirement to comply with standards of water quality and effluent limitations.**

14 All persons affected by rules establishing water quality standards and effluent limitations  
15 shall promptly comply therewith: *Provided*, That:

16 (1) Where necessary and proper, the secretary may specify a reasonable time for persons not  
17 complying with such standards and limitations to comply therewith and upon the expiration of any  
18 such period of time, the secretary shall revoke or modify any permit previously issued which  
19 authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the  
20 waters of this state which result in reduction of the quality of such waters below the standards and  
21 limitations established therefor by rules of the board or secretary;

22 (2) ~~Notwithstanding any rule or permit condition to the contrary, and except for any standard~~

1 ~~imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious~~  
2 ~~to human health.~~ For purposes of both this article and sections 309 and 505 of the federal Water  
3 Pollution Control Act, compliance with a permit issued pursuant to this article shall be deemed  
4 compliance for purposes of both this article and sections 301, 302, ~~303~~, 306, 307 and 403 of the  
5 federal Water Pollution Control Act and with all applicable state and federal water quality standards,  
6 except for any such standard imposed under section 307 of the federal Water Pollution Control Act  
7 for a toxic pollutant injurious to human health. Notwithstanding any provision of this code or rule  
8 or permit condition to the contrary, water quality standards themselves shall not be considered  
9 “effluent standards or limitations” for the purposes of both this article and sections 309 and 505 of  
10 the federal Water Pollution Control Act and shall not be independently or directly enforced or  
11 implemented except through the development of terms and conditions of a permit issued pursuant  
12 to this article. Nothing in this section, however, prevents the secretary from modifying, reissuing  
13 or revoking a permit during its term. The provisions of this section addressing compliance with a  
14 permit are intended to apply to all existing and future discharges and permits without the need for  
15 permit modifications; ~~However, should any such modification be necessary under the terms of this~~  
16 ~~article, then the secretary shall immediately commence the process to effect such modifications; and~~

17 (3) The Legislature finds that there are concerns within West Virginia regarding the  
18 applicability of the research underlying the federal selenium criteria to a state such as West Virginia  
19 which has high precipitation rates and free-flowing streams and that the alleged environmental  
20 impacts that were documented in applicable federal research have not been observed in West  
21 Virginia and, further, that considerable research is required to determine if selenium is having an  
22 impact on West Virginia streams, to validate or determine the proper testing methods for selenium

1 and to better understand the chemical reactions related to selenium mobilization in water.

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

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

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

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

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

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

15 (6) Within twenty-four months of the effective date of this subdivision, the secretary shall  
16 propose rules for legislative approval in accordance with the provisions of article three, chapter  
17 twenty-nine of this code which establish a state-specific selenium standard that protects aquatic life.  
18 Concurrent with proposing a legislative rule, the secretary shall also submit the proposed standard  
19 and supporting documentation to the administrator of the Environmental Protection Agency. The  
20 secretary shall also consult with and consider research and data from the West Virginia Water  
21 Research Institute at West Virginia University, the regulated community and other appropriate  
22 groups in developing the state-specific selenium standard.

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

6 **§22-11-8. Prohibitions; permits required.**

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

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

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

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

22           (3) Acquire, construct, install, modify or operate a disposal system or part thereof for the

1 direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other  
2 wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to the  
3 disposal system;

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

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

9 (6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or  
10 preparation plant, or dispose of any refuse or industrial wastes or other wastes from the mine or  
11 quarry or preparation plant: *Provided*, That the department's permit is only required wherever the  
12 aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into  
13 or pollution of waters of the state, except that a permit is required for any preparation plant:  
14 *Provided, however*, That unless waived in writing by the secretary, every application for a permit to  
15 open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial  
16 wastes or other wastes from the mine or quarry or preparation plant shall contain a plan for  
17 abandonment of the facility or operation, which plan shall comply in all respects to the requirements  
18 of this article. The plan of abandonment is subject to modification or amendment upon application  
19 by the permit holder to the secretary and approval of the modification or amendment by the secretary;  
20 or

21 (7) Operate any disposal well for the injection or reinjection underground of any industrial  
22 wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well

1 or plug or abandon any such disposal well.

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

5 **§22-11-22a. Civil penalties and injunctive relief; civil administrative penalties for coal mining**  
6 **operations.**

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

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

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

1 and other matters as justice may require.

2           (3) Upon application by the secretary, the circuit courts of the state or the judges thereof in  
3 vacation may by injunction compel compliance with and enjoin violations of the provisions of this  
4 article, article eleven-a of this chapter, the rules of the board or secretary, effluent limitations, the  
5 terms and conditions of any permit granted under the provisions of this article or article eleven-a of  
6 this chapter or any order of the secretary or board, and the venue of any such actions shall be the  
7 county in which the violations or noncompliance exists or is taking place or in any county in which  
8 the waters thereof are polluted as the result of the violation or noncompliance. The court or the judge  
9 thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision  
10 on the merits of any injunction application filed. Any other section of this code to the contrary  
11 notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive  
12 relief under this article or article eleven-a of this chapter. An application for an injunction under the  
13 provisions of this section may be filed and injunctive relief granted notwithstanding that all of the  
14 administrative remedies provided in this article have not been pursued or invoked against the person  
15 or persons against whom such relief is sought and notwithstanding that the person or persons against  
16 whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

17           (4) The judgment of the circuit court upon any application filed or in any civil action  
18 instituted under the provisions of this section is final unless reversed, vacated or modified on appeal  
19 to the Supreme Court of Appeals. Any such appeal shall be sought in the manner provided by law  
20 for appeals from circuit courts in other civil cases, except that the petition seeking review in any  
21 injunctive proceeding must be filed with said Supreme Court of Appeals within ninety days from the  
22 date of entry of the judgment of the circuit court.

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

7           (b) The secretary may assess a civil administrative penalty whenever he or she finds that a  
8 person who holds a permit to operate a coal mining operation issued under article three of this  
9 chapter has violated any provision of this article or article eleven-a of this chapter, any permit issued  
10 under or subject to the provisions of this article or article eleven-a of this chapter or any rule or order  
11 issued pursuant to this article or article eleven-a of this chapter. A civil administrative penalty may  
12 be assessed unilaterally by the director in accordance with this subsection.

13           (1) Any civil administrative penalty assessed pursuant to this section shall not exceed  
14 \$10,000 per violation and the maximum amount of any civil administrative penalty assessed  
15 pursuant to this section shall not exceed \$125,000: *Provided*, That any stipulated penalties accrued  
16 after the date of the draft order shall not be included for purposes of determining the total amount  
17 of the civil administrative penalty. For purposes of this section, a single operational upset which  
18 leads to simultaneous violations of more than one pollutant parameter shall be treated as a single  
19 violation.

20           (2) In determining the amount of any civil administrative penalty assessed under this  
21 subsection, the secretary shall take into account the nature, circumstances, extent and gravity of the  
22 violation, or violations, and, with respect to the violator, ability to pay, any prior history of such

1 violations, the degree of good faith, economic benefit or savings, if any, resulting from the violation,  
2 cooperation of the alleged violator, and such other matters as justice may require.

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

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

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

13 (C) If an informal hearing is requested, the director shall inform the alleged violator of the  
14 time and place of the hearing. The secretary may appoint an assessment officer to conduct the  
15 informal hearing and make a written recommendation to the secretary concerning the proposed order  
16 and the assessment of a civil administrative penalty.

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

21 (4) The secretary shall provide the opportunity for the public to comment on any draft order  
22 by publishing a Class II legal advertisement in the newspaper with the largest circulation in the

1 county in which the violation occurred, and by other such means as the secretary deems appropriate,  
2 which shall provide notice of the draft order, including the civil administrative penalty assessment.  
3 The secretary shall consider any comments received in determining whether to revise the draft order  
4 before issuance of a final order. During the thirty-day public comment period, any person may  
5 request a public hearing regarding the draft order and the secretary may grant or deny the request at  
6 his or her discretion. If a request for a public hearing is denied, the secretary shall provide notice to  
7 the person requesting a hearing and reasons for such denial.

8 (5) Within thirty days of the close of the public comment period on a draft order, the secretary  
9 shall issue a final order or make a determination not to issue a final order, and shall provide written  
10 notice by certified mail or personal service pursuant to the West Virginia rules of civil procedure to  
11 the alleged violator and shall provide notice by certified mail or personal service pursuant to the  
12 West Virginia rules of civil procedure to those persons who submitted written comments on the draft  
13 order during the public comment period.

14 (6) The issuance of a final order assessing a civil administrative penalty pursuant to  
15 subsection (b) of this section may be appealed to the environmental quality board pursuant to section  
16 twenty-one of this article. Any person who submitted written comments on a draft order during the  
17 public comment period shall have the right to file such an appeal or intervene in any appeal filed by  
18 the alleged violator.

19 (7) The authority to levy a civil administrative penalty is in addition to all other enforcement  
20 provisions of this article and the payment of any assessment does not affect the availability of any  
21 other enforcement provision in connection with the violation for which the assessment is levied:  
22 *Provided*, That no combination of assessments against a violator under this section shall exceed

1 \$25,000 for each violation: *Provided, however,* That any violation for which the violator has paid  
2 a civil administrative penalty assessed under this section may not be the subject of a separate civil  
3 penalty action. No assessment levied pursuant to this section becomes due and payable until at least  
4 thirty days after receipt of the final order or the procedures for review of the assessment, including  
5 any appeals, have been completed, whichever is later.

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

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

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

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

15 **§22A-1-41. The Coal Jobs and Safety Act of 2015; legislative findings.**

16 (a) *Legislative findings.* --

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

22 (2) Coal production in West Virginia has fallen from one hundred sixty-five million tons in

1 2008 to approximately one hundred fifteen million tons in 2014, a decline of thirty-one percent.

2 Much of this decline has been concentrated in the southern coalfields.

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

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

8 (5) When the coal-related jobs multiplier, established by the West Virginia University and  
9 Marshall University Colleges of Business, 2010 Joint Economic Impact Report, is factored in the  
10 total direct and indirect jobs impact on the West Virginia economy shows a twenty thousand six  
11 hundred eighty-job decline in mining and mine-dependent employment in the state from one hundred  
12 thousand eleven six hundred eighty in 2011 to ninety-one thousand today. The impact of this damage  
13 to the West Virginia economy is demonstrated by the rapid rise of unemployment in the coalfields  
14 with some counties now reporting an unemployment rate of more than ten percent.

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

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

1 is lost with the loss of jobs.

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

6 (b) *Coal Jobs and Safety Act of 2015*. -- Therefore, in order to encourage the recovery of the  
7 West Virginia coal industry and to increase direct and indirect employment thus created, the  
8 Legislature enacts the Coal Jobs and Safety Act of 2015 and it is collectively comprised of:

9 (1) This section;

10 (2) The amendments to:

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

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

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

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

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

16 (F) Sections three hundred one, three hundred eight, three hundred nine, three hundred ten,  
17 four hundred two, four hundred three, four hundred four, four hundred five, five hundred one, six  
18 hundred one, six hundred two, six hundred three and six hundred four, article two-a of this chapter;  
19 and

20 (3) The following new sections:

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

22 (B) Section two hundred four-a, article two-a of this chapter

1 that were adopted and enacted during the 2015 Regular Session of the Legislature.

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

4 **§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures**  
5 **for screening.**

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

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

10 (A) Amphetamines;

11 (B) Cannabinoids/THC;

12 (C) Cocaine;

13 (D) Opiates;

14 (E) Phencyclidine (PCP);

15 (F) Benzodiazepines;

16 (G) Propoxyphene;

17 (H) Methadone;

18 (I) Barbiturates; and

19 (J) Synthetic narcotics.

20 Split samples shall be collected by providers who are certified as complying with standards  
21 and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40,  
22 which may be amended, from time to time, by legislative rule of the Office of Miners' Health, Safety

1 and Training. Collected samples shall be tested by laboratories certified by the United States  
2 Department of Health and Human Services, Substance Abuse and Mental Health Services  
3 Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this  
4 subdivision, the mine operator may implement a more stringent substance abuse screening policy  
5 and program;

6 (2) A random substance abuse testing program covering the substances referenced in  
7 subdivision (1) of this subsection. “Random testing” means that each person subject to testing has  
8 a statistically equal chance of being selected for testing at random and at unscheduled times. The  
9 selection of persons for random testing shall be made by a scientifically valid method, such as a  
10 random number table or a computer-based random number generator that is matched with the  
11 persons’ Social Security numbers, payroll identification numbers or other comparable identifying  
12 numbers; and

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

15 (b) For purposes of this subsection, preemployment testing shall be required upon hiring by  
16 a new employer, rehiring by a former employer following a termination of the employer/employee  
17 relationship or transferring to a West Virginia mine from an employer’s out-of-state mine to the  
18 extent that any substance abuse test required by the employer in the other jurisdiction does not  
19 comply with the minimum standards for substance abuse testing required by this article.  
20 Furthermore, the provisions of this section apply to all employers that employ certified persons who  
21 work in mines, regardless of whether that employer is an operator, contractor, subcontractor or  
22 otherwise.

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

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

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

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

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

10 (2) With respect to any certified person subject to a collective bargaining agreement, the  
11 employer shall notify the director, on a form prescribed by the director, within seven days of any of  
12 the following: ~~Provided, That notification pursuant to this subdivision shall not result in the~~  
13 ~~immediate temporary suspension, suspension or revocation of any certificate held by a certified~~  
14 ~~person who is subject to a collective bargaining agreement unless and until the arbitration is~~  
15 ~~concluded and the discharge is upheld:~~

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

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

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

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

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

4 (4) Notice shall result in the immediate temporary suspension of all certificates held by the  
5 certified person who failed the screening, pending a hearing before the board of appeals pursuant to  
6 section two of this article. ~~Provided, That notification pursuant to this subsection shall not result in~~  
7 ~~the immediate temporary suspension of any certificate held by a certified person who is subject to~~  
8 ~~a collective bargaining agreement unless and until the arbitration is concluded and the discharge is~~  
9 ~~upheld, and no certificate held by a certified person who is subject to a collective bargaining~~  
10 ~~agreement shall be suspended or revoked unless the discharge is upheld in arbitration: *Provided,*~~  
11 ~~however, That if the certified person terminates his or her employment or voluntarily removes~~  
12 ~~himself or herself from the grievance or arbitration procedure, the certified person may be~~  
13 ~~immediately, temporarily decertified pursuant to this article.~~

14 (d) Suspension or revocation of a certified person's certificate as a miner or other miner  
15 specialty in another jurisdiction by the applicable regulatory or licensing authority for substance  
16 abuse-related matters shall result in the director immediately and temporarily suspending the  
17 certified person's West Virginia certificate until such time as the certified person's certification is  
18 reinstated in the other jurisdiction.

19 (e) The provisions of this article shall not be construed to preclude an employer from  
20 developing or maintaining a drug and alcohol abuse policy, testing program or substance abuse  
21 program that exceeds the minimum requirements set forth in this section. The provisions of this  
22 article shall also not be construed to require an employer to alter, amend, revise or otherwise change,

1 in any respect, a previously established substance abuse screening policy and program that meets or  
2 exceeds the minimum requirements set forth in this section. The provisions of this article shall  
3 require an employer to subject its employees who as part of their employment are regularly present  
4 at a mine and who are employed in a safety-sensitive position to preemployment and random  
5 substance abuse tests: *Provided*, That each employer shall retain the discretion to establish the  
6 parameters of its substance abuse screening policy and program so long as it meets the minimum  
7 requirements of this article. For purposes of this section, a “safety-sensitive position” means an  
8 employment position where the employee’s job responsibilities include duties and activities that  
9 involve the personal safety of the employee or others working at a mine.

10 **ARTICLE 2. UNDERGROUND MINES.**

11 **§22A-2-6. Requirements for movement of off-track mining equipment in areas of active**  
12 **workings where energized trolley wires or trolley feeder wires are present;**  
13 **premovement requirements; certified and qualified persons.**

14 (a) Prior to moving or transporting any unit of off-track mining equipment in areas of the  
15 active workings where energized trolley wires or trolley feeder wires are present:

16 (1) The unit of equipment shall be examined by a certified person to ensure that coal dust,  
17 float coal dust, loose coal oil, grease, and other combustible materials have been cleaned up and have  
18 not been permitted to accumulate on such unit of equipment; and

19 (2) A certified person shall examine the trolley wires, trolley feeder wires, and the associated  
20 automatic circuit interrupting devices provided for short circuit protection to ensure that proper short  
21 circuit protection exists.

22 (b) A record shall be kept of the examinations required by subsection (a) of this section and

1 shall be made available, upon request, to an authorized representative of the secretary.

2 (c) Off-track mining equipment shall be moved or transported in areas of the active workings  
3 where energized trolley wires or trolley feeder wires are present only under the direct supervision  
4 of a certified person who shall be physically present at all times during moving or transporting  
5 operations.

6 (d) The frames of off-track mining equipment being moved or transported, in accordance  
7 with this section, shall be covered on the top and on the trolley wire side with fire-resistant material.

8 (e) Electrical contact shall be maintained between the mine track and the frames of off-track  
9 mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need  
10 not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come  
11 into contact with the transporting vehicle.

12 (f) A minimum vertical clearance of twelve inches shall be maintained between the farthest  
13 projection of the unit of equipment which is being moved and the energized trolley wires or trolley  
14 feeder wires at all times during the movement or transportation of such equipment. However, that  
15 if the height of the coal seam does not permit twelve inches of vertical clearance to be so maintained,  
16 the following additional precautions shall be taken:

17 (1) (A) Except as provided in paragraph (B) of this subdivision electric power shall be  
18 supplied to the trolley wires or trolley feeder wires only from outby the unit of equipment being  
19 moved or transported.

20 (B) Where direct current electric power is used and such electric power can be supplied only  
21 from inby the equipment being moved or transported, power may be supplied from inby such  
22 equipment provided a miner with the means to cut off the power, and in direct communication with

1 persons actually engaged in the moving or transporting operation, is stationed outby the equipment  
2 being moved.

3 (2) The settings of automatic circuit interrupting devices used to provide short circuit  
4 protection for the trolley circuit shall be reduced to not more than one half of the maximum current  
5 that could flow if the equipment being moved or transported were to come into contact with the  
6 trolley wire or trolley feeder wire;

7 (3) At all times the unit of equipment is being moved or transported, a miner shall be  
8 stationed at the first automatic circuit breaker outby the equipment being moved and such miner shall  
9 be: (A) In direct communication with persons actually engaged in the moving or transporting  
10 operation and (B) capable of communicating with the responsible person on the surface required to  
11 be on duty;

12 (4) Where trolley phones are utilized to satisfy the requirements of subdivision (3) of this  
13 subsection, telephones or other equivalent two-way communication devices that can readily be  
14 connected with the mine communication system shall be carried by the miner stationed at the first  
15 automatic circuit breaker outby the equipment being moved and by a miner actually engaged in the  
16 moving or transporting operation; and

17 (5) No person may be permitted to be inby the unit of equipment being moved or transported,  
18 in the ventilating current of air that is passing over such equipment, except those persons directly  
19 engaged in moving such equipment.

20 (g) The provisions of subsections (a) through (f), inclusive, of this section do not apply to  
21 units of mining equipment that are transported in mine cars. However, no part of the equipment may  
22 extend above or over the sides of the mine car.

1 **§22A-2-28. Equipment to conform with height of seam.**

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

10 **§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals;**  
11 **inspection.**

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

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

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

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

8 (e) On the trolley wire or "tight" side, there shall be at least twelve inches of clearance from  
9 the farthest projection of any moving equipment.

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

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

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

17 (I) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced  
18 not more than ~~one hundred~~ one hundred five feet apart, except when variances are authorized by the  
19 director with unanimous agreement of the mine safety and technical review committee. Shelter holes  
20 shall be on the side of the entry opposite the trolley wire except that shelter holes may be on the  
21 trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved  
22 by the director.

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

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

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

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

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

14 (o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage  
15 equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier,  
16 barrier tractor and other related equipment shall be equipped with a suitable lifting jack and handle.  
17 An audible warning device and headlights shall be provided on each locomotive and each shuttle car.  
18 All other mobile equipment, using the face areas of the mine, shall be provided with a conspicuous  
19 light or other approved device so as to reduce the possibility of collision.

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

1           (q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads:  
2 *Provided*, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive  
3 pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be  
4 their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars  
5 when in motion: *Provided, however*, That trip lights need not be used on cars being shifted to and  
6 from loading machines, or on cars being handled at loading heads during gathering operations at  
7 working faces. ~~No person except the operator or his assistant shall ride on locomotives or loaded~~  
8 ~~cars.~~ No person, other than the motorman and brakeman, should ride on a locomotive unless  
9 authorized by the mine foreman, and then only when safe riding facilities are provided. An empty  
10 car or cars shall be used to provide a safe distance between the locomotive and the material car when  
11 rail, pipe or long timbers are being hauled. A safe clearance shall be maintained between the end  
12 car or trips placed on side tracks and moving traffic. On haulage roads the clearance point shall be  
13 marked with an approved device.

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

18           (s) Flying or running switches and riding on the front bumper of a car or locomotive are  
19 prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not  
20 over eighty feet), or when going up extremely steep grades and then only at slow speed. The  
21 operator of a shuttle car shall face in the direction of travel except during the loading operation when  
22 he or she shall face the loading machine.

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

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

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

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

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

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

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

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

21 (x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of  
22 the operator: *Provided*, That the addition of or use of sideboards on shuttle cars shall be permitted

1 if the shuttle car is equipped with cameras: *Provided, however,* That shuttle cars with sideboards  
2 as manufactured by an equipment manufacturer shall be permitted to be used without the use of  
3 cameras. The use of sideboards on shuttle cars on which cameras are installed shall not be  
4 prohibited by rule.

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

6 (z) All self-propelled track haulage equipment shall be equipped with an emergency stop  
7 switch, self centering valves, or other devices designed to de-energize the traction motor circuit in  
8 the event of an emergency. All track mounted trolley equipment shall be equipped with trolley pole  
9 swing limiters or other means approved by the mine safety and technical review committee to restrict  
10 movement of the trolley pole when it is disengaged from the trolley wire. Battery-powered mobile  
11 equipment shall have the operating controls clearly marked to distinguish the forward and reverse  
12 positions.

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

15 **PART I. GENERAL PROVISIONS.**

16 **§22A-2A-101. Use of diesel-powered equipment authorized.**

17 Diesel-powered equipment for use in underground coal mines may only be approved,  
18 operated and maintained in accordance with rules, requirements and standards established pursuant  
19 to this article. ~~Diesel-powered equipment may not be used in underground coal mines until the West~~  
20 ~~Virginia diesel equipment commission promulgates its initial rules, requirements and standards~~  
21 ~~governing the operation of diesel equipment in underground coal mines: *Provided, That the diesel*~~  
22 ~~equipment commission may approve limited site-specific requests for experimental and testing use~~

1 ~~of diesel-powered equipment in underground coal mines and for the use of alternative diesel-related~~  
2 ~~health and safety technologies and methods consistent with the provisions of section three hundred~~  
3 ~~ten of this article.~~

4 **§22A-2A-204a. Director defined.**

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

7 **§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties**  
8 **and responsibilities; transfer of equipment and records; continuation of**  
9 **prior approvals of diesel equipment for use in underground coal mines;**  
10 **continuation of rules of the commission.**

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

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

16 (c) The rules of the commission in effect immediately prior to the effective date of the  
17 reenactment of this section shall remain in force and effect until promulgation of new or additional  
18 rules by the director pursuant to section three hundred eight of this article. To the extent the director  
19 finds that the commission rules in effect on the effective date of the reenactment of this section  
20 adequately fulfill any of the duties of the commission that are transferred to the director by the  
21 reenactment of any of the provisions of this article, such rules are deemed to be actions taken by the  
22 director to fulfill such duties.

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

4 **§22A-2A-308. Director's authority to promulgate legislative rules; continuation of rules**  
5 **adopted by the commission.**

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

15 (b) ~~In promulgating the initial rules pursuant to subsection (a) of this section, the commission~~  
16 ~~shall follow the procedures set forth in article three, chapter twenty-nine-a of this code that are~~  
17 ~~prescribed for an agency proposing a legislative rule, to the point where an agency would approve~~  
18 ~~a rule for submission to the Legislature. At that point, the commission shall proceed to final~~  
19 ~~adoption of the initial rules and file a notice of the final adoption in the state register and with the~~  
20 ~~legislative rule-making review committee. Final adoption of the initial rules may be approved only~~  
21 ~~upon a majority vote of all six members of the commission. All six members must be present when~~  
22 ~~a vote is taken. Upon final adoption by the commission, the initial rules are thereby promulgated and~~

1 ~~have the effect of law without further action by the commission or the Legislature. The initial rules~~  
2 ~~shall be published in the code of state rules and continue in effect until modified or superseded in~~  
3 ~~accordance with the provisions of this article. All rules promulgated and adopted by the commission~~  
4 ~~in effect prior to the effective date of this section shall remain in effect until changed or superseded~~  
5 ~~by legislative rule enacted pursuant to subsection (a) of this section.~~

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

9 **§22A-2A-309. Director's authority to approve site-specific experimental testing prior to initial**  
10 **rules.**

11 ~~The commission is hereby authorized to~~ director may approve limited site-specific requests  
12 for experimental and testing use of diesel-powered equipment in underground coal mines prior to  
13 promulgation of initial rules in accordance with subsections (b), (c), (d), (e), (f) and (g), section three  
14 hundred ten of this article. ~~Final approval of a site-specific request may be approved only upon a~~  
15 ~~majority vote of all six members of the commission. All six members must be present when a vote~~  
16 ~~is taken.~~

17 **§22A-2A-310. Duties of director.**

18 (a) ~~After the promulgation of the initial rules, the commission shall have as its primary duties~~  
19 ~~the implementation of this article and the evaluation and adoption of~~ It is the duty of the director to  
20 carry out and implement this article and to evaluate and adopt state-of-the-art technology and  
21 methods, reflected in engines and engine components, emission control equipment and procedures,  
22 ~~that~~ which when applied to diesel-powered underground mining machinery, shall reasonably reduce

1 or eliminate diesel exhaust emissions and enhance protections of the health and safety of miners.  
2 The technology and methods adopted by the ~~commission~~ director shall have been demonstrated to  
3 be reliable. In making a decision to adopt new technology and methods, the ~~commission~~ director  
4 shall consider the highest achievable measures of protection for miners' health and safety through  
5 available technology, engineering controls and performance requirements and shall further consider  
6 the cost, availability, adaptability and suitability of any available technology, engineering controls  
7 and performance requirements as they relate to the use of diesel equipment in underground coal  
8 mines. Any state-of-the-art technology or methods adopted by the ~~commission~~ director shall not  
9 reduce or compromise the level of health and safety protection of miners.

10 (b) Upon application of a coal mine operator, the ~~commission~~ director shall consider  
11 site-specific requests for the use of diesel equipment in underground coal mines and for the use of  
12 alternative diesel-related health and safety technologies and methods. The ~~commission's~~ director's  
13 action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon  
14 receipt of a site-specific application, the ~~commission~~ director shall conduct an investigation, which  
15 investigation shall include consultation with the mine operator and the authorized representatives  
16 of the miners at the mine. Authorized representatives of the miners shall include a mine health and  
17 safety committee elected by miners at the mine, a person or persons employed by an employee  
18 organization representing miners at the mine or a person or persons authorized as the representative  
19 or representatives of miners of the mine in accordance with MSHA regulations at 30 C. F. R. Pt. 40  
20 (relating to representative of miners). Where there is no authorized representative of the miners, the  
21 ~~commission~~ director shall consult with a reasonable number of miners at the mine. Upon completion  
22 of the investigation, the ~~commission~~ director may approve the application for the site-specific

1 request. ~~Provided, That an application for a site-specific request under this subsection may be~~  
2 ~~approved only upon a majority vote of all six members of the commission. All six members must~~  
3 ~~be present when a vote is taken.~~

4 (1) Within one hundred eighty days of receipt of an application for use of alternative  
5 technologies or methods, the ~~commission~~ director shall complete its investigation. However, the  
6 director has an additional one hundred eighty days to complete investigations upon applications filed  
7 prior to the effective date of the reenactment of this section. The time period may be extended with  
8 the consent of the applicant.

9 (2) The ~~commission~~ director shall have thirty days upon completion of the investigation in  
10 which to render a final decision approving or rejecting the application.

11 (3) The ~~commission members shall~~ director may not approve an application made under this  
12 section if, at the conclusion of the investigation, the ~~commission members have made a~~  
13 ~~determination~~ director determines that the use of the alternative technology or method will reduce  
14 or compromise the level of health and safety protection of miners.

15 (4) The written approval of an application for the use of alternative technologies or methods  
16 shall include the results of the ~~commission's~~ director's investigation and describe the specific  
17 conditions of use for the alternative technology or method.

18 (5) The written decision to reject an application for the use of alternative technologies or  
19 methods shall include the results of the ~~commission's~~ director's investigation and shall outline in  
20 detail the basis for the rejection.

21 (c) The ~~commission~~ director shall establish conditions for the use of diesel-powered  
22 equipment in shaft and slope construction operations at coal mines.

1           (d) ~~In performing its functions, the commission~~ The director shall have access to the services  
2 of the Board of Coal Mine Health and Safety necessary for the director to implement and carry out  
3 the provisions of this article. The board, at the request of the director, shall provide administrative  
4 support and assistance pursuant to section six, article six of this chapter to enable the ~~commission~~  
5 director to carry out ~~its duties~~ the duties imposed upon the director in this article.

6           (e) Any action taken by the commission, prior to the effective date of the reenactment of this  
7 section, or by the director to either approve or reject the use of an alternative technology or method,  
8 or establish conditions under subsection (c) of this section shall be final and binding and not subject  
9 to further review except where a decision by the commission, prior to the effective date of the  
10 reenactment of this section, or by the director may be deemed to be an abuse of discretion or contrary  
11 to law. If any party affected by a decision of the commission, prior to the effective date of the  
12 reenactment of this section, or by the director believes that the decision is an abuse of discretion or  
13 contrary to law, that party may file a petition for review with the circuit court of Kanawha County  
14 in accordance with the provisions of the administrative procedures act relating to judicial review of  
15 governmental determinations. The court, in finding that any decision made by the commission, prior  
16 to the effective date of the reenactment of this section, or by the director is an abuse of discretion or  
17 contrary to law, shall vacate and, if appropriate, remand the case.

18           (f) ~~The powers and duties of the commission shall be limited to the matters regarding the use~~  
19 ~~of diesel-powered equipment in underground coal mines.~~

20           (g) ~~(f)~~ Appropriations for the funding of the commission and to effectuate the purposes of  
21 this article shall be made to a budget account hereby established for that purpose in the General  
22 Revenue Fund. Expenditures from this fund are provided for in section six, article six of this

1 chapter.

2 ~~(h) The commission may issue a clarifying resolution about the initial rules and other matters~~  
3 ~~consistent with the powers and duties of the commission under this article. A unanimous vote is~~  
4 ~~required for any clarifying resolution by the commission.~~

5 **§22A-2A-402. Approval of diesel power package or diesel engine.**

6 Every diesel power package or diesel engine used in underground coal mining shall be  
7 approved by the ~~West Virginia diesel equipment commission~~ director when it complies with  
8 applicable requirements, standards and procedures established by ~~rules of the commission~~ this  
9 article, and be certified or approved, as applicable, by MSHA and maintained in accordance with  
10 MSHA certification or approval.

11 **§22A-2A-403. Exhaust emissions control and conditioning systems.**

12 (a) All exhaust emissions control and conditioning systems and their component devices for  
13 diesel-powered equipment for use in underground coal mines shall be approved by the ~~West Virginia~~  
14 ~~diesel equipment commission~~ director. Such approval requires compliance with applicable standards  
15 and procedures ~~established by rules of the commission~~ pursuant to this article for the use of the  
16 system or device in reducing or eliminating diesel particulate matter, carbon monoxide and oxides  
17 of nitrogen.

18 ~~The rules of the commission shall require all~~ All exhaust emissions control and conditioning  
19 systems ~~to~~ must undergo an initial series of laboratory tests, using test equipment requirements and  
20 standard procedures approved by the ~~commission~~ director for testing for gaseous and particulate  
21 emissions. The ~~commission~~ director shall compile a list of acceptable third-party laboratories where  
22 testing is performed competently and reliable results are produced.

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

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

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

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

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

16 **§22A-2A-404. Emissions monitoring and control.**

17 ~~Rules of the commission~~ The director shall establish procedures for monitoring and  
18 controlling emissions from diesel-powered equipment. ~~Such~~ The procedures shall include, but not  
19 be limited to, monitoring and controlling activities to be performed by a qualified person.

20 **§22A-2A-405. Exhaust gas monitoring and control.**

21 (a) For monitoring and controlling exhaust gases, the ~~rules of the commission~~ director shall  
22 establish the maximum allowable ambient concentration of exhaust gases in the mine atmosphere.

1 Standards for exhaust gases, stated in parts per million, shall be established for carbon monoxide and  
2 oxides of nitrogen. The rules shall establish the location in the mine at which the concentration of  
3 these exhaust gases is to be measured, the frequency at which measurements are to be made, and  
4 requirements prescribing the sampling instruments to be used in the measurement of exhaust gases.

5 ~~(b) Rules of the commission~~ The director shall establish the concentration of exhaust gas,  
6 stated as a percentage of an exposure limit, that when present will require changes to be made in the  
7 use of diesel-powered equipment or the methods of mine ventilation, or will require other  
8 modifications in the mining process.

9 ~~(c) Rules of the commission~~ The director shall provide for the remedial action to be taken  
10 if the concentration of any of the gases listed in subsection (a) of this section exceeds the exposure  
11 limit.

12 ~~(d) In addition to the other maintenance requirements required by this article, rules of the~~  
13 ~~commission shall~~ the director shall establish requirements provide for service, maintenance and tests  
14 which are specific to an engine's fuel delivery system, timing or exhaust emissions control and  
15 conditioning system.

16 PART 5. VENTILATION.

17 **§22A-2A-501. Ventilation.**

18 ~~(a) Rules of the commission~~ The director shall establish values to be maintained for the  
19 minimum quantities of ventilating air where diesel-powered equipment is operated. The purpose of  
20 these rules is to ensure that necessary minimum ventilating air quantity is provided where  
21 diesel-powered equipment is operated.

22 ~~(b) Rules of the commission~~ The director shall require that each specific model of

1 diesel-powered equipment shall be approved before it is taken underground. ~~The rules shall provide~~  
2 ~~that in addition to requiring that each~~ Each diesel engine shall have an assigned MSHA approval  
3 number securely attached to the engine with the information required by 30 C. F. R. §§7.90 and  
4 7.105, the approval plate shall also specify the minimum ventilating air quantity required by the  
5 ~~commission~~ director for the specific piece of diesel-powered equipment. ~~The rules shall provide that~~  
6 The minimum ventilating air quantity shall be determined by the director based on the amount of air  
7 necessary at all times to maintain the exhaust emissions at levels not exceeding the exposure limits  
8 established ~~by the commission~~ pursuant to section four hundred six of this article.

9 (c) ~~Rules of the commission shall require that the~~ The minimum quantities of air in any split  
10 where any individual unit of diesel-powered equipment is being operated shall be at least that  
11 specified on the approval plate for that equipment. Air quantity measurements to determine  
12 compliance with this requirement shall be made at the individual unit of diesel-powered equipment.

13 (d) ~~Rules of the commission~~ The director shall establish the minimum quantities of air  
14 required in any split when multiple units are operated. Air quantity measurements to determine  
15 compliance with this requirement shall be made at the most downwind unit of diesel-powered  
16 equipment that is being operated in that air split.

17 (e) ~~Rules of the commission shall provide that~~ Minimum quantities of air in any split where  
18 any diesel-powered equipment is operated shall not be less than the minimum air quantities  
19 established pursuant to subsections (a) and (b) of this section and shall be specified in the mine  
20 diesel ventilation plan.

21 PART 6. FUEL.

22 **§22A-2A-601. Specifications for fuel.**

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

7 (b) ~~Rules of the commission shall require~~ Each coal mine using diesel equipment  
8 underground ~~to~~ shall establish a quality control plan for assuring that the diesel fuel used complies  
9 with the standards established pursuant to this section. The ~~rules~~ director shall also establish a  
10 procedure under which each mine operator will provide evidence that the diesel fuel used in  
11 diesel-powered equipment underground meets the standards for fuel established by the commission.

12 **§22A-2A-602. Fuel storage facilities.**

13 (a) The ~~commission~~ director shall establish requirements for the safe storage of diesel fuel  
14 underground so as to minimize the risks associated with fire hazards in areas where diesel fuel is  
15 stored.

16 (b) (1) ~~Rules of the commission~~ The director shall either provide:

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

18 (B) That a stationary underground diesel fuel tank may only be authorized through a  
19 petitioning process that permits a stationary underground diesel fuel tank to be located in a  
20 permanent underground diesel fuel storage facility, on a site-specific basis. Stationary underground  
21 diesel fuel tanks may not be located in temporary underground diesel fuel storage areas.

22 (c) ~~Rules of the commission~~ The director shall ~~govern~~ establish requirements for the

1 transportation and storage of diesel fuel in diesel fuel tanks and safety cans.

2 (d) ~~Rules of the commission~~ The director shall establish limits on the total amount of diesel  
3 fuel that may be stored in each permanent underground diesel fuel storage facility and in each  
4 temporary underground diesel fuel storage area.

5 **§22A-2A-603. Dispensing of diesel fuel.**

6 ~~Rules of the commission~~ The director shall establish requirements governing the refueling  
7 of diesel-powered equipment which shall, at a minimum, comply with the provisions of part 75 of  
8 the code of federal regulations dealing with the dispensing of diesel fuel, set forth in 30 C. F. R.  
9 §75.1905, effective April 25, 1997.

10 **§22A-2A-604. Location of fueling.**

11 (a) ~~Rules of the commission shall require that~~ Fueling of diesel-powered equipment is not  
12 to be conducted in the intake escapeways unless the mine design and entry configuration make it  
13 necessary. For those cases where fueling in the intake escapeways is necessary, the ~~rules~~ director  
14 shall establish a procedure whereby the mine operator shall submit a plan for approval, outlining the  
15 special safety precautions that will be taken to insure the protection of miners. The plan shall specify  
16 a fixed location where fueling will be conducted in the intake escapeway and all other safety  
17 precautions that will be taken, which shall include an examination of the area for spillage or fire by  
18 a qualified person.

19 (b) ~~Rules of the commission shall require that~~ At least one person, specially trained in the  
20 cleanup and disposal of diesel fuel spills, shall be on duty at the mine when diesel-powered  
21 equipment or mobile fuel transportation equipment is being used or when any fueling of  
diesel-powered equipment is being conducted.