

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3432

By Delegate Kelly

[By Request of the Department of Homeland Security

– Division of Emergency Management]

[Introduced March 17, 2025; referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §15-5B-3a and §15-5C-2 of the Code of West Virginia, 1931, as
2 amended, revising the statutes to clarify and separate duties identified in the code between
3 the Division of Emergency Management and the West Virginia Department of
4 Environmental Protection according to what each agency has the resources and expertise
5 to fulfill to delegate the duties of investigation of industrial facility emergency events and
6 emergency incidents by well and pipeline operators that are reported to the Division of
7 Emergency Management and implementation of fines and penalties imposed upon
8 industrial facilities and well and pipeline operators to the Department of Environmental
9 Protection.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.

§15-5B-3a. Industrial facility emergency event notification and access.

1 (a) Definitions. -- Unless the context in which used clearly requires a different meaning, the
2 following words and phrases as used in this section have the following meanings:

3 (1) "Industrial facility" means:

4 (A) Any facility that is required to submit a risk management plan to the United States
5 Environmental Protection Agency pursuant to regulations promulgated under Section 112(r) of the
6 Clean Air Act of 1990, 42 U.S.C. §7412(r), including the property upon which the facility is located
7 and any buildings appurtenant thereto or associated therewith, including storage facilities; or

8 (B) A facility which is a factory, mill, plant or refinery, other than a coal facility, including the
9 property upon which a factory, mill, plant or refinery is located and any buildings appurtenant
10 thereto or associated therewith, including storage facilities, found by the director to be of a type to
11 have a reasonable potential to have an emergency event: *Provided*, That before any facility may
12 be subject to the provisions of this section, the owner or operator of each facility ~~must~~ shall be
13 placed on actual written notice via certified mail, return receipt requested, of the facility's inclusion
14 thereon, as well as the requirements imposed by the provisions of this section and any rules

15 promulgated thereunder: *Provided*, however, That the list required by the provisions of this section
16 shall be filed with the President of the Senate and the Speaker of the House of Delegates by the
17 first day of the 2010 legislative session.

18 (2) "Appropriate state and local officials" means the Governor or his or her representative,
19 the Director of the Division of ~~Homeland Security and Emergency Management~~, a representative
20 designated by the ~~Director~~ Secretary of the ~~Division~~ Department of Homeland Security and
21 ~~Emergency Management~~ who has been trained and qualified by the Federal Emergency
22 Management Agency's (FEMA) National Incident Management System (NIMS) program and/or a
23 representative of a local emergency management agency who has been trained and qualified by
24 FEMA's NIMS program.

25 (3) "Director" means the Director of the Division of ~~Homeland Security and Emergency~~
26 ~~Management~~.

27 (4) "Emergency event" means an unplanned event, including, but not limited to, an
28 explosion, a fire that cannot be contained within 15 minutes of discovery, the release of a
29 reportable quantity, as specified in 40 C.F.R. §302 (2009) or its successor, of an extremely
30 hazardous substance listed in the appendices to 40 C.F.R. §355 (2009) or its successor, loss of life
31 or serious personal injury at an industrial facility: *Provided*, That the director may, by promulgation
32 of a legislative rule, establish a higher threshold report level for a particular extremely hazardous
33 substance than is set in the aforementioned Code of Federal Regulations citation.

34 (b) Reporting requirement. --

35 (1) Within 15 minutes of the industrial facility ascertaining the occurrence of an emergency
36 event at an industrial facility, the industrial facility shall contact the Mine and Industrial Accident
37 Emergency Operations Center by telephone at the statewide telephone number established by
38 the director or shall contact a ~~local emergency telephone system~~ the local county 9-1-1 Center, as
39 defined in §24-6-1 *et seq.* of this code, by telephone at the number established by the system to
40 communicate the occurrence of the emergency event: *Provided*, That if telephone

communications fail for any reason, the industrial facility shall contact local emergency services in the most expeditious manner possible. The industrial facility shall provide the following information:

(A) The name and title of the individual making the report;

(B) The name and address of the facility; and

(C) Notification that an emergency event has occurred.

(2) If the caller has ready access to the following information, he or she shall also provide:

(A) Then-available information concerning the nature and extent of the emergency event, including any information that concerns the existence or nonexistence of potential threats to the public health;

(B) ~~In the event of~~ If there is an unplanned fire that cannot be contained within 15 minutes, explosion or release as defined in this section, preliminary information regarding the type of substance involved and, if a release, the estimated amount released, if known; and

(C) The name, title and contact information of the individual designated to serve as a contact person on behalf of the industrial facility.

(3) Any call made pursuant to this subsection may be recorded by the agency receiving the call. ~~In the event of~~ If there is an industrial facility contacts a ~~local emergency telephone system~~ the local county 9-1-1 Center to report an emergency event, the ~~local emergency telephone~~ local county 9-1-1 Center system shall immediately forward all information received to the Mine and Industrial Accident Emergency Operations Center.

(c) Event communications. -- As soon as practicable after providing the notice required under subsection (b) of this section, the industrial facility shall implement a communications system designed to provide timely information to appropriate state and local officials. At a minimum, the industrial facility shall designate a person to serve as a contact for state and local emergency responders. Any person so designated shall, upon the request of an appropriate state or local official, provide such additional information known or subsequently known that may be

necessary to assess the extent of the emergency or to provide appropriate public assistance.

(d) Authorized access to public officials. -- As soon as practicable after the occurrence of an emergency event, the industrial facility shall, upon request, provide appropriate state and local officials with timely authorized access to the person or persons charged with managing the event on behalf of the facility and the area(s) where the emergency event is being managed or the industrial facility's response to the emergency event is being coordinated. The industrial facility shall also provide appropriate state and local officials with timely authorized access to any areas affected by the emergency event: *Provided*, That the industrial facility has determined those areas to be reasonably safe: *Provided, however*, That within 30 minutes of obtaining information that affects the public health, safety and welfare, state and local officials shall notify the public of any hazardous materials or events which may affect the area.

(e) Civil penalties. --

(1) The Department of Environmental Protection shall be responsible for investigating all matters relevant to this code section.

~~(4)~~ (2) The director secretary of the Department of Environmental Protection shall impose a civil penalty of up to \$100,000 on the industrial facility if he or she determines that the industrial facility failed to comply with the reporting requirement of subsection (b) of this section at the conclusion of an investigation by the Department of Environmental Protection. Collection of the civil penalty will be the responsibility of the Department of Environmental Protection. No penalty shall ~~may~~ be imposed upon an industrial facility giving notice pursuant to this section for unintentionally providing inaccurate or incomplete preliminary information to the Mine and Industrial Accident Emergency Operations Center or ~~local emergency telephone system~~ the local county 9-1-1 Center: *Provided*, That the industrial facility implemented reasonable efforts to provide the most accurate and complete preliminary information possible: *Provided, however*, That the industrial facility implemented reasonable efforts to correct inaccurate or incomplete preliminary information reported to the Mine and Industrial Accident Emergency Operations

Center or ~~local emergency telephone system~~ the local county 9-1-1 Center once such ~~that~~ information was determined by the industrial facility to be inaccurate or incomplete.

(2) ~~(3)~~ The ~~director~~ secretary of the Department of Environmental Protection shall impose a civil penalty on the operator or operators of an industrial facility if he or she determines that the industrial facility failed to comply with the communication or access requirements of subsections (c) and (d) of this section. Application of this subdivision and amounts levied as civil penalties by the director shall be determined in accordance with legislative rules promulgated pursuant to §29A-3-1 *et seq.* of this code and the collection of the civil penalty will be the responsibility of the Department of Environmental Protection at the conclusion of an investigation into the same.

~~(3)~~ ~~(4)~~ The ~~director~~ secretary of the Department of Environmental Protection may waive the imposition of a civil penalty imposed under this section: *Provided*, That he or she finds that the failure to comply with the requirements of this section was caused by circumstances outside the control of the industrial facility at the conclusion of an investigation by the Department of Environmental Protection.

~~(4)~~ ~~(5)~~ All moneys collected pursuant to this section shall be deposited in the Hazardous Waste Emergency Response Fund, as established pursuant to §22-19-3 of this code.

(f) Nothing in this section may be construed to:

(1) Relieve an industrial facility from any other reporting or notification requirement imposed under state or federal law;

(2) Limit in any way the jurisdiction of state and local emergency responders;

(3) Limit the police power authority of the Governor; or

(4) Limit the authority of the state Fire Marshal.

(g) The director, working in cooperation with the Department of Environmental Protection, the state Fire Marshal and the state Emergency Response Commission, shall promulgate legislative rules identifying a list of industrial facilities that are subject to the requirements of this section.

119 (h) The ~~Division~~ Department of Homeland Security, ~~and Division of~~ Emergency
120 Management is authorized to promulgate rules, including emergency rules, pursuant to the
121 provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

**ARTICLE 5C. REPORTING OF EMERGENCY INCIDENTS BY WELL AND PIPELINE
OPERATORS.**

§15-5C-2. Reporting requirements.

1 (a) In addition to any other requirements imposed by law, all pipeline operators and well
2 operators shall report incidents to the ~~Division~~ Department of Homeland Security, ~~and Division of~~
3 Emergency Management at the Mine and Industrial Accident Call Center at 1-866-987-2338, or
4 other such number as may be identified by the Director within 15 minutes of ascertaining the
5 occurrence of an incident at a well, well pad or pipeline facility. Pipeline operators and well
6 operators may satisfy this requirement by contacting the ~~local emergency telephone system~~ the
7 local county 9-1-1 Center and orally reporting the information required by this section.

8 (b) Contents of report:

9 (1) The initial report shall include the following minimum information:

10 (A) The name, title, and business affiliation of the individual making the report;

11 (B) The identification and location of the well, well pad or pipeline facility; and

12 (C) Notification that an incident has occurred.

13 (2) If the caller has ready access to the following information, he or she shall also provide:

14 (A) Then-available information concerning the nature and extent of the incident, including
15 any information that concerns the existence or nonexistence of potential threats to the public
16 health;

17 (B) ~~In the event of~~ If there is an unplanned fire that cannot be contained within 15 minutes,
18 explosion or release, preliminary information regarding the type of substance involved and, if a
19 release, the estimated amount released, if known; and

(C) The name, title, business affiliation, and contact information of the individual designated to serve as a contact person on behalf of the pipeline operator or well operator.

(c) Any ~~local emergency telephone system~~ the local county 9-1-1 Center receiving an initial notification shall immediately forward all information received to the ~~Division~~ Department of Homeland Security, ~~and Division of~~ Emergency Management at the Mine and Industrial Accident Call Center at 1-866-987-2338, or other such number as may be identified by the Director.

(d) All calls received by the ~~Division~~ Department of Homeland Security, ~~and Division of~~ Emergency Management at the Mine and Industrial Accident Call Center shall be recorded for documentation purposes. Recording of calls shall be automatic, and the recorded call information, including time of call and complete voice transcripts, shall be made available to the public upon receipt of a request to the Director in accordance with the West Virginia Freedom of Information Act, §29B-1-1 *et seq.* of this code.

(e) An investigation of these matters shall be conducted by the Department of Environmental Protection.

~~(e)~~ (f) The Director secretary of the Department of Environmental Protection shall impose a civil administrative penalty of not less than \$2,500 but not to exceed \$50,000 on the pipeline operator or well operator if it is determined that the pipeline operator or well operator failed to give timely notice as required by this section at the conclusion of an investigation by the Department of Environmental Protection with collection of the civil penalty being the responsibility of the Department of Environmental Protection: Provided, That the Director secretary of the Department of Environmental Protection shall waive imposition of the civil administrative penalty if the failure to give the required notice:

(1) Occurred as a result of circumstances wholly outside the control of the pipeline operator or well operator;

(2) Occurred because the pipeline operator or well operator was attempting to stabilize the incident;

(3) Occurred because the pipeline operator or well operator was rendering emergency assistance; or

(4) Resulted from the incident occurring in a location with no or inadequate wireless communications coverage and notice was provided within 15 minutes of reestablishing communication.

(f) (g) Any pipeline operator or well operator aggrieved by the imposition of a civil administrative penalty at the conclusion of an investigation by the Department of Environmental Protection may request within 30 days of receipt of a written communication imposing a civil administrative penalty that the Director reconsider the imposition or amount of the civil administrative penalty. If reconsideration is denied, the pipeline operator or well operator shall have a right of appeal to the ~~Circuit Court of Kanawha County, West Virginia~~ Intermediate Court of Appeals.

NOTE: The purpose of this bill is to revise the statutes to clarify and separate duties identified in the code between the Division of Emergency Management and the West Virginia Department of Environmental Protection according to what each agency has the resources and expertise to fulfill to delegate the duties of investigation of industrial facility emergency events and emergency incidents by well and pipeline operators that are reported to the Division of Emergency Management and implementation of fines and penalties imposed upon industrial facilities and well and pipeline operators to the Department of Environmental Protection.

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