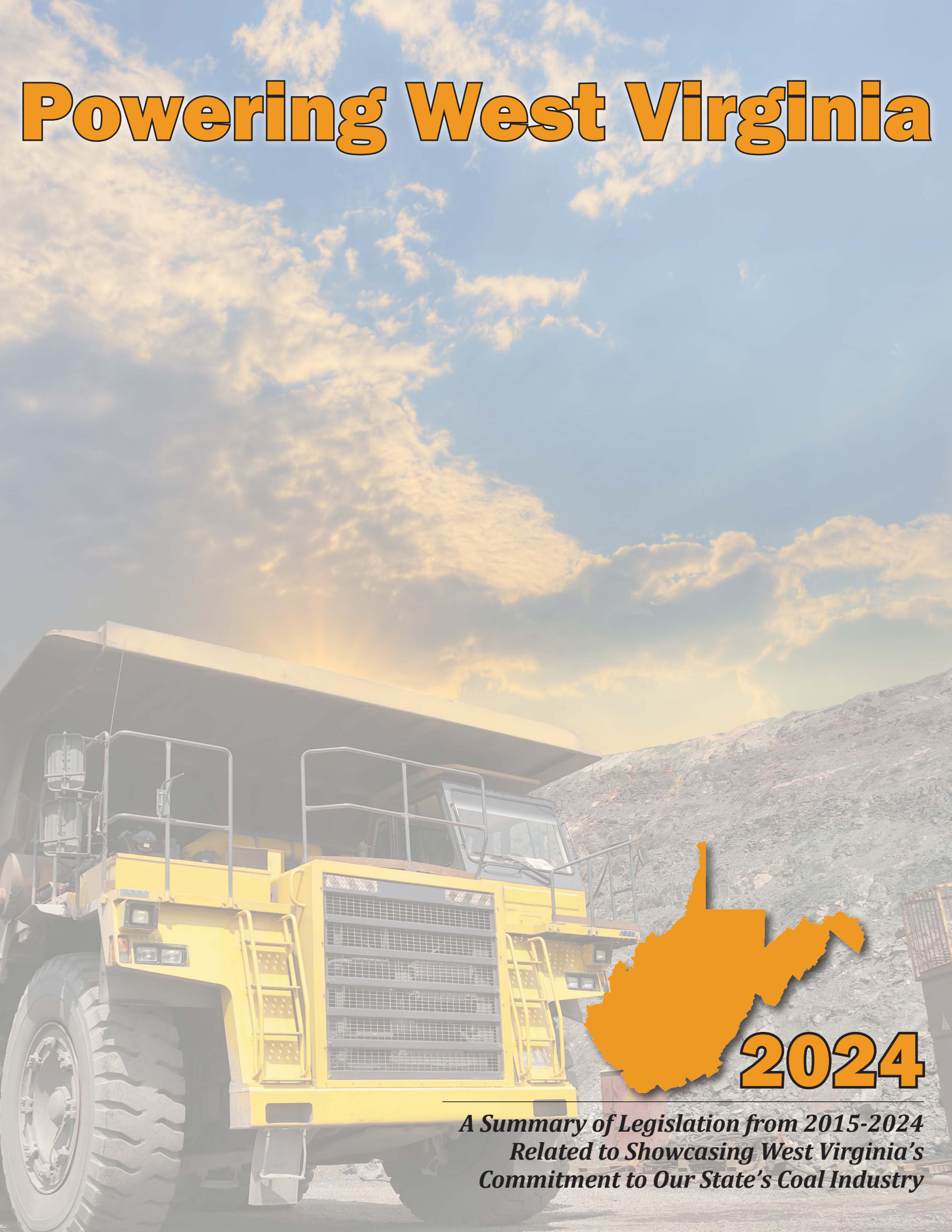
Powering West Virginia



2024

A Summary of Legislation from 2015-2024 Related to Showcasing West Virginia's Commitment to Our State's Coal Industry

Table of Contents

Notes About This Publication

Produced by Jacque Bland, Communications Director – West Virginia Senate. Information was compiled and edited from available resources including Bill Summaries, bill abstracts, Conference Committee reports and bill titles. Details pertaining to a specific bill may have updated since the bill's original passage. Electronic versions of this book and other publications are available for download at https://www.wvlegislature.gov/Senate1/president.cfm. For corrections, questions or additional information, please email jacque.bland@wvsenate.gov or call 304-357-7999.

2024 Regular Session

Senate Bill 164

Relating generally to trespassing

This bill modifies the sections of current law related to trespass; trespass on land generally; mine property and agricultural property by removing the damages provision from sections §61-3B-3, §61-3B-6, and §61-3B-7, placing that provision applicable to the three existing in the new §§61-3B-8 that allows for deferring entry of a judgment of conviction for 6 months to allow for payment of damages which, if done, allows for dismissal of the charge.

CODE REFERENCE: West Virginia Code §61-3B-3, §61-3B-6, and §61-3B-7 – amended; §61-3B-8 – new

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Pending Governor's approval as of March 15, 2024

Senate Bill 583

Relating to employer liability and damages in civil actions involving commercial motor vehicles

The purpose of this bill is to provide for per person and per occurrence cap on noneconomic damages of $5 million dollars in a personal injury or wrongful death claim arising from a vehicular accident with a commercial motor vehicle with specified exceptions.

Under current law, there is no cap on any type of damages in a personal injury or wrongful death claim arising out of a vehicular accident with a commercial motor vehicle. The strike and insert amendment places a $5 million cap on noneconomic damages against an employer defendant. Of note, that cap is per plaintiff and per occurrence on personal injury and wrongful death claims.

For an employer defendant to take advantage of the cap, it must have liability insurance in the amount of at least $3 million dollars. The cap would also not apply in certain circumstances where, at the time of the incident, the operator of the commercial motor vehicle: 1) was under the influence of drugs or alcohol; 2) subsequently refused to submit to a breathalyzer exam per West Virginia law; 3) was driving in excess of the hours permitted under state/federal law; 4) was engaging in reckless driving; 5) was operating an overloaded vehicle not under special permit; or 6) engaged in distracted driving as set forth in our code.

There is an indexing provision for the cap, which is similar to the medical malpractice caps. Specifically, the cap would be adjusted upward annually using the consumer price index, but it could not exceed 150 percent of the original $5 million dollar figure.

The section is effective on July 1, 2024, and only applies to claims arising after that date.

CODE REFERENCE: West Virginia Code §61-3B-3, §61-3B-6, and §61-3B-7 – amended; §61-3B-8 – new

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Pending Governor's approval as of March 15, 2024

House Bill 5091

West Virginia Critical Infrastructure Protection Act

The purpose of this bill is to broaden the protections for critical infrastructure facilities and increase penalties imposed on individuals for damaging critical infrastructure.

Under existing law, an individual cannot trespass (misdemeanor) or damage critical infrastructure (felony). Fines and imprisonment, or both, are imposed as criminal penalties under current law.

With respect to changes to existing law, this proposed legislation first removes the requirement for critical infrastructure to be completely enclosed or marked with signage indicating that entry is forbidden. This allows power lines, communication lines, and pipelines that are often not enclosed or marked with signage to fall within the ambit of the bill's protections. Additionally, new language clarifies that hardware, software, or other digital property of the facility is protected by the Act.

Next, the proposed legislation increases the fines for a first offense for damaging critical infrastructure equipment from the existing law range of $1,000 to $5,000 to a proposed range of $3,000 to $10,000. Additionally, it creates a second offense of damaging critical infrastructure equipment, which has a corresponding fine range of $10,000 to $15,000 and a proposed imprisonment range of two to 10 years. Of note, added language makes it clear that damage inflicted by cyber-attack or digital interference would be covered by the Act.

The proposed legislation also adds a subsection that provides criminal penalties and compensatory and punitive damages for an individual who buys or receives property stolen from a critical infrastructure facility.

Finally, the bill provides for the forfeiture of personal property used in the theft and incorporates by reference the provisions of the West Virginia Contraband Forfeiture Act.

CODE REFERENCE: West Virginia Code §61-10-34 – amended

DATE OF PASSAGE: March 7, 2024

EFFECTIVE DATE: June 5, 2024

ACTION BY GOVERNOR: Pending Governor’s approval as of March 15, 2024

House Bill 5317

Making it permissive for commercial motor vehicles registered in this state to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations

The bill, as amended by the Senate, requires commercial motor vehicles to be inspected annually (rather than every 2 years). This amendment lowers neither the fee for the inspection-windshield sticker nor the maximum inspection fee.

[The House bill, as it passed the House, merely opined that commercial motor vehicles registered in this state "should" be inspected at least once annually, but then went on to state that "the superintendent [State Police] shall cause to be inspected on an annual bases any commercial motor vehicle which is subject to the federal motor carrier safety administration rules and regulation". The House bill also lowered the sticker cost for such registrations (from $6 to $3) and lowered the maximum inspection fee (from $19 to $14). The House bill also defined "commercial motor vehicle" almost, but not exactly, like the term is defined in federal law (49 U.S.C. § 31132).]

This bill comes at the request of the Dept. of Homeland Security and WV State Police (WVSP). The WVSP indicated that all commercial motor vehicles should be required to be inspected annually. Annual state inspections could then take the place of federally mandated motor vehicle inspections, which are much more costly. An annual inspection sticker would serve as a reminder of the next inspection date.

The Senate strike and insert amendment that was adopted clearly requires that commercial motor vehicles shall be inspected at least once each year, refers to the federal definition of "commercial motor vehicle," removes duplicative or outdated language, and retains existing fees (does not lower the fees for inspection sticker and permissible maximum inspection fee).

Federal law requires the Secretary of Transportation to prescribe regulations on Government standards for inspection of commercial motor vehicles and retention by employers of records of an inspection, standards that shall provide for annual or more frequent inspections of a commercial motor vehicle unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. 49 U.S.C. § 31142(b), in part.

CODE REFERENCE: West Virginia Code §17C-16-4 – amended

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: March 9, 2024

ACTION BY GOVERNOR: Pending Governor's approval as of March 15, 2024

House Bill 5583

Permitting the Commissioner of the Division of Highways to issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified

The bill amends one section in traffic code on permits for excess size and weight. It adds that the Commissioner of Highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in state law over routes designated by the Commissioner of Highways at night, and during holidays, holiday weekends, Saturdays, and Sundays. The special permit applies to all interstate highways, United States highways with four or more travel lanes, and divided highways within the state with four or more travel lanes. As amended by the Senate, the bill adds language agreed to by DOH and stakeholders, that the commissioner shall promptly issue a requested permit if the application is properly completed and the requested route, dates, and times meet state and federal safety requirements. The language was modified slightly to also require compliance with state and federal laws and regulations generally, as well as, in case of usage of roads subject to bond covenants (WV Turnpike), that such covenants are not violated.

CODE REFERENCE: West Virginia Code §17C-17-11 – amended

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Pending Governor's approval as of March 15, 2024

2023 Regular Session

Senate Bill 609

Obtaining approval for decommissioning or deconstructing of existing power plant

This bill creates new law to provide that no existing coal, oil, or natural gas fueled power plant may be decommissioned without prior approval of the Public Energy Authority, but such approval may not be unreasonably withheld.

Under the bill, the authority may approve the decommissioning or deconstructing of an existing power plant upon the submission of a petition containing:

- An analysis by an approved third party that evaluates the social, environmental, and economic impact at a local and statewide level of such decommissioning and deconstruction; and
- Potential alternatives to the decommissioning and deconstruction, including the reconstruction making use of other technologies, including novel technologies and green technologies as alternative fuel sources.

The authority shall propose rules for legislative approval and promulgate emergency rules including an exemption for power plants that have been non-producing for at least five years prior to the effective date.

CODE REFERENCE: West Virginia Code §5D-1-5c – new

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 7, 2023

House Bill 2839

Making a technical correction regarding an incorrect fund name and clarifying applicability to mine lands governed by SMCRA and the Abandoned Mine Lands Act

This bill corrects an incorrect fund name and clarifies an ambiguity in code with respect to the benefits of removal of rare earth minerals for the waters of the state. The Acid Mine Drainage Set Aside Fund has been corrected to be the Acid Mine Drainage Abatement and Treatment Fund. A new section has been added to clarify the confusion regarding whether to which types of property the statute is applicable. It clarifies that the statue applies to both lands regulated by the Abandon Mines and Reclamation Act and the Surface Coal Mining and Reclamation Act.

CODE REFERENCE: West Virginia Code §22-2-10 – amended and §22-3-39 – NEW.

DATE OF PASSAGE: March 3, 2023

EFFECTIVE DATE: June 1, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

House Bill 2862

Relating generally to requirements for shareholder voting by the West Virginia Investment Management Board and the Board of Treasury Investments

The bill establishes a standard of care for shareholder voting which applies to both the West Virginia Board of Treasury Investments ("BTI") and the West Virginia Investment Management Board ("IMB"), to be effective July 1, 2024. The bill requires that all shareholder votes that BTI and IMB (collectively "the Boards") are authorized to cast, or entrust to a fiduciary, are cast solely in the pecuniary interests of the underlying fund's beneficiaries. The Boards are expressly prohibited from casting, or permitting a fiduciary to cast, any shareholder vote for the purpose of furthering non-pecuniary interests.

The bill defines pecuniary factors as those factors having a direct and material effect on the financial risk or return to beneficiaries based on an investment pool's objectives and funding policy. The bill clarifies that environmental, social, corporate governance, or other similar considerations are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or return to beneficiaries. Any factor that does not meet the definition of pecuniary factor is considered a non-pecuniary factor under the bill.

Additionally, the bill prohibits the Boards from adopting a policy of casting shareholder votes, or permitting a fiduciary to cast shareholder votes, according to the recommendations of a proxy advisor firm unless such firm commits, in writing, to make all shareholder voting recommendations to the Boards according to the standard of care. A fiduciary must provide the Boards with advance notice of any shareholder vote concerning non-pecuniary interests to provide the Boards with a reasonable opportunity to instruct the fiduciary how the vote must be cast.

The bill allows the Boards to waive requirements of the bill related to money managers, if those requirements could cause significant loss to the funds under management or significantly limit investment options. To adopt a waiver, the Boards would have to make a finding that reasonable and good faith efforts have been made to find a fiduciary meeting the requirements of the bill.

The bill makes clear that the Boards are not required to divest from any private market funds or from indirect holdings in actively or passively managed investment funds. However, if the manager of such a fund offers "proxy voting choice options," the Boards must exercise those options according to the standard of care. "Proxy voting choice options" refers to a set of features that some fund managers now offer institutional clients, in which the clients may participate in proxy voting decisions when legally and operationally viable.

Finally, the bill requires each Board to publish an annual report on its website, tabulating and describing all shareholder votes cast by the Board or its fiduciaries.

CODE REFERENCE: West Virginia Code §12-6C-13 – amended; §12-6-11a – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3270

To amend the deliberate intent statute to limit noneconomic damages to $500,000

Under current law, West Virginia employers who are covered under the workers compensation system enjoy immunity from employee suits for workplace injuries. However, an injured employee may bypass an employer's workers compensation immunity and bring a "deliberate intent" civil action (also sometimes referred to as a Mandolidis action) against the employer by establishing that an injury was caused because the employer deliberately exposed the employee to unsafe working conditions.

The bill imposes a new requirement for deliberate intent cases based on an employee suffering from occupation pneumoconiosis, such as black lung or silicosis. In those cases, the employee is required to prove that the employer fraudulently concealed or manipulated dust samples or air quality samples to be successful in a deliberate intent claim.

The bill also imposes a limit on compensatory damages for noneconomic loss, applicable to deliberate intent causes of action accruing on or after July 1, 2023. Such damages may not exceed the higher of two times the economic damages before the post-verdict offset or $500,000. The bill links the cap to the Consumer Price Index and requires annual increases to account for inflation until the cap reaches $750,000.

CODE REFERENCE: West Virginia Code §23-4-2 – amended; §23-4-2A – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Became law without Governor's signature March 11, 2023

House Bill 3303

Clarifying and expanding the powers and duties of the director of the Coalfield Community Development Office

This bill involves the Office of Coalfield Community Development. It deletes language that required the Secretary of the Department of Commerce appoint a chief to administer the office, instead requiring the Governor to appoint a director. It also clarifies that the Office is under the Department of Economic Development, not Commerce. The director appointed by the Governor would be responsible for hiring staff for the office. The initial appointment will be July 1, 2026, per the Senate amendment.

The bill requires funding for the office to come from appropriations from the Legislature.

The director must report quarterly to Legislative Energy and Finance Committees regarding any project funded by the office, including the amount of funding, the recipient, and a description of the project.

Section 5 of the article is amended to supplement the office's powers and duties.

The Senate Amendment also sunsets the article and terminates the Office on June 30, 2032.

CODE REFERENCE: West Virginia Code §5B-2A-4 and §5B-2A-5 – amended; §5B-2A-14 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 22, 2023

House Bill 3482

To create the Coal Fired Grid Stabilization and Security Act of 2023

This bill creates the "Coal Fired Grid Stabilization and Security Act" (§5B-2O-1 through §5B-2O-4) and directs the Department of Economic Development (DED) to identify economically viable sites for the development of coal electric generation projects that are located near convenient and sufficient supplies of coal and are likely to create projects that provide economic benefits to local and state government and citizens of the state.

The Act contains legislative findings which, among other things, recognize the opportunity for the efficient development of coal in the state, the production of electricity using coal, the need to encourage and simplify the development of coal electric generation projects, the need to streamline the regulatory process governing approval of projects, and the responsibility of the DED to implement the Act and provide assistance to sustain projects.

§22B-1-7 is amended to require that administrative appeals of permitting decisions must be held within 60 days of the filing of an appeal, unless all parties to the appeal agree to a continuance, and a decision must be issued within 60 days of a final hearing.

CODE REFERENCE: West Virginia Code §22B-1-7 – amended; §5B-2O-1 through §5B-2O-4 and §22-5-11c – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 22, 2023

2022 Regular Session

Senate Bill 1

Creating Mining Mutual Insurance Company

This bill created the Mining Mutual Insurance Company. This provides a safety net to coal operators who have experienced difficult financial hardships to comply with the Surface Coal Mining Reclamation Act by giving them an option to obtain performance bonds to assure proper reclamation.

The bill has a short title and an extensive list of legislative findings. It also defines necessary terms. It creates a domestic, private, nonstock corporation owned by the policyholders. It is not a governmental entity and is responsible for its own debts and obligations and it funds are not part of the state's general revenue funds. Since it is not a governmental entity it is not subject to the open proceedings act or the Freedom of Information Act. It would be subject to premium taxes set out in Chapter 33 of the Code.

The bill provides for a board of directors to govern the operation of the company. There shall initially be a provisional board and the bill provides for their qualifications to serve and the manner in which they are appointed. Upon filing of the articles of incorporation the officers and directors shall be selected pursuant to the provisions of those articles. Terms of office are set forth in the bill.

The board of directors is given contracting authority to entered into contracts with licensed insurers, health service plans, insurance service organizations, third-party administrators, brokerage firms or other entities with suitable qualifications to administer the affairs of the company. Any such contract is subject to competitive bidding and must be filed with the Insurance Commissioner.

The company would be subject to regulation by the Insurance Commissioner. They must file their charter and bylaws and apply for a license. The Commissioner is required to act on these documents within 15 days. The Commissioner has the power and authority to:

- Determine the initial capital and surplus requirements;
- Monitor economic viability; and
- Waive other requirements imposed on mutual insurance companies.

The company has 40 months to comply with the capital and surplus requirements.

A special revenue account is created to receive moneys transferred from the Department of Environmental Protection. Within 30 days of the effective date of this act, the Treasurer with the cooperation of the Department of Environmental Protection shall transfer $50,000,000 into the fund. Thirty days following this transfer these funds shall be transferred to the Mining Mutual as initial capital and surplus. This shall be seen as a noninterest loan and paid back as reclamation activities are completed. Additional funds may be transferred into the special revenue account from time to time with approval of the Insurance Commissioner when capital is needed by the Mutual Mining Company. These funds will be transferred to the company within 30 days and shall be considered a noninterest loan and paid back. Once approved to conduct business, the company may issue nonassessable policies of performance bonds. Participation is optional and the provisions of Code related to corporations' law and insurance law are applicable if they are not in conflict with the provisions of this act.

CODE REFERENCE: West Virginia Code §33-61-1 through §33-61-10 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 476

Relating to imposition of minimum severance tax on coal

This bill corrects a cross reference regarding the severance tax rate on "thin seam" coal. The correction is made by removing any reference to a specific subsection within the cross-referenced section. The bill defines "thin seam" coal identically as it is defined in §13A-3(g)(1). That definition provides: "mined by underground methods from seams with an average thickness of 45 inches or less."

CODE REFERENCE: West Virginia Code §11-12B-3 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: March 10, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

Senate Bill 714

Relating to tie votes by Coal Mine Safety and Technical Review Committee

The bill adds the Director of the Office of Miners' Health, Safety and Training as a voting member of the Coal Mine Safety and Technical Review Committee when an additional vote is needed to break a tie.

CODE REFERENCE: West Virginia Code §22A-6-7 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: March 11, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4003

Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage

The bill restates long-standing public policy of the state that it is compelled to maintain reasonable standards of purity and quality of the waters of the state which are consistent with public health and the protection of all forms of life.

In this bill, the Legislature finds that treatment of mine drainage reduces environmental harm by reducing pollution in the waters of the state. The expensive treatment of mine drainage may produce materials that contain valuable concentrations of rare earth elements and critical minerals with commercial value. The Legislature finds that these materials are part of the water and can only be separated with expensive investments of resources which may last for decades. The bill is to help fulfill the state's obligations to maintain the purity and quality of the water by encouraging investments into the treatment of mine drainage.

The bill determines that all chemical compounds and other potentially toxic materials which are found within the waters of the state and which are derived from the treatment of mine drainage, may be used, sold, or transferred for commercial gain and benefit. Funds received by the DEP are deposited into the Special Reclamation Water Trust Fund or the Acid Mine Drainage Set-Aside Fund and used by the department to fulfill its legal obligations. Private parties may retain the proceeds for themselves.

CODE REFERENCE: West Virginia Code §22-2-10 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4479

Establishing the Coalfield Communities Grant Facilitation Commission

The bill would amend the provisions of the WV Code by adding a new article to be known as the "Coalfield Grant Facilitation Act of 2022."

The new article creates the "Coalfield Community Grant Facilitation Commission" consisting of 9 members appointed by the Governor with the advice and consent of the Senate. The Executive Director of the Economic Development Authority (or his or her designee) is a member and will serve as the chair of the Commission. The remaining members will represent: county governments, large and small municipalities, foundations or nonprofits that provide public interest grants, institutions of higher education, business and industry in the state, and coalfield areas of the state. The Commission is required to establish a process for review and approval of awards to applicants for funds a coalfield community may need as a match for a grant; provide grant applicants with technical assistance and support; and educating coalfield communities as to the availability of state, federal and nongovernmental resources. The Economic Development Authority is to provide the Commission administrative, clerical and technical support. Commission members are to be reimbursed for any costs incurred by them for their participation, but not compensation. The Commission must find that a project to be funded is in the public interest and that the grant will be used for a public purpose. A project in the public interest and for a public purpose may provide private benefit, so long as the Commission determines the project will enhance a local community or region, the grant making entity requires a public purpose for grant eligibility and the Commission determines that the project will enhance the quality of life or services of a community or region.

The bill also creates a subcommittee of the Commission made up of representatives of WVU, Marshall, the Alliance for Economic Development of Southern WV, and all institutions of higher learning in the coal field counties and regions to provide assistance in the development of grants and grant applications. The bill requires an annual report to the Joint Committee on Government and Finance on its work.

CODE REFERENCE: West Virginia Code §5B-2K-1 through §5B-2K-6 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4488

Relating to coal mining and changing fees for permitting actions

This bill ensures adequate funding for the operation of the Department of Environmental Protection's Division of Mining and Reclamation. The division's revenue has gradually decreased each year, but its expenses are remaining relatively constant. Estimates indicate that the division will be operating in a deficit by FY2026 without an increase in revenue.

The provisions of the bill increase or add new fees for various permits concerning surface coal mining operations. Adjusting these fees will generate additional annual revenue for the division. The amended fee structure would include these additions or changes:

- Permit Renewals – $3,000 (Currently $1,000 and not differentiated from new permits)
- Major Permit Modification – $2,000 (Currently $500)
- Minor Permit Modification – $1,000 (Currently $500)
- Permit Reissuance – $3,000 (New)
- Permit Transfer – $2,000 (New)
- Annual Permit Fee (All permits) – $2,000 (Currently $1000)
- Applications for the water quality certification for activities covered by federal law – $500 (New)

CODE REFERENCE: West Virginia Code §22-11-10 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4758

Relating to developing and maintaining a database to track reclamation liabilities in the West Virginia Department of Environmental Protection Special Reclamation Program

This bill requires the DEP to develop and maintain a database to track reclamation liabilities at coal mining operations that were permitted after August 3, 1977. The information will be updated on a quarterly basis starting in July 2022.

The federal office of surface mining, DEP, and the coal industry have requested this change to the Surface Coal Mining and Reclamation Act.

CODE REFERENCE: West Virginia Code §22-3-11 – amended

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 1001

West Virginia Industrial Advancement Act

The purpose of this bill is to provide certain tax incentives, based upon very significant investment and employment thresholds, for labor and capital intensive heavy industrial facilities to locate in the state. The bill would create a new section of tax code that clarifies how existing tax credits for manufacturing would apply to investments of this magnitude. Per a memorandum of understanding between the State of West Virginia and the $2.7 billion investment related to the Act, the State will not release any money until this prospective company first spends its money within the state. The available funds would not be awarded all at once. They would come in three separate groupings, with the company required to hit specific, auditable milestones of in-state spending first. Those investments are expected to be infrastructure development and upgrades.

CODE REFERENCE: West Virginia Code §11-13LL-1 through §11-13LL-14 – new

DATE OF PASSAGE: January 12, 2022

EFFECTIVE DATE: January 12, 2022

ACTION BY GOVERNOR: Signed January 12, 2022

2021 Regular Session

Senate Bill 34

Creating exemption to state sales and use tax for rental and leasing of equipment

The bill would amend the provisions of the West Virginia Code providing exemptions from the Consumer Sales and Service Tax. The bill adds a new exemption for leases of heavy equipment or machinery among corporations with at least 50% common ownership.

CODE REFERENCE: West Virginia Code §11-15-9 – amended.

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 542

Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants

This bill requires that public electric utilities must maintain a minimum 30-day aggregate fuel supply under contract for the remaining life of their coal-fired generating plants.

It also requires that public electric utilities must provide advance notice to the Office of Homeland Security and Emergency Management, the Public Service Commission, and the Legislature's Joint Committee on Government and Finance, before announcing retirement, closure, or sale of an electricity generating unit.

CODE REFERENCE: West Virginia Code §24-1-1c, §24-2-1q, and §24-2-21 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 641

Allowing counties to use severance tax proceeds for litter cleanup programs

The bill authorizes counties which receive allocations from the Coal County Reallocated Severance Tax Fund to use those allocations to fund, among a host of projects which can already be financed, litter redress initiatives.

CODE REFERENCE: West Virginia Code §11-13A-6a – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 677

Relating generally to miners' safety, health, and training standards

This bill authorizes the Director of the Office of Miners' Safety, Health, and Training to discharge a tenured underground mine inspector without first petitioning the Board of Coal Mine Health & Safety. After removal from employment, the inspector may request a hearing before the Board to challenge his discharge; however, the hearing is no longer mandatory.

The bill also provides technical cleanup to several sections of code, and replaces outdated terminology related to use of flame safety lamps for detection of gas with approved gas detectors.

CODE REFERENCE: West Virginia Code §22A-1-2, §22A-1-12, §22A-2-40, §22A-2-46, §22A-2-70, and §22A-9-1 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 718

Relating generally to Coal Severance Tax Rebate

The purpose of this bill, which originated in the Senate Committee on Finance, would further clarify the tax rebate granted during the 2019 Regular Session to coal companies for investments in new equipment and improvements to real property.

The original bill provided that a rebate was allowable by comparing the state portion of the severance tax on coal produced from the mine in 2018 with the state portion of severance during the current calendar year. With the passage of time, 2018 has proven to be an outlier. To make the rebate more effective, this bill would remove the 2018 date and rewrite the section of the bill regarding the rebate to allow for a rebate when using the immediately preceding five (5) years of a qualifying investment. The changes to the section also clarify that to be eligible coal production from all the mines of the taxpayer in this state have increased in the pertinent year and there has been an increase in the total number of full-time employees and full-time equivalent employees.

The original bill also required that the rebate could only be used on investments in "new" machinery and equipment. This bill would allow repaired and refurbished equipment to qualify if they are used directly in the production of coal. Definitions have either been added, deleted, or modified for consistency.

CODE REFERENCE: West Virginia Code §11-13EE-2, §11-13EE-3, §11-13EE-5 and §11-13EE-16 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

2020 Regular Session

Senate Bill 793

Relating to B&O taxes imposed on certain coal-fired electric generating units

This bill amends §11-13-2q of the business and occupation tax to clarify the definition for coal-fired merchant power plants. It also provides an election for recomputation of the taxable generating capacity of a coal-fired electric power generating unit placed in service prior to January 1, 1995.

Under previous law, the taxable generating capacity of those units was based on the unit's net generation during calendar years 1991 through 1994. This bill allows the owners or operators of those generating units to make an irrevocable election to reduce the taxable generating capacity of those units to 45 percent of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021.

However, this election is subject to the requirement that the owner agree to keep the generating units in operation until at least January 1, 2025. In the event a generating unit ceases to be operational during the required time period, a recapture tax is imposed. The recapture tax is also be imposed if ownership of the generating unit is transferred on or after July 1, 2021, but before January 1, 2025.

In the event federal law or regulation requires closure of the generating unit, the recapture tax is not applicable to periods after the closure date.

CODE REFERENCE: West Virginia Code §11-13-2q – amended; §11-13-12r – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 810

Implementing federal Affordable Clean Energy Rule

This bill amends the Code relating to the Obama Administrations Clean Power Plan (CPP) so that the West Virginia Department of Environmental Protection can promulgate rules to comply with the Trump Administration's Affordable Clean Energy (ACE) Rule.

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4439

Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production

The purpose of House Bill 4439 is to establish the Coal Severance Tax Rebate. The bill sets out legislative findings and defines necessary terminology.

This rebate would be allowed for capital investments in new machinery and equipment directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article.

Any new company would have to be engaged in coal production for a period of two years prior to possibly qualifying for this investment tax credit. Any unused tax credit for any single year of investment would be carried forward for a period not to exceed ten years. There is also a provision for suspension if the taxpayer is delinquent in the payment of severance taxes.

Finally, there is a required report from the Tax Commissioner to the Joint Committee on Government and Finance by July 1, 2022, and on the first of July every year thereafter. There are also provisions regarding construction of the statute, severability and rulemaking for the Tax Commissioner.

CODE REFERENCE: West Virginia Code §11-13EE-1 through 16 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4615

West Virginia Critical Infrastructure Protection Act

This bill provides numerous protections for critical infrastructure. The bill defines critical infrastructure and critical infrastructure facility and creates new criminal offenses.

The bill provides that any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $250 nor more than $1,000, confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, or tamper with equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, confined in a jail for not more than one year, or both fined and confined.

If a person who willfully damages, destroys, vandalizes, defaces, or tampers with the equipment in a critical infrastructure facility causes damage in excess of $2,500, the person is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 but not more than $5,000, imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

Additionally, any person or organization who conspires with any person to commit the offense of trespass against a critical infrastructure facility is guilty of a misdemeanor and, upon conviction thereof shall be fined in an amount of not less than $2,500 nor more than $10,000. Any person or organization who conspires with any person or organization to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and who does cause damages in excess of $2,500 is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 but not more than $20,000. Finally, any person who is arrested for or convicted of the new offenses may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by the bill, and any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

CODE REFERENCE: West Virginia Code §61-10-34 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

2019 Regular Session

Senate Bill 635

Relating generally to coal mining activities

The purpose of this bill is to provide a series of changes to our current mining laws. This bill is broken down into four essential parts: 1) Economic Development, 2) Environmental, 3) Underground Coal Mining, and 4) Crimes and Their Punishment.

- Economic Development
- Within the article dealing with the Coalfield Community Development Office, it abolishes the requirement that a community impact statement be provided; requires now that the office consult with the department's Office of Mining and Reclamation on a quarterly basis to review the permit application databases to determine if newly proposed surface mines present economic opportunities for mine operators to cooperate with landowners and local governmental officials; and, states that an operator only need to prepare and submit certain information upon request by the Office.
- Environmental
- Within the article dealing with the Surface and Coal Mine Reclamation Act, it requires the Secretary of the DEP to promulgate rules relating to surface owner protection from material damage due to subsidence. States that the Secretary shall consider the federal standards.
- Within the article dealing with the Water Pollution Control Act, it requires the Secretary of the DEP to promulgate rules relating to surface coal mine operations. The rules should relate to categories of permitting actions and permitting fees.
- Within the article dealing with the Aboveground Storage Tank Act, it requires the Secretary of the DEP to promulgate rules relating to incorporating relevant provisions of the Groundwater Protection Rules for Coal Mining contained in 38 CFR 2F for tanks and devices located at coal mining operations.
- Underground Coal Mining
- Within the article dealing with Office of Miners' Health, Safety and Training; Administration; Enforcement, it requires any miner issued a personal assessment to either appeal or pay the fine within 30 days of receipt of the violation; requires that the state's Mine Rescue Team be provided as a backup mine rescue team to operation that cannot secure a backup, and requires that the Office of Miners' Health, Safety and Training use surplus special revenue funds to pay for the rescue team or teams; and, the Act holds harmless the mine owner and the State of West Virginia. If they refuse to effect a rescue for persons in the act of mine trespass due to safety concerns.
- Within the article dealing with the OMHST's Substance Abuse Enforcement, it allows any employee involved in an accident involving physical injuries or damage to equipment to be drug tested by the employer; and, requires that any miner that fails a drug test to be suspended for at least six months.
- Within the article dealing with Underground Mines, for ventilation, it requires that a mine operator submit a copy of the MSHA-approved ventilation plan to the director of OMHST once approved. That this shall serve as the state-approved plan as well. For apprentice miners, the director of the OMHST shall promulgate rules to establish a course of instruction. That apprentice miners work within sight and sound of an experienced miner for 90 days instead of 120 days. For tracking data, it allows the director of the OMHST to use the employers tracking data for the purpose of decertifying any examiner who fails to perform his/her duties. And, finally, it requires that all existing rules under this article be revised to reflect any changes enacted during the 2019 Regular Session.

- Within the article dealing with Use of Diesel-Powered Equipment in Underground Coal Mines, it eliminates the requirement that an operation measure Nitrogen Oxide (NO) unless they are measuring the ambient air (close to the equipment).
- Within the article dealing with Certification of Underground and Surface Coal Miners, it allows a competent miner to supervise up to two red hat miners instead of limiting it to one; and, removes the certification for any miner convicted of mine trespass.
- Crimes and Their Punishment
- Within the article dealing with Crimes Against Property, it removes the provision for entry into an underground coal mine from the section dealing with entry into a building.
- Within the article dealing with Trespass, it establishes the offense of mine trespass with criminal penalties for first, second, and third offenses upon conviction. First offense is a misdemeanor and jail not less than one week and pay a fine of not less than $1,000 or more than $5,000; second offense is a felony and jail not less than five years and not more than 10 years and fined not less than $5,000 or more than $10,000; and third offense is a felony and jail not less than five years or more than 10 years and fined not less than $10,000 or more than $25,000. The bill creates additional graduated criminal penalties for those who cause bodily injury or death to others while trespassing, provides for double damages for property damages created during a mine trespass; and provides for certain protections insuring the right to demonstrate is not violated.

CODE REFERENCE: West Virginia Code §22A-2A-405, §22A-8-5, §22A-8-10, §61-3-12, and §61-3B-6 – amended; §5B-2A-5,§5B-2A-6, §5B-2A-8, §5B-2A-9, §22-3-14, §22-11-10, §22-30-3, §22-30-24, §22A-1-21, §22A-1-35, §22A-1A-1, §22A-1A-2, §22A-2-2, §22A-2-12, §22A-2-13, §22A-8-5, §22A-2-80 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3142

Relating to reducing the severance tax on thermal or steam coal

The bill would reduce the regular severance tax on thermal or steam coal to 2% over a three-year period. The first year of reduction would be at 35% of the 2%, the second year would be at 65% of 2% and in the final year it would increase to the full 2%.

CODE REFERENCE: West Virginia Code §11-13A-3, §11-13A-6 and §11-13A-6a – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3144

North Central Appalachian Coal Severance Tax Rebate Act

The bill would provide a rebate for capital investment in new machinery, equipment, and improvements to real property directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article. The rebate amount would be 35% of the cost of the new machinery, equipment, or improvements to real property. The rebate amount is limited to 80% of the State portion of the severance taxes attributable to the additional coal produced as a result of the new machinery, equipment, or improvements to real property. A taxpayer who fails to use the machinery, equipment, or improvements to real property for at least 5 years in the production of coal in this state shall pay a "recapture tax" equal to the amount of rebate received for the years the machinery, equipment, or real property were prematurely removed from service.

CODE REFERENCE: West Virginia Code §114-13EE-1 through §114-13EE-16 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 207

Exempting from business and occupation tax certain merchant power plants

The bill would provide that on or after July 1, 2020, a merchant power plant is exempt from the business and occupation tax on the generating capacity of its generating units located in this State that are owned or leased by the taxpayer and used to generate electricity. When the July 1, 2020, date falls during a taxpayer's taxable year, the tax liability for that year shall be prorated based upon the number of months before and the number of months beginning on and after July 1, 2020, in that taxable year.

For purposes of the bill, the term "merchant power plant" means an electricity generating plant in this state that:

- is not subject to regulation of its rates by the West Virginia Public Service Commission;
- sells electricity it generates only on the wholesale market;
- does not sell electricity pursuant to one or more long-term sales contracts; and,
- does not sell electricity to retail consumers.

CODE REFERENCE: West Virginia Code §11-13-2r – new

DATE OF PASSAGE: July 24, 2019

EFFECTIVE DATE: October 21, 2019

ACTION BY GOVERNOR: Signed July 30, 2019

2018 Regular Session

Senate Bill 395

Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board

Current law provides that judicial review of an order issued by an environmental board following an appeal hearing will take place in the Circuit Court of Kanawha County. This bill would by-pass the circuit court and send appeals directly to the West Virginia Supreme Court of Appeals. The bill requires that a perfected petition of appeal must be filed with the Supreme Court within 30 days of the order's entry. The bill also states that an order is not stayed pending appeal.

This bill eliminates the requirement for use of the Attorney General as counsel and allows the hiring of outside counsel without approval of the Attorney General. Finally, this bill amends the sections of the Code relating to the Air Quality Board, the Environmental Quality Board, and the Surface Mine Board to reflect that appeal will be made directly to the Supreme Court.

CODE REFERENCE: West Virginia Code §22B-1-9, §22B-2-3, §22B-3-3, and §22B-4-3 – amended

DATE OF PASSAGE: March 6, 2018

EFFECTIVE DATE: March 6, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 525

Relating to certification for emergency medical training – mining

The purpose of this bill is to move the code section governing the licensure of emergency medical technicians – mining from its current place in the chapter governing Public Health into the chapter governing Miner's Health, Safety and Training. The requirements remain identical, and the only substantive change is that references to the abolished Board of Miner Training, Education and Certification are changed to the Board of Coal Mine Health and Safety.

CODE REFERENCE: West Virginia Code §16-4C-6c – repealed; §22A-10-3 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 626

Relating to coal mining generally (Coal Jobs and Safety Act IV)

This bill is the 2018 effort by the Legislature to bring state environmental and coal safety laws into conformity with the federal counterpart. The bill does the following:

- Chapter 22 Article 3: Surface Coal Mining and Reclamation Act
- This bill alters notice requirements regarding permit applications pursuant to the Surface Coal Mining and Reclamation Act. Notices are to be published in forms and by manners prescribed by the secretary, including electronic methods.
- Chapter 22 Article 11: Water Pollution Control Act
- The bill establishes that any applicant for water quality certification that seeks certification for activities covered by a U.S. Army Corp. of Engineers permit under the Water Pollution Control Act will be granted certification without conditions. The bill removes special language in the code which targets the coal industry, but no other industry. The coal industry must comply with the language being removed anyway, under DEP rules. This change just removes duplicative requirements.
- Chapter 22A, Article 1: Office of Miner's Health, Safety, and Training
- The bill eliminates the requirement that a comprehensive mine safety plan be subject to annual review by the director of West Virginia Office of Miner's Health, Safety, and Training unless it is proven that the operator has a pattern of mine safety violations which warrant annual review or there has been an accident resulting in a death or serious bodily injury.
- The bill creates a new section, §22A-1-42, providing that the MSHA-approved ground control plan shall serve as the state-approved plan and be the only plan required by the director of West Virginia Office of Miner's Health, Safety, and Training.
- The proposed bill also requires that surface operations have Automated External Defibrillators as required by the director, who will promulgate rules concerning them.
- Chapter 22A, Article 2: Underground Mines
- The bill provides that the operator's MSHA-approved plan will be the only plan that shall be required by the director of West Virginia Office of Miner's Health, Safety, and Training for the following terms: a. Ventilation plans; b. Belt air plans; c. Seal plans; d. Roof control; e. Emergency shelter plans under the transportation provisions; f. Emergency response plans; g. Tracking and communications plans; and, h. Self-Contained Self-Rescuers storage plans.
- The bill adds a requirement that 1 additional SCSR than is required by MSHA is to be located at the working section for each person present. The bill requires that operators provide at least 3 SCSRs, which include 1 on the working section, 1 in storage, and 1 on the mantrip. Also, the bill allows for fines and assessments by the director if 3 SCSRs are not present. However, this provision may be changed by the committee amendment.
- If all state requirements are in the federal plan, there will only be the federal plan. The bill only affects the administrative planning process and does not affect safety laws or their enforcement. Only one MSHA-approved plan is to be accepted by the director, but both federal and state agencies remain responsible for enforcement.
- Chapter 22A, Article 2A: Use of Diesel-powered equipment in Underground Coal Mines
- The proposed bill allows for a diesel-powered generator to be used underground where (1) it is vented directly to a return, (2) there is a person within sight and sound of the generator, and (3) all other safety rules relating to diesel-powered generators are followed.

CODE REFERENCE: West Virginia Code §22-3-9, §22-3-20, §22-11-7a, §22A-1-36, §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-25, §22A-2-26, §22A-2-37, §22A-2-55, and §22A-2A-1001 – amended; §22A-1-42 – new

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4626

Relating to West Virginia Innovative Mine Safety Technology Tax Credit Act

The bill adds language to the definition of the "[l]ist of approved innovative mine safety technology" that is to be compiled and maintained by the Board of Coal Mine Health and Safety. Expenditures for eligible safety property on the list are qualified for a tax credit under the West Virginia Innovative Mine Safety Technology Tax Credit Act. The effect of the amendment is to include "proximity detection systems, cameras and underground safety shelters and the refurbishing thereof . . . on the list whether required or not", thus making the costs of these properties eligible for the tax credit as well.

The bill also adds language providing that the list may include safety equipment other than that described in the expressions of legislative intent if "specified herein." The bill extends the termination date of the tax credit from December 31, 2018, to December 31, 2025.

CODE REFERENCE: West Virginia Code §11-13BB-3, §11-13BB-4, and §11-13BB-14 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

2017 Regular Session

Senate Bill 222

Relating to disqualification for unemployment benefits

This bill addresses the standards for disqualification from unemployment compensation benefits in circumstances involving a strike or bona fide labor dispute. The bill provides that an individual is disqualified from benefits for any week or portion thereof in which he or she did not work as a result of a strike or bona fide labor dispute. A lockout is not considered a strike or bona fide labor dispute and no person may be disqualified due to a lockout. An employee can show he or she has been displaced from employment because of a lockout by presenting himself or herself physically for work at the workplace on the first day of the lockout or the first day he or she is able to be present at the workplace and the employer denied the individual the opportunity to perform work.

Employees are not entitled to benefits if non-striking employees or contractors operate the facility or perform the employees' duties unless they are permanent replacements. A permanent replacement is an employee currently employed and has been notified that he or she is permanently replacing the striking worker. Employees or contractors hired for shorter periods of time such as the length of the strike or bona fide labor dispute may not be determined to have permanently replaced the striking employee.

CODE REFERENCE: West Virginia Code §21A-6-3 – amended

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 224

Repealing requirement for employer's bond for wages and benefits

The purpose of this bill is to remove the requirement that certain employers within the State of West Virginia must post a wage bond for the first five years of their operation. In §21-5-14, the bill shortens the length of time that a construction or mineral severance, production or transportation business must be in operation to be exempt from the wage bond requirement from five years to one year. Additionally, certain other businesses are exempted from the wage bond requirement if they satisfy one of three conditions:

- it has been in business in another state for at least five years
- it has at least $100,000 in assets, or,
- it is a subsidiary of a parent company that has been in business for at least five years. In §21-5-15, the penalties for knowingly, willfully and fraudulently disposing of or relocating assets with the intent to deprive employees of their wages and benefits are increased, with the possible fine increasing from $30,000 to $60,000.

CODE REFERENCE: West Virginia Code §21-5-14 and §21-5-15 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 330

Relating to WV Workplace Freedom Act

This bill strikes two provisions from the West Virginia Workplace Freedom Act for clarification. The definition of the term "state" is stricken from the Definitions section of the Act. Additionally, a Construction provision is stricken that dealt with collective bargaining agreements in the building and construction industry.

CODE REFERENCE: West Virginia Code §21-5G-1 and §21-5G-7 – amended

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: June 15, 2017

ACTION BY GOVERNOR: Vetoed March 28, 2017; Overridden April 7, 2017

Senate Bill 687

Relating generally to coal mining, safety and environmental protection (Coal Jobs and Safety Act III)

This bill updates and revises a number of mine health and safety and environmental sections of West Virginia Code.

Environmental Provisions

- Reclamation Funds
- The originating bill makes a few changes to the surface coal mining and reclamation act bonding requirements. Moneys paid from special reclamation water trust fund shall be paid to help assure a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the secretary has applied for or obtained an NPDES permit. The changes also strike the requirement that the secretary of DEP develop a long-range planning process for selection and prioritization of sites to be reclaimed.
- Preblast Survey Requirements
- The standard for notifying owners and occupants of manmade dwellings and structures of blasting at surface mining operations is expanded in distance from within five tenths of a mile within of the permitted area or areas to within one-half mile of those areas. The distinction between surface mining operations that are less than 200 or 300 acres is also removed, and the statute now only references surface mining operations.
- For blasting related to permitted surface disturbances of underground mines, blasting activities associated with specified construction activities is also added to the statutory language and the notification requirement is now limited to all owners and occupants of man-made dwellings and structures within one-half mile (not five-tenths of a mile) of the proposed blasting area.
- A provision of the statute that required additional preblast surveys and referenced the receipt by the operator of a written waiver or affidavit from residents is removed, as well as language distinguishing the waiver from an occupant of a structure as opposed to an owner of a structure (no waiver is necessary for an occupant).
- The statutory requirement that the operator file notice of the preblast survey or waiver in the office of the county clerk where the structure is located is also removed.
- Bonding Release
- The bill also changes the code section applicable to release of bond or deposits related to reclamation work performed and a permittee's approved reclamation plan. Language is removed that requires a minimum bond of $10,000 be retained after grade release, after 60% of the bond or collateral is released for the applicable bonded area once an operator completes backfilling, regrading and drainage control.
- Language is also removed regarding an additional bond release of 25% two years after the last augmented seeding, fertilizing, irrigation or other work. Language is added regarding bond releases after successful revegetation has been established, and that notes no bond shall be fully released until all reclamation requirements of this article are fully met.
- Language is removed from the code that applies to operations with an approved variance from approximate original contour. The bill requires the Secretary to propose new rules to implement revisions to the statute related to the releases of bond or deposits and directs the Secretary to specifically consider adopting corresponding federal standards.

- Well Plugging
- The bill proposes a change to the Office of Oil and Gas duties as to the methods of plugging wells. Additional language is added to the code that applies to instances in which the well to be plugged is an abandoned well and the well operator is also a coal operator that intends to mine through the well.
- The language that is added notes that with respect to wells that are less than 4,000 feet, a mine cooperator need only fill the well to at least 200 feet below the base of the lowest workable coal bed. As to wells that are 4,000 feet or greater, the operator must fill the well to at least 400 feet below the base of the lowest workable coal bed. The change is proposed to make well plugging of abandoned mines in WV consistent with Mine Safety Health Administration (MSHA) regulations, rather than require plugging of wells to a greater depth that the state Office of Oil and Gas currently mandates.
- The bill notes that the secretary may require filling to a greater depth based on excessive pressure within the well.
- Water Quality Standards
- The bill proposes a change to W.Va. Code §22-11-7b regarding water quality standards and the procedure to determine compliance with the biologic component of the narrative water quality standard.
- As to rule proposals by the secretary of the DEP that measure compliance with the narrative water quality standard, the new language replaces the term "biologic" with "aquatic life" in qualifying the component to be measured for compliance. The revised bill also removes the following criteria from being considered by the DEP in evaluating the holistic health of the aquatic ecosystem: "Supports a balanced aquatic community that is diverse in species composition."
- The code still states that rules promulgated may not establish measurements for biologic components of WV's narrative water quality standards that would establish standards less protective than legislatively-approved rules.

Mine Safety Provisions

- The bill retains all inspection and enforcement authority of the Office of Miners' Health, Safety and Training (OMHS&T). It does not transform the OMHS&T into a compliance assistance office. The bill does not make changes to the state's mine rescue teams.
- Currently, the Office of Miners' Health, Safety and Training includes the following separate boards and commissions: Board of Coal Mine Health and Safety; Coal Mine Safety and Technical Review Committee; Board of Miner Training, Education and Certification; Mine Inspectors' Examining Board; Board of Appeals; and, the Mine Safety Technology Task Force
- The above boards and commissions will be collapsed to eliminate the duplication of responsibilities, as follows: The Board of Coal Mine Health and Safety will assume all duties and responsibilities of the Board of Miner Training, Education and Certification, the Mine Inspectors' Examining Board, and the Mine Safety Technology Task Force. Those three boards/task force will be abolished under the proposed language of the originating bill.
- In addition to the Board of Coal Mine Health and Safety, the Coal Mine Safety and Technical Review Committee and the Board of Appeals remain intact.
- The bill adds an automated external defibrillator (AED) to the list of mandatory first-aid equipment that an underground coal mine must have at certain locations within the mine.

- The bill proposes a change to the code language that applies to the use of diesel-powered equipment in underground coal mines. The changes reflect the 2015 abolishment of the WV Diesel Equipment Commission, and the transfer of that commission's duties to the director of the OMHS&T.
- The changes also direct OMHS&T to revise the diesel equipment commission's legislative rules, found at 196 C.S.R. §1.1, et seq. to reflect the technological advances that have been made in diesel equipment currently operating in underground mines, and to recognize the scope of existing annual retraining and task training standards that are already mandated by MSHA.
- The bill also directs the Office of Miners' Health, Safety and Training to promulgate rules consistent with the changes proposed in the bill.

CODE REFERENCE: West Virginia Code §22-3-11, §22-3-13a, §22-3-23, §22-6-24, §22-11-7b, §22A-1-2, §22A-1-5, §22A-2-59, §22A-6-3, §22A-6-4, §22A-6-6, §22A-7-3, § 22A-7-5, §22A-7-5a, §22A-7-7, §22A-9-1, §22A-11-1, §22A-11-2, 2§2A-11-3, §22A-11-4, §22A-7-1, §22A-7-2, §22A-2A-1001, §22A-7-2, §22A-11-6 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2506

Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria

This bill allows water quality NPDES permit limits to be calculated using an average design flow as recommended by the United States Environmental Protection Agency (EPA) for the protection of human health, rather than the more restrictive low flow standard that is currently used by the WV Department of Environmental Protection (DEP). Specifically, the bill requires the DEP to calculate a permittee's limit on pollutant discharge by using the harmonic mean flow, a critical design flow that is used to determine the amount of pollution a stream can hold without posing a threat to human health.

The bill also allows for overlapping mixing zones, a practice that has been prohibited in West Virginia. In order to comply with water quality standards set forth by the Federal Clean Water Act (CWA), the WV DEP allows permitted dischargers to use a mixing zone, where concentrations of an emitted pollutant in wastewater are higher than would normally be allowed under the standards because they are allowed to mix with the receiving river or stream. By mixing with the receiving body of water, the pollutant is diluted to an acceptable level. The bill also allows for mixing zones to overlap, which means that permitted dischargers may be located closer in proximity to one another. Even with passage of the bill, the law still mandates that no mixing zone – whether or not it overlaps – reach a point that is less than one-half mile upstream of any water intake.

CODE REFERENCE: West Virginia Code §22-11-7b – amended

DATE OF PASSAGE: March 28, 2017

EFFECTIVE DATE: June 26, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

House Bill 2734

Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory

This bill allows a dealer of heavy equipment rental inventory to assign a fee to each item of heavy equipment rental inventory in an amount not greater than 2.5% of the rental charge. This fee must be held separately from the dealer's remaining revenue and remitted to the proper sheriff before September 30th of each year for the payment of the dealer's personal property taxes. If the amount of remittances exceeds the tax obligation, the excess is retained by the sheriff. This bill exempts the fee from municipal sales or use taxes.

CODE REFERENCE: West Virginia Code §11-5-15 – new

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2811

Relating to the definition of above ground storage tanks

This bill creates two new exemptions for the Aboveground Storage Tanks Act.

Subsection (M) carves out an exemption for "Tanks having the capacity of two hundred ten barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern."

Subsection (N) creates an exemption for "Tanks having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern."

The zone of critical concern defined in the act as one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

This legislation retrains the registration provision, signage provision, and notice requirements for these classes of storage tanks.

CODE REFERENCE: West Virginia Code §22-30-3 – amended

DATE OF PASSAGE: March 25, 2017

EFFECTIVE DATE: June 23, 2017

ACTION BY GOVERNOR: Signed April 4, 2017

House Bill 2857

West Virginia Safer Workplaces Act

This bill creates a new article entitled the "West Virginia Safer Workplace Act", a short title that is given to the article in §21-3E-1.

§21-3E-2 defines a number of terms. "Alcohol" means ethanol, isopropanol or methanol. "Drugs" is defined as any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act, 21 U.S.C. 812. For purposes of this article, an "employer" includes any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, which has one or more full-time employees. The term "employer" expressly excludes the United States, the state or other public-sector incorporated municipalities, counties or districts or any Native American tribes. Other terms defined include "employee," "good faith," "prospective employee," "sample," and "split sample."

In §21-3E-3, the article sets forth the public policy of the act. It includes a legislative declaration that the State's public policy is to advance the confidence of workers that they are in a safe workplace and to enhance the viability of their workplaces by permitting employers to require mandatory drug testing of both applicants and current employees. This section includes language to preserve the right to privacy, but to state that the public policy of drug testing outweighs the right to privacy in this area under certain circumstances. The article is made applicable to employers who are not otherwise subject to drug and alcohol testing provisions in other areas of the Code.

§21-3E-4 declares it lawful for employers to test employees or prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring, but requires employers to adhere to certain safeguards in order to qualify for a bar from being subjected to legal claims for acting in good faith on the results of those tests.

§21-3E-5 permits employers to require samples from employees and prospective employees, and sets forth requirements for the collection of samples to test reliably. An employer may require individual identification, and the collection of samples must be done in conformity with the provisions of this article. The employer may designate the type of sample to be used for testing.

In §21-3E-6, the article imposes obligations on the employer with respect to timing and costs of any testing conducted under the new article. Testing shall occur during, immediately before or after a regular work period. Testing time is work time for purposes of compensation and benefits for current employees. Employers must pay all actual costs for drug and/or alcohol testing for current and prospective employees. Finally, if required tests are conducted at a location other than the normal work site, the employer must provide transportation or pay reasonable transportation costs to current employees.

Testing procedures are set forth in §21-3E-7. Collection of samples must be performed under reasonable and sanitary conditions. Any observer of urine sample collection must be of the same sex as the employee from whom the sample is being collected. Sample collections must be documented. The documentation requirements include labeling to reasonably preclude the possibility of misidentification and the handling of samples in accordance with reasonable chain of custody and confidentiality procedures. Employees must also be afforded an opportunity to provide notification of any information which may be considered relevant to the test, such as identification of currently or recently used prescription drugs, nonprescription drugs or other relevant medical information. Sample collection, storage and transportation shall be performed in a manner to preclude the possibility of sample

contamination, adulteration or misidentification. Confirmatory drug testing must be conducted at a laboratory either certified by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, approved by the Department of Health and Human Services under the Clinical Laboratory Improvement Acts, or approved by the College of American Pathologists. Drug and alcohol testing must include confirmation of any positive test results. For drug testing, confirmation will be conducted by use of a chemical process different than the one used in the initial drug screen. The second confirming test must be a chromatographic technique. An employer may take adverse employment action based only on a confirmed positive drug or alcohol test. Should a person wish to challenge the results of the initial test, the employee has a right to a split sample, but he or she will be responsible for the associated costs.

§21-3E-8 addresses the requirements of testing policies. Testing or retesting must be carried out within the terms of a written policy which has been distributed to every employee subject to testing and available for review by prospective employees. Upon request or as otherwise appropriate, employers must provide information about the existence and availability of counseling, employee assistance, rehabilitation and/or other drug abuse treatment programs which the employer offers, if any. However, the bill does not require any such programs to be offered.

Within the terms of the written policy, employers may require the collection and testing of samples for 1) deterrence or detection of possible illicit drug use, possession, sale, conveyance, or distribution or manufacture of illegal drugs, intoxicants or controlled substances in any amount or in any manner or on or off the job or the abuse of alcohol or prescription drugs; 2) investigation of possible individual employee impairment; 3) investigation of accidents in the workplace or incidents of theft or other employee misconduct; 4) maintenance of safety for employees, customers, clients or the public at large; or, 5) maintenance of productivity, quality of products or services or security of property or information. The collection of samples and testing of samples shall be conducted in accordance with the Act and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this article and applicable federal and state law. Language is included in subsection (f) to clarify that nothing in the article may be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug or alcohol testing.

After a confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or an employee's refusal to provide a testing sample, the provisions of §21-3E-9 permits the employer to then use the test result or refusal to submit as a valid basis for disciplinary and/or rehabilitative action. Such actions may include a requirement that the employee enroll in an approved counseling or treatment program, suspension of the employee, termination of employment, refusal to hire a prospective employee or other adverse employment action in conformity with the employer's written policy including any applicable collective bargaining agreement.

§21-3E-10 addresses employees in sensitive positions where an accident could cause loss of human life, serious bodily injury or significant property or environmental damage. After a confirmed positive test of an employee in a sensitive position, the employer may permanently remove the employee from the sensitive position and transfer or reassign the employee to an available nonsensitive position with comparable pay and benefits or may take other action consistent with the employer's policy provided there are not applicable contractual provisions that expressly prohibit such action. Employers obligated to

perform drug testing under a federal or state mandated drug testing statute will be required to follow any additional requirements mandated under those laws.

§21-3E-11 provides legal protections from civil claims to employers who comply with the provisions of the West Virginia Safer Workplace Act. No cause of action can be brought against any employer who has established a policy and initiated a testing program in accordance with the new article for: 1) actions based on the results of a positive drug or alcohol test or the refusal of an employee or job applicant to submit to a drug test; 2) failure to test for drugs or alcohol or failure to test for a specific drug or other controlled substance; 3) failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition or any mental, emotional or psychological disorder or condition; or, 4) termination or suspension of any substance abuse prevention or testing program or policy.

In §21-3E-12, the bill provides that no cause of action exists against an employer who has an established drug or alcohol testing program in accordance with this new article unless the employer's action was based on a "false positive" test result and the employer had actual knowledge the result was in error and ignored the true test result because of disregard for the truth and/or the willful intent to deceive or be deceived. Should a claim be made under this article where the allegation is based on a claim of a false positive test, there is a rebuttable presumption that the test was valid if the employer complied with the provisions of the article, and the employer is not liable for monetary damages if it relied on a false positive test reasonably and in good faith. No liability exists for any action taken based on a "false negative" drug or alcohol test. Likewise, §21-3E-13 provides that no cause of action for defamation or similar claims exists against employers with an established testing program under this article, unless the results of a test were disclosed to a person other than the employer, an authorized agent or representative, the tested employee or the tested prospective employee and all elements of the cause of action are satisfied.

§21-3E-14 clarifies that this article does not create a cause of action against an employer who does not establish a program or policy on substance abuse prevention or implement drug or alcohol testing.

§21-3E-15 addresses confidentiality, providing that all communications related to the drug or alcohol testing program are confidential and may not be used in any proceeding except in a proceeding related to an action taken by an employer under this new article.

Finally, §21-3E-16 provides that employees who test positive at levels above those set forth in the employer's policy may be terminated and forfeit his or her eligibility for unemployment compensation benefits and indemnity benefits under the Workers' Compensation Laws. The drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that employees risk forfeiture of unemployment and/or workers' compensation benefits. Employers who fail to provide this notice waive their right to assert that eligibility for benefits is entirely forfeited.

CODE REFERENCE: West Virginia Code §21-3E-1 through §21-3E-16 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

2016 Regular Session

Senate Bill 1

Establishing WV Workplace Freedom Act

This bill establishes the West Virginia Workplace Freedom Act and makes changes to two sections of the West Virginia Labor-Management Relations Act to make those sections consistent with the new Act. The bill prohibits requiring a person, as a condition or continuation of employment, to become or remain a member of a labor organization, pay any dues or other fees or charges, however denominated, of any kind to any labor organization, or pay any charity or third party in lieu of those payments any amounts equivalent to or a pro rata portion of dues or other fees required of members of a labor organization.

The bill makes any contract or other understanding or practice, whether written or oral, which excludes from employment any person because of membership with or refusal to join any labor or employee organization unlawful, null and void, and of no legal effect. Violations of the West Virginia Workplace Freedom Act carry criminal penalties. Any labor organization, employer, public body or other person directly or indirectly violating the Act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000. Each day of violation is considered a separate and distinct offense. The bill creates avenues of civil relief and damages.

In addition to the criminal penalties set forth in the Act, any person injured as a result of any violation or threatened violation of the Act has a cause of action, and, if proven in a court of competent jurisdiction, may be entitled the following relief against a person or persons violating or threatening to violate the Act: (1) compensatory damages; (2) costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails; (3) punitive damages; (4) preliminary or injunctive relief; and (5) any other appropriate equitable relief.

The bill specifically excludes from its scope any employee or employer covered by the federal Railway Labor Act, 45 U.S.C. 151 et seq., any employee of the United States or a wholly owned corporation of the United States, any employee employed on property over which the United States government has exclusive jurisdiction for purposes of labor relations and where the provisions of this article would otherwise conflict or be preempted by federal law. This bill addresses its construction and applicability. The bill states it is neither intended nor should it be construed to change or affect any collective bargaining or collective bargaining agreements in the building and construction industry. It applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016. The provisions of this bill do not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

CODE REFERENCE: West Virginia Code § 21-1A-3 and §21-1A-4 – amended; §21-5G-1 through §21-5G-7 – new

DATE OF PASSAGE: February 5, 2016

EFFECTIVE DATE: May 5, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016; Overridden February 12, 2016

Senate Bill 7

Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances

This bill amends West Virginia Code §55-7-13d, specifically subsection (c), which addresses a plaintiff's involvement in a felony criminal act. The bill provides a defendant is not liable for damages as a result of negligence or gross negligence, if a plaintiff's damages arise out of that plaintiff's commission, attempted commission or immediate flight from the commission or attempted commission of a felony. The plaintiff's injuries must have been suffered as a proximate result of those actions for the bar to apply. However, in some cases, such as wrongful death or adjudicated incompetency, the plaintiff may not be the actual injured person. The bill provides that it is the conduct of the injured person that generates the defense and not necessarily the named plaintiff.

The bill clarifies that the burden of proof for this defense rests on the party seeking to assert the defense. The bill provides that if the plaintiff has been convicted of, pleaded guilty or pleaded no contest to a felony, the court shall dismiss the claim, if the court determines as a matter of law, that the person's damages were suffered as a proximate result of the felonious conduct to which the plaintiff pleaded guilty or no contest, or upon which the plaintiff was convicted. The bill also offers a definition of damages. It includes all damages which may be recoverable for personal injury, wrongful death, property damage and also damages recoverable in a wrongful death action, including damages suffered by family members, such as loss of companionship and loss of income or services of the decedent. Further, the bill provides that if a criminal action is pending, the court shall stay the action at the request of the defendant until resolution of the criminal matter, including appeals, unless the court finds that the conviction would not constitute a valid defense under the bill.

The bill also establishes that the amendments to West Virginia Code §55-7-13d apply to causes of action accruing on or after its effective date. The bill also amends West Virginia Code §55-7B-5(d) of the Medical Professional Liability Act. It establishes that an action related to the prescription or dispensation of controlled substances may not be maintained against a health care provider pursuant to this article by or on behalf of a person whose damages arise as a proximate result of a violation of the Uniform Controlled Substances Act as set forth in §60A, the commission of a felony, a violent crime which is a misdemeanor, or any other state or federal law related to controlled substances. Additionally, the bill provides that an action may be permitted if the health care provider dispensed or prescribed a controlled substance in violation of state or federal law that proximately caused injury or death.

CODE REFERENCE: West Virginia Code §55-7-13d & 55-7B-5 – amended

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 351

Dedicating severance tax proceeds

The bill amends the provisions of the West Virginia Code relating to the dedication of severance taxes to the West Virginia Infrastructure General Obligation Debt Service Fund. Current law requires that the first $22.5 million of severance tax collected be deposited in the West Virginia Infrastructure General Obligation Debt Service Fund. The bill requires that the amount deposited into the fund be only the amount necessary to pay principal and interest, and to ultimately retire bonds over their scheduled amortization life, but in no fiscal year may the deposit exceed $22.25 million. The annual debt service amount is to be determined in accordance with a debt amortization table to be published by the Treasurer by April 1, 2016. The Treasurer may amend the table from time to time as the Treasurer considers necessary.

CODE REFERENCE: West Virginia Code §31-15A-16 – amended

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 419

Relating to Workers' Compensation Debt Reduction Act

The bill revises statutory measures that provide funding to pay the legacy costs of the state's Workers' Compensation system incurred before the system was privatized in 2005. Changes to those statutes affect the flow of revenues into the state General Revenue Fund, authorize the future termination of additional severance taxes imposed on coal, natural gas and timber, and the future severance tax on timber, among others. Specifics of the changes include:

§4-11A-18 – This section is amended to end the annual transfer of $50.4 million dollars of Personal Income Tax revenues to the Workers' Compensation Debt Reduction Fund effective February 1, 2016. This revision would effectively restore the flow of that amount of Personal Income Tax revenues to the State General Revenue Fund permanently.

§11-13A-3b – This section is amended to provide that on and after July 1, 2016, the regular severance tax imposed on timber (that is currently suspended until the additional Workers' Compensation 2.78% severance tax on timber is terminated) will be reestablished and imposed at the rate of 1.50%.

§11-13V-4 – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues from additional severance taxes imposed on coal, natural gas and timber from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016 through June 30, 2016.
- Terminate those taxes beginning July 1, 2016.
- Authorize the Governor to terminate those taxes before July 1, 2016, by Executive Order if he chooses to do so.
- Remove language that would terminate these taxes only when the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety.

§11-21-96 – This section is amended to end the annual transfer of a separate $45 million dollars of Personal Income Tax revenues to the Workers' Compensation Debt Reduction Fund effective February 1, 2016. This revision would effectively restore the flow of that full amount of Personal Income Tax revenues to the State General Revenue Fund until July 1, 2016. Thereafter, $30 of that amount will be distributed annually as required by current law into the West Virginia Retiree Health Benefit Trust Fund, also known as the OPEB fund. However the current law requirement that $5 million of those Personal Income Tax revenues be deposited into a separate fund known as the Post-July 1, 2010, Employee Trust Fund would change. That transfer will not be made and the $5 will remain in the State General Revenue Fund permanently.

§23-2C-3 – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues from surcharges and assessments derived from Workers' Compensation insurance premiums from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016, through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from surcharges and assessments derived from Workers' Compensation insurance premiums from the Workers'

Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017.

§29-22A-10d – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues derived from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016, through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017, until the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety. Current law directing that, after the certification, these net terminal income revenues are to be redirected into the State Excess Lottery Fund is retained.

§29-22A-10e – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues derived from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016, through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017, until the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety. Current law directing that, after the certification, these net terminal income revenues are to be redirected into the State Excess Lottery Fund is retained.

Notes: The Workers' Compensation Debt Reduction Fund was created in 2005 in WVC §23-2D-5 to serve as a transfer fund into which are collected revenues from various sources to pay the legacy costs of the state's Workers' Compensation system incurred before the system was privatized in 2005. The West Virginia Retiree Health Benefit Trust Fund, also known as the OPEB (Other Post Employment Benefits) fund, was created in 2006 to provide for and administer public employee post-employment health care benefits. [WVC §5-16D-2.] The Post-July 1, 2010, Employee Trust Fund was created in 2012 to provide an incentive to public retirees who were hired on and after July 1, 2010. [WVC §5-16-5b.]

CODE REFERENCE: West Virginia Code §4-11A-18, §11-13A-3b, §11-13V-4, §11-21-96, §23-2C-3, §29-22A-10d and §29-22A-10e – amended

DATE OF PASSAGE: February 26, 2016

EFFECTIVE DATE: February 26, 2016

ACTION BY GOVERNOR: Signed February 29, 2016

Senate Bill 426

Continuing Office of Coalfield Community Development

This bill authorizes the continuation of the Office of Coalfield Community Development, transferring the office from the Division of Energy to the Department of Commerce. The bill provides that the Secretary of the Department of Commerce may appoint a chief administrator to the office who serves at the will and power of the Secretary.

CODE REFERENCE: West Virginia Code §5B-2A-3 and §5B-2A-4 – amended

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: March 15, 2016

Senate Bill 567

Providing protection against property crimes committed against coal mines, railroads, utilities and other industrial facilities

Current law provides that it is a crime to destroy certain commercial and industrial property. This bill adds oil, timber and timber processing facilities to the list. It creates the offense of knowingly and willfully damaging or destroying property of protected entities and hindering, impairing or disrupting directly or indirectly the normal operation, with a penalty of $5,000 to $10,000, plus the cost to repair, or 1-5 years incarceration, or both. In addition, the bill contains a new subsection to allow a railroad company, public utility, business or owner of the property that is damaged or disrupted to seek restitution, if court ordered.

CODE REFERENCE: West Virginia Code §61-3-29 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 691

Modifying certain air pollution standards

This bill makes technical clean-ups to one section of code that was modified substantially during the 2015 legislative session by passage of House Bill 2004, and requires the Department of Environmental Protection to submit its proposed plan to comply with the EPA's Clean Power Plan to the Legislature for approval prior to its submission. In subsection (c), the bill changes the word "shall" to "may" in two places – first to permit, rather than require, the plan to be on a "unit- specific performance basis," and secondly, to permit either a rate-based or mass-based model to be utilized. The term "meter-based" is also modified to "mass-based."

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: March 10, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

House Bill 4435

Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects

The bill amends the provisions of the West Virginia Code relating to the powers and duties of the Public Service Commission (PSC). The bill adds a new section to the code authorizing expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects. The procedure created in the bill by which the PSC would approve the modernization and improvement plan would be in lieu of the current requirement for a certificate of convenience and necessity for improvements to utilities.

Pursuant to the new procedure provided in the bill, an electric utility would file a multiyear comprehensive plan for modernizing and improving the coal-fired boilers at the utility's power plants with the PSC. The plan would describe the improvement plan, the projected costs and how the costs would be paid for, the timeline for the improvements and evidence demonstrating the need for the improvements and that they will better provide and maintain adequate, efficient, safe, reliable and reasonably priced electric generation. The electric utility must also publish a notice of the application, as a Class 1 legal advertisement, which includes the anticipated rate increase by average percentage and money amount for customers within a class of service, that the PSC is to hold a hearing regarding the application within 180 days of the notice and that a final order will be entered within 270 days of the filing date. After the notice and hearing, the PSC shall approve the program and allow expedited recovery of costs related to the expenditures for the modernization program if it finds the plan to be just, reasonable, based upon prudent investments that are used and useful to the utilities' West Virginia ratepayers, not contrary to the West Virginia public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced electricity generated from coal.

CODE REFERENCE: West Virginia Code §24-2-1I – new

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4726

Relating to coal mining generally (Coal Jobs and Safety Act II)

This bill is otherwise known as the Coal Jobs and Safety Act of 2016 and is in two parts: 1) Environmental and 2) Health, Safety and Training. The intent of the bill is to continue the reform efforts of the Coal Jobs and Safety Act of 2015 and make regulatory changes to both the Department of Environmental Protection (DEP) and the Office of Miners' Health Safety and Training (WVMHS&T) in order to create more efficiencies in carrying out the duties of both offices, while creating more certainty for the coal industry.

The environmental part of the bill would do the following: Update and make new legislative findings; Eliminate the DEP's Office of Explosives and Blasting (those duties are now transferred to the Division of Mining and Reclamation; Mandates that the DEP revise and promulgate rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal regulation requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; Requires the DEP to follow deadlines for taking action on applications for site-specific water quality criteria (requiring a decision within 90 days); and Requires the DEP to conduct hydrologic impact assessments.

The miners' health, safety and training part of the bill would do the following: Transfer certification authority for mining emergency medical technicians (EMTs) to the Office of Miners' Health, Safety and Training; Modify certain ventilation and roof or rib requirements; Provide that state mine rescue teams may serve as a backup team to mine company teams; Requires the State Board of Appeals to allow evidence of substance abuse testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary; Provide for testimony by telephone under oath, that the penalty for not reporting accidents in 15 minutes to the Office of Miners' Health, Safety and Training be modified to "up to $100,000" from $100,000; Provide that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members, and allowing company input into state supervisory training and how it is scheduled during the year; and Provide that if a miners' wireless emergency communications device fails, that a miner shall be assigned to be in sight or sound of a certified miner until such time that the device is replaced.

CODE REFERENCE: West Virginia Code §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9, §22-3A-10, §16-4C-6c, §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a, §22-3-34, §22-3-35, §22-3-36, §22-3-37, §22-3-38, §22-3-39, §22-11-6, §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-31, §22A-1-35, §22A-1A-2, §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66, §22A-2-77, §22A-7-7 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: April 1, 2016

House Bill 4734

Relating to mine subsidence insurance

This bill increases available coverage for mine subsidence coverage to $200,000.00 by increasing the total value that BRIM can reinsure from $75,000.00 to $200,000.00. The bill also deletes the provision that restricts loss coverage; the bill strikes language stating that loss coverage is the loss in excess of 2% of the policy's total insured value. As such, the bill would expand mine subsidence insurance coverage to cover lower amounts and higher amounts.

Under current West Virginia law, insurers issuing policies to cover structures in the state (with the exception of certain designated counties) are required to provide mine subsidence insurance unless such coverage is waived by the insured. The premium charged is set by the Board of Risk and Insurance Management ("BRIM"). The coverage is the amount of loss in excess of 2% of the policy's total insured value, and the total insured value is currently limited to $75,000. The deductible may not be less than $250 nor more than $500. The amount of mine subsidence insurance may not exceed the amount of the fire insurance on the structure.

BRIM is a reinsurer on this program. When the carrier sells the mine subsidence coverage, it collects the premium and sends that, less a ceding commission (30%), to BRIM to go into the fund. The process for a claim is that the carrier presents BRIM with a claim notice and documentation that the insured has the coverage and in what amount. BRIM then investigates the claim and if it is payable, the insurer pays the loss based on the proof BRIM gets signed. The insurer then provides BRIM with a copy of both sides of the cashed check and then BRIM reimburses the carrier the amount it paid the insured. BRIM incurs the adjustment expense and will deny the claim if it is not mine subsidence. See §33-30-1 et seq.; 115 CSR 1.

CODE REFERENCE: West Virginia Code §33-30-6 and §33-30-8 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: October 1, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

2015 Regular Session

Senate Bill 3

Relating to liability of possessor of real property for harm to trespasser

This bill codifies the duty that possessors of real property owe to trespassers under the common law of the State of West Virginia. It does nothing to alter the duty owed and does not disturb any statutes that limit the liability of land possessors under various circumstances. This bill insulates the laws of West Virginia from a provision of the new Restatement (Third) of Torts §51, which departs substantially from the common law duty owed to trespassers as it currently exists and, if adopted, would extend to trespassers the same duty of reasonable care owed to invitees and licensees, and makes an exception to that duty only for what it terms "flagrant trespassers."

To foreclose the adoption of this new standard into the common law of West Virginia, this bill codifies the existing common law of the State as it relates to duties of landowners to trespassers, which provides that landowners generally owe to trespassers only a duty to refrain from willful or wanton injury. The situations already identified at common law where a land possessor may also be subject to liability for the injury or death of a trespasser, including 1) the possessor discovers the trespasser in a position of peril and fails to exercise ordinary care not to cause injury to the trespasser, 2) he maintains a highly dangerous condition or instrumentality on the property under certain circumstances or 3) a child trespasser is injured or killed due to a dangerous instrumentality or condition on the property under certain circumstances, are preserved.

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: January 29, 2015

EFFECTIVE DATE: April 29, 2015

ACTION BY GOVERNOR: Signed February 9, 2015

Senate Bill 13

Relating to liability of a possessor of real property for injuries caused by open and obvious hazards

This bill reinstates and codifies the open and obvious doctrine of landowner liability as it existed in the State of West Virginia prior to the decision of the West Virginia Supreme Court of Appeals in the case of *Hersh v. E-T Enterprises, Limited Partnership*, 752 S.E.2d 336 (Nov. 12, 2013). The open and obvious doctrine is a common law rule of liability which imposes upon landowners, lessees or other lawful occupants a duty to either warn of, or mitigate, hazards upon their property which are not "open and obvious" to any entrant upon a property; that is, those dangers which may be concealed, hidden, or otherwise not obvious to a reasonable person or not within open view. The Court's decision explicitly abolished the open and obvious doctrine in West Virginia; this bill restores it through codification. To that end, the bill states that a possessor of real property owes no duty of care to protect others against dangers that are "open, obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupant." The new section of code also clarifies no new causes of action are created by this section, and states the legislative intent of the section to reinstate the law on open and obvious as it existed prior to the *Hersh* decision. Lastly, the bill directs the court to take into consideration, as a matter of law, the "nature and severity, or lack thereof, of violations of any statute relating to a cause of action."

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: February 18, 2015

EFFECTIVE DATE: February 18, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

Senate Bill 357

The Coal Jobs and Safety Act of 2015

This bill creates the Coal Jobs and Safety Act of 2015. Legislative findings related to the Act are contained in §22A-1-41.

First, the bill permits construction of a coal waste pile or other coal waste storage area using demonstrated technologies or measures consistent with good engineering practices to prevent acid mine drainage discharge in §22-3-13.

The bill directs the state Department of Environmental Protection (DEP) to promulgate rules relating to contemporaneous reclamation (see §22-3-13) and the granting of inactive status with respect to a permit previously issued (see §22-3-19), giving consideration in both cases to the adoption of federal standards.

With respect to the state's Water Pollution Control Act, the bill amends §22-11-6 to extend the Clean Water Act safe harbor for compliance with National Pollutant Discharge Elimination System (NPDES) permits to Section 303 of the Clean Water Act, and with all applicable state and federal permit conditions, with certain limitations. The bill also authorizes the Secretary of DEP to promulgate an emergency rule revising aluminum water quality values using a hardness-based equation. The bill requires, in §22-11-8, that NPDES permit water quality standards be based upon the qualities of the individual discharge point and the receiving stream, and not a wholesale incorporation of state and federal water quality standards. A new section, §22-11-22a, sets forth civil penalties for violations of the provisions of any permit issued under this article.

The bill amends provisions related to the drug testing of miners. In §22A-1A-1, the bill extends the requirement for immediate temporary suspension of miners' cards in the case of a positive test for substance abuse to miners represented by a collective bargaining agreement, where it previously applied only to miners who were not so represented. Positive tests for prescription drugs cannot be excused with a prescription dated more than one year prior to the date of the drug test result.

§22A-2-6, relating to the moving of mining equipment in areas of active working, is completely rewritten by the bill. This section now requires that mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. If it is transported in an area where trolley wire is energized, the bill prohibits anyone from being in by the equipment in the ventilating split that is passing over such equipment, except for those directly involved with transporting or tramming the equipment and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

A proviso is added to §22A-2-28 and §22A-2-37 to permit the use of sideboards on shuttle cars on which cameras are installed. Also, §22A-2-37 is amended to extend the distance from which track may stop from the nearest working face from five hundred to fifteen hundred feet, require shelter holes to be spaced no more than one hundred five feet apart and authorizes the mine foreman to permit persons to ride on a locomotive when safe riding facilities are provided.

Finally, the bill abolishes the Diesel Equipment Commission, transferring its duties and powers to the director of the Office of Miners' Health Safety and Training (see §22A-2A-301, §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307).

Additional references to the Diesel Equipment Commission are modified throughout the code to eliminate references to the Diesel Equipment Commission give the Director of the Office of Miners' Health, Safety and Training (defined as "director" in §22A-2A-204a) the authority previously given to the Commission (see §22A-2A-101; §22A-2A-308; §22A-2A-309; §22A-2A-310; §22A-2A-402; §22A-2A-403; §22A-2A-404; §22A-2A-405; §22A-2A-501; §22A-2A-601; §22A-2A-602; §22A-2A-603; and §22A-2A-604).

CODE REFERENCE: West Virginia Code §22A-2A-302 through §22A- 2A-307 – repealed; §22-3-13, §22-3-19, §22-11-6, §22-11-8, §22A-1A-1, §22A-2-6, §22A-2-28, §22A-2-37, §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603, and §22A-2A-604 – amended; §22-11-22a, §22A-1-41, and §22A-2A-204a – new

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: June 1, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

Senate Bill 423

Amending Aboveground Storage Tank Act

This bill made significant modifications to the Aboveground Storage Tank Act passed by the Legislature during the 2014 session. Overall, the bill now focuses enforcement and regulatory efforts on tanks with a capacity of 10,000 gallons or above within zones of critical concern of public water utilities. Certain definitions are amended and new ones have been added. The bill provides that the owner or operator of a tank must certify its compliance with an approved industry standard or program, or to the standards developed by the Department of Environmental Protection (DEP) by rule. Releases are defined in the same way as in other programs administered by the Department of Environmental Protection. Spill prevention and response plans are required. Much of Article 31 of Chapter 22 has been deleted, although key provisions have been moved to Article 30.

The bill adds a new section of code to the chapter relating to public health. §16-1-9f directs the Secretary of the Department of Health and Human Resources, in coordination with DEP and the Division of Homeland Security and Emergency Management, to compile an inventory of all potential sources of significant contamination within a public water system's zone of critical concern, and then to identify which of those sources are not currently permitted or subject to regulation by DEP.

Within the Aboveground Storage Tank Act itself (Article 30), slight modifications were made to the legislative findings set forth in §22-30-2.

The bill amends the definition of an "aboveground storage tank" ("AST") in §22-30-3.

The substance of the definition is maintained, but the definition now acknowledges that certain tanks, specifically those that contain hazardous waste that are regulated pursuant to 40 CFR §§ 264 and 265 (excluding those subject to regulation under 40 CFR § 265.201), fall within the definition of an AST but are not regulated tanks. Twelve categories of tanks are specifically exempted from the definition of an AST:

- Shipping containers already subject to federal law or regulation governing hazardous materials including railroad freight cars;
- Barges or boats;
- Swimming pools;
- Process vessels;
- Devices containing drinking water, surface or groundwater, demineralized water, non-contact cooling water or water stored for fire or emergency purposes;
- Devices containing food for human or animal consumption that are regulated under the Federal Food, Drug and Cosmetic Act;
- Devices located on a farm used exclusively for farm, but not commercial, purposes, except where that device is located in a zone of critical concern;
- Devices holding wastewater that is actively being treated or processed;
- Empty tanks in inventory or being offered for sale;
- Pipeline facilities including gathering lines regulated under the Natural Gas Pipeline Safety Act (1968) or Hazardous Liquid Pipeline Safety Act (1979), or intrastate pipeline regulated by the West Virginia Public Service Commission or other state law comparable to the NGPSA or HLPSA;
- Liquid traps, atmospheric and pressure vessels or associated gathering lines related to oil and gas production or gathering lines; and
- Electrical equipment.

New definitions are added for "first point of isolation," "regulated level 1 aboveground storage tank," "regulated level 2 aboveground storage tank," "regulated aboveground storage tank," and "zone of peripheral concern," while additional definitions, such as "process vessel," "public water system," "release" and "zone of critical concern" are modified.

In §22-30-4, the bill deletes the requirement that an inventory of tanks include all tanks, "regardless of whether it is an operational or nonoperational storage tank." Tank owners or operators are required to submit a registration form for their tanks no later than July 1, 2015, even if the tank is placed into service after the effective date of this section. The information required to be included in the registration form is modified to delete the requirement that the tank owner or operator identify the nearest groundwater public water supply intake or surface water downstream public water supply intake, and to add information concerning the circumstances under which the registration must be updated. The Secretary of DEP is no longer required to make certain determinations about the tank's design, construction and leak performance. Finally, new fees are codified: $40 registration fee for all ASTs placed in service before July 1, 2015, and $20 per tank for those placed into service thereafter.

The AST regulatory program is detailed in §22-30-5, and has been substantially modified by the bill. This section directs DEP to develop a regulatory program for new and existing regulated ASTs and secondary containment that takes into account the size, location and contents of the tanks. This program must set out "tiered requirements" for regulated tanks, with Level 1 tanks being regulated to a higher standard than Level 2 tanks due to their proximity to an intake. The rules promulgated by DEP must include:

- criteria for the design, construction and maintenance of ASTs
- criteria for the design, construction, maintenance or methods of secondary containment
- criteria for the design, operation, maintenance or methods of leak detection including visual inspections, and inventory control system, together with tank testing or comparable system designed to identify AST leaks
- record keeping requirements
- requirements for the development of maintenance and corrosion prevention plans
- requirements for closure of ASTs, and necessary remediation resulting from an AST release
- assessment of registration fee, annual operation and response fees
- the issuance of a certificate to operate ("CTO") after submission of an application, with review and approval by WVDEP, and,
- a procedure for administrative resolution of violations including assessment of civil penalties.

Additionally, Section 5 gives the Secretary of DEP authority to, at the request of the permittee, modify portions of permits and other plans issued pursuant to other provisions of Chapter 22 in order to include conditions pertaining to the management and control of regulated tanks.

The plans and permits that may be so amended include those issued pursuant to (1) the Surface Coal Mining and Reclamation Act, (2) the Office of Oil and Gas's authority found in W. Va. Code §§22-6 and 22-6A, or plans required under 35 CSR 1, (3) the National Pollution Discharge Elimination System, and (4) the Solid Waste Management Act, as well as any groundwater protection plans developed pursuant to W. Va. Code §22-12. If a plan or permit is so modified to conform to the requirements of this Act, it is deemed to comply with the requirements of the Act, so long as the registration requirements are met.

The bill amends §22-30-6 to require regulated ASTs to be evaluated by a qualified individual (as defined in the bill), and to require owners and operators of ASTs to submit certifications of that evaluation

to DEP. Initial certifications of evaluation must be completed within 180 days of the effective date of the rules promulgated by DEP.

These evaluations are no longer required to be done annually, and the bill now permits DEP to set the timeline for subsequent review by legislative rule, but provides that the time in between evaluations may be no less than one year.

In §22-30-7, the provisions concerning financial responsibility are modified to limit the applicability of the section to owners and operators of regulated ASTs, and it gives the secretary of DEP authority to determine which bonds and other guarantees of performance satisfy the requirements of this section, which generally requires evidence of adequate financial resources to undertake any necessary corrective action.

With respect to corrective action, §22-30-8 is amended to eliminate the requirement that the operator or owner of an AST develop a "preliminary corrective action plan" considering the types of fluids and tanks. Further, the Secretary of DEP is authorized to use money from the Protect Our Water Fund to undertake corrective action in the event of an actual release from an AST.

The requirement to prepare and submit a spill prevention and response plan, or SPRP, as required by §22-30-9, is limited to regulated ASTs, and may be submitted for a facility or location. SPRPs must be submitted no less frequently than every five years, a change from the three year submission timetable under current law, unless an event occurs that requires updating sooner. The bill modifies the specific contents of the SPRP as well, and the requirements that these plans be site-specific and developed in consultation with the Bureau for Public Health are removed. In lieu of an SPRP meeting these requirements, AST owners or operators may certify that their AST is subject to a groundwater protection plan or spell prevention control and countermeasures plan, and such plan must be made available for review by the Secretary of DEP.

§22-30-10 directs owners and operators of regulated ASTs to give notice to the applicable public water system and relevant emergency response organizations of the contents of the ASTs, as well as provide the location of the Safety Data Sheets associated with the stored fluids. An alternative disclosure method is also provided. In both cases, the information provided is protected from disclosure under §22-30-14, which addresses public access to information provided under this article.

§22-30-11 permits the signage required under the Act to be "displayed nearby." Minor changes are made to §22-30-12 to provide for the collection of an annual operating fee in addition to an initial registration fee.

The bill modifies the section, §22-30-13, that creates the Protect Our Water Fund. This section has been amended to allow monies from this fund to be expended to address "releases" from ASTs, and not merely leaks, and to limit the applicability of the section to regulated ASTs, rather than all ASTs. A cap is placed on the contents of the fund, and thereby the fees that can be collected, of $1 million at the end of three years, and $1 million in the aggregate thereafter.

The provisions of §22-30-14, addressing public access to information, are modified to restrict public access to information designated by the Division of Homeland Security and Emergency Management as restricted from public access, including trade secrets and proprietary business information, and requires that such information be "secured and safeguarded" by the department. A criminal misdemeanor penalty for unauthorized disclosure is added that carries penalties of up to 1 year in prison and a $5,000 fine if

convicted. If there is a release into the waters of the State that could affect a public water supply, information about the release must be promptly made available to emergency responders.

In §22-30-15, the bill changes the inspection schedule, providing that "level 1" ASTs be inspected at least once every five years, and that a schedule for inspection of "level 2" ASTs be established by legislative rule. In §22-30-16, authority is given to the Environmental Quality Board to stay orders entered by the Secretary of DEP alleging violations of the Act. Appeal to the Environmental Quality Board is authorized, pursuant to §22-30-18, to challenge any "action, decision or order of the secretary," whereas current law allows for appeals only from an "order."

Civil and criminal penalties are modified in §22-30-17. First, the language in the section is amended to refer to "certificates to operate" rather than "permits." Similar changes are made in §22-30-24. The misdemeanor for "knowingly and intentionally violat[ing] any provision of this article" is expanded to also cover violation of "any rule or order issued under or subject to the provisions of this article," while felony charges are reserved only for subsequent willful violations.

A person cannot be subject to criminal prosecution for pollution when carrying out a corrective action plan approved by the secretary of DEP. Finally, civil penalties collected may be deposited either in the Protect Our Water Fund or in the AST Administrative Fund. Technical changes are made to §22-30-19, which addresses duplicative enforcement.

In §22-30-21, the bill directs the Division of Homeland Security and Emergency Management, rather than the Secretary of DEP, to coordinate with state and local emergency response agencies to facilitate a coordinated emergency response and incident command. The requirement that the Secretary of DEP coordinate with the State Fire Marshal concerning National Incident Management System Training provisions is eliminated.

§22-30-22 expands the venue in which the Secretary of DEP may bring suit to either the circuit court of the county in which the "imminent and substantial danger exists" or the circuit court of Kanawha County. In the event of such a danger, the Secretary of DEP shall require the owner or operator of the AST to provide immediate notice to appropriate governmental authorities.

The bill amends §22-30-25 to permit the secretary of DEP to designate via legislative rules additional categories of ASTs for which one or more of the requirements of the Act may be waived. Waiver will be permitted only when those categories of ASTs "do not represent a substantial threat of contamination or they are currently regulated under standards that are consistent with the protective standards and requirements set forth in this article."

A new section, §22-30-26, which was originally contained in Article 31, provides that any person who holds an NPDES general permit for a facility containing regulated ASTs may be required by the secretary to obtain an individual permit, a change from the current law that makes such individual permit mandatory.

Article 31 of Chapter 22 is substantially repealed. This includes the repeal of §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12. The Public Water System Supply Study Commission initially contained in §22-31-12 has been relocated to §22-31-2, replacing the Act's legislative findings. The composition of the Study Commission is modified, and will now contain three members appointed by the Governor, the designation of the Commissioner of the Bureau for Public Health as chair, the elimination of the nonvoting members appointed by the President of the Senate and the Speaker of the House, the inclusion of two representatives designated by the Business Industry

Council, and one representative designated by the West Virginia Rivers Coalition. The Study Commission shall terminate on June 30, 2019.

CODE REFERENCE: West Virginia Code §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7,§22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 – repealed; §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11,§22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16,§22-30-17,§22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24,§22-30-25 and §22-31-2 – amended; §16-1-9f and §22-30-26 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

Senate Bill 578

Relating to occupational disease claims

Under current law, the claimant, the employer and the Workers' Compensation Commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim, wherever the worker's compensation claim is in the administrative or appellate processes, except for medical benefits for nonorthopedic occupational disease claims. This bill removes the exception for settlements of medical benefits for nonorthopedic occupational disease claims, which would permit the negotiation of final settlements of all components of worker's compensation claims, permitting settlements of medical benefits for nonorthopedic occupational disease claims, including settlements of occupational pneumoconiosis claims. The bill requires that a claimant in a settlement of medical benefits for a nonorthopedic occupational disease claims be represented by legal counsel.

The bill specifies that the amendments enacted during the current 2015 regular session of the Legislature apply to all settlement agreements executed after the effective date of the legislation.

CODE REFERENCE: West Virginia Code §23-4-8d – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

House Bill 2001

Repealing portions of the Alternative and Renewable Energy Portfolio Act

This bill repeals, in its entirety, the Alternative and Renewable Energy Portfolio Act, Article 2F of Chapter 24. This Act passed the House in the Regular Session of 2009 in a slightly different form, but was later passed in a Special Session in the late Spring of that year. Various minor changes were made between the two versions.

The provisions to be repealed mandate the Public Service Commission to establish a system of tradable credits stemming from the established, verified and monitored generation and sale of electricity generated from alternative and renewable energy resource facilities, as defined by section three of the article. The credits thus established were to be available for electrical power generators to trade, sell or otherwise be used to meet the portfolio standards established by section five of the article. Under the provisions of that section, each electric utility in this state is required to own an amount of credits equal to a certain percentage of electricity, sold by the electric utility in the preceding year to retail customers in West Virginia. These credits are to be phased in over a ten year period. For the period beginning January 1, 2015, and ending December 31, 2019, each utility is to own credits in an amount equal to at least ten percent of the electric energy sold by the electric utility. For the period beginning January 1, 2020, and ending December 31, 2024, an electric utility is to own credits in an amount equal to at least fifteen percent of the electric energy sold to retail customers. Commencing on January 1, 2025, this percentage is to equal 25% of all electrical energy sold.

Functionally, this means power generators have to either generate the mandated percentage from a renewable source themselves, or, alternatively, purchase the credits from power generators who have an excess of the mandated percentage generated from power generation operations derived from alternative and renewable energy resource facilities. On or before January 1, 2011, each electric utility subject to the provisions of the article was required to prepare an alternative and renewable energy portfolio standard compliance plan and to file an application with the Public Service Commission seeking approval of such plan. On or after January 1, 2015, and each year thereafter, the Commission is required to determine whether each electric utility doing business in this state is in compliance with these requirements. If, after notice and a hearing, the Commission determines that an electric utility has failed to comply with an alternative and renewable energy portfolio standard, the Commission is required by the article to impose a compliance assessment on the electric utility, in amounts delineated by guidelines contained in the article.

In furtherance of the provisions of the article, a regime of cost recovery and rate incentives is currently provided. These are designed to stimulate electric utility investment in alternative and renewable energy resources.

Additionally, and importantly, as shall be seen, the Public Service Commission was required to adopt a rule requiring that all electric utilities provide a rebate or discount at fair value, to be determined by the commission, to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement; to, further, consider adopting, by rule, a requirement that all sellers of electricity offer net metering rebates or discounts to customer-generators, and to institute a general investigation for the purpose of adopting rules pertaining to net metering.

The Public Service Commission was permitted by the article to enter into interagency agreements with the Department of Environmental Protection and the Division of Energy to carry out the responsibilities

mandated by the article, including conducting an ongoing alternative and renewable energy resource planning assessment for this state, including recommending to the Legislature additional compliance goals for alternative and renewable energy portfolio standards beyond 2025. The Public Service Commission was required to consider adopting, by rule, alternative and renewable energy portfolio requirements for rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in this state.

The article also established in the state Treasury a special revolving fund to be jointly administered by the Public Service Commission and the Division of Energy designated the "Alternative and Renewable Energy Resources Research Fund." Moneys in the fund are to be used to award matching grants for demonstration, commercialization, research and development projects relating to alternative and renewable energy resources and energy efficiency technologies. Rulemaking authority was also provided to the Public Service Commission for the making of all rules required by the article.

The effect of the bill is to completely repeal all of the provisions of this article.

This Committee Substitute was drafted to address concerns raised in the Energy Committee regarding the effect of repeal of the entire article on net metering and interconnectivity; according to reports in the media this morning, the "Senate Energy Committee members delayed advancing their version of the bill Thursday, to allow a rewrite that will repeal most of the Alternative Energy Portfolio Act — but retain the net metering provisions."

CODE REFERENCE: West Virginia Code §24-2F-1 through §24-2F-12 – repealed

DATE OF PASSAGE: January 28, 2015

EFFECTIVE DATE: January 28, 2015

ACTION BY GOVERNOR: Signed February 3, 2015

House Bill 2002

Predicating actions for damages upon principles of comparative fault

This bill changes the law in West Virginia concerning the apportionment of fault in tort actions. It repeals two sections of code. The first, §55-7-13, established a statutory claim for contribution by joint judgment debtors, while §55-7-24 set out the manner in which Courts are to apply joint and several liability to judgment debtors in West Virginia.

Four new sections of code are added by the bill. First, §55-7-13a establishes the modified comparative fault standard by defining the term "comparative fault" as "the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage" and directs recovery in tort actions to be based on principles of comparative fault whereby the fault and damages should be apportioned "in direct proportion to that person's percentage of fault." In §55-7-13b, a number of terms are defined, including "compensatory damages," "defendant," "fault" and "plaintiff."

§55-7-13c requires in subsection (a) that in any action for damages, liability shall be several, rather than joint, and that each defendant is only liable for the amount of damages in direct proportion to that defendant's percentage of fault. The bill allows joint liability to be imposed when two or more defendants "consciously conspire and deliberately purpose a common plan or design to commit a tortious act or omission."

The procedure for the sitting judge to use in apportioning damages is spelled out in subsection (b), requiring the percentage of fault to be multiplied by the total damages to determine a defendant's maximum liability.

Subsection (c) allows a plaintiff to recover, even if partially at fault, so long as the plaintiff's fault is less than the combined fault of all other persons. An exception to a defendant's maximum liability is provided in subsection (d), which allows a plaintiff who is unable to collect from one of the defendants to file a motion to collect the uncollectible amount from the other defendants, but the defendant's apportionment is limited to his own percentage of fault multiplied by the uncollectible amount. This section also identifies a number of situations in which defendants shall continue to be jointly and severally liable, and a number of sections of Code to which this provision does not apply.

Finally, in §55-7-13d, the bill spells out, in subsection (a), how fault is to be determined. In particular, the bill requires that the fault of all persons who contributed be considered, regardless of whether the person was or could have been named as a party to the litigation. Under certain circumstances the fault of a nonparty can be considered, such as if the plaintiff entered into a settlement agreement with the nonparty or if a defendant gives notice identifying that nonparty.

If a nonparty is assessed fault, or if a plaintiff has settled with a nonparty, then the plaintiff's possible recovery is reduced by that percentage. The subsection clarifies that assignments of fault for nonparties are not binding in subsequent actions. Special interrogatories are to be used by the triers of fact to determine fault.

In subsection (b), the bill clarifies that a party may still be held liable for another person's fault if that person was acting as an agent of the party or by any other applicable provision of statutory or common law. Subsection (c) provides that a defendant is not liable for damage suffered by a plaintiff in the commission of, or while attempting to flee from the commission of, a felony criminal act, so long as the plaintiff has been convicted or the jury makes a finding that the plaintiff committed the felony. The burden

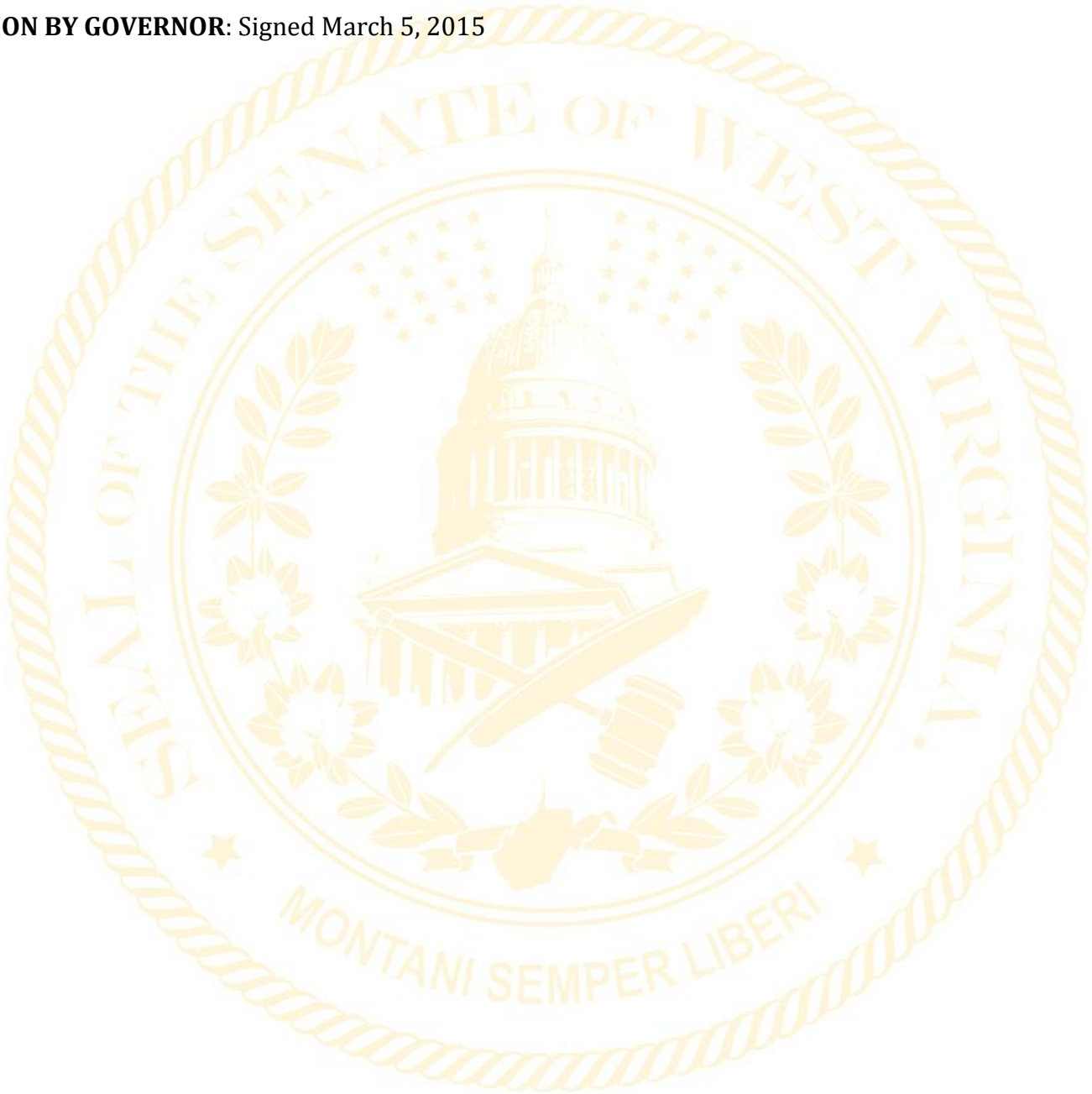
of proof established in subsection (d) rests with the person seeking to establish fault. Subsection (e) clarifies that no independent cause of action is created by this section.

CODE REFERENCE: West Virginia Code §55-7-13 and §55-7-24 – repealed; §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d – new

DATE OF PASSAGE: February 24, 2015

EFFECTIVE DATE: May 25, 2015

ACTION BY GOVERNOR: Signed March 5, 2015



House Bill 2004

Providing a procedure for the development of a state plan under section 111(d) of the Clean Air Act

This bill requires the involvement and approval of the Legislature in the development of the State's plan as required by section 111(d) of the Clean Air Act. First, the bill establishes a new subsection setting forth legislative findings that details how the plan "necessitates establishment and creation of law affecting the economy and energy policy of this State," and declaring a compelling state interest to require legislative review and passage of law prior to submission of the plan to the Environmental Protection Agency (EPA).

Subsection (b) prohibits the Department of Environmental Protection (DEP) from submitting a plan to the EPA without specific legislative action granting such authority. This subsection clarifies that DEP is permitted to develop a proposed state plan in consultation with the DEP Advisory Council and other entities, in accordance with this section.

In subsection (c), the bill sets forth the timing of a proposed state plan to the Legislature, including requiring DEP to make certain determinations of feasibility of a state plan. The plan must be on a unit-specific performance basis, and must also be based upon either a rate-based model or a meter-based model. In addition to submitting the plan to the Legislature, DEP is also directed to publish the report and any proposed state plan on its website. The Legislature may approve the state plan in either regular session or special session.

If the EPA fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide, then the requirements of this section are void, and no state plan is necessary. If the Legislature refuses to approve DEP's proposed state plan, DEP must submit a modified plan for reconsideration by the Legislature.

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: February 19, 2015

EFFECTIVE DATE: February 19, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

House Bill 2011

Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer

This bill amends West Virginia's deliberate intent statute in an effort to clarify and clearly articulate the liability standards applicable to such a claim.

Subsection (a) adds additional specificity to the provisions permitting an employer to require an employee to undergo a blood test to determine if he or she is intoxicated by establishing a drug and alcohol testing procedure. The test must be a blood test and, if an employee tests positive as defined, then the intoxication is deemed the proximate cause of any injury.

The bill modifies subsection (c) by bifurcating the provisions related to employee injury from those related to employee death and lays out the specific rights to recovery in each case. A new provision is added to require that, unless good cause is shown, the employee or his or her representative file a claim for workers' compensation benefits.

In subsection (d), which spells out the specific factual findings that must be shown for an employer to lose the immunity provided under the workers' compensation code, the bill clarifies and adds to these findings. With respect to the second of the five findings, that the employer had actual knowledge of the specific unsafe working condition, the bill adds the requirement that actual knowledge be specifically proven by the employee or individual seeking to recover and sets forth the manner in which such actual knowledge can and cannot be proven. To satisfy the third element, the bill lays out the evidentiary standards for showing that the specific unsafe working condition was a violation of a safety statute, rule or regulation, or of a commonly accepted and well-known safety standard within the industry or business. Clarifying language is added to the fourth finding to ensure that the employer being sued under the deliberate intent exemption must be a person who has "actual knowledge" as required by the second of the five findings.

The bill also modifies the fifth of the findings in subsection (d), which requires a showing that the employee suffered "serious compensable injury or compensable death . . . as a direct and proximate result of the specific unsafe working condition." New language limits the factual circumstances supporting this finding to four:

- The injury results in a permanent physical and/or psychological impairment of at least thirteen percent, or that otherwise causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy;
- The injury, as verified by a written certification by a licensed physician, is likely to result in death within eighteen months or less from the date of the filing of the complaint;
- The injury causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy; or
- In the case of occupational pneumoconiosis claims, a verification from a board certified pulmonologist must be submitted showing that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis that has caused pulmonary impairment of at least fifteen percent, as confirmed by valid and reproducible ventilatory testing.

Certain procedural requirements for making a deliberate intent claim are also provided, including filing a verified statement from a person with "knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards" applicable to the particular injury. The

employer may request, and the court must duly consider, a request to bifurcate discovery related to liability from that related to damages.

Finally, in subsection (e), the bill provides that venue is appropriate in the circuit court of the county where the alleged injury occurred, or in the circuit court of the county where the employer has its principal place of business.

CODE REFERENCE: West Virginia Code §23-4-2 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2626

Use of the Abandoned Land Reclamation Fund

The bill modifies limitations on the use of federal grant funds allocated to this State to address water and land reclamation needs arising from the effects of coal mining that occurred predominantly before 1977. These funds arise from federal reclamation fees imposed upon current coal production. The grants are deposited into the State's Abandoned Land Reclamation Fund.

The changes made by the bill mirror changes to those limitations that have been made in federal law. Specifically, the bill would remove the 30% limitation that once existed in federal law upon the expenditure of funds allocated to the state "for the purpose of protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal surface mining practices." Also in conformance with federal law, the bill would increase from 10% to 30% the limitation that once existed in federal law upon the use of the grant funds for distribution by the Secretary of the State's Department of Environmental Protection into either the State's Reclamation and Restoration Fund or the State's Acid Mine Drainage Abatement and Treatment Fund. The purposes for these two funds are described in the bill and would remain unchanged.

CODE REFERENCE: West Virginia Code §22-2-4 – amended

DATE OF PASSAGE: March 9, 2015

EFFECTIVE DATE: June 7, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2627

Providing protection against property crimes committed against coal mines, utilities and other industrial facilities

The purpose of this bill is to increase fines and criminal penalties for those who knowingly and willfully damage certain personal property. This bill does the following:

- Adds facilities that "store oil, timber, timber processing" to the existing list: natural gas, coal, water, wastewater, stormwater, and telecommunications or cable service.
- This section contains offenses with associated penalties:
- Knowingly and willfully damage or destroy property (with added facilities above): $2,000 fine or one year in jail or both.
- Knowingly and willfully damage or destroy property and creates substantial risk of serious bodily harm: Felony, $5,000 or one to three years in jail or both.
- Knowingly and willfully damage or destroy property and causes serious bodily injury: $5-50,000 or one to three years in jail or both.
- Knowingly and willfully damage or destroy property and hinders, impairs or disrupts, directly or indirectly the normal operation: $5-10,000 plus the cost to repair or one to three years in jail or both).

CODE REFERENCE: West Virginia Code §61-3-29 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

House Bill 3006

Relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies

The bill provides that for tax years beginning after December 31, 2016, the Tax Commissioner would fix the interest rate that is applicable to overpayments and deficiencies as the adjusted prime rate charged by banks plus three percentage points. The rate would be set based upon the adjusted prime rate on the first business day of December of the preceding year, and would be effective January 1st.

Currently, the interest rate for underpayments and deficiencies is based upon the adjusted prime rate charged by banks or 8%, whichever is higher. For the past several years, the prime rate charged by banks has been below 8%, so the effective tax rate for deficiencies has been 8%.

CODE REFERENCE: West Virginia Code §11-10-17a – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

Legislative Rulemaking

Senate Bill 2

Authorizing DEP to promulgate rules

This is the Department of Environmental Protection Bundle. It contains rules from the Division of Air Quality, the Secretary's Office, and the Division of Water and Waste Management, including bills related to coal mining.

The EPA made a finding of failure to submit action to address deficiencies which may result in sanctions. All but 2 of the proposed rules from the Division of Air Quality all have similar amendments with the goal of the State retaining primacy. The amendments include adding or revising the definitions for the terms: alternative emission limitation; malfunction; shutdown; and startup. A requirement is added that any owner or operator that cannot comply with established emission standards during periods of startup and shutdown request an alternative emission limitation. Language has been added to several of the proposed rules providing that any inconsistency between rules is to be decided by the Secretary in favor of the more stringent provision, term, condition, method or rule.

The amendments to the rules are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of the counterpart standards in this State. Upon authorization and promulgation, the rules will be submitted to the EPA.

A severability section has been added to each of the Division of Air Quality proposed rules. The Division of Air Quality is moving forward with the proposed removal of the startup, shutdown, or maintenance (SSM) exemption provisions to ensure the state complies with the federal requirements. However, in response to comments, a severability clause was added to address disposition of the rule in the event the federal regulations are withdrawn by a subsequent administration's US EPA, are overturned by a court of competent jurisdiction, and/or are invalidated by an act of the West Virginia Legislature or United States Congress. It allows the Secretary to terminate any permit or section of an existing permit issued under an affected rule.

References to "Director" have been changed to "Secretary" throughout these proposed rules. The proposed rules have also been amended to clarify that they are not subject to the Sunset Law.

WV Department of Environmental Protection (DEP), Division of Air Quality, Alternative Emission Limitations During Startup, Shutdown, And Maintenance Operations, 45CSR01; Alternative Emission Limitations During Startup and Shutdown Operations 45CSR01 (New Title)

This proposed rule amends a current legislative rule. The proposed rule sets forth the criteria for establishing an alternative emission limitation during periods of startup, shutdown, or maintenance (SSM). The proposed rule adopts the alternative emission limitation provisions already contained in a series of state implementation plans (SIP). The proposed rule applies to a set of sources that have excess emissions during these specified periods and could not therefore always meet the allowable emissions limits. The proposed rule provides criteria for establishing these alternative emissions limitations and includes the reporting requirements in accordance with federal regulations.

The revisions to this rule are related to the disapproval of the SSM provisions (88 FR 23356). It is designed to be a mechanism to have in place for WV sources in case they cannot meet emissions limits once the exceptions allowed in the current rule are removed and to protect WV industries from being instantly

in violation. The inclusion of maintenance events was specifically identified as one of the reasons the US EPA disapproved the state's request to add this rule to the WV SIP.

WV Department of Environmental Protection (DEP), Division of Air Quality, To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers, 45CSR02

This proposed rule amends a current legislative rule which establishes emission limitations for smoke and particulate matter which are discharged from fuel burning units and sets forth the permitting, testing, monitoring, recordkeeping, reporting, and exemption requirements. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in this rule were the automatic exemptions at §45-2-9.1, the discretionary exemptions at §§45-2-10.1 and 10.2, and the affirmative defense at §45-2-9.4. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, this rule will be submitted to the U.S. EPA.

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection (DEP), Division of Air Quality, Control of Air Pollution from the Operation of Hot Mix Asphalt Plants, 45CSR03

This proposed rule amends a current legislative rule which establishes emission limitations for hot mix asphalt plants and the plant property and sets forth the permitting, recordkeeping, reporting, and exemption requirements. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in the rule were an exemption for smoke and or particulate matter during certain start-up or shutdowns at §45-3-3.2 and the discretionary exemption at §45-3-7.1. These provisions have been deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, the rule will be submitted to the U.S. EPA.

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection (DEP), Division of Air Quality, Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, 45CSR05

This proposed rule amends a current legislative rule which establishes emission limitations for coal preparation plants, coal handling operations, and coal refuse disposal areas and sets forth the permitting, recordkeeping, reporting, and exemption requirements. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in the rule was a discretionary exemption at §§45-5-13.1, which has been deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, this rule will be submitted to the U.S. EPA.

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection (DEP), Division of Air Quality, Control of Air Pollution from Combustion of Refuse, 45CSR06

This proposed rule amends a current legislative rule which establishes emission limitations for combustion of refuse. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in this rule was the automatic exemptions at §45-6-8.2, which has been deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, 45CSR6 will be submitted to the U.S. EPA

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection (DEP), Division of Air Quality, To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations (current); Control of Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations, 45CSR07 (New)

This proposed rule amends a current legislative rule which establishes emission limitations for combustion of refuse. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in the rule were the discretionary exemptions at §45-7-9.1, the automatic exemptions at §45-7-10.3 and §45-7-10.4, which are all deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, the rule will be submitted to the U.S. EPA

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection (DEP), Division of Air Quality, Ambient Air Quality Standards, 45CSR08

This proposed rule amends a current legislative rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection Division of Air Quality, Control of Air Pollution form the Emission of Sulfur Oxides, 45 CSR 10

The proposed rule amends a current legislative rule and is promulgated under the Air Pollution Control Act which governs a statewide program of air pollution prevention, abatement, and control and ensures timely processing of permit applications for the good of the public, business, and the environment. This rule establishes emission standards for sulfur oxides from fuel burning units and sets forth the permitting, reporting, testing, record keeping, and exemption requirements.

The proposed rule is required to maintain state primacy under the United States Environmental Protection Agency. The rule is being amended in response to the U.S.E.P.A. finding of failure to address deficiencies and inadequacies for provisions related to excess emissions during startup, shutdown, and malfunctions for fuel burning units. There are currently deadlines which must be met for these amendments or the EPA will impose sanctions.

WV Department of Environmental Protection, Division of Air Quality, Standards of Performance for New Stationary Sources 45 CSR 16

The proposed rule amends a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection, Division of Air Quality, Control of Air Pollution from the Emission of Volatile Organic Compounds, 45 CSR 21

The proposed rule amends a current legislative rule and is promulgated under the Air Pollution Control Act which governs a program of air pollution prevention, abatement, and control and to ensure timely processing of permit applications for the good of the public, business, and the environment. This rule establishes reasonably available control technology to control emissions of volatile organic compounds from sources that manufacture, mix, store, use, or apply materials containing volatile organic compounds and are in Cabell, Kanawha, Putnam, Wayne, and Wood Counties.

This promulgation is required to maintain state primacy under the United States Environmental Protection Agency. The rule is being amended in response to the U.S.E.P.A. finding of failure to address deficiencies and inadequacies for provisions related to excess emissions during startup, shutdown, and malfunctions, specifically Subsection 9.3. There are currently deadlines which must be met for these changes of the EPA will impose sanctions.

WV Department of Environmental Protection, Division of Air Quality, 45 CSR 34 Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This proposed rule amends a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2023.

WV Department of Environmental Protection, Division of Air Quality, Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units, 45 CSR 44

The proposed rule repeals a current legislative rule which regulates greenhouse gas emissions in the form of carbon dioxide from existing coal-fired electric generating units because its federal counterpart regulation was vacated by the D. C. Circuit Court on January 19, 2021.

WV Department of Environmental Protection, Secretary's Office, Drinking Water Treatment Revolving Fund, 60 CSR 12

The proposed rule is new. It transfers the administration of the Safe Drinking Water Treatment Fund from the Department of Health and Human Resources to the Department of Environmental Protection as a result of Committee Substitute for Committee Substitute for Senate Bill 561, passed by the Legislature during the 2023 Regular Session.

The Fund is used for financial assistance to projects for public water systems that collect, treat, and supply water for human consumption. It continues to be managed by the Water Development Authority, but under the direction of the Department instead of the Department of Health and Human Resources.

Department of Environmental Protection, Waste Management Division of Water and Waste Management, Hazardous Waste Management System, 33 CSR 20

The proposed rule amends a current legislative rule and is the result of the Hazardous Waste Management Act under W.Va. Code §22-18-1, et seq. The Act protects the public health and the environment from the effects of inadequate management of hazardous waste. This rule regulates the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health and safety and the environment.

The proposed rule adopts and incorporates by reference the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of October 31, 2021.

Department of Environmental Protection, Water Resources Division of Water and Waste Management, Underground Injection Control, 47 CSR 13

The proposed rule amends a current legislative rule and is promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, this rule governs the Underground Injection Control Program (UIC). The UIC program regulates underground injections of waste into six classes of wells. This rule set forth criteria and standards which apply to the UIC program. The proposed rule updates the 6 classes of wells to maintain state primacy under the U.S. Environmental Protection Agency.

The proposed rule updates the definition of a Class 3 well which is a well which injects for the extraction of minerals to exclude in situ combustion of fossil fuel; specifies that the amount and chemical make-up of injection fluids are to be considered among the factors for casing and cementing requirements

to prevent potential leaks from a Class 1 well; requires caliper logs for intermediate and long strings of casings for Class 1 wells; require each Class 1 well plug to be tested for seal and stability; additional specifications are added for alarms and shut off systems Also, §47-13-8.4.2.j is added to the rule providing requirements for testing and monitoring for hazardous waste injection wells and requiring a plan be developed and followed; requires additional data in quarterly reports to the Director; the requirements for the contents of permitting maps are changed; allows the Director to consider well materials specifications and their life expectancy before issuing a permit and adds post-closure care to the list of items needed to be covered by the performance bond; provides that the requirement to maintain an approved post-closure care plan is enforceable even if the plan is not a condition of a permit, must be submitted with a permit application, and becomes a condition if approved by the Director; requires that after closure of a well, records be kept for 3 years and that the operator turn the records over to the Director; adds new sections to the rule adopting federal regulations concerning financial responsibility for hazardous waste injection wells, modifications, exceptions, and omissions to the incorporated regulations, and restrictions and prohibitions on injections with exceptions; and updates permitting requirements for class 3 wells for mineral dissolution and extraction to include the submission of mapping indicating public water systems and water well.

The proposed rule also adds language regarding Class 1 hazardous waste injection wells stating that the obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities and that the requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. It also requires the owner or operator of a well that has ceased operations for more than two years shall notify the Director 30 days prior to resuming operation of the well.

CODE REFERENCE: West Virginia Code §64-3-1 et. seq – amended

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: March 8, 2024

ACTION BY GOVERNOR: Pending Governor's approval as of March 15, 2024

House Bill 2640

Authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules

The Committee Substitute contains 8 rules relating to the Department of Environmental Protection and is known as Bundle 3.

Department of Environmental Protection, Standards of Performance for New Stationary Sources, 45 CSR 16

The rule amends a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The rule adopts and incorporates by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Department of Environmental Protection, Requirements for Operating Permits, 45 CSR 30

The rule amends a current legislative rule. which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

This rule provides for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the CAA and the state operating permit program requirements of 40CFR Part 70. This rule establishes: (a) the obligation for a source to obtain a Title V operating permit; (b) applicability for other sources, including exemptions and deferred sources; (c) permit application, content, issuance, renewal, reopening, revision, review, suspension, modification, revocation, and reissuance requirements, and (d) Title V fee requirements. All fees collected pursuant to this rule shall be expended solely to cover all reasonable direct and indirect costs required to administer the Title V operating permit program and accounted for in accordance with this rule.

The fee structure is being revised as recommended by the U.S. EPA in its September 2021 Title V Program Evaluation Report, August 2019 Title V Permit Fee Evaluation Report, and May 2015 Title V Program Evaluation Report and other revisions were made to comport with Revisions to the Petition Provisions of the Title V Permitting Program [85 Fed. Reg. 6431, February 5, 2020] and Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and the Federal Operating Permit Program [87 Fed. Reg. 19042, April 1, 2022]. Obsolete transitional language was removed, and other clarifications were made.

These amendments are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Section 8 relating to fees has been completely rewritten. It:

- Replaced the annual emissions only fee to an annual fee that includes an emissions fee, base fee, and complexity fee components.

- The emissions fee factor is a calculation based on the 3-yr average of the DAQ Title V Fund expenses. The calculated emissions fee factor is now multiplied by the amount of actual emissions released by the specific source to determine the emissions fee component.
- The emissions fee cap was removed.
- The Certified Emissions Statement (CES) was eliminated. (Emission reporting requirements remain.)
- The Title V fee program does not reference the Rule 22 minor source fee program.

Table 45-30A Hazardous Air Pollutants - This table was struck in its entirety, consistent with the revised definition.

Table 45-30B - Class I and Class II Substances - This table was struck in its entirety, consistent with the revised definition.

LRMRC proposed the following clean-up amendment:

On page 39, subdivision 8.1.a.1, by striking the number "$15,000" and inserting in lieu thereof the number "$5,000".

The committee substitute contains several amendments which have already been included in the modified rule. There is a committee amendment to remove those amendments.

Department of Environmental Protection, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

The rule amends a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The rule incorporates by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022. Revisions to the rule include the annual incorporation by reference amendments of the NESHAPs promulgated by the EPA under 40 CFR Part 63 as of June 1, 2022, that include: (a) Carbon Black Production and Cyanide Chemicals Manufacturing Residual Risk and Technology Reviews, and Carbon Black Production Area Source Technology Review; (b) Flexible Polyurethane Foam Fabrication Operations Residual Risk and Technology Review and Flexible Polyurethane Foam Production and Fabrication Area Source Technology Review; (c) Clean Air Act Section 112 List of Hazardous Air Pollutant: Amendments to the List of Hazardous Air Pollutants (HAP); (d) Mercury Cell Chlor-Alkali Plants Residual Risk and Technology Review; (e) Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction; (f) Refractory Products Manufacturing Residual Risk and Technology Review; (g) Stationary Combustion Turbines; Amendments; (h) Surface Coating of Automobiles and Light-Duty Trucks, Surface Coating of Metal Cans, Boat Manufacturing, i) Clay Ceramics Manufacturing; Technical Correction and (j) General Provisions Technical Correction.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

Department of Environmental Protection, Control of Ozone Season Nitrogen Oxides Emissions, 45 CSR 40

This rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. The modifications also update the promulgation history of the rule.

Section 4 relating to applicability has been amended to update the classification of certain units as not being subject to this rule since they are already the subject of a Federal NOx ozone season emissions trading program.

Department of Environmental Protection, Rules for Quarrying and Reclamation, 38 CSR 03

The rule amends a current legislative rule promulgated under the Quarry Reclamation Act which governs the extraction of non-coal minerals by quarrying.

Section 6.8 relating to blasting has been amended to require blasters to be approved by the Secretary, be current in their Blaster's Certification, and have the certification in their possession while conducting blasting activities. The Certified Blaster is in charge of and responsible for the design, loading, and firing of the blast.

Department of Environmental Protection, Recycling Assistance Grant Program, 33 CSR 10

The rule amends a current legislative rule and is promulgated under the A. James Manchin Rehabilitation Environmental Action Plan in W. Va. Code §22-15A-1 et. seq. The rule sets out guidelines and procedures for providing grants to local governments and other parties to plan, initiate, expand, or upgrade recycling programs, public education programs, and recycling market procurement efforts.

The rule has been in effect since 2008. Overall, the changes are needed to update the rule for current technology and marketplace circumstances. The rule adds language under multiple sections to add "source reduction programs" which are those programs that reuse waste materials to avoid using recycling centers and landfills. The rule adds additional flexibility to the department concerning the "Cure period", removes language prohibiting certain parties who do not participate in tax and fee collection from receiving grants, removes the 20-year minimum lease limitation for recycling facilities construction and improvements. Allows grant money to be used for a reasonable share of costs of audits required by West Virginia Code §12-4-14 up to a maximum of $2,000 and increases the maximum grant size from $20,000 to $35,000 for Recycling Feasibility Study and Planning Grant, Local Government.

Section 12 relating to requirements for grant recipients has been amended to require that requests for changes in a grant budget be in writing and not significantly alter the original scope of the grant, requires a minimum of three verbal bids for recipient purchases between $5,000 and $10,000; allows electronic bids, requires written bids for all purchases estimated to be more than $10,000, requires all bids be recorded in the required reports and retained in the recipient's file, prohibits any attempt to segregate a project into sections having an estimated value of less than $10,000, sets forth notice to solicit bids and documentation requirements, allows feasibility studies to be procured using a Best Value Procurement method, and allows, the Department to waive or modify the bidding procedures to allow direct purchase of commodities and services under defined circumstances.

Department of Environmental Protection, Reclamation of Abandoned and Dilapidated Properties Grant Program, 33 CSR 13

The rule is new and is promulgated under the A. James Manchin Rehabilitation Environmental Action Plan in W. Va. Code §22-15A-1 et seq. The rule sets out guidelines and procedures to assist county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks in the remediation of abandoned, blighted, and dilapidated structures or properties. Enrolled Committee Substitute for Senate Bill 552 which passed during the 2022 regular session is the basis for the rule.

Section 2 defines terms including "Abandoned" and "Dilapidated."

Section 3 creates the Reclamation of Abandoned and Dilapidated Properties (RADP) Grant Program and sets forth the application process. Grants are available to county commissions and municipalities to remediate abandoned and dilapidated structures by demolition or deconstruction. The grants are awarded for a period of one year from the date of the grant agreement. One six-month extension may be granted for good cause if a request is submitted before the expiration of the grant period. Subsequent grants may be obtained by a grantee through submission of a new application, as long as all the objectives of the current grant have been completed.

Section 4 sets applicable conditions for funding under the program: The project must provide environmental improvement by decreasing imminent danger, risk to public health and welfare and negative visibility of structures. The project may provide for redevelopment of property or new development initiatives.

Section 5 relates to the authorized use of grants funds in an approved program. Uses may include asbestos testing; asbestos removal prior to demolition; demolition of the structure; costs associated with disposal at a permitted landfill or materials recovery center; site stabilization; legal costs associated with securing properties for demolition; and other costs approved by the department.

Section 6 relates to unauthorized uses of grants. A grantee may not use a grant to replace funds currently budgeted to demolish or deconstruct a structure or for expenditures not related to demolition or deconstruction of a structure. Also, grant funds may not be used for land acquisitions; environmental testing of soil conditions; administrative costs; beautification costs not related to site stabilization; office equipment; entertainment; alcoholic beverages, meals, and gratuities; lobbying expenses; or landfill operations or management.

Section 7 relates to the review of applications. The department may reject applications not meeting eligibility and submission requirements and may partially award or reject applications based on available funding. The department must submit those recommended for funding to the Secretary and the Governor for approval.

Section 8 relates to grant recipient requirements. Grant funding is disbursed at the time of receipt of invoices and all other required information for approved expenditures on at least a 30-day rolling basis. This section contains provisions on the maintenance of financial and other records, requires the grantee, and requires the grantee to submit a final report to the department within 30 days following the last day of the grant period and specifies information to be contained in the report.

Section 9 relates to site visits. It allows the department to periodically conduct site visits.

Section 10 requires all unexpended grant funding at the end of the grant period to remain within the program.

The House amended the rules to ensure the program gives priority to structures in "high traffic areas, tourism corridors, and/or common open spaces."

Department of Environmental Protection, Reclamation of Solar and Wind Electricity Generation Facilities, 60 CSR 11

The rule is new and is promulgated under the West Virginia Wind and Solar Energy Facility Reclamation Act, W. Va. Code §22-32-1 et seq. created in Enrolled Committee Substitute for Senate Bill 492 which passed during the 2021 regular session. The rule establishes requirements and bonding for the decommissioning of solar and wind generation facilities to guarantee the decommissioning.

An owner of a solar or wind generation facility must decommission its facility and pay for the costs of decommissioning. Decommissioning activities must begin within 90 days after abandonment and be completed within 24 months unless the owner receives departmental approval of an alternative plan.

The owner of a facility which commenced operations on or before July 1, 2021, is to submit by July 1, 2022, the date that the generation facility commenced operations; a decommissioning plan; and identification of landowners.

An owner that commences commercial operation after July 1, 2021, is to submit certain information after commencing operation. Within 90 days, the department will notify the owner of any deficiencies in the decommissioning plan. Within 90 days after receiving a deficiency notice, an owner must address all deficiencies and resubmit the decommissioning plan.

New owners must confirm compliance with the decommissioning agreement of the prior owner or submit an alternative decommissioning agreement for approval.

Within one year of commencing operations, each non-exempt facility will pay a fee to the Wind and Solar Decommissioning Account of $100 per megawatt of generation capacity, and $50 per megawatt of generation for each subsequent modification.

The department may inspect solar or wind generation facilities to ensure compliance.

Unless exempt, the owner of a facility must prepare a decommissioning plan which includes a commitment to remove all aboveground equipment such as solar panels, turbines, foundations, and structures. The plans must include an estimate of the cost of decommissioning the facility with supporting calculations.

The facility is to be returned to the approximate original topography with grading, topsoil, and revegetation to prevent adverse hydrological effects.

In lieu of the decommissioning plan requirements, parties may reach an alternative decommissioning agreement. The alternative agreement must be provided to the department for review. The parties are required to grant the department and the Public Service Commission authority to enforce compliance with the alternative agreement. Decommissioning agreements, which legally bind exempt parties, are subject to review and comment by the department not approval.

The owner of facility is exempt from the decommissioning and bonding requirements of this rule if the facility has a nameplate capacity of less than 1.0 megawatts; is operated by regulated public utility who can demonstrate financial integrity; or if the facility is legally bound by a decommissioning agreement, based upon a qualified independent party and executed before July 9, 2021; or was granted authorization or waiver to construct by the Public Service Commission, conditioned upon the execution of the agreement before July 9, 2021.

A facility remains exempt unless it is found to be in breach of an agreement, the agreement is found to be unenforceable; a facility is transferred to a party not bound by the agreement; or expands its facility by 50% or more in total disturbed acreage.

Unless exempt, each solar and wind generation facility must provide a decommissioning bond conditioned on the faithful decommissioning of the facility. The department shall set the estimated bond amount for the department to perform the decommissioning work. The bond amount must be based on estimated costs submitted by the owner and acceptable to the department; estimated costs to the department that may arise to perform the work; and other cost information.

The value of the bond shall be based upon the total disturbed acreage, less salvage value, and shall not exceed the total projected future cost of decommissioning, less salvage value.

The department must notify the owner of the facility of any denial, approval, or modification to the decommissioning plan or the bond amount. Any person adversely affected by a decision of the department may appeal that decision to the Environmental Quality Board and thereafter to the appropriate court of law.

Unless exempt, an owner who is required to provide a bond payable to the state in a form acceptable to the department and the Attorney General in a sum determined by the department conditioned on the faithful decommissioning of the facility.

If the owner of a facility fails to submit a decommissioning bond or a properly executed and legally binding decommissioning agreement, the department must provide notice to the owner and may assess a penalty of not more than $10,000.00 for the first day of violation and an additional penalty of not more than $500.00 for each day the failure continues.

If the owner transfers ownership to a successor owner, the department must release the bond posted by the owner. The successor owner must provide a bond that meets the requirements.

An owner must receive approval from the department prior to replacing any bond. The department shall approve a replacement bond within 90 days of receipt of the request for replacement if it meets the requirements of these rules.

Once every five years, an owner may request a reduction of the required bond amount by submitting an amended decommissioning plan. If the department finds that the amended plan reduces the estimated cost to complete decommissioning, the department may approve reducing the bond.

The department is required to review each nonexempt decommissioning plan and bond amount every five years after a facility is bonded, or when a new owner submits a revised decommissioning plan. The department may increase the amount of the bond if the facility has expanded or the cost to decommission the facility has otherwise increased.

The owner must submit either a surety bond, collateral bond, letter of credit, or certificate of deposit in a form acceptable to the department and to the Attorney General.

An owner may satisfy the bonding requirements by submitting a surety bond that complies with the requirements of this section. The requirements concern amounts, powers of attorney, bankruptcy terms, and suspension or cancellation issues. An owner may satisfy the bonding requirements by submitting a letter of credit that complies with the requirements this section. The requirements concern the characteristics of the bank, irrevocability, ability to pay to the department upon demand, amount, and others.

An owner may satisfy the bonding requirements by submitting a certificate of deposit that complies with the requirements. The requirements concern the amount, FDIC, renewability, ability to pay, release terms, and certain waivers.

If an owner fails to decommission a facility as set forth in the decommissioning plan and did not commence action to rectify deficiencies within 90 days after notification, the department may cause the bond to be forfeited for the entire facility. The notification must include the reasons for the forfeiture, the amount to be forfeited, times for corrective action, and available appellate rights.

The department must release a bond if the department is satisfied that an owner has completed decommissioning of a facility in accordance with the decommissioning plan. The owner shall allow the department to inspect the facility to verify the adequacy of decommissioning for bond release.

Upon bond forfeiture for an abandoned facility, the department may take any necessary action to secure and decommission the facility.

Appendix A sets forth a list of solar and wind generation facilities that are exempt from the rule.

The following House amendments were adopted:

On page 5, subparagraph 4.1.d.iii after the word, 'slabs" by inserting the words "to a minimum depth of 36 inches below the surface";

On page 5, subsection 4.4 after the word "receipt" by adding the following:

"The department shall only deny an alternative decommissioning agreement if they determine that it will not result in the restoration of the property to a condition in which it can be used towards the same or a similar use as its use prior to the onset of the alternative decommissioning agreement.";

And,

On page 7, by striking out subdivision 6.2.a and inserting in lieu thereof subdivision 6.2.a to read as follows:

"6.2.a. Estimated costs of decommissioning and salvage value as submitted by the owner in the decommissioning plan and in accordance with these rules with such costs estimated by the department using current machinery production handbooks and publications or other documented or substantiated cost estimates acceptable to the department."

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 279

Authorizing the Department of Environmental Protection to promulgate legislative rules

This bill is the Department of Environmental Protection bundle. It contains 8 rules.

Department of Environmental Protection – Ambient Air Quality Standards, 45 CSR 08

The rule amends a current legislative rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, and incorporates by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).

The changes to the rule adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021.

The updates to the rule maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Standards of Performance for New Stationary Sources, 45 CSR 16

The rule amends a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021. These amendments maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

This rule amends an existing DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021. These modifications maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Emission Standards for Hazardous Air Pollutants, 45 CSR 34

The rule amends a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021.

These amendments are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

Department of Environmental Protection – Requirements for the Management of Coal Combustion Residuals, 33 CSR 1B

This rule is new and is promulgated under the Solid Waste Management Act which governs solid waste management and disposal. Specifically, this rule governs Coal Combustion Residuals, such as bottom ash and fly ash, produced when coal is burned for electric power generation.

The rule simply adopts by reference the Federal Regulation, 40 CFR Part 257, Subpart D, Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. This is necessary to obtain and maintain closure and permitting primacy. DEP already regulates operations, and the rule will provide DEP with jurisdiction over cleanup and closure also.

The rule applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions, who engage in solid waste management of residuals generated from the combustion of coal at electric utilities and independent power producers. These requirements also apply to disposal located off-site of the power producer.

The rule establishes minimum national criteria to determine which solid waste disposal facilities and solid waste management practices do not pose a reasonable probability of adverse effects on health or the environment under the Resource Conservation and Recovery Act.

Department of Environmental Protection – Requirements Governing Water Quality Standards, 47 CSR 02

The rule is the result of the Water Pollution Control Act found in W.Va. Code §22-11-1, et seq, which provides rule-making authority to the DEP to establish rules necessary to carry out the requirements of the Act.

The rule amends the previous legislative rule which establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The stated public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of water consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fishes, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

New Subsection 8.2.c was added to the rule for the evaluation of factors related to human health on a case-by-case basis as part of the NPDES permitting process. CWA 303(c) is the water quality standards. The process begins with a regulated party investing in an environmental study. This study will be reviewed for proper protocols and water quality standards first by DEP and then by the EPA. Once approved by both the state and federal regulators, a permit may be issued with different criteria. This permit is not subject to legislative review.

Subsection 8.6. in the rule which required DEP to create a work group to analyze and recommend updates to human health criteria is being deleted from the rule because it is no longer necessary.

The most significant amendments are to the Requirements Governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the

Clean Water Act, Section 303(c)(1). This will be the third rule change in the last few years. These updates match West Virginia with the US EPA 2015 updates for nationally recommended criteria.

The rule includes changes to the human health criteria in Appendix E recommended by the Human Health Criteria Work Group. In this rule, the DEP is revising 31 substances and adding 4 substances to the human health criteria. Once authorized, 28 criteria will become more stringent and 7 will become less stringent. If authorized, these 35 criteria will then be consistent with nationally recommended criteria. The units of measure for the substances in the table are also being revised to have the same units of measure for the various substances. The legislature has now updated or added in total 59 of the EPA's 96 recommended criteria.

Finally, the rule is amended in Appendix A, Category B-2 – Trout Waters by adding language regarding the Summersville tailwaters above Collision Creek which states that the water temperature is limited to no more than 5 degrees above the natural temperature, not to exceed 72 degrees any time during the year. This change effectively increases the allowable water discharge temperature from the dam.

Department of Environmental Protection – Underground Injection Rule, 47 CSR 13

The rule amends a current legislative rule and is promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, this rule governs the Underground Injection Control Program (UIC). The UIC program regulates underground injections of waste into five classes of wells. The rule updates these five classes and adds a sixth classification for carbon capture and sequestration wells.

The rule sets forth criteria and standards which apply to the UIC program. All owners and operators of these wells must be authorized by DEP to make injections. The classes are as follows:

- Class 1 wells are for disposal of hazardous wastes below the water table;
- Class 2 wells are for injection fluids associated with oil and gas production such as brine water;
- Class 3 wells are used to inject fluids to dissolve and extract minerals such as salt mining;
- Class 4 wells cover radioactive materials that do not meet the Class 1 criteria. Note: Class 4 wells are no longer allowed under the federal rule, but nationally some are grandfathered for long term closure; and
- Class 5 wells are shallow wells above the water table, which are not Class 1 through 4 or Class 6. These include wells such as commercial sewage leach fields.
- The new Class 6 wells are for carbon capture and sequestration.

West Virginia currently has primary enforcement authority for the first five classes of wells, but the rule must be updated to maintain this primacy. Currently, federal rules apply to Class 6 wells. Once the rule is updated and approved, DEP intends to seek primacy over Class 6 wells.

Subsection 4.6 describing Class 6 wells is new. Subsection 5.4 is new and describes the area of review for Class 6 wells. Paragraph 6.2.c.5. is new and relates to the mechanical integrity of Class 6 wells.

Section 8 relating to criteria and standards applicable to Class 1 wells has been amended regarding construction requirements, monitoring and closure requirements, and post-closure care.

Section 9 relating to criteria and standards applicable to Class 2 wells has amendments relating to construction, abandonment, operating, monitoring and reporting requirements and information to be considered by the Director prior to issuing a permit.

New Section 13 contains the criteria and standards for Class 6 wells. It contains minimum criteria for siting; construction requirements; abandonment; logging, sampling and testing prior to injection well operation; operating, monitoring and reporting requirements; emergency and remedial response; required permit information; and post injection site care and site closure.

Section 14 relating to the injection well permitting program has been amended to contain requirements relating to loss of mechanical integrity, release of infected wastes into an unauthorized zone, plugging and abandonment, financial responsibility, waiver of requirements by the Director, corrective actions regarding Class 6 wells, and applications for Class 6 permits.

Department of Environmental Protection – Administrative Proceedings and Civil Penalty Assessment, 47 CSR 30B

The rule amends a current legislative rule which was promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, the rule governs the Administrative Proceedings and Civil Penalty Assessment for operators who may not be in compliance with their permits. This rule establishes the procedure for the resolution of enforcement actions and the assessment of civil penalties in lieu of the institution of civil actions as provided in the code.

The rule addresses these issues to make the West Virginia rule more comparable to the Clean Water Act by addressing the Court's concerns. The rule requires an administrative hearing whether the operator choses to participate or not, empowers the secretary to unilaterally assess a civil penalty even if an operator does not resolve the issue by voluntary agreement, and deletes the provision allowing an operator to terminate a proceeding at any time for any reason. Finally, the rule also deletes the provision allowing an operator to reject a modification of a proposed consent order made by the secretary which is based on public comments or other information received during a public hearing.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: February 11, 2022

EFFECTIVE DATE: February 11, 2022

ACTION BY GOVERNOR: Signed February 21, 2022

House Bill 4242

Authorizing the Division of Labor to promulgate a legislative rule relating to Child Labor

This Committee Substitute contains the Department of Commerce rules. It is known as Bundle 10 and contains 10 rules, including three rules relating to the Office of Miners' Health, Safety and Training.

Office of Miners' Health, Safety and Training – Rule Governing the Safety of Those Employed In and Around Surface Mines in West Virginia, 56 CSR 03

The rule amends a current legislative rule. The Office of Miners' Health, Safety and Training, in consultation with the Board of Coal Mine Health and Safety has updated the electrical safety rules found in 56 CSR 3, concerning lock-out, tag-out procedures; troubleshooting procedures; and the use of electrically insulated gloves on surface mines. These changes correspond with the electrical safety rule changes the Board made to Electrical Provisions for Underground Mining 36 CSR 12, which became effective on February 11, 2021.

- §56-3-37. Electricity.

The amendments to this section:

- Specify when equipment must be locked-out and tagged-out, by whom, and who should keep the keys;
- Require the use of electrically insulated gloves and specify standards and testing requirements for gloves;
- Require hot sticks to be tested every 12 months;
- Require the overload protection for transformers and conductors to be in accordance with the National Electric Code in effect at the time of installation;
- Replace "Certified electrician" with "qualified person" under the maintenance and repair section;
- Removes the requirement that circuits to be deenergized on idle days and shifts;
- Requires ground fault interrupters on portable hand-held tools;
- Alters the minimum distances from overhead powerlines where machinery may be operated by adding a table; and
- Adds a new section governing low and medium voltage for portable equipment with grounding requirements and circuit breaker requirements.

Office of Miners' Health, Safety and Training – Rules Governing First-Aid Training of Shaft and Slope Employees, 56 CSR11

This rule repeals a current legislative rule. The first-aid training requirements for shaft and slope employees has been moved to the Board of Coal Mine Health and Safety's rule, Shaft and/or Slope Operations in the State of West Virginia 36 CSR 1, which went into effect March 27, 2021.

Office of Miners' Health, Safety and Training – Substance Abuse Screening Standards and Procedures, 56 CSR 19

The rule amends a current legislative rule. The Office of Miners' Health, Safety and Training (Office) has found that coal miners who fail a drug test for THC are now claiming that their failed drug test is because of their use of over-the-counter CBD products. The Office believes that when medical marijuana becomes available for use by West Virginia residents, coal miners will begin to use that as a defense also.

The Office believes that THC in any form should be a prohibited substance in the interest of mine safety. This rule prohibits THC in any form.

The Office is also seeing an increase in the reluctance of coal operators, drug testing collectors, laboratories, and medical review officers to participate in permanent revocation hearings and contested case hearings in front of the Board of Appeals. Without having the necessary witnesses available to testify at a hearing, the Office has difficulty proving that the coal miner did, in fact, fail a drug test. If the Office of Miners' Health, Safety and Training is unable to prove that coal miners failed the drug test, the entire coal mine drug program could be jeopardized. The rule removes defenses to any individual failing a drug test for THC because of medical marijuana, CBD products, and the procedural failure of the employer to notify the Director within seven days after a failed drug test.

This rule requires drug testing vendors to become registered drug testing contractors who have agreed ahead of time to appear and provide the needed evidence. A drug testing contractor must register with the Office as a contractor and pay the $100.00 annual registration fee. Drug testing contractors are subject to assessments if they fail to follow the requirements of this rule.

The rule requires employers to ensure that all breath alcohol tests and drug tests are performed by drug testing contractors and that the drug testing contractors comply with Subsections 7.1. and 7.2. of the rule.

Under the current rule an individual who refuses a drug test, possesses, or submits an adulterated or substituted sample must complete 18 months of counseling and 18 monthly random drug tests. The requirement in the updated rule is six months of counseling and six monthly random drug and alcohol tests. The individual's suspension time remains 18 months.

CODE REFERENCE: West Virginia Code §64-10-1 et. seq – amended

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: March 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 216

Authorizing Department of Commerce to promulgate legislative rules

This is a Department of Commerce rules bundle, which includes a rule that affects comprehensive mine safety programs.

Miners Health Safety and Training - Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 08

Language set forth in 36 CSR 31, pertaining to a coal mines comprehensive mine safety program, has been moved to 56 CSR §8.

The section has been in effect since 1984 and gives the Director the authority to require a mine operator, who has experienced a substantial number of injuries due to materials handling, to identify a procedure to reduce such injuries and add that procedure to the mines comprehensive mine safety program.

CODE REFERENCE: West Virginia Code §64-10-1 – amended

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: March 11, 2021

ACTION BY GOVERNOR: Signed March 15, 2021

House Bill 2382

Authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards

This bill is rules Bundle 7, Department of Environmental Protection (DEP) which contains seven Air Quality Rules, two Water and Waste Management Rules, and one Secretary's Office rule.

DEP-Air Quality – Ambient Air Quality, 45 CSR 8

The rule amends a current DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the U. S. Environmental Protection Agency (EPA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. The amendments to the rule are necessary to maintain primacy.

DEP-Air Quality – Standards of Performance for New Stationary Sources, 45 CSR 16

The rule amends a current DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These amendments to the rule are necessary to maintain primacy.

DEP-Air Quality – Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

The rule amends a current DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These amendments to the rule are necessary to maintain primacy.

DEP-Air Quality – Control of Air Pollution from Municipal Solid Waste Landfills, 45 CSR 23

The rule modifies a current DEP rule which establishes and adopts emission standards for controlling air pollution from Municipal Solid Waste Landfills, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to maintain primacy.

Section 7 of the rule was amended to allow an owner or operator to meet operational standards for collection and control systems, compliance systems, monitoring requirements, annual reporting requirements, corrective action, and recordkeeping by complying with federal regulations as opposed to state rules. If they choose the federal route, they may not return to regulation under the state rule.

DEP-Air Quality – Acid Rain Provisions and Permits, 45 CSR 33

The rule amends an existing DEP rule which establishes and regulates the Acid Rain Program as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020.

The amendments are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to maintain primacy.

DEP-Air Quality – Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule amends a current DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the CAA.

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020.

The amendments are necessary are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

DEP-Air Quality – Control of Greenhouse Gas Emissions from Existing Coal- fired Electric Utility Generating Units, 45 CSR 44

This rule is a new DEP rule which establishes and regulates the Affordable Clean Energy rule, consisting of emission guidelines for greenhouse gas emissions from existing Electric Utility Generating Units (EGUs). The proposed rule implements the federal emission guidelines established at 40 C.F.R. 60, Subpart UUUUa, commonly referred to as the Affordable Clean Energy (ACE) rule.

The federal emission guidelines establish the best systems of emission reduction (BSER) which, in the judgment of the U.S. EPA Administrator, have been adequately demonstrated and provide information on the degree of emission limitation achievable for the designated pollutant. The federal emission guidelines are heat rate improvements which target achieving lower carbon dioxide emission rates at designated facilities. The federal emission guidelines were developed pursuant to section 111(d) of the CAA.

This rule will regulate greenhouse gas emissions, in the form of carbon dioxide, from existing coal-fired EGUs that commenced construction on or before January 8, 2014, that meet the definition of a designated facility. This rule establishes applicability criteria, permit application requirements, permit requirements, standards of performance requirements, and monitoring, recordkeeping, and reporting requirements for designated facilities for control carbon dioxide emission rates based on the heat rate improvements analysis that can be applied to or at the affected steam generating unit.

DEP-Water and Waste Management – Requirements Governing Water Quality Standards, 47 CSR 2

The rule amends a current legislative rule. It establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The stated public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of water consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fishes, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

These changes to the Requirements Governing Water Quality Standards are being made to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act (CWA), Section 303(c)(1).

Subsection 8.6. in the rule required DEP on or before April 1, 2020, to propose updates to the numeric human health criteria found to be presented to the 2021 Legislative Session. These proposed changes

include revisions to human health criteria in Appendix E, subsections 8.23 and 8.25, in order to adhere to a mandate from the 2019 Legislature.

In the change, the DEP is revising 24 of the human health criteria. In the proposed rule from 2018/19, the DEP recommended changes to 56 different criteria. If authorized, these 24 criteria will then be consistent with nationally recommended criteria.

The remaining human health criteria will be studied by a work group including DEP personnel and the DEP Advisory Council. This work group began meeting monthly for one year beginning in June 2020. The group will research and recommend additional revisions to the numeric human health criteria, if necessary, to be presented to the 2022 Legislature. The group may also recommend revising bioaccumulation factors, a West Virginia specific fish consumption rate, and other factors which establish state specific criteria.

Finally, the rule is being amended to remove Section 7.2.d.19.2. This provision was disapproved by EPA under its authority in the CWA §303(c)(3) and 40 CFR §131.21(a)(2). The Charleston Sanitary Board submittal was not approved and never went into effect, rendering this subsection unnecessary.

DEP-Water and Waste Management – Hazardous Waste Management System, 33 CSR 20

The rule regulates the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health and safety and the environment. The rule adopts and incorporates by reference the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of September 8, 2020. The previous rule adopted regulations in effect on August 21, 2019.

The federal rule amendments adopted by this rule change are:

- Increased Recycling: Adding Aerosol Cans to the Universal Waste Regulations: Federal Register 84 FR 67202 published December 9, 2019, effective February 7, 2020.
- Modernizing Ignitable Liquids Determinations: Federal Register 85 FR 40594 published July 7, 2020, effective September 8, 2020.

The amendments add aerosol cans to a classification of hazardous waste known as universal waste. Universal waste also includes batteries, lightbulbs, and pesticides. These materials have lower toxicity levels and are managed differently with a more relaxed regulatory framework. This change will only have an effect on commercial and industrial facilities. Households are exempt.

DEP amended the rule to adopt the most current federal hazardous waste regulations to maintain consistency with the federal program and the state program. The adoption is necessary to maintain primacy.

DEP-Secretary's Office – Voluntary Remediation and Redevelopment Rule, 60 CSR 3

The rule amends a current legislative rule and it establishes the eligibility, procedures, standards, and legal documents required for voluntary remediation activities and brownfield revitalization. The rule sets the administrative process for the Voluntary Remediation Program (VRP), which encourages voluntary cleanup and redevelopment of abandoned or under-utilized contaminated properties by providing certain environmental liability protections.

The rule has two changes. First, the De Minimis Table has been removed from the rule. This table lists the default concentrations of contaminants that may remain in residential soil, industrial soil, and groundwater at a remediation site because the residual contaminants do not present an unacceptable risk to human health.

The table has been relocated to the VRP Guidance Manual. DEP will then be able to update the voluntary remediation standards annually or immediately following significant regulatory changes using the scientific sources outlined within the rule. The time spent requiring the agency to amend the legislative rule every legislative session will be eliminated, streamlining the process. The agency believes this change will lead to increased efficiency and increased responsiveness.

Within Subdivision 9.2.d. of the purposed rule the DEP outlines an updated process to ensure transparency and public participation. The section provides 1) a formal scientific process to calculate and review the changes to the De Minimis Standards, 2) describes a communication process for the updates, 3) requires a public notice and comment period, and 4) provides a means for appeal. The public notice and comment period and appeal section is the subject of an agency agreed to modification which ultimately makes the table part of an interpretive rule.

The method of scientifically determining how the De Minimis Standards are calculated is not changed; however, the process for making changes are rewritten to fall within DEP's authority, no longer requiring legislative approval. The agency believes human health and the environment will remain protected. The rule change simply removes the De Minimis Table from the rule and empowers the DEP to insert it into the VRP Guidance Manual.

The current legislative rule-based process takes over a year when the standards require updating. DEP estimates the proposed process will take less than three months, including review, development, verification, public comment, and final publication. DEP believes this will eliminate the need to amend the legislative rule on an annual basis to remain current with published science. DEP states that toxicity information evolves over time with research and a faster process will help to ensure that remediation standards reflect current science. The agency indicates that the data in the table can regularly change as often as twice a year and is out of date before a new legislative rule is ultimately approved. Under the current process, voluntary remediators may be required to remediate to a more stringent standard than necessary, burdening the applicant with unnecessary costs and a prolonged cleanup. Alternatively, applicants may receive Certificates of Completion and liability protections even when remediating to a level that current science has proven is not protective of human health and the environment.

In the second rule change, DEP updates the requirements for monitored attenuation. Currently, applicants are required to collect eight (8) semiannual samples to demonstrate successful attenuation. The change allows for the current process, but alternately allows for eight (8) quarterly samples. Data to be used in a statistical attenuation demonstration may be collected more frequently over a shorter period of time. Therefore, applicants will have more flexibility, potentially reducing the amount of time required to ensure a site has been remediated.

Again, the current system of semiannual and longer sampling frequencies is still available, as long as no more than fifty percent (50%) of samples are collected during the same season. This change may prevent unnecessary collection of data when the data is adequate to make a satisfactory demonstration.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 26, 2021

EFFECTIVE DATE: March 26, 2021

ACTION BY GOVERNOR: Signed April 7, 2021

Senate Bill 449

Authorizing Department of Commerce promulgate legislative rules

This bill is known as the Department of Commerce Rules bundle, which authorizes and directs the promulgation of 19 rules, including two related to the Office of Miners' Health, Safety and Training.

Office of Miners' Health, Safety and Training, Substance Abuse Screening, Standards and Procedures, 56 CRS 19

This rule is in response to Senate Bill 635, which passed during the 2019 Regular Session. The change requires the Board of Appeals to suspend a miner's certification for a minimum of six months, if the miner tests positive on a drug or alcohol test. The previous rule for alcohol and THC was a minimum of three months of suspension.

The rule is also amended to include the requirement that an employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer. Additionally, the rule removes the types of drug and alcohol test failures that an employer reports to the Director, and now simply requires the employer to report all positive drug and alcohol tests to the Director.

The rule is amended to increase the suspension period from nine months to 18 months for those miners who refuse a drug test or possess or submit an adulterated or substituted urine sample.

Senate Bill No. 455 Office of Miners' Health, Safety and Training, Rules Governing the Certification, Recertification and Training of EMT Miners and the Certification of EMT-Instructors, 56 CSR 22

This rule closes loopholes that allow EMT-Ms to miss the required annual training modules but still maintain their certification. The amendments to this rule also change who may becoming an EMT-M-Instructor. The applicants must possess a current certification that is equal to or greater than an EMT-M in order to become an Instructor. The current EMT-M-Instructors are grandfathered and allowed to continue to teach even though they may not possess a certification equal to or greater than an EMT-M.

The rule also adds a definition of the term "recertified or recertification" which requires the taking of either an eight-hour module of continuing education each year or a 32-hour module every three years. However, the terms do not include recertification for a person who lost the original certification by not completing two continuing education modules.

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: February 12, 2020

EFFECTIVE DATE: February 12, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4217

Authorizing Department of Environmental Protection promulgate legislative rules

This bill is known as the Department of Environmental Protection Rules bundle which authorizes and directs the promulgation of 10 rules, constituting Bundle 3.

Department of Environmental Protection, Division of Air Quality, Ambient Air Quality Standards, 45 CSR 08

This rule modifies a current legislative rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. The rule incorporates, by reference, the national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency (EPA).

The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by the EPA as of June 1, 2019. These incorporate EPA modifications on the retention of standards for the various oxides of nitrogen.

These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in the state.

Department of Environmental Protection, Division of Air Quality, Standards of Performance for New Stationary Sources, 45 CSR 16

This rule modifies a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in the state.

Department of Environmental Protection, Division of Air Quality, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This rule modifies a current legislative rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the state.

The modifications also incorporate, by reference, annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2019, and establish the general procedures and criteria necessary to implement air emissions standards.

Department of Environmental Protection, Division of Air Quality, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

Department of Environmental Protection, Division of Air Quality, Control of Ozone Season Nitrogen Oxides Emissions, 45 CSR 40

This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

The rule updates definitions and adds extensive provisions for monitoring, recordkeeping, and reporting requirements.

Division of Mining and Reclamation, West Virginia Surface Mining Reclamation Rule, 38 CSR 02

This rule modifies a current legislative rule. This rule governs surface mining reclamation, including permit applications; property access; water drainage and erosion; land use; wildlife and revegetation; insurance and bonding; performance standards; subsidence control; and inspection and enforcement.

The rule changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. Senate Bill 635 amended W. Va. Code §22-3-14, which is a part of the Surface Coal Mining Reclamation Act regulating surface effects of underground mining. Senate Bill 635 added a new subsection (e) requiring the Secretary to promulgate a rule before the 2020 Regular Session pertaining to surface owner protection from material damage due to subsidence. Under the bill, the Secretary is instructed to consider the adoption of certain specified federal standards.

The objective of the rule change is to clarify the agency's limitations in adjudicating property rights disputes brought on by subsidence damage.

The House amended two sections in the rule. The first amendment clarifies language in paragraph 11.3.a.3, providing that companies electing to execute bonds must diligently pursue listing on the United States Treasury Department's list of approved sureties. Paragraph 16.2.c.2 currently allows an operator to correct material damage caused by subsidence to any structures or facilities or compensate the owner in the full amount of the diminution in value of the structures or facilities resulting from the subsidence. The House adopted an amendment to allow the owner to make the election, with a limitation on compensation to repair the damage, not to exceed 120% of the pre-mining value of the structure or facility. A statement is added that the paragraph does not create any additional property rights, nor may it be construed to vest the Secretary with the jurisdiction to adjudicate property rights disputes.

Division of Mining and Reclamation, Groundwater Protection Rules for Coal Mining Operation, 38 CSR 02F

This rule modifies a current legislative rule. It establishes practices for groundwater protection which are to be followed by any person who conducts coal mining operations. The rule is established under the

Groundwater Protection Act, the Water Pollution Control Act, and the Surface Coal Mining and Reclamation Act.

The changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. The statutory change added a subsection (g) to W. Va. Code §22-30-24, the Aboveground Storage Tank Act. The added subsection (g) states that the Secretary of Department of Environmental Protection (DEP) shall promulgate legislative rules for consideration by the Legislature in its 2020 Regular Session to incorporate the relevant portions of the Aboveground Storage Tank Act into the Groundwater Protection Rules for Coal Mining for tanks located at coal mining operations.

The purpose of the changes is to vest all enforcement authority in one division of the DEP with respect to coal mines, rather than having two divisions responsible for enforcement. The Division of Mining and Reclamation will take over, from the Division of Water and Waste Management, enforcement of rules pertaining to storage tanks at coal mining sites.

The changes incorporate the entirety of the Above Ground Storage Tank Act into the rule by reference.

Department of Environmental Protection, Division of Water & Waste Management, Hazardous Waste Management System, 33 CSR 20

This rule amends a current legislative rule regulating the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health, safety, and the environment. The rule adopts and incorporates, by reference, the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of August 21, 2019. The new rule adopts the most recent hazardous waste regulations and is necessary to maintain the West Virginia program's approval, primacy, and consistency with the federal program.

Department of Environmental Protection, Voluntary Remediation and Redevelopment Rule, 60 CSR 03

This rule amends a current legislative rule. It is the result of the Voluntary Remediation and Redevelopment Act, located in West Virginia Code §22-22-1 et seq.

The changes will update and modernize the existing rule based on current science and current practice. Many of the changes are the result of comments and feedback from years of implementation of the rule.

Most of the changes are to the Risk Protocol and Remediation Standards section, which clarify the requirements related to performing risk assessments. Additionally, language will be added to clarify that presumptive remedies can be considered in the exposure assessment to eliminate the need to perform a more costly site-specific risk assessment.

Several changes are to the Licensed Remediation Specialist Program. The Voluntary Remediation and Redevelopment Act requires the use of a Licensed Remediation Specialist for supervision of all remediations completed through the program. This is to ensure that the safety, health, and welfare of the public are protected.

The changes to this section strengthen the program by requiring 1) evidence of accredited educational degrees earned to meet minimum education requirements; 2) a passing score set by the rule at 70% for the Licensed Remediation Specialist examination; and 3) appropriate continuing education, including mandatory training specific to the program.

The changes to the Risk Protocol were made to update the requirements related to performing risk assessments to better reflect the current standard of practice.

The changes also increase fees associated with the program which have not been increased since the original filing in 1997. The current fees do not adequately cover program costs.

Oil and Gas Conservation Commission, Rules of the Commission, 39 CSR 01

This rule amends a current legislative rule. Generally, it defines the operations of the Oil and Gas Conservation Commission (OGCC). The rules are promulgated primarily to prevent waste, protect correlative rights of owners, and to conserve oil and gas fields throughout the state.

The rule change was prompted by the needs of oil and gas operators who are developing deep wells into shale formations. A deep well is a well which penetrates below the top of the Onondaga Limestone formation.

Current deep well spacing requirements are 3,000 feet minimum between wells and 400 feet minimum between wells and lease or unit boundaries. It has been widely acknowledged by both industry and government officials that these deep well minimum spacing requirements are unworkable for deep wells drilled into tight formations, such as the Utica and Rogersville shales. Currently, operators are being granted exceptions for these types of wells, almost as a matter of routine.

For horizontal deep wells the minimum distances between new wells and older wells and new wells and unit and lease boundaries are defined. These are default minimums. If needed, the OGCC has the authority to create exceptions to these distances. The new spacing language provides that the productive interval of each new horizontal deep well shall be:

- Unless otherwise agreed to, no less than 1,000 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by a different operator;
- No less than 800 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by the same operator;
- Unless otherwise agreed to, no less than 500 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by different operators;
- No less than 400 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by the same operator;
- No less than 150 feet from the productive interval nearest the heel or toe of a previously permitted deep well and no less than 75 feet from a lease or unit boundary; and
- For a horizontal well, no spacing limitations for non-productive intervals before or after the productive interval.

The vertical deep well spacing is updated with respect to the minimum distances between a well and the lease or unit boundaries. The distance is changed from 400 feet to

500 feet, so that vertical deep well spacing will be consistent with the spacing requirements of horizontal deep wells.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 163

Authorizing DEP promulgate legislative rules

This bill contains eight Department of Environmental Protection rules which constitute Bundle 3.

Department of Environmental Protection, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by the EPA as of June 1, 2018.

These modifications are necessary for the state to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by the EPA.

Department of Environmental Protection, Ambient Air Quality Standards, 45CSR08

This rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead, incorporating, by reference, the national primary and secondary ambient air quality standards as promulgated by the United States Environmental Protection Agency (EPA).

The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These incorporate, by reference, EPA modifications on retention of standards for the various oxides of nitrogen.

These modifications to our rule are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection, Standards of Performance for New Stationary Sources, 45 CSR 16

This rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this state.

Department of Environmental Protection, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the state.

The modifications also incorporate, by reference, annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2018, and establishes the general procedures and criteria necessary to implement air emissions standards. Additionally, the tables appended are updated in conformity with new Federal guidelines.

Department of Environmental Protection, Quality Implementation Plans, 45 CSR 36

This rule repeals an existing DEP rule which establishes general provisions relating to transportation conformity plans, pursuant to the Clean Air Act (CAA), requiring that federally supported highway and transit projects are consistent with state air quality implementation plans in places where air quality does not currently meet federal standards. The circumstances requiring adoption of the Rule no longer exist.

Department of Environmental Protection, Provisions for Determining Compliance with Air Quality Management Rules, 45 CSR 38

This rule repeals an existing DEP rule which establishes general provisions relating to data which could be used to determine if a facility complied with emissions standards, pursuant to the Clean Air Act (CAA). The circumstances requiring adoption of the Rule no longer exist, as the requirements of Enhanced Special Monitoring Call of the EPA which gave rise to this Rule have been included in other Rules and this is now duplicative.

Department of Environmental Protection, Cross State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions and Ozone Season Nitrogen Oxides Emissions, 45 CSR 43

This rule is new. It establishes a program of mitigating the emissions of certain hazardous materials through emissions trading programs among the states as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference the federal Cross-State Air Pollution Rules promulgated by EPA as of June 1, 2018.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. The modifications also update the promulgation history of the rule.

Department of Environmental Protection, Requirements Governing Water Quality Standards, 47 CSR 2

The rule amends a current rule. It establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fish, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

As submitted to the Legislative Rule-Making Review Committee, DEP amended the requirements governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act, Section 303(c)(1). Revisions relating to overlapping mixing zones and harmonic mean flow complied with changes made by the Legislature to W. Va. Code §22-11-7b. Revisions to human health criteria brought the state's standards in line with nationally-recommended water quality criteria. Revisions to the site-specific criterion process allowed a streamlined process for developing site-specific revisions for copper and other metals. Additional administrative revisions were made to make the rule clearer and more concise.

The Legislative Rule-Making Review Committee modified the proposed rule to return the standards to current standards with technical amendments. The Committee on Energy, Industry and Mining approved an amendment to the proposed rule returning the standards to those submitted by the DEP. The Committee Substitute returns the proposed rule to the modified rule recommended by the LRMRC with the addition of a paragraph requiring the Secretary to propose updates to Appendix E on or before April 1, 2020, to put them out for comment, and submit the proposed updates to the 2021 Legislative Session. The Committee Substitute also states that the DEP Secretary shall allow for submission of proposed human health criteria until October 1, 2019.

CODE REFERENCE: West Virginia Code §64-3-1 – amended

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: March 26, 2019

Senate Bill 223

Authorizing Department of Commerce promulgate legislative rules

This bill contains eight rules relating to the Department of Commerce, including rules from the Division of Labor, the Office of Miners' Health Safety and Training, and the Division of Natural Resources.

Office of Miners' Health Safety and Training, Rule Governing the Safety of Those Employed In and Around Surface Mines in West Virginia, 56 CSR 3

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training (OMHST) to revise this rule by promulgating an emergency rule to reflect that the Mine Safety and Health Administration (MSHA) approved surface ground control plan shall serve as the state- approved plan. Further, Senate Bill 626 required automated external defibrillators (AED) on all surface mining operations.

Specifically, Section 6, relating to the powers and duties of the Director of OMHST, is completely rewritten. In Section 8, the Director of OMHST is directed to execute a bond in the sum of $10,000. The current bond is $2,000. In Section 10, the salary of surface mine inspectors is changed from "not less than $17,000 per year" to not less than "$53,904 per year."

In Section 11, the Mine Inspectors' Examining Board is abolished, and the duties of that entity are imposed upon the Board of Coal Mine Health and Safety.

In Section 21, the minimum salary of a mine foreman examiner is increased from $13,500 to $31,032. In Section 30, subsection 30.8. is added to provide that the MSHA- approved surface ground control plan shall serve as the state-approved plan.

In Section 48, a new subsection 48.4. requires that at least one AED be stored on the permitted area of all surface operations in a controlled environment with manufacturers' recommendations. Further, all mine personnel must be trained on the operation of the AED, and a written record must be retained. In Section 52, the requirement for filing reports was revised from monthly to quarterly.

Office of Miners' Health Safety and Training, Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 8

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to promulgate an emergency rule detailing the requirements for mine safety programs to be established by coal operators as provided in W. Va. Code §22A-1-36(b).

This rule amends a current legislative rule. It provides that the comprehensive mine safety program is not subject to annual review by the Director, except when there has been a fatality, a serious accident involving bodily harm, or a pattern of mine safety violations. The Director now has 90 days, as opposed to 30 days, to approve an initial submission of a program or to approve any proposed modifications or revisions. A program's annual evaluation must now include accident investigations conducted during the previous one-year period. Finally, it allows an operator or independent contractor to petition the Director to be removed from annual review.

Office of Miners' Health Safety and Training, Operating Diesel Equipment in Underground Mines in West Virginia, 56 CSR 23

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to amend the state rules to permit the use of diesel generators in

underground mines as long as the generator is vented directly to the return and at least one person is present within sight and sound of the generator.

This rule also contains two new sections that relate to the operation of underground diesel-powered electric generators (§28) and electrical provisions for diesel- powered electrical generators (§29).

CODE REFERENCE: West Virginia Code §64-10-1, §64-10-2, and §64-10-3 – amended

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 240

Repealing certain legislative rules no longer authorized or are obsolete

This bill repeals the following legislative rules which are obsolete or for which there is no longer authority, including two rules from the Department of Environmental Protection.

Department of Environmental Protection

- Department of Environmental Protection legislative rule relating to abandoned mine lands reclamation rule, 59 CSR 1.
- Department of Environmental Protection legislative rule relating to certification of gas wells, 35 CSR 7.

CODE REFERENCE: West Virginia Code §64-12-1 et seq. – new

DATE OF PASSAGE: February 11, 2019

EFFECTIVE DATE: February 11, 2019

ACTION BY GOVERNOR: February 19, 2019

Senate Bill 163

Authorizing the Department of Environmental Protection promulgate legislative rules

This bill contains 10 rules proposed by the Department of Environmental Protection and two rules which the Department requested be repealed, which constitute Bundle 3.

Hazardous Waste Management System, 33 CSR 20

This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates the generation, treatment, storage, and disposal of hazardous waste in this State.

The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, the Resource Conservation and Recovery Act (RCRA) and the regulations promulgated thereunder. The rule is amended to include federal changes through July 1, 2017.

Underground Storage Tanks, 33 CSR 30

This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates underground storage tanks in this State.

The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, 40 CFR 280. The rule is amended to include federal changes through July 15, 2015.

The modifications to Section 3 are extensive, including additions to the qualifications of Class A, C, and D certificates and an entirely new Class F certificate. The modifications also delete the Secretary's power to do a background check, add a requirement that the applicant submit documentation of active job participations, and add new requirements for National Association of Corrosion Engineer certification levels for Class D and Class E classifications. Application fees are increased from $75 to $185 and the renewal rate is increased to $125 from $50, with the fee covering a three-year period instead of a two-year period. A new section provides that fees shall be adjusted annually to account for inflation or deflation.

Section 4 is amended to add a requirement that the Secretary be notified of structural deficiencies of tanks and any work done on interior linings or corrosion protection.

West Virginia Surface Mining Reclamation Rule, 38 CSR 2

This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.

Section 6 has been extensively amended. The amendments cover, in extensive detail, the general requirements for blasting operations, filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures, and pre-blast surveys. They include tables and charts setting forth explosive eights, vibrations, and other criteria.

In Section 11, the provisions relating to incremental bonding have been amended to mirror the language found in the Federal Code of Federal Regulations and provisions relating to Environmental Security Accounts for Water Quality are eliminated as it has no Federal counterpart.

A new Section 25 has been added on the certification of blasters which sets forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates, penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals, blasting crews and reciprocity with other states.

A new Section 26 has been added setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of the claims.

A new Section 27 has been added setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the fees.

Standards of Performance for New Stationary Sources, 45 CSR 16

This proposed rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016.

Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

This proposed rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

Section 9 has been amended to substantially change the manner in which hydrogen chloride and mercury emissions are to be calculated. Additionally, combined emissions for units using a coal mill or alkali bypass are given a new method of calculation. An entirely new set of procedures now being specified for electronic media.

Control of Air Pollution from Municipal Solid Waste Landfills, 45 CSR 23

This proposed rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Municipal Solid Waste Landfills, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

Section 7, which is new, sets forth the applicability, compliance times, emissions requirements, collection and control system requirements testing requirements, emission monitoring requirements, compliance requirements, reporting requirements, and recordkeeping requirements enjoined upon operators of existing municipal solid waste landfills by the EPA.

Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This proposed rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

The modifications also incorporate by reference annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2017.

Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This proposed rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

Ambient Air Quality Standards, 45 CSR 08

This proposed rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017. It incorporates by reference EPA modifications on the Ambient Air Quality Standards for Lead and Particulate matter which retain the current lead standard and make a technical correction on the particulate matter standard. Also, new methods of measuring sulfur dioxide and nitrogen dioxide concentrations were approved.

West Virginia Surface Mining Reclamation Rule, 38 CSR 2

This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.

The proposed rule makes extensive changes to the section on blasting. It covers, in extensive detail, the general requirements for blasting operations, the filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures, and pre-blast surveys. It includes tables and charts setting forth explosive eights, vibrations, and other criteria.

A new Section 25 on the certification of blasters setting forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates, penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals as per Code, blasting crews and reciprocity with other states.

A new Section 26 adds an entirely new section setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of such claims.

Finally, the proposed rule adds a new Section 27 setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the same.

The Senate Committee on Energy, Industry and Mining adopted amendments to the proposed rule which rewrote paragraph 12.2.a.4 of the proposed rule, relating to a bond release or reduction. It removed reference to compliance with water quality standards and allows the Secretary to approve a request for release without restriction as to Phase. The Committee also rewrote paragraph 12.2.4.B. The paragraph currently requires an operator to irrevocable commit other financial resources to assure long term treatment of drainage. It requires a mechanism whereby the Secretary can assume management of the resources in the case of an operator's default. EIM's amendment removes this requirement and simply requires an operator to provide assurances in a form satisfactory to the Secretary through a contract or other mechanism to provide for long term treatment of the damage.

Voluntary Remediation and Redevelopment Rule, 60 CSR 3

This proposed rule modifies an existing Department of Environmental Protection legislative rule that implements a program that provides guidelines for brownfield revitalization and provides procedures and standards for that program. The rule is designed to encourage persons to voluntarily implement and remedial plans at sites which may be contaminated without DEP having to take enforcement action by providing financial incentives and establishing limitations of liability for persons who perform remediation on these sites to DEP's standards.

The modifications proposed by this rule revise procedures for the Brownfields Revolving Fund (BRF) program. Primarily, all information about the BRF is now placed in the same section of the Rule, greater flexibility is provided for on establishing loan interest rates and procedures for accommodation of a variety of entities, so that conditions for EPA loans can be met, and to gain access to a broader array of funding sources, such as legislative grants of monies or grants from other entities or groups.

Section 6 has been amended to remove language providing that voluntary arbitration agreements may contain a provision for alternative dispute resolution.

State Construction Grants Program Rule, 47 CSR 33

This rule is being repealed because Congress never reappropriated the money for this grant program.

Rules on Freedom of Information Act Requests, 60 CSR 2

The Department requested that this rule be repealed.

CODE REFERENCE: West Virginia Code §64-3-1 – amended

DATE OF PASSAGE: February 16, 2018

EFFECTIVE DATE: February 16, 2018

ACTION BY GOVERNOR: Signed February 27, 2018

Senate Bill 230

Authorizing the Department of Commerce promulgate legislative rules

This bill contains seven Division of Labor Rules; five Division of Natural Resources rules, one rule from the Office of Miners' Health, Safety and Training and one Division of Energy rule which is being repealed, all relating to the Department of Commerce and constituting Bundle 10.

Miners Health Safety and Training, Operating Diesel Equipment in Underground Mines in WV, 56 CSR 23

During the 2015 legislative session, the Legislature passed Senate Bill 357. Senate Bill 357 (codified as W. Va. Code 22A-2A-301(a), abolished the West Virginia Diesel Commission and transferred its duties and responsibilities to the Director of the Office of Miners Health, Safety and Training. Senate Bill 357 gave the power and authority to propose legislative rules.

During the 2017 legislative session, the Legislature passed Senate Bill 687 (Codified at S.B. 22A-2A-1001), which mandated the Director to revise these rules and to make nine (9) specific changes as a Miners Health, Safety and Training rule. The Director incorporated those (9) specified changes into the WV Diesel Commission.

The proposed rule: adds a new subsection that permits a mine operator to replace a filter or catalyst of the same make and model without contacting the office of miners' health, safety and training; provides that only qualified mechanics authorized by the engine manufacturer or ASE certified diesel mechanics may repair or adjust fuel injection systems, engine timing or exhaust emissions control and conditioning systems; requires all used intake air filters, exhaust diesel particulate matter filters and engine oil filters to be placed in their original containers or other suitable enclosed containers and be removed from the underground mine to the surface no less than once in a 24 hour period; requires records of emissions tests, 200 hour maintenance tests and repairs be countersigned once each week by the certified mine electrician or mine foreman; with respect to replacing engine oil and filters, requires an independent analysis be conducted of the engine oil; removes requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab; modifies the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds; modifies the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds; modifies the alternative condition by which equipment fails under 196 CSR 1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and removes the requirement for eight (8) hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

Division of Energy, Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development, 207 CSR 1

This rule is being repealed because the Division of Energy no longer exists.

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: March 10, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 113

Authorizing DEP promulgate legislative rules

This rules bundle contains nine bills which constitute Bundle 3, Department of Environmental Protection. Each rule is discussed below.

Department of Environmental Protection, Alternative emission limitations during startup, shutdown and maintenance operations, 45-01

This rule is a new rule that sets forth the criteria for establishing an alternative emission limitation (AEL) during periods of startup, shutdown, or maintenance for stationary sources (periods outside of normal operations). The rule adopts the alternative emission limitation provisions already contained in a series of state implementation plans. The rule applies to a set of sources that have excess emissions during these specified periods and thus, cannot meet the allowable emissions limits at all times. The rule provides criteria for establishing these alternative emissions limitations and includes the reporting requirements in accordance with corresponding federal regulation. The rule does not apply to sources of emissions that are subject to a NSPS or MACT regulation with specific start-up and shutdown provisions.

The rule implements modifications to WV Rules which are necessary to maintain compliance with federal Clean Air Act (CAA) guidelines as interpreted by the Environmental Protection Agency (EPA), and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection, Permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation, 45-13

This rule modifies an existing DEP rule which establishes a series of procedures for reporting by stationary sources of air pollution, and defines the criteria necessary for obtaining permits to construct, modify, or relocate a non-major stationary source, consistent with the CAA.

These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Department of Environmental Protection, Permits for construction and modification of major stationary sources for prevention of significant deterioration of air quality, 45-14

This rule modifies an existing DEP rule which establishes a preconstruction state permit program consistent with the federal CAA and implementing regulations for the prevention of significant deterioration of air quality. The program sets forth criteria for issuing permits for the construction or major modification of major stationary sources of air pollution.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. The promulgation history of the rule is also updated.

Department of Environmental Protection, Standards of performance for new stationary sources, 45-16

This rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal CAA.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. The promulgation history of the rule is also updated.

Department of Environmental Protection, Control of air pollution from hazardous waste treatment, storage and disposal facilities, 45-25

This rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the State.

The modifications also incorporate by reference annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33CSR20, promulgated as of June 1, 2016. The promulgation history of the rule is also updated.

Department of Environmental Protection, Emission standards for hazardous air pollutants, 45-34

This rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the CAA.

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. The modifications also update the promulgation history of the rule.

Department of Environmental Protection, Ambient air quality standards, 45-08

This rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the EPA.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Department of Environmental Protection, Rule: Voluntary remediation and redevelopment, 60-03

This Rule is being promulgated in order to bring State Rules into conformity with the federal EPA rule which recently made changes to exposure factors, toxicity criteria, and physiochemical parameters, as well as risk-based groundwater de minimis values now including exposure via dermal contact.

This rule amends Table 60-3B (the "Deminimis Table") and incorporates some minor changes. The table is used extensively during risk-based cleanups to determine whether or not environmental contamination at a site being evaluated under the rule exceeds levels that would be protective of human health.

Department of Environmental Protection, Awarding of matching grants for local litter control programs, 33-41

This Rule is being promulgated in order to replace 58-06. This entire Rule is new.

The Litter Control Grant Program was originally established by the legislature under the jurisdiction of the Division of Natural Resources. During the 2005 regular session of the legislature, the creation of the A. James Manchin Rehabilitation Environmental Action Plan ("REAP") moved the Litter Control Program from the DNR to the DEP. This rule simply clarifies that the program is under the jurisdiction of the DEP.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 30, 2017

EFFECTIVE DATE: March 30, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 134

Authorizing Bureau of Commerce to promulgate legislative rules

This bill authorizes six rules, and directs the Board of Coal Mine Health and Safety to amend a current rule and repeals one current legislative rule promulgated by the Division of Natural Resources.

Office of Miners' Health, Safety and Training Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors, 56-22

The Coal Jobs and Safety Act of 2016 transferred the training of miners EMTs from the Office of Emergency Services to the Director of the Office of Miners' Health Safety and Training. The rule conforms to the Act. It adds a definition of "National DOT Curriculum for First Responders."; extends the period of time accepted for recognition as an EMT-M under the Grandfather Clause; and lists 2 new requirements for certification.

An initial applicant has up to one year to retake the parts of the test that he or she failed in order to obtain the EMT-M certification. After one year, if the applicant fails to obtain his or her certification, he or she must repeat the entire EMT-M course. The EMT- M curriculum in conjunction with the National DOT Curriculum for First Responders must be followed when teaching the sixty (60) hour EMT-M certification course. Updates in the DOT curriculum will also apply to the EMT-M curriculum.

The 2017 Legislature during the Regular Session directed the Board of Coal Mine Health and Safety to amend the below rule:

Board of Coal Mine Health and Safety Rules governing proximity detection systems and haulage safety generally, 36-57

The Legislature directed the Board to amend its current rules to remove the July 1, 2017, deadline and insert instead the timeframe set forth in the federal rule relating to proximity detection systems.

CODE REFERENCE: West Virginia Code §64-10-1, §64-10-2, and §64-10-3 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 202

Authorizing Department of Commerce promulgate legislative rules

This bill authorizes the Department of Commerce to promulgate the following rules, including rules for the Division of Labor, WorkForce West Virginia, and the Office of Miners' Health, Safety and Training.

West Virginia Division of Labor, Wage Payment and Collection, 42 CSR 5

Senate Bills 12 and 318, both passed during the 2015 Legislative Session, amended the Wage Payment and Collection Act. Senate Bill 12 standardized the law concerning the time by which employers must pay employees their final wages, regardless of the reason for the separation. Senate Bill 318 modified the Code to permit employers to pay employees twice monthly without having to seek a variance from DOL, so long as the bi-monthly settlements are no more than nineteen days apart. DOL now proposes several modifications to the current rules implementing that Act.

The House of Delegates amended the rule on page seven, subsection 10.4 and subdivisions 10.4.1 and 10.4.2, by inserting language to clarify that an employer or a claimant may submit evidence for consideration by the Division of Labor.

Division of Labor, Minimum Wage and Maximum Hours, 42 CSR 8

The Division of Labor has promulgated this rule pursuant to passage of House Bill 4283 during the 2014 Regular Session and House Bill 201 during the Second Extraordinary Session. The rule sets forth criteria for employer and employee exemptions, determination of compensable time, employer credits and other matters relating to minimum wages, maximum hours and overtime compensation.

The Senate amended the rule on page one, section two, by adding a new subsection to clarify the enforceability of the provisions of the rule.

WorkForce West Virginia, West Virginia Prevailing Wage Act, 96 CSR 4

The rule series 96CSR4 is a new series offered by WorkForce WV pursuant to W.Va. Code §21-5A-12.

The rule defines the regions of the state that will be used to calculate the prevailing hourly rate of wages. Also, the rule provides the process for addressing written objections to the methodology to calculate the wages.

Any public authority or political subdivision contemplating the construction of a public improvement project exceeding $500,000 in public money must obtain the prevailing hourly rate of wages from WorkForce. Such rates shall be incorporated into the contract specifications. The subdivision also provides that any affected person may object to the methodology for determining the prevailing hourly rate of ways or the rate of wages by filing a written objection with the Executive Director in accordance with the process provided for in the rule.

Office of Miners' Health, Safety and Training, Substance Abuse Screening Standards and Procedures, 56 CSR 19

The Office of Miners' Health, Safety and Training, in response to S.B. 357 (The Coal Jobs and Safety Act of 2015), has amended its current rules to bring them into conformity with the provision in SB 357 which states that if a miner refuses or fails a drug test, the agency may immediately suspend the miner's certification instead of waiting, in the case of union miner, for the outcome of the arbitration. The rule is

also amended to include sections from SB 357 which states that a certified employee may not rely on a prescription that is dated one year prior to the date of the drug test result.

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 140

Amending State Administrative Procedures Act

This bill was recommended for passage by the Legislative Rule-Making Review Committee. The bill makes a number of changes to Chapter 29A, the State Administrative Procedures Act, in order to better align the Code with current practice and to add additional code sections to facilitate the rule-making process.

Two new sections are added to state code. The first, §29A-1-3a, clarifies that technical amendments to a current rule (including typos, punctuation, internal code citations, addresses and phone numbers) do not require the rule to go through the legislative rule-making review committee. Instead, agencies can file the corrected rule with the Secretary of State's office. The second new section, §29A-1-3b, concerns void rules and clarifies that when an agency ceases to exist, the agency rules are automatically void.

One section of code, §29A-2-8, is repealed. This code section placed limitations on an agency's ability to duplicate its own rules, or to obtain copies of those rules other than from the Secretary of State, except under certain circumstances. Additional amendments to the Code made by this bill include:

A new definition added in §29A-1-2 defining "legislative exempt rule," as a rule that is "promulgated by an agency or relating to a subject matter that is exempt from the rule-making provisions" of chapter 29A. Additional changes are made throughout the chapter to identify the manner in which legislative exempt rules are to be handled. Amendments to §29A-3-1a clarifying that an agency seeking to amend an existing rule must re-file the entirety of the rule rather than simply those parts of the bill that are being changed, and further clarifying that new language be underlined and removed language must be stricken through in the rule submitted to rule-making.

§29A-3-4 sets forth the procedures for filing legislative exempt rules and notices thereof with the Secretary of State's Office, but clarifies that legislative exempt rules and other procedural and interpretive rules are not void for failure to comply with these procedures. §29A-3-8 adds language on the effective date of legislative rules to allow the effective date to be set by other sections of applicable code. Similar changes in §29A-3-13 modify the effective date of non-exempt legislative rules that are filed with the State Register to the filing date, or to another date fixed by the agency.

Finally, §29A-3-15 modifies the procedures for handling emergency legislative rules. The bill adds a requirement that an agency filing a proposed emergency rule include therewith "a listing of state agencies, professions, businesses and other identifiable interest groups affected by the proposed emergency rule." An agency's good faith failure to provide a comprehensive list is not a basis for disapproval of the emergency rule. The bill also clarifies that an emergency rule expires upon an agency's failure to file a proposed rule addressing the same subject matter following the close of the public comment period.

CODE REFERENCE: West Virginia Code §29A-1-2, §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 – amended; §29A-1-3a and §29A-1-3b – new; §29A-2-8 – repealed

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2233

Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office

This bill requires the Legislative Rule-Making Review Committee, with the assistance of the Legislative Auditor, to review any rule promulgated after January 1, 2015, within five years of its effective date. The LRMRC is to make recommendations to the Legislature for amendment or repeal of any rule. The LRMRC is to determine whether or not a rule is achieving its purpose and whether it should be eliminated, continued or amended. The LRMRC and the Legislative Auditor's Office are to submit their findings and recommendations to the Joint Committee on Government and Finance.

CODE REFERENCE: West Virginia Code §29A-3-16 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2283

Authorizing the Department of Environmental Protection to promulgate legislative rules

The purpose of this bill was to authorize the DEP to promulgate ten legislative rules – five from the Division of Air Quality; one from the Secretary's Office; and four from the Division of Water and Waste Management. Most of these rules involved standard updates to DEP rules to ensure such rules matched EPA updates in order to ensure the DEP remains the primary enforcer of EPA law in WV. Several of the rules were more complex and/or controversial, most significantly:

- 47 CSR 2, relating to water quality standards in WV; among other things, designating part of the Kanawha River known as "zone 1" to a "water category A", meaning suitable for drinking water;
- 47 CSR 30, relating to NPDES permitting for coal operators; providing clarification that coal operators are subject to the same standards as other industries regarding NPDES permitting, as was previously clarified in S.B. 615 enacted in 2012, and to hopefully provide clarity of WV law to a WV federal court which had relied on the prior version of the rule to make adverse rulings against WV coal operators; and
- 33 CSR 1, relating to solid waste management, updating the rule to permit solid waste facilities to accept waste from natural gas well sites under a regulatory framework and standards set forth in the updated rule, pursuant to a previously enacted bill during the first special session in 2014, HB 107.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

EFFECTIVE DATE: March 12, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015