

HB 2890

RECEIVED

97 MAY -6 PM 1:38

OFFICE OF THE CLERK
WEST VIRGINIA
STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2890

(By Delegate Staton, Amores, Linch, Fleischauer,
Thomas, Kominar and Buchanan)



Passed _____ April 10, _____ 1997

In Effect _____ From _____ Passage

RECEIVED

97 MAY -8 PM 1:28

OFFICE OF THE CLERK
STATE OF WEST VIRGINIA

ENROLLED

H. B. 2890

(BY DELEGATES STATON, AMORES, LINCH, FLEISCHAUER,
THOMAS, KOMINAR AND BUCHANAN)

[Passed April 10, 1997; in effect from passage.]

AN ACT to amend and reenact section thirty-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-a, all relating to the establishment of standards and procedures for the use and maintenance of diesel-powered equipment in underground coal mines; modifying the prohibition on underground equipment powered by internal combustion engines; authorizing the use of diesel-powered equipment; stating purpose and intent; defining certain terms; creating the West Virginia diesel equipment commission; establishing the qualifications and eligibility of members of the commission; prescribing terms of office for members; providing for nomination and appointment of members; providing for removal of members; providing for compensation and reimbursement for expenses; defining a quorum of the commission and the necessary affirmative vote required for adoption of a measure; providing for the promulgation of rules by the commission; establishing an arbitration process to be followed in the event the commission fails to adopt rules before the first day of April, one thousand nine hundred ninety-eight; describing the duties of the commission after the adoption of initial rules; directing the promulgation of rules requiring the monitoring and control of exhaust emissions and establishing standards for

allowable concentrations of exhaust emissions; providing for approval of diesel power package or diesel engine; providing for approval of exhaust emissions control and conditioning systems and establishing requirements and standards for exhaust emissions control and conditioning systems; requiring monitoring and controlling of emissions; requiring monitoring and controlling of exhaust gases; requiring values for minimum quantities of ventilating air; requiring approval of diesel-powered equipment and the attachment of an approval plate; establishing standards for fuel and fuel storage facilities; requiring rules governing the refueling of diesel-powered equipment; providing for rules to govern where refueling may take place; requiring rules governing fire suppression systems for diesel powered equipment, fuel transportation units and permanent underground diesel fuel storage facilities; regulating or prohibiting certain starting aids; providing for fire and safety training; providing for service and maintenance of diesel-powered equipment; requiring training and qualification of persons working on diesel-powered equipment; requiring on-shift examination of equipment by the operator; providing for scheduled maintenance; requiring on-board performance and maintenance diagnostics systems; requiring periodic examination and testing of diesel-powered equipment; providing for record-keeping as to all tests, examinations, maintenance or repair; providing for rules to establish programs for training, a certification process and refresher training.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article two-a, all to read as follows:

ARTICLE 2. UNDERGROUND MINES.

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

- 1 (a) The roadbed, rails, joints, switches, frogs and
- 2 other elements of all haulage roads shall be constructed,
- 3 installed and maintained in a manner consistent with speed

4 and type of haulage operations being conducted to ensure
5 safe operation. Where transportation of personnel is exclu-
6 sively by rail, track shall be maintained to within five hun-
7 dred feet of the nearest working face, except that when
8 any section is fully developed and being prepared for
9 retreating, then the distance of such maintenance can be
10 extended to eight hundred feet if a rubber tired vehicle is
11 readily available.

12 (b) Track switches, except room and entry develop-
13 ment switches, shall be provided with properly installed
14 throws, bridle bars and guard rails; switch throws and
15 stands, where possible, shall be placed on the clearance
16 side.

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

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

23 (e) On the trolley wire or "tight" side, there shall be
24 at least twelve inches of clearance from the farthest projec-
25 tion of any moving equipment.

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

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

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

37 (i) Shelter holes shall be provided along haulage
38 entries. Such shelter holes shall be spaced not more than
39 one hundred feet apart, except when variances are autho-
40 rized by the director with unanimous agreement of the

41 mine safety and technical review committee. Shelter holes
42 shall be on the side of the entry opposite the trolley wire
43 except that shelter holes may be on the trolley wire and
44 feeder wire side if the trolley wire and feeder wire are
45 guarded in a manner approved by the director.

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

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

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

56 (m) No steam locomotive shall be used in mines
57 where miners are actually employed in the extraction of
58 coal, but this shall not prevent operation of a steam loco-
59 motive through any tunnel haulway or part of a mine that
60 is not in actual operation and producing coal.

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

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

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

83 (q) The pushing of trips, except for switching pur-
84 poses, is prohibited on main haulage roads: *Provided*,
85 That nothing herein shall prohibit the use of a pusher
86 locomotive to assist the locomotive pulling a trip. Motor-
87 men and trip riders shall use care in handling locomotives
88 and cars. It shall be their duty to see that there is a con-
89 spicuous light on the front and rear of each trip or train of
90 cars when in motion: *Provided, however*, That trip lights
91 need not be used on cars being shifted to and from load-
92 ing machines, or on cars being handled at loading heads
93 during gathering operations at working faces. No person
94 except the operator or his assistant shall ride on locomo-
95 tives or loaded cars. An empty car or cars shall be used to
96 provide a safe distance between the locomotive and the
97 material car when rail, pipe or long timbers are being
98 hauled. A safe clearance shall be maintained between the
99 end car or trips placed on side tracks and moving traffic.
100 On haulage roads the clearance point shall be marked with
101 an approved device.

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

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

116 (t) (1) A system of signals, methods or devices shall
117 be used to provide protection for trips, locomotives and

118 other equipment coming out onto tracks used by other
119 equipment.

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

126 (3) The dispatcher's only duty shall be to direct
127 traffic: *Provided*, That the dispatcher's duties may also
128 include those of the responsible person required by sec-
129 tion forty-two of this article: *Provided, however*, That the
130 dispatcher may perform other duties which do not inter-
131 fere with his dispatching responsibilities and do not re-
132 quire him to leave the dispatcher's station except as ap-
133 proved by the mine safety and technical review committee.

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

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

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

140 (v) A locomotive following another trip shall main-
141 tain a distance of at least three hundred feet from the rear
142 end of the trip ahead, unless such locomotive is coupled to
143 the trip ahead.

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

149 (x) Shuttle cars shall not be altered by the addition of
150 sideboards so as to inhibit the view of the operator.

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

153 (z) All self-propelled track haulage equipment shall
 154 be equipped with an emergency stop switch, self centering
 155 valves, or other devices designed to de-energize the trac-
 156 tion motor circuit in the event of an emergency. All track
 157 mounted trolley equipment shall be equipped with trolley
 158 pole swing limiters or other means approved by the mine
 159 safety and technical review committee to restrict move-
 160 ment of the trolley pole when it is disengaged from the
 161 trolley wire. Battery powered mobile equipment shall
 162 have the operating controls clearly marked to distinguish
 163 the forward and reverse positions.

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

PART 1. GENERAL PROVISIONS.

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

1 Diesel-powered equipment for use in underground
 2 coal mines may only be approved, operated, and main-
 3 tained in accordance with rules, requirements and stan-
 4 dards established pursuant to this article. Diesel-powered
 5 equipment shall not be used in underground coal mines
 6 until the West Virginia diesel equipment commission pro-
 7 mulgates its initial rules, requirements and standards gov-
 8 erning the operation of diesel equipment in underground
 9 coal mines.

§22A-2A-102. Control of diesel safety and health hazards.

1 The purpose of this article is to reduce or eliminate
 2 the inherent hazards of electric-powered equipment in
 3 underground coal mines while recognizing that the intro-
 4 duction of an internal combustion engine into that envi-
 5 ronment presents a different set of safety and health risks
 6 for miners. The provisions of this article are intended to
 7 provide an integrated approach to the control of diesel
 8 safety and health hazards in underground coal mines.

PART 2. DEFINITIONS.

§22A-2A-201. Applicability of definitions.

1 (a) For the purposes of this article, the words or
 2 phrases defined in this part 2 have the meanings ascribed

3 to them. These definitions are applicable unless a differ-
4 ent meaning clearly appears from the context.

5 (b) When used in this article, the words and phrases
6 defined in section two, article one of this chapter have the
7 meaning ascribed to them in that section. Those defini-
8 tions are applicable to this article unless a different mean-
9 ing clearly appears from the context in which the word or
10 phrase is used in this article.

§22A-2A-202. Board defined.

1 "Board" means the board of coal mine health and
2 safety continued by section three, article six of this chap-
3 ter.

§22A-2A-203. Certificate of approval defined.

1 "Certificate of approval" means a formal document
2 issued by MSHA stating that a complete assembly has met
3 the requirements of part 36, title thirty of the code of
4 federal regulations, 30 C.F.R. § 36.1, et seq., for mobile
5 diesel-powered transportation equipment and authorizing
6 the use and attachment of an official approval plate so
7 indicating.

§22A-2A-204. Commission defined.

1 "Commission" means the West Virginia diesel
2 equipment commission created under the provisions of
3 section three hundred one of this article.

§22A-2A-205. Diesel fuel tank defined.

1 "Diesel fuel tank" means a closed metal vessel spe-
2 cifically designed for the storage or transport of diesel
3 fuel.

§22A-2A-206. Diesel fuel transportation unit defined.

1 "Diesel fuel transportation unit" means a self-pro-
2 pelled or portable wheeled vehicle used to transport a
3 diesel fuel tank.

§22A-2A-207. Diesel engine defined.

1 “Diesel engine” means any compression ignition
2 internal combustion engine using the basic diesel cycle
3 where combustion results from the spraying of fuel into
4 air heated by compression.

§22A-2A-208. Diesel power package defined.

1 “Diesel power package” means a diesel engine with
2 an intake system, exhaust system, and a safety shutdown
3 system installed that meets the specific requirements for
4 MSHA approval of diesel power packages intended for
5 use in approved equipment in areas of underground coal
6 mines where electric equipment is required to be per-
7 missible.

§22A-2A-209. Exhaust emission defined.

1 “Exhaust emission” means any substance emitted to
2 the atmosphere from the exhaust port of the combustion
3 chamber of a diesel engine.

§22A-2A-210. Exhaust emissions control and conditioning system defined.

1 “Exhaust emissions control and conditioning sys-
2 tem” means a device or combination of devices that will
3 collect and treat diesel exhaust emissions at the exhaust
4 port of the engine, and will reduce the volume of, or elimi-
5 nate emissions of, diesel particulate matter, carbon monox-
6 ide and oxides of nitrogen in accordance with the require-
7 ments and standards of the commission established in
8 accordance with the provisions of section four hundred
9 three of this article.

§22A-2A-211. MSHA defined.

1 “MSHA” means the mine safety and health admin-
2 istration of the United States department of labor.

§22A-2A-212. Permanent underground diesel fuel storage facility defined.

1 “Permanent underground diesel fuel storage facili-
2 ty” means a facility designed and constructed to remain at
3 one location for the storage or dispensing of diesel fuel,
4 which does not move as mining progresses.

§22A-2A-213. Safety can defined.

1 “Safety can” means a metal container intended for
2 storage, transport or dispensing of diesel fuel, with a nomi-
3 nal capacity of five gallons, listed or approved by a na-
4 tionally recognized independent testing laboratory.

§22A-2A-214. Temporary underground diesel fuel storage area defined.

1 “Temporary underground diesel fuel storage area”
2 means an area of a mine provided for the short-term stor-
3 age of diesel fuel in a fuel transportation unit, which
4 moves as mining progresses.

PART 3. WEST VIRGINIA DIESEL EQUIPMENT COMMISSION.

§22A-2A-301. Creation of the West Virginia diesel equipment commission.

1 The West Virginia diesel equipment commission,
2 consisting of six members, is hereby created in the office
3 of miners’ health, safety and training of the bureau of
4 commerce.

§22A-2A-302. Members of the commission; qualifications and eligibility.

1 (a) Each member of the commission shall be a citi-
2 zen of the United States and a resident of the state of West
3 Virginia.

4 (b) No member of the Legislature, or person holding
5 any elective or full-time appointive office in the federal,
6 state, or local government shall be eligible to serve as a
7 member of the commission.

§22A-2A-303. Appointment and terms of commission members.

1 (a) The members of the commission shall be ap-
2 pointed to initial terms as follows:

3 (1) Two members shall serve for a term beginning on
4 the first day of May, one thousand nine hundred ninety-
5 seven and ending on the thirtieth day of June, one thou-
6 sand nine hundred ninety-nine;

7 (2) Two members shall serve for a term beginning on
8 the first day of May, one thousand nine hundred ninety-
9 seven and ending on the thirtieth day of June, two thou-
10 sand;

11 (3) Two members shall serve for a term beginning on
12 the first day of May, one thousand nine hundred ninety-
13 seven and ending on the thirtieth day of June, two thou-
14 sand one.

15 (b) Of the two members appointed under each of
16 subdivisions (1), (2) and (3) of subsection (a), one shall be
17 a person who can reasonably be expected to represent the
18 viewpoint or interests of coal operators in this state, and
19 one shall be a person who can reasonably be expected to
20 represent the viewpoint or interests of working miners in
21 this state.

22 (c) The initial term of each of the six members first
23 appointed shall be designated by the governor.

24 (d) After the initial appointments, all members shall
25 be appointed for terms of four years. Members shall not
26 serve more than two terms of four years each.

§22A-2A-304. Nomination and appointment of members.

1 (a) Prior to the appointment of a person to the com-
2 mission, the governor shall request the nomination of a
3 candidate for the appointment. If the position is to be
4 filled by a person who can reasonably be expected to
5 represent the viewpoint or interests of underground coal
6 operators in this state, the governor shall request the nomi-
7 nation from the major trade association representing un-
8 derground coal operators in this state. If the position is to
9 be filled by a person who can reasonably be expected to
10 represent the viewpoint or interests of working miners in
11 this state, the governor shall request the nomination from
12 the highest ranking officer of the major employee organi-
13 zation representing coal miners in this state.

14 (b) The governor shall appoint a member to serve for
15 the term for which the person was nominated, and until his
16 or her successor has been nominated and appointed: *Pro-*
17 *vided*, That if a successor is not appointed within one hun-

18 dred twenty days after the expiration of a member's term,
19 a vacancy is deemed to exist. The governor may reject a
20 nomination and decline to appoint a nominee only if the
21 person does not have the qualifications, integrity and re-
22 sponsibility necessary to enable the person to perform his
23 or her duties as a member of the commission.

24 (c) Appointments to fill vacancies on the commission
25 shall be for the unexpired term of the member to be re-
26 placed.

§22A-2A-305. Removal of members.

1 When a member fails to appear at three consecutive
2 meetings of the commission or at one half of the meetings
3 held during a one-year period, any member of the com-
4 mission may notify the member and the governor of such
5 fact. Such member shall be removed by the governor
6 unless good cause for absences is shown.

§22A-2A-306. Compensation of members; reimbursement for expenses.

1 Each member of the commission shall be paid the
2 same compensation and expense reimbursement as is paid
3 to members of the Legislature for their interim duties as
4 recommended by the citizens legislative compensation
5 commission and authorized by law for each day or por-
6 tion thereof engaged in the discharge of official duties.
7 No reimbursement for expenses shall be made except
8 upon an itemized account, properly certified by the mem-
9 bers of the commission. All reimbursement for expenses
10 shall be paid out of the state treasury upon a requisition
11 on the state auditor.

§22A-2A-307. Quorum; majority vote required.

1 A quorum of the commission consists of not less
2 than two of the members who represent the viewpoint or
3 interests of coal operators and two of the members who
4 represent the viewpoint or interests of working miners. A
5 measure before the commission for its consideration is
6 adopted on the affirmative vote of any four of the six
7 members.

§22A-2A-308. Promulgation of initial rules by the commission.

1 (a) The West Virginia diesel equipment commission
2 shall prepare and adopt the initial rules for the operation
3 of diesel equipment in underground coal mines in this
4 state. In preparing and adopting initial rules, the commis-
5 sion shall consider the highest achievable measures of
6 protection for miners' health and safety through available
7 technology, engineering controls and performance re-
8 quirements, and shall further consider the cost, availability,
9 adaptability and suitability of any available technology,
10 engineering controls and performance requirements as
11 they relate to the use of diesel equipment in underground
12 coal mines. Authorization for the commission to establish
13 the initial rules shall cease to exist after the thirty-first day
14 of March, one thousand nine hundred ninety-eight, except
15 that the commission shall, if necessary, promulgate initial
16 rules following a decision made by the board of arbitra-
17 tors pursuant to section three hundred nine of this article.

18 (b) In promulgating the initial rules pursuant to sub-
19 section (a) of this section, the commission shall follow the
20 procedures set forth in article three, chapter twenty-nine-a
21 of this code that are prescribed for an agency proposing a
22 legislative rule, to the point where an agency would ap-
23 prove a rule for submission to the Legislature. At that
24 point, the commission shall proceed to final adoption of
25 the initial rules and file a notice of the final adoption in
26 the state register and with the legislative rule-making re-
27 view committee. Upon final adoption by the commission,
28 the initial rules are thereby promulgated and have the
29 effect of law without further action by the commission or
30 the Legislature. The initial rules shall be published in the
31 code of state rules and continue in effect until modified or
32 superseded in accordance with the provisions of this arti-
33 cle.

§22A-2A-309. Failure to promulgate initial rules; arbitration.

1 (a) If the commission fails to finally adopt its initial
2 rules before the first day of April, one thousand nine hun-
3 dred ninety-eight, the members who represent the view-
4 point or interests of coal operators and the members who

5 represent the viewpoint or interests of working miners
6 shall each prepare a final draft of proposed initial rules,
7 which drafts shall be considered the "last best offer" by
8 each group of members. Thereafter, the matters in contro-
9 versy which the commission is unable to resolve shall be
10 submitted to arbitration as soon as is practicable.

11 (b) The board of appeals established and continued
12 pursuant to the provisions of article five of this chapter
13 shall begin the selection of arbitrators by contacting the
14 alternative dispute resolution department of the federal
15 mediation and conciliation service to obtain a roster of the
16 names of fifteen persons who are willing to serve as neu-
17 tral members of a special subcommittee of the board of
18 appeals that will function as a board of arbitration. The
19 board of appeals shall request that the federal mediation
20 and conciliation service, in compiling the roster, consider
21 experience, training, affiliations, actual or potential con-
22 flicts of interest and other matters when selecting persons
23 who may serve as neutral and independent arbitrators.
24 From the roster of fifteen persons so compiled, the board
25 of appeals shall draw five names by lot. The persons
26 drawn shall comprise the board of arbitration, and they are
27 empowered to resolve all outstanding issues that prevent
28 final adoption of initial rules by the diesel equipment
29 commission.

30 (c) In the event that an arbitrator shall die, or refuse
31 to act or become incapable of acting as an arbitrator be-
32 fore the matters pending before the board of arbitration
33 are concluded, then the remaining arbitrators shall appoint
34 another person from the roster of available persons to be
35 an arbitrator in place of the arbitrator who no longer con-
36 tinues to act.

37 (d) Each arbitrator shall be compensated at a per
38 diem rate of two hundred twenty-five dollars per day for
39 each day or portion thereof engaged in the discharge of
40 official duties. Each member of the commission shall be
41 paid the same expense reimbursement as is paid to mem-
42 bers of the Legislature for their interim duties as recom-
43 mended by the citizens legislative compensation commis-
44 sion and authorized by law. No reimbursement for ex-

45 penses shall be made except upon an itemized account,
46 properly certified by the arbitrators. All reimbursement
47 for expenses shall be paid out of the state treasury upon a
48 requisition on the state auditor.

49 (e) On the fifth day of January, one thousand nine
50 hundred ninety-nine, the board of arbitrators shall resolve
51 issues presented by the proposed drafts drawn up by the
52 members of the commission. Only matters in controversy
53 may be addressed by the board of arbitration. Arbitration
54 is conditioned by limiting the range of outcomes to a
55 choice between the positions submitted by each opposing
56 group within the commission as their "last best offer."
57 As to each issue raised by the proposed drafts, the board
58 of arbitration shall adopt a position advanced by one of
59 the member groups and shall have no authority to com-
60 promise the positions or substitute an alternative position.
61 In making its decisions, the board of arbitrators shall con-
62 sider the highest achievable measures of protection for
63 miners' health and safety through available technology,
64 engineering controls and performance requirements, and
65 shall further consider the cost, availability, adaptability and
66 suitability of any available technology, engineering con-
67 trols and performance requirements as they relate to the
68 use of diesel equipment in underground coal mines.
69 When the board of arbitration reaches agreement on a
70 proposed rule, at the conclusion of its work the board of
71 arbitration shall transmit a report containing the proposed
72 rule to the commission, the president of the Senate and the
73 speaker of the House of Delegates. The board of arbitra-
74 tion may include in its report any other information, rec-
75 ommendations, or materials that the board of arbitration
76 considers appropriate, including suggested legislation.
77 Any arbitrator may include as an addendum to the report
78 any additional information, recommendations, or materi-
79 als.

80 (f) The board of coal mine health and safety shall
81 provide appropriate administrative support to the board of
82 arbitration, including technical assistance.

83 (g) Within twenty-eight days following the resolution
84 of all issues by the board of arbitration, the commission

85 shall adopt the initial rules, fully incorporating the deci-
86 sion of the board of arbitration. The commission shall file
87 a notice of the final adoption in the state register and with
88 the legislative rule-making review committee. The initial
89 rules are thereby promulgated and have the effect of law
90 without further action by the commission or the Legisla-
91 ture. The initial rules shall be published in the code of
92 state rules and continue in effect until modified or super-
93 seded in accordance with the provisions of this article, or
94 by act of the Legislature.

**§22A-2A-310. Duties of commission following promulgation
of initial rules.**

1 (a) After the promulgation of the initial rules, the
2 commission shall have as its primary duties the implemen-
3 tation of this article and the evaluation and adoption of
4 state of the art technology and methods, reflected in en-
5 gines and engine components, emission control equip-
6 ment, and procedures, that when applied to diesel-powered
7 underground mining machinery shall reasonably reduce
8 or eliminate diesel exhaust emissions and enhance
9 protections of the health and safety of miners. The tech-
10 nology and methods adopted by the commission shall
11 have been demonstrated to be reliable. In making a deci-
12 sion to adopt new technology and methods, the commis-
13 sion shall consider the highest achievable measures of
14 protection for miners' health and safety through available
15 technology, engineering controls and performance re-
16 quirements, and shall further consider the cost, availability,
17 adaptability and suitability of any available technology,
18 engineering controls and performance requirements as
19 they relate to the use of diesel equipment in underground
20 coal mines. Any state of the art technology or methods
21 adopted by the commission shall not reduce or compro-
22 mise the level of health and safety protection of miners.

23 (b) Upon application of a coal mine operator, the
24 commission shall consider site-specific requests for use of
25 alternative diesel-related health and safety technologies
26 and methods. The commission's action on applications
27 submitted under this subsection shall be on a mine-by-
28 mine basis. Upon receipt of a site-specific application, the

29 commission shall conduct an investigation, which investi-
30 gation shall include consultation with the mine operator
31 and the authorized representatives of the miners at the
32 mine. Authorized representatives of the miners shall in-
33 clude a mine health and safety committee elected by min-
34 ers at the mine, a person or persons employed by an em-
35 ployee organization representing miners at the mine, or a
36 person or persons authorized as the representative or rep-
37 resentatives of miners of the mine in accordance with
38 MSHA regulations at 30 C.F.R. Pt. 40 (relating to repre-
39 sentative of miners). Where there is no authorized repre-
40 sentative of the miners, the commission shall consult with a
41 reasonable number of miners at the mine.

42 (1) Within one hundred eighty days of receipt of an
43 application for use of alternative technologies or methods,
44 the commission shall complete its investigation. The time
45 period may be extended with the consent of the applicant.

46 (2) The commission shall have thirty days in which
47 to render a final decision approving or rejecting the appli-
48 cation.

49 (3) The commission members shall not approve an
50 application made under this section if, at the conclusion of
51 the investigation, the commission members have made a
52 determination that the use of the alternative technology or
53 method will reduce or compromise the level of health and
54 safety protection of miners.

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

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

64 (c) The commission shall establish conditions for the
65 use of diesel-powered equipment in shaft and slope con-
66 struction operations at coal mines.

67 (d) In performing its functions, the commission shall
68 have access to the services of the board of coal mine
69 health and safety. The board shall make clerical support
70 and assistance available to enable the commission to carry
71 out its duties.

72 (e) Any action taken by the commission to either
73 approve or reject the use of an alternative technology or
74 method, or establish conditions under subsection (c) of
75 this section, shall be final and binding and not subject to
76 further review except where a decision by the commission
77 may be deemed to be an abuse of discretion or contrary to
78 law. If any party affected by a decision of the commis-
79 sion believes that the decision is an abuse of discretion or
80 contrary to law, that party may file a petition for review
81 with the circuit court of Kanawha County in accordance
82 with the provisions of the administrative procedures act
83 relating to judicial review of governmental determinations.
84 The court, in finding that any decision made by the com-
85 mission is an abuse of discretion or contrary to law, shall
86 vacate and, if appropriate, remand the case.

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

90 (g) Appropriations for the funding of the commis-
91 sion and to effectuate the purposes of this article shall be
92 made to a budget account hereby established for that
93 purpose in the general revenue fund.

PART 4. EXHAUST EMISSION REQUIREMENTS

FOR DIESEL POWER PACKAGES.

§22A-2A-401. General provisions relating to requirements for exhaust emissions.

1 (a) This part 4 is intended to control the potential
2 health hazards of diesel exhaust, by requiring that diesel-
3 powered machines be equipped with clean-burning en-
4 gines, that exhaust emissions control and conditioning
5 systems may be required on diesel engines as specified by
6 the commission, that exhaust emissions be monitored and
7 controlled and that standards be established for the allow-

8 able concentrations of exhaust emissions in a mine envi-
9 ronment.

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

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

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

1 (a) All exhaust emissions control and conditioning
2 systems and their component devices shall be approved by
3 the West Virginia diesel equipment commission. Such
4 approval requires compliance with applicable standards
5 and procedures established by rules of the commission for
6 the use of the system or device in reducing or eliminating
7 diesel particulate matter, carbon monoxide and oxides of
8 nitrogen.

9 The rules of the commission shall require all exhaust
10 emissions control and conditioning systems to undergo an
11 initial series of laboratory tests, using test equipment re-
12 quirements and standard procedures approved by the
13 commission for testing for gaseous and particulate emis-
14 sions. The commission shall compile a list of acceptable
15 third-party laboratories where testing is performed compe-
16 tently and reliable results are produced.

17 (b) Requirements and standards for exhaust emis-
18 sions control and conditioning systems, include, but are
19 not limited to, the following:

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

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

28 (3) A minimum standard, stated in parts per million,
29 for the reduction of emissions of oxides of nitrogen, using
30 advanced control technology such as catalytic control
31 technology or other comparably effective control meth-
32 ods.

33 (4) Any additional requirements established by the
34 rules of the commission or MSHA regulations relating to
35 requirements for permissible mobile diesel-powered trans-
36 portation equipment set forth in part 36, title thirty of the
37 code of federal regulations, 30 C.F.R. § 36.1, et seq.

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

1 Rules of the commission shall establish procedures
2 for monitoring and controlling emissions from diesel-
3 powered equipment. Such procedures shall include, but
4 not be limited to, monitoring and controlling activities to
5 be performed by a qualified person.

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

1 (a) For monitoring and controlling exhaust gases, the
2 rules of the commission shall establish the maximum al-
3 lowable ambient concentration of exhaust gases in the
4 mine atmosphere. Standards for exhaust gases, stated in
5 parts per million, shall be established for carbon monox-
6 ide and oxides of nitrogen. The rules shall establish the
7 location in the mine at which the concentration of these
8 exhaust gases is to be measured, the frequency at which
9 measurements are to be made, and requirements prescrib-
10 ing the sampling instruments to be used in the measure-
11 ment of exhaust gases.

12 (b) Rules of the commission shall establish the con-
13 centration of exhaust gas, stated as a percentage of an
14 exposure limit, that when present will require changes to
15 be made in the use of diesel-powered equipment or the
16 methods of mine ventilation, or will require other modifi-
17 cations in the mining process.

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

22 (d) In addition to the other maintenance require-
23 ments required by this article, rules of the commission
24 shall provide for service, maintenance and tests which are
25 specific to an engine's fuel delivery system, timing or
26 exhaust emissions control and conditioning system.

PART 5. VENTILATION.

§22A-2A-501. Ventilation.

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

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

22 (c) Rules of the commission shall require that the
23 minimum quantities of air in any split where any individu-
24 al unit of diesel-powered equipment is being operated
25 shall be at least that specified on the approval plate for that
26 equipment. Air quantity measurements to determine com-

27 pliance with this requirement shall be made at the individ-
28 ual unit of diesel-powered equipment.

29 (d) Rules of the commission shall establish the mini-
30 mum quantities of air required in any split when multiple
31 units are operated. Air quantity measurements to deter-
32 mine compliance with this requirement shall be made at
33 the most downwind unit of diesel-powered equipment that
34 is being operated in that air split.

35 (e) Rules of the commission shall provide that mini-
36 mum quantities of air in any split where any diesel-pow-
37 ered equipment is operated shall not be less than the mini-
38 mum air quantities established pursuant to subsections (a)
39 and (b) of this section and shall be specified in the mine
40 diesel ventilation plan.

PART 6. FUEL.

§22A-2A-601. Specifications for fuel.

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

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

§22A-2A-602. Fuel Storage Facilities.

1 (a) The commission shall establish requirements for
2 the safe storage of diesel fuel underground so as to mini-

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

5 (b) (1) Rules of the commission shall either provide:

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

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

15 (c) Rules of the commission shall govern the trans-
16 portation and storage of diesel fuel in diesel fuel tanks and
17 safety cans.

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

§22A-2A-603. Dispensing of Diesel Fuel.

1 Rules of the commission governing the refueling of
2 diesel-powered equipment shall, at a minimum, comply
3 with the provisions of part 75 of the code of federal regu-
4 lations dealing with the dispensing of diesel fuel, set forth
5 in 30 C.F.R. § 75.1905, effective the twenty-fifth day of
6 April, one thousand nine hundred ninety seven.

§22A-2A-605. Location of fueling.

1 (a) Rules of the commission shall require that fueling
2 of diesel-powered equipment is not to be conducted in the
3 intake escapeways unless the mine design and entry con-
4 figuration make it necessary. For those cases where fuel-
5 ing in the intake escapeways is necessary, the rules shall
6 establish a procedure whereby the mine operator shall
7 submit a plan for approval, outlining the special safety
8 precautions that will be taken to insure the protection of
9 miners. The plan shall specify a fixed location where
10 fueling will be conducted in the intake escapeway and all

11 other safety precautions that will be taken, which shall
12 include an examination of the area for spillage or fire by a
13 qualified person.

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

PART 7. FIRE SUPPRESSION.

§22A-2A-701. Fire suppression systems for diesel-powered equipment and fuel transportation units.

1 Rules of the commission governing fire suppression
2 systems for diesel-powered equipment and fuel transporta-
3 tion units shall, at a minimum, comply with the provisions
4 of part 75 of the code of federal regulations dealing with
5 fire suppression systems for diesel-powered equipment
6 and fuel transportation units, set forth in 30 C.F.R. §
7 75.1911, effective the twenty-fifth day of April, one thou-
8 sand nine hundred ninety-seven.

§22A-2A-702. Fire Suppression for Storage Areas.

1 Rules of the commission governing fire suppression
2 systems for permanent underground diesel fuel storage
3 facilities shall, at a minimum, comply with the provisions
4 of part 75 of the code of federal regulations dealing with
5 fire suppression systems for permanent underground
6 diesel fuel storage facilities, set forth in 30 C.F.R. §
7 75.1912, effective the twenty-fifth day of April, one thou-
8 sand nine hundred ninety-seven.

§22A-2A-703. Use of certain starting aids regulated or prohibited.

1 Rules of the commission shall regulate or prohibit
2 the use of volatile or chemical starting aids.

§22A-2A-704. Fire and safety training.

1 (a) Rules of the commission shall provide for all
2 underground employees at the mine to receive special

3 instruction related to fighting fires involving diesel fuel.
 4 This training may be included in annual refresher training
 5 under MSHA regulations set forth in 30 C.F.R. Pt. 48
 6 (relating to training and retraining of miners), or included
 7 in the fire drills required under MSHA regulations set
 8 forth in 30 C.F.R. § 75.1101.23 (relating to program of
 9 instruction; location and use of fire fighting equipment;
 10 location of escapeways, exits, and routes of travel; evacua-
 11 tion procedures; fire drills).

12 (b) Rules of the commission shall provide for all
 13 miners to be trained in precautions for safe and healthful
 14 handling and disposal of diesel-powered equipment filters.

PART 8. MAINTENANCE.

§22A-2A-801. Maintenance of diesel-powered equipment.

1 (a) Rules of the commission shall require diesel-
 2 powered equipment to be maintained in an approved and
 3 safe condition or removed from service. Failure of the
 4 mine operator to comply with the maintenance require-
 5 ments established by the board may result in revocation of
 6 the commission's approval of the diesel-powered equip-
 7 ment. The commission shall establish procedures for
 8 appropriate notification to be given to the mine operator,
 9 requiring the submission, evaluation and implementation
 10 of a plan to achieve and maintain compliance.

11 (b) Rules of the commission shall provide that service
 12 and maintenance of diesel-powered equipment shall be
 13 performed according to a specified routine maintenance
 14 schedule, on-board performance and maintenance diag-
 15 nostics readings, emissions test results, and component
 16 manufacturer's recommendations.

§22A-2A-802. Training and qualification of persons working on diesel-powered equipment.

1 (a) Rules of the commission shall require that all
 2 maintenance, repairs, examinations and tests on diesel-
 3 powered equipment shall be performed by a person who,
 4 at a minimum, is trained and qualified in accordance with
 5 the provisions of part 75 of the code of federal regulations
 6 dealing with the training and qualification of persons

7 working on diesel powered equipment, as set forth in 30
8 C.F.R. § 75.1915, effective the twenty-fifth day of April,
9 one thousand nine hundred ninety-seven.

10 (b) Rules of the commission shall require that the
11 training and qualification program and record made avail-
12 able for inspection pursuant to the provisions of 30 C.F.R.
13 § 75.1915(c) be made available to the commission or its
14 authorized representative.

§22A-2A-803. Examination of equipment by operator.

1 Rules of the commission shall require that mobile
2 diesel-powered equipment that is to be used during a shift
3 be visually examined by the equipment operator before
4 being placed in operation, and that equipment defects
5 affecting safety be reported promptly to the mine opera-
6 tor. Rules of the commission shall specify the inspection
7 procedures to be followed and the operating conditions
8 under which the examination is to be made. Rules of the
9 commission shall establish record-keeping requirements
10 for such visual examinations.

§22A-2A-804. Scheduled maintenance.

1 Rules of the commission shall establish the intervals
2 at which a qualified person will evaluate and interpret the
3 results of tests and examinations, perform maintenance
4 and make all necessary adjustments or repairs or remove
5 the diesel-powered equipment from service. The commis-
6 sion shall establish record-keeping requirements for per-
7 sons performing maintenance.

**§22A-2A-805. On-board performance and maintenance diag-
nostics systems.**

1 Rules of the commission shall require that on-board
2 engine performance and maintenance diagnostics systems
3 shall be capable of continuously monitoring and giving
4 read-outs. The diagnostics system shall identify levels that
5 exceed the engine or component manufacturer's recom-
6 mendation, standards established by the commission or the
7 applicable MSHA requirements.

§22A-2A-806. Diagnostic testing.

1 (a) The commission shall require periodic examina-
2 tion and testing of all diesel-powered equipment by a
3 person trained and qualified as required by rules of the
4 commission.

5 (b) Rules of the commission shall prescribe the scope
6 of the examination and testing and the procedures to be
7 followed, and the rules requiring testing of undiluted ex-
8 haust emissions may exceed the written standard operating
9 procedures for such testing and evaluation required by
10 part 75 of the code of federal regulations, set forth in 30
11 C.F.R. § 75.1915(g).

§22A-2A-807. Records.

1 (a) Rules of the commission shall provide:

2 (1) That a record be made of all tests, examinations
3 and maintenance and repairs of diesel-powered equip-
4 ment;

5 (2) That the person performing the test, examination,
6 maintenance or repair certify by date, time, engine hour
7 reading, and signature that the test, examination, mainte-
8 nance, or repair was made;

9 (3) That records of tests and examinations include
10 the specific results of such tests and examinations;

11 (4) That records of maintenance and repairs include
12 a description of the work or service that was performed,
13 and the results of any subsequently required emissions
14 testing.

15 (b) Rules of the commission shall specify the persons
16 who are required to countersign records of tests, examina-
17 tions, maintenance and repairs.

18 (c) Rules of the commission shall establish proce-
19 dures and time periods for the retention of records and
20 their availability for inspection by the commission and by
21 miners and their representatives.

PART 9. TRAINING.

§22A-2A-901. Training and general requirements.

1 (a) Rules of the commission shall establish programs
2 for training equipment operators and members of the
3 mine health and safety committee. Training shall include,
4 but not be limited to, the following:

5 (1) Fundamentals of the operation of a diesel engine;

6 (2) Federal and state regulations governing their use
7 of diesel-powered equipment;

8 (3) The mine operator's rules for safe operation;

9 (4) Specific features of each piece of equipment; and

10 (5) Problem recognition.

11 (b) Required training shall include equipment specif-
12 ic, hands-on orientation given in an area of the mine
13 where the equipment will be operated. This orientation
14 shall be specific to the type and make of the diesel ma-
15 chine and shall be presented in small groups.

16 (c) Rules of the commission shall establish a certifi-
17 cation process for qualifying equipment operators to op-
18 erate a specific type of diesel-powered equipment. An
19 operator may be qualified to operate more than one type
20 of equipment by completing additional equipment-specif-
21 ic training covering differences specific to each additional
22 type of equipment.

23 (d) Rules of the commission shall require refresher
24 training, separate from that required by MSHA regulations
25 at 30 C.F.R. Pt. 48 (relating to the training and retraining
26 of miners), and annual recertification.

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

[Handwritten Signature]

Chairman Senate Committee

[Handwritten Signature]

Chairman House Committee

Originating in the House.

Takes effect from passage.

[Handwritten Signature]

Clerk of the Senate

[Handwritten Signature]

Clerk of the House of Delegates

[Handwritten Signature]

President of the Senate

[Handwritten Signature]

Speaker of the House of Delegates

The within is approved this the 5th
day of May, 1997.

[Handwritten Signature]

Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/97

Time 11:50am