

H. B. 2566

(By Delegates R. Smith, Wagner, Summers, Zatezalo, Gearheart, Moffatt,
Cadle, R. Phillips, J. Nelson, Kessinger and B. White)

[Introduced February 2, 2015; referred to the
Committee on Energy then the Judiciary.]

A BILL to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and
§22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-
13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said code; to
amend said code by adding thereto a new section, designated §22-11-22a; to amend said code
by adding thereto a new section, designated §22A-1-41; to amend and reenact §22A-1A-1
of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said code; to
amend and reenact §22A-2A-101 of said code; to amend said code by adding thereto a new
section, designated §22A-2A-204a; to amend and reenact §22A-2A-301, §22A-2A-308,
§22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405,
§22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code,
all relating to creating the "Coal Jobs and Safety Act of 2015;" providing methods of assuring
that discharges from waste piles do not exceed applicable water quality standards;
conforming the rules regarding the procedures for requesting and obtaining inactive status

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

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

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

10 That §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-
 11 2A-307 of the Code of West Virginia, 1931, as amended, be repealed; that §22-3-13 and §22-3-19
 12 of said code be amended and reenacted; that §22-11-6 and §22-11-8 of said code be amended and
 13 reenacted; that said code be amended by adding thereto a new section, designated §22-11-22a; that
 14 said code be amended by adding thereto a new section, designated §22A-1-41; that §22A-1A-1 of
 15 said code be amended and reenacted; that §22A-2-6, §22A-2-28 and §22A-2-37 of said code be
 16 amended and reenacted; that §22A-2A-101 of said code be amended and reenacted; that said code
 17 be amended by adding thereto a new section, designated §22A-2A-204a; and that §22A-2A-301,
 18 §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-
 19 2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code
 20 be amended and reenacted, all to read as follows:

21 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

1 **§22-3-13. General environmental protection performance standards for surface mining;**
2 **variances.**

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

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

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

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

17 (3) Except as provided in subsection (c) of this section, with respect to all surface mines,
18 backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and
19 grade in order to restore the approximate original contour: *Provided*, That in surface mining which
20 is carried out at the same location over a substantial period of time where the operation transects the
21 coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large
22 and where the operator demonstrates that the overburden and other spoil and waste materials at a

1 particular point in the permit area or otherwise available from the entire permit area is insufficient,
2 giving due consideration to volumetric expansion, to restore the approximate original contour, the
3 operator, at a minimum, shall backfill, grade and compact, where advisable, using all available
4 overburden and other spoil and waste materials to attain the lowest practicable grade, but not more
5 than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic
6 materials, in order to achieve an ecologically sound land use compatible with the surrounding region:
7 *Provided, however,* That in surface mining where the volume of overburden is large relative to the
8 thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion
9 the amount of overburden and other spoil and waste materials removed in the course of the mining
10 operation is more than sufficient to restore the approximate original contour, the operator shall, after
11 restoring the approximate contour, backfill, grade and compact, where advisable, the excess
12 overburden and other spoil and waste materials to attain the lowest grade, but not more than the
13 angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an
14 ecologically sound land use compatible with the surrounding region and, the overburden or spoil
15 shall be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated
16 in accordance with the requirements of this article: *Provided further,* That the director shall propose
17 rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code,
18 governing variances to the requirements for return to approximate original contour or highwall
19 elimination and where adequate material is not available from surface mining operations permitted
20 after the effective date of this article for: (A) Underground mining operations existing prior to
21 August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;
22 (4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining

1 operation to effectively control erosion and attendant air and water pollution;

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

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

12 (7) Ensure that all prime farmlands are mined and reclaimed in accordance with the
13 specifications for soil removal, storage, replacement and reconstruction established by the United
14 States secretary of agriculture and the soil conservation service pertaining thereto. The operator, at
15 a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown that
16 other available soil materials will create a final soil having a greater productive capacity, and if not
17 utilized immediately, stockpile this material separately from other spoil, and provide needed
18 protection from wind and water erosion or contamination by other acid or toxic material; (B)
19 segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination
20 of the horizons or other strata that are shown to be both texturally and chemically suitable for plant
21 growth and that can be shown to be equally or more favorable for plant growth than the B horizon,
22 in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality

1 to that which existed in the natural soil, and if not utilized immediately, stockpile this material
2 separately from other spoil and provide needed protection from wind and water erosion or
3 contamination by other acid or toxic material; (C) replace and regrade the root zone material
4 described in paragraph (B) of this subdivision, with proper compaction and uniform depth over the
5 regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon
6 described in paragraph (A) of this subdivision;

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

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

16 (10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in
17 associated off-site areas and to the quality and quantity of water in surface and groundwater systems
18 both during and after surface mining operations and during reclamation by: (A) Avoiding acid or
19 other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water
20 from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which
21 adversely affects downstream water upon being released to water courses; and (iii) casing, sealing
22 or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from

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

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

22 (12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon,

1 in accordance with standards and criteria developed pursuant to subsection (f) of this section, all
2 existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes
3 or other liquid and solid wastes, and used either temporarily or permanently as dams or
4 embankments;

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

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

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

21 (A) Maintain for a period of at least three years and make available for public inspection,
22 upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes,

1 the amount of explosives used per hole and the order and length of delay in the blasts; and

2 (B) Require that all blasting operations be conducted by persons certified by the office of
3 explosives and blasting.

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

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

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

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

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

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

22 (v) No substantial adverse environmental damage, either on-site or off-site, will result from

1 the delay in completion of reclamation as required by this article; and

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

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

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

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

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

22 (18) Refrain from the construction of roads or other access ways up a stream bed or drainage

1 channel or in proximity to the channel so as to significantly alter the normal flow of water;

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

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

17 On lands eligible for re-mining assume the responsibility for successful revegetation, as
18 required by subdivision (19) of this subsection, for a period of not less than two growing seasons,
19 as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other
20 work in order to assure compliance with subdivision (19) of this subsection;

21 (21) Protect off-site areas from slides or damage occurring during surface mining operations
22 and not deposit spoil material or locate any part of the operations or waste accumulations outside the

1 permit area: *Provided*, That spoil material may be placed outside the permit area, if approved by the
2 director after a finding that environmental benefits will result from the placing of spoil material
3 outside the permit area;

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

1 fill placement by dumping in a single lift, on a site specific basis: *Provided, however,* That the
2 services of a qualified registered professional engineer experienced in the design and construction
3 of earth and rockfill embankment are utilized: *Provided further,* That the approval may not be
4 unreasonably withheld if the site is suitable;

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

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

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

19 (26) The director shall promulgate for review and consideration by the West Virginia
20 Legislature, legislative rules during the 2016 Regular Session of the West Virginia Legislature,
21 revisions to rules for contemporaneous reclamation as required under subdivision (16), subsection
22 (b) of this section. The secretary shall specifically consider the adoption of federal standards codified

1 at 30 C.F.R. §§816.100-116 (1983) and 30 C.F.R. §§817.100-116 (1983) when proposing revisions
2 to the state rule.

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

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

13 (3) In cases where an industrial, commercial, agricultural, commercial forestry, residential,
14 or public facility including recreational uses is proposed for the post-mining use of the affected land,
15 the director may grant a permit for a surface mining operation of the nature described in subdivision
16 (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an
17 equal or better use of the affected land, as compared with premining use; (B) the applicant presents
18 specific plans for the proposed post-mining land use and appropriate assurances that the use will be:
19 (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use;
20 (iii) obtainable according to data regarding expected need and market; (iv) supported by
21 commitments from public agencies where appropriate; (v) practicable with respect to private
22 financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached

1 to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining
2 land use; and (vii) designed by a person approved by the director in conformance with standards
3 established to assure the stability, drainage and configuration necessary for the intended use of the
4 site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local
5 land use plans and programs; (D) the director provides the county commission of the county in which
6 the land is located and any state or federal agency which the director, in his or her discretion,
7 determines to have an interest in the proposed use, an opportunity of not more than sixty days to
8 review and comment on the proposed use; and (E) all other requirements of this article will be met.

9 (4) In granting any permit pursuant to this subsection, the director shall require that: (A) A
10 natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are
11 required: *Provided*, That constructed barriers may be allowed where: (i) Natural barriers do not
12 provide adequate stability; (ii) natural barriers would result in potential future water quality
13 deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the
14 mineral resource: *Provided, however*, That, at a minimum, the constructed barrier shall be sufficient
15 in width and height to provide adequate stability and the stability factor shall equal or exceed that
16 of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the
17 constructed barrier shall be composed of impervious material with controlled discharge points; (B)
18 the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the
19 outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil
20 will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use:
21 *And provided further*, That all excess spoil material not retained on the mountaintop shall be placed
22 in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure

1 stability of the spoil retained on the mountaintop and meet the other requirements of this article.

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

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

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

19 (f) The director shall propose rules for legislative approval in accordance with article three,
20 chapter twenty-nine-a of this code, for the design, location, construction, maintenance, operation,
21 enlargement, modification, removal and abandonment of new and existing coal mine waste piles.
22 In addition to engineering and other technical specifications, the standards and criteria developed

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

20 **§22-3-19. Permit revision and renewal requirements; incidental boundary revisions;**
21 **requirements for transfer; assignment and sale of permit rights; operator**
22 **reassignment; and procedures to obtain inactive status.**

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

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

21 (3) Any permit renewal shall be for a term not to exceed the period of time for which the
22 original permit was issued. Application for permit renewal shall be made at least one hundred

1 twenty days prior to the expiration of the valid permit.

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

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

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

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

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

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

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

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

9 **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

10 **§22-11-6. Requirement to comply with standards of water quality and effluent limitations.**

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

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

19 (2) ~~Notwithstanding any rule or permit condition to the contrary, and except for any standard~~
20 ~~imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious~~
21 ~~to human health,~~ For purposes of both this article and Sections 309 and 505 of the federal Water
22 Pollution Control Act, compliance with a permit issued pursuant to this article shall be deemed

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

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

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

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

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

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

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

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

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

20 (7) Within thirty days of the effective date of this section, the secretary shall promulgate an
21 emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic
22 life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with

1 issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting
2 documentation to the Administrator of the Environmental Protection Agency.

3 **§22-11-8. Prohibitions; permits required.**

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

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

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

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

19 (3) Acquire, construct, install, modify or operate a disposal system or part thereof for the
20 direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other
21 wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to the
22 disposal system;

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

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

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

17 or

18 (7) Operate any disposal well for the injection or reinjection underground of any industrial
19 wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well
20 or plug or abandon any such disposal well.

21 (c) Where a person has a number of outlets emerging into the waters of this state in close
22 proximity to one another, the outlets may be treated as a unit for the purposes of this section, and

1 only one permit issued for all the outlets.

2 **§22-11-22a. Civil penalties and injunctive relief; civil administrative penalties for coal mining**
3 **operations.**

4 (a) Any person who holds a permit to operate a coal mining operation issued under article
5 three of this chapter who violates any provision of any permit issued under or subject to the
6 provisions of this article or article eleven-a of this chapter is subject to a civil penalty not to exceed
7 \$25,000 per day of the violation and any person who violates any provision of this article or of any
8 rule or who violates any standard or order promulgated or made and entered under the provisions of
9 this article, article eleven-a of this chapter or article one, chapter twenty-two-b of this code is subject
10 to a civil penalty not to exceed \$25,000 per day of the violation.

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

14 (2) In determining the amount of a civil penalty the circuit court shall consider the
15 seriousness of the violation or violations, the economic benefit (if any) resulting from the violation,
16 any history of the violations, any good-faith efforts to comply with the applicable requirements,
17 cooperation by the permittee with the secretary, the economic impact of the penalty on the violator,
18 and other matters as justice may require.

19 (3) Upon application by the secretary, the circuit courts of the state or the judges thereof in
20 vacation may by injunction compel compliance with and enjoin violations of the provisions of this
21 article, article eleven-a of this chapter, the rules of the board or secretary, effluent limitations, the
22 terms and conditions of any permit granted under the provisions of this article or article eleven-a of

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

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

18 (5) Legal counsel and services for the director, secretary or the board in all civil penalty and
19 injunction proceedings in the circuit court and in the Supreme Court of Appeals of this state shall
20 be provided by legal counsel employed by the department, the Attorney General or his or her
21 assistants and by the prosecuting attorneys of the several counties as well, all without additional
22 compensation, or the director, secretary or the board, with the written approval of the Attorney

1 General, may employ counsel to represent him or her or it in a particular proceeding.

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

8 (1) Any civil administrative penalty assessed pursuant to this section shall not exceed
9 \$10,000 per violation and the maximum amount of any civil administrative penalty assessed
10 pursuant to this section shall not exceed \$125,000: *Provided*, That any stipulated penalties accrued
11 after the date of the draft order shall not be included for purposes of determining the total amount
12 of the civil administrative penalty. For purposes of this section, a single operational upset which
13 leads to simultaneous violations of more than one pollutant parameter shall be treated as a single
14 violation.

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

20 (3) No assessment may be levied pursuant to this subsection until after the alleged violator
21 has been notified by certified mail or personal service pursuant to the West Virginia Rules of Civil
22 Procedure. The notice shall include a proposed order which refers to the provision of the statute, rule,

1 order or permit alleged to have been violated, a concise statement of the facts alleged to constitute
2 the violation, a statement of the amount of the administrative penalty to be imposed and a statement
3 of the alleged violator's right to an informal hearing prior to the issuance of the proposed order.

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

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

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

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

16 (4) The secretary shall provide the opportunity for the public to comment on any draft order
17 by publishing a Class II legal advertisement in the newspaper with the largest circulation in the
18 county in which the violation occurred, and by other such means as the secretary deems appropriate,
19 which shall provide notice of the draft order, including the civil administrative penalty assessment.
20 The secretary shall consider any comments received in determining whether to revise the draft order
21 before issuance of a final order. During the thirty-day public comment period, any person may
22 request a public hearing regarding the draft order and the secretary may grant or deny the request at

1 his or her discretion. If a request for a public hearing is denied, the secretary shall provide notice to
2 the person requesting a hearing and reasons for such denial.

3 (5) Within thirty days of the close of the public comment period on a draft order, the secretary
4 shall issue a final order or make a determination not to issue a final order, and shall provide written
5 notice by certified mail or personal service pursuant to the West Virginia Rules of Civil Procedure
6 to the alleged violator and shall provide notice by certified mail or personal service pursuant to the
7 West Virginia Rules of Civil Procedure to those persons who submitted written comments on the
8 draft order during the public comment period.

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

14 (7) The authority to levy a civil administrative penalty is in addition to all other enforcement
15 provisions of this article and the payment of any assessment does not affect the availability of any
16 other enforcement provision in connection with the violation for which the assessment is levied:
17 Provided, That no combination of assessments against a violator under this section shall exceed
18 \$25,000 for each violation: Provided, however, That any violation for which the violator has paid
19 a civil administrative penalty assessed under this section may not be the subject of a separate civil
20 penalty action. No assessment levied pursuant to this section becomes due and payable until at least
21 thirty days after receipt of the final order or the procedures for review of the assessment, including
22 any appeals, have been completed, whichever is later.

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

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

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

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

10 **§22A-1-41. The Coal Employment Preservation Act of 2015; legislative findings.**

11 (a) Legislative findings. --

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

17 (2) Coal production in West Virginia has fallen from one hundred sixty-five million tons in
 18 2008 to approximately one hundred fifteen million tons in 2014, a decline of thirty-one percent.
 19 Much of this decline has been concentrated in the southern coalfields.

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

22 (4) During that same period, direct coal mining employment has decreased by approximately

1 four thousand jobs, from a high of twenty-two thousand, three hundred ,thirty-six in 2011 to just
2 eighteen thousand, two hundred today, a decline of nineteen percent.

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

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

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

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

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

4 (1) This section;

5 (2) The amendments to:

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

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

8 (C) Section one, article one-a, chapter twenty-two-a of this code;

9 (D) Sections six, twenty-eight and thirty-seven, article two, chapter twenty-two-a of this
10 code;

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

12 (F) Sections three hundred one, three hundred eight, three hundred nine, three hundred ten,
13 four hundred two, four hundred three, four hundred four, four hundred five, five hundred one, six
14 hundred one, six hundred two, six hundred three and six hundred four, article two-a, chapter
15 twenty-two-a of this code; and

16 (3) The following new sections:

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

18 (B) Section two hundred four-a, article two-a, chapter twenty-two-a of this code

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

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

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

1 **for screening.**

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

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

6 (A) Amphetamines;

7 (B) Cannabinoids/THC;

8 (C) Cocaine;

9 (D) Opiates;

10 (E) Phencyclidine (PCP);

11 (F) Benzodiazepines;

12 (G) Propoxyphene;

13 (H) Methadone;

14 (I) Barbiturates; and

15 (J) Synthetic narcotics.

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

1 and program;

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

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

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

19 (c) (1) Every employer shall notify the director, on a form prescribed by the director, within
20 seven (7) days of any of the following:

21 (A) A positive drug or alcohol test of a certified person, whether it be a preemployment test,
22 random test, reasonable suspicion test or post-accident test. However, for purposes of determining

1 whether a drug test is positive the certified employee may not rely on a prescription dated more than
 2 one year prior to the date of the drug test result;

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

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

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

6 (2) With respect to any certified person subject to a collective bargaining agreement, the
 7 employer shall notify the director, on a form prescribed by the director, within seven (7) days of any
 8 of the following: ~~Provided, That notification pursuant to this subdivision shall not result in the~~
 9 ~~immediate temporary suspension, suspension or revocation of any certificate held by a certified~~
 10 ~~person who is subject to a collective bargaining agreement unless and until the arbitration is~~
 11 ~~concluded and the discharge is upheld:~~

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

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

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

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

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

22 (4) Notice shall result in the immediate temporary suspension of all certificates held by the

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

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

15 (e) The provisions of this article shall not be construed to preclude an employer from
16 developing or maintaining a drug and alcohol abuse policy, testing program or substance abuse
17 program that exceeds the minimum requirements set forth in this section. The provisions of this
18 article shall also not be construed to require an employer to alter, amend, revise or otherwise change,
19 in any respect, a previously established substance abuse screening policy and program that meets or
20 exceeds the minimum requirements set forth in this section. The provisions of this article shall
21 require an employer to subject its employees who as part of their employment are regularly present
22 at a mine and who are employed in a safety-sensitive position to preemployment and random

1 substance abuse tests: *Provided*, That each employer shall retain the discretion to establish the
2 parameters of its substance abuse screening policy and program so long as it meets the minimum
3 requirements of this article. For purposes of this section, a "safety-sensitive position" means an
4 employment position where the employee's job responsibilities include duties and activities that
5 involve the personal safety of the employee or others working at a mine.

6 **ARTICLE 2. UNDERGROUND MINES.**

7 **§22A-2-6. Requirements for movement of off-track mining equipment in areas of active**
8 **workings where energized trolley wires or trolley feeder wires are present;**
9 **premovement requirements; certified and qualified persons.**

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

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

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

18 (b) A record shall be kept of the examinations required by subsection (a) of this section, and
19 shall be made available, upon request, to an authorized representative of the secretary.

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

1 operations.

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

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

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

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

16 (B) Where direct current electric power is used and such electric power can be supplied only
17 from inby the equipment being moved or transported, power may be supplied from inby such
18 equipment provided a miner with the means to cut off the power, and in direct communication with
19 persons actually engaged in the moving or transporting operation, is stationed out by the equipment
20 being moved.

21 (2) The settings of automatic circuit interrupting devices used to provide short circuit
22 protection for the trolley circuit shall be reduced to not more than one half of the maximum current

1 that could flow if the equipment being moved or transported were to come into contact with the
2 trolley wire or trolley feeder wire;

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

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

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

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

19 **§22A-2-28. Equipment to conform with height of seam.**

20 The use of underground mining equipment of a size that does not conform to the height of
21 the seam being mined, which creates unsafe working conditions for the miner operating the
22 equipment or others, is prohibited. However, the addition of or use of sideboards on shuttle cars is

1 permitted if the shuttle car is equipped with cameras. The board of coal mine health and safety shall
2 promulgate such rules as are necessary to effectuate this section. However, that rule may not limit
3 the use of sideboards on shuttle cars on which cameras are installed.

4 **§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals;**
5 **inspection.**

6 (a) The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall
7 be constructed, installed and maintained in a manner consistent with speed and type of haulage
8 operations being conducted to ensure safe operation. Where transportation of personnel is
9 exclusively by rail, track shall be maintained to within ~~five~~ one thousand five hundred feet of the
10 nearest working face, except that when any section is fully developed and being prepared for
11 retreating, then the ~~distance of such maintenance can be extended to eight hundred feet~~ track shall
12 be maintained to within one thousand five hundred feet of that retreat mining section if a rubber tired
13 vehicle is readily available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads:
15 *Provided*, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive
16 pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be
17 their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars
18 when in motion: *Provided, however*, That trip lights need not be used on cars being shifted to and
19 from loading machines, or on cars being handled at loading heads during gathering operations at
20 working faces. ~~No person except the operator or his assistant shall ride on locomotives or loaded~~
21 ~~cars. No person, other than the motorman and brakeman, should ride on a locomotive unless~~
22 authorized by the mine foreman, and then only when safe riding facilities are provided. An empty

1 car or cars shall be used to provide a safe distance between the locomotive and the material car when
2 rail, pipe or long timbers are being hauled. A safe clearance shall be maintained between the end
3 car or trips placed on side tracks and moving traffic. On haulage roads the clearance point shall be
4 marked with an approved device.

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

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

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

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

20 (3) The dispatcher's only duty shall be to direct traffic: *Provided*, That the dispatcher's duties
21 may also include those of the responsible person required by section forty-two of this article:
22 *Provided, however*, That the dispatcher may perform other duties which do not interfere with his or

1 her dispatching responsibilities and do not require him or her to leave the dispatcher's station except
2 as approved by the mine safety and technical review committee.

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

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

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

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

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

12 (x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of
13 the operator. However, the addition of or use of sideboards on shuttle cars shall be permitted if the
14 shuttle car is equipped with cameras. The Office of Miners Safety Health and Training may not
15 propose any rule limiting the use of sideboards on shuttle cars on which cameras are installed.

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

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

1 positions.

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

4 **PART I. GENERAL PROVISIONS.**

5 **§22A-2A-101. Use of diesel-powered equipment authorized.**

6 Diesel-powered equipment for use in underground coal mines may only be approved,
7 operated and maintained in accordance with rules, requirements and standards established pursuant
8 to this article. ~~Diesel-powered equipment may not be used in underground coal mines until the West~~
9 ~~Virginia diesel equipment commission promulgates its initial rules, requirements and standards~~
10 ~~governing the operation of diesel equipment in underground coal mines: *Provided*, That the diesel~~
11 ~~equipment commission may approve limited site-specific requests for experimental and testing use~~
12 ~~of diesel-powered equipment in underground coal mines and for the use of alternative diesel-related~~
13 ~~health and safety technologies and methods consistent with the provisions of section three hundred~~
14 ~~ten of this article.~~

15 **§22A-2A-204A. Director defined.**

16 "Director" means the Director of the Office of Miners' Health and Safety established in
17 section one, article one of this chapter.

18 **§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties**
19 **and responsibilities; transfer of equipment and records; continuation of**
20 **prior approvals of diesel equipment for use in underground coal mines;**
21 **continuation of rules of the commission.**

22 ~~The West Virginia Diesel Equipment Commission, consisting of six members, is continued,~~

1 ~~and commencing July 1, 2010, is a separate independent commission within the Department of~~
2 ~~Commerce.~~

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

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

8 (c) The rules of the commission in effect immediately prior to the effective date of the
9 reenactment of this section shall remain in force and effect until promulgation of new or additional
10 rules by the director pursuant to section three hundred-eight of this article. To the extent the director
11 finds that the commission rules in effect on the effective date of the reenactment of this section
12 adequately fulfill any of the duties of the commission that are transferred to the director by the
13 reenactment of any of the provisions of this article such rules are deemed to be actions taken by the
14 director to fulfill such duties.

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

18 **§22A-2A-308. Director's authority to promulgate legislative rules; continuation of rules**
19 **adopted by the commission.**

20 ~~(a) The West Virginia diesel equipment commission shall prepare and adopt the initial rules~~
21 ~~for the operation of diesel equipment in underground coal mines in this state~~ director has the power
22 and authority to propose legislative rules to carry out and implement the provisions of this article in

1 accordance with the provisions of article three, chapter twenty-nine-a of this code. ~~In preparing and~~
2 ~~adopting initial rules~~ Proposing rules for legislative approval, the ~~commission~~ director shall consider
3 the highest achievable measures of protection for miners' health and safety through available
4 technology, engineering controls and performance requirements and shall further consider the cost,
5 availability, adaptability and suitability of any available technology, engineering controls and
6 performance requirements as they relate to the use of diesel equipment in underground coal mines.

7 (b) ~~In promulgating the initial rules pursuant to subsection (a) of this section, the commission~~
8 ~~shall follow the procedures set forth in article three, chapter twenty-nine-a of this code that are~~
9 ~~prescribed for an agency proposing a legislative rule, to the point where an agency would approve~~
10 ~~a rule for submission to the Legislature. At that point, the commission shall proceed to final~~
11 ~~adoption of the initial rules and file a notice of the final adoption in the state register and with the~~
12 ~~Legislative Rule - Making Review Committee. Final adoption of the initial rules may be approved~~
13 ~~only upon a majority vote of all six members of the commission. All six members must be present~~
14 ~~when a vote is taken. Upon final adoption by the commission, the initial rules are thereby~~
15 ~~promulgated and have the effect of law without further action by the commission or the Legislature.~~
16 ~~The initial rules shall be published in the code of state rules and continue in effect until modified or~~
17 ~~superseded in accordance with the provisions of this article. All rules promulgated and adopted by~~
18 the commission in effect prior to the effective date of this section shall remain in effect until changed
19 or superseded by legislative rule enacted pursuant to subsection (a) of this section.

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

1 **§22A-2A-309. Director's authority to approve site-specific experimental testing prior to initial**
 2 **rules.**

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

9 **§22A-2A-310. Duties of director.**

10 (a) ~~After the promulgation of the initial rules, the commission shall have as its primary duties~~
 11 ~~the implementation of this article and the evaluation and adoption of~~ It is the duty of the director to
 12 carry out and implement this article and to evaluate and adopt state of the art technology and
 13 methods, reflected in engines and engine components, emission control equipment and procedures,
 14 ~~that~~ which when applied to diesel-powered underground mining machinery₂ shall reasonably reduce
 15 or eliminate diesel exhaust emissions and enhance protections of the health and safety of miners.
 16 The technology and methods adopted by the ~~commission~~ director shall have been demonstrated to
 17 be reliable. In making a decision to adopt new technology and methods, the ~~commission~~ director
 18 shall consider the highest achievable measures of protection for miners' health and safety through
 19 available technology, engineering controls and performance requirements and shall further consider
 20 the cost, availability, adaptability and suitability of any available technology, engineering controls
 21 and performance requirements as they relate to the use of diesel equipment in underground coal
 22 mines. Any state of the art technology or methods adopted by the ~~commission~~ director shall not

1 reduce or compromise the level of health and safety protection of miners.

2 (b) Upon application of a coal mine operator, the ~~commission~~ director shall consider site-
3 specific requests for the use of diesel equipment in underground coal mines and for the use of
4 alternative diesel-related health and safety technologies and methods. The ~~commission's~~ director's
5 action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon
6 receipt of a site-specific application, the ~~commission~~ director shall conduct an investigation, which
7 investigation shall include consultation with the mine operator and the authorized representatives
8 of the miners at the mine. Authorized representatives of the miners shall include a Mine Health and
9 Safety Committee elected by miners at the mine, a person or persons employed by an employee
10 organization representing miners at the mine or a person or persons authorized as the representative
11 or representatives of miners of the mine in accordance with MSHA regulations at 30 C.F.R. Pt. 40
12 (relating to representative of miners). Where there is no authorized representative of the miners, the
13 ~~commission~~ director shall consult with a reasonable number of miners at the mine. Upon completion
14 of the investigation, the ~~commission~~ director may approve the application for the site-specific
15 request. ~~Provided, That an application for a site-specific request under this subsection may be~~
16 ~~approved only upon a majority vote of all six members of the commission. All six members must~~
17 ~~be present when a vote is taken.~~

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

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

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

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

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

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

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

20 (e) Any action taken by the commission, prior to the effective date of the reenactment of this
21 section, or by the director to either approve or reject the use of an alternative technology or method,
22 or establish conditions under subsection (c) of this section, shall be final and binding and not subject

1 to further review except where a decision by the commission, prior to the effective date of the
 2 reenactment of this section, or by the director may be deemed to be an abuse of discretion or contrary
 3 to law. If any party affected by a decision of the commission, prior to the effective date of the
 4 reenactment of this section, or by the director believes that the decision is an abuse of discretion or
 5 contrary to law, that party may file a petition for review with the circuit court of Kanawha County
 6 in accordance with the provisions of the administrative procedures act relating to judicial review of
 7 governmental determinations. The court, in finding that any decision made by the commission, prior
 8 to the effective date of the reenactment of this section, or by the director is an abuse of discretion or
 9 contrary to law, shall vacate and, if appropriate, remand the case.

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

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

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

19 **§22A-2A-402. Approval of diesel power package or diesel engine.**

20 Every diesel power package or diesel engine used in underground coal mining shall be
 21 approved by the ~~West Virginia diesel equipment commission~~ director when it complies with
 22 applicable requirements, standards, and procedures established by ~~rules of the commission~~ this

1 article, and be certified or approved, as applicable, by MSHA and maintained in accordance with
2 MSHA certification or approval.

3 **§22A-2A-403. Exhaust emissions control and conditioning systems.**

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

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

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

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

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

22 (3) A minimum standard, stated in parts per million, for the reduction of emissions of oxides

1 of nitrogen, using advanced control technology such as catalytic control technology or other
2 comparably effective control methods; and

3 (4) Any additional requirements established by the rules of the commission prior to the
4 enactment of this section, as may be supplemented or amended by legislative rules promulgated by
5 the director or MSHA regulations relating to requirements for permissible mobile diesel-powered
6 transportation equipment set forth in part 36, title thirty of the code of federal regulations, 30 C.F.R.
7 §36.1, et seq.

8 **§22A-2A-404. Emissions monitoring and control.**

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

12 **§22A-2A-405. Exhaust gas monitoring and control.**

13 (a) For monitoring and controlling exhaust gases, the ~~rules of the commission~~ director shall
14 establish the maximum allowable ambient concentration of exhaust gases in the mine atmosphere.
15 Standards for exhaust gases, stated in parts per million, shall be established for carbon monoxide and
16 oxides of nitrogen. The rules shall establish the location in the mine at which the concentration of
17 these exhaust gases is to be measured, the frequency at which measurements are to be made, and
18 requirements prescribing the sampling instruments to be used in the measurement of exhaust gases.

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

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

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

8 PART 5. VENTILATION.

9 **§22A-2A-501. Ventilation.**

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

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

1 with the standards established pursuant to this section. The ~~rules~~ director shall also establish a
2 procedure under which each mine operator will provide evidence that the diesel fuel used in diesel-
3 powered equipment underground meets the standards for fuel established by the commission.

4 **§22A-2A-602. Fuel storage facilities.**

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

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

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

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

14 (c) ~~Rules of the commission~~ The director shall ~~govern~~ establish requirements for the
15 transportation and storage of diesel fuel in diesel fuel tanks and safety cans.

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

19 **§22A-2A-603. Dispensing of diesel fuel.**

20 ~~Rules of the commission~~ The director shall establish requirements governing the refueling
21 of diesel-powered equipment which shall, at a minimum, comply with the provisions of part 75 of
22 the code of federal regulations dealing with the dispensing of diesel fuel, set forth in 30 C.F.R.

1 §75.1905, effective April 25, 1997.

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

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

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

NOTE: The purpose of this bill is to create the Coal Jobs and Safety Act of 2015, which is comprised of the new code sections added and the amendments to current code sections made during the 2015 Legislative Session. The bill provides methods of assuring that discharges from waste piles do not exceed applicable water quality standards. The bill conforms the rules regarding the procedures for requesting and obtaining inactive status and the rules relating to the requirements for contemporaneous reclamation under the West Virginia Surface Coal Mining and Reclamation Act to the corresponding federal requirements. The bill abolishes the West Virginia Diesel Equipment Commission. The bill transfers the duties and responsibilities of the commission to the Director of the Office of Miners' Health, Safety and Training. The bill defines terms. The bill provides rule-making authority. The bill provides that approvals of equipment and rules previously approved by the commission continue in full force and effect. The bill develops statewide hardness-based aluminum water quality criteria for the protection of aquatic life. The bill prohibits the wholesale incorporation of water quality standards into permits rather than specifically developing terms and conditions on a permit-by-permit basis that are designed to protect water quality standards, the scope of the permit shield as it relates to compliance with water quality standards. The bill establishes an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements. The bill makes legislative findings. The bill permits the immediate temporary suspension, suspension or revocation of a certificate held by a certified person who has tested positive for certain drugs or alcohol, refused to submit a sample for screening, possessed or submitted a substituted

sample, or possessed or submitted an adulterated sample for testing. The bill provides if a drug test is positive a certified employee may not rely on the fact that the drug was prescribed if the prescription is more than one year old. The bill sets forth the requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present. The bill establishes premovement requirements. The bill increases the distance from five hundred feet to one thousand five hundred feet of the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail. The bill increases the distance of track to be maintained when a section is fully developed and being prepared for retreating. The bill permits the use of sideboards on shuttle cars if they are equipped with cameras. The bill increases the spacing between shelter holes. The bill removes the requirement that locomotives, personnel carriers, barrier tractors and other related equipment be equipped with suitable lifting jacks and handles. The bill prescribes that no one, other than the motorman and brakeman, should not ride on a locomotive unless authorized by the mine foreman, and then only when safe riding facilities are provided.

§22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 are repealed.

§22-11-22a, §22A-1-41 and §22A-2A-204a are new; therefore, they have been completely underscored.

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

§22A-2-6 has been completely rewritten; therefore, it has been completely underscored.