

E N G R O S S E D  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 357**

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

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[Originating in the Committee on the Judiciary;  
reported February 5, 2015.]

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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, §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; and to amend said code by adding thereto a new section, designated §22A-2A-204a, 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 rules regarding procedures for requesting and obtaining inactive status and rules relating to requirements for contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation Act to corresponding federal requirements; abolishing West Virginia Diesel Equipment Commission; transferring duties and responsibilities of West Virginia Diesel Equipment Commission to Director of the Office of Miners' Health, Safety and Training; defining terms; providing rule-making authority;

providing that rules previously approved by commission continue in full force and effect; developing emergency rules for statewide hardness-based aluminum water quality criteria for protection of aquatic life; prohibiting 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; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; permitting 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; providing that 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; setting forth requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; establishing premovement requirements; increasing 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; requiring certain equipment be readily available when distance from track to face is between five hundred feet and one thousand five hundred feet; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; permitting use of sideboards on shuttle cars if they are equipped with cameras; requiring shelter holes be provided along haulage entries and be placed not more than one hundred five feet apart; providing exception; removing requirement that locomotives, personnel carriers, barrier tractors and other related equipment be equipped with lifting jacks and handles; and prescribing that no one, other than motorman and brakeman, should ride on a

locomotive unless authorized by the mine foreman, and then only when safe riding facilities are provided.

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

That §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, be repealed; that §22-3-13 and §22-3-19 of said code be amended and reenacted; that §22-11-6 and §22-11-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-11-22a; that said code be amended by adding thereto a new section, designated §22A-1-41; that §22A-1A-1 of said code be amended and reenacted; that §22A-2-6, §22A-2-28 and §22A-2-37 of said code be amended and reenacted; that §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22A-2A-204a, all to read as follows:

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

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

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

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

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

12       (2) Restore the land affected to a condition capable of  
13 supporting the uses which it was capable of supporting prior  
14 to any mining, or higher or better uses of which there is  
15 reasonable likelihood so long as the use or uses do not

16 present any actual or probable hazard to public health or  
17 safety or pose any actual or probable threat of water  
18 diminution or pollution and the permit applicants' declared  
19 proposed land use following reclamation is not considered to  
20 be impractical or unreasonable, inconsistent with applicable  
21 land use policies and plans, involves unreasonable delay in  
22 implementation or is violative of federal, state or local law;

23 (3) Except as provided in subsection (c) of this section,  
24 with respect to all surface mines, backfill, compact where  
25 advisable to ensure stability or to prevent leaching of toxic  
26 materials and grade in order to restore the approximate  
27 original contour: *Provided*, That in surface mining which is  
28 carried out at the same location over a substantial period of  
29 time where the operation transects the coal deposit and the  
30 thickness of the coal deposits relative to the volume of the  
31 overburden is large and where the operator demonstrates that  
32 the overburden and other spoil and waste materials at a  
33 particular point in the permit area or otherwise available from  
34 the entire permit area is insufficient, giving due consideration

35 to volumetric expansion, to restore the approximate original  
36 contour, the operator, at a minimum, shall backfill, grade and  
37 compact, where advisable, using all available overburden and  
38 other spoil and waste materials to attain the lowest  
39 practicable grade, but not more than the angle of repose, to  
40 provide adequate drainage and to cover all acid-forming and  
41 other toxic materials in order to achieve an ecologically  
42 sound land use compatible with the surrounding region:  
43 *Provided, however,* That in surface mining where the volume  
44 of overburden is large relative to the thickness of the coal  
45 deposit and where the operator demonstrates that due to  
46 volumetric expansion the amount of overburden and other  
47 spoil and waste materials removed in the course of the  
48 mining operation is more than sufficient to restore the  
49 approximate original contour, the operator shall, after  
50 restoring the approximate contour, backfill, grade and  
51 compact, where advisable, the excess overburden and other  
52 spoil and waste materials to attain the lowest grade, but not  
53 more than the angle of repose, and to cover all acid-forming



54 and other toxic materials in order to achieve an ecologically  
55 sound land use compatible with the surrounding region and the  
56 overburden or spoil shall be shaped and graded in a way as to  
57 prevent slides, erosion and water pollution and revegetated in  
58 accordance with the requirements of this article: *Provided*  
59 *further*, That the director shall propose rules for legislative  
60 approval in accordance with article three, chapter twenty-nine-a  
61 of this code governing variances to the requirements for return  
62 to approximate original contour or highwall elimination and  
63 where adequate material is not available from surface mining  
64 operations permitted after the effective date of this article for:  
65 (A) Underground mining operations existing prior to August 3,  
66 1977; or (B) for areas upon which surface mining prior to July  
67 1, 1977, created highwalls;

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

71 (5) Remove the topsoil from the land in a separate layer,  
72 replace it on the backfill area or, if not utilized immediately,

73 segregate it in a separate pile from other spoil and, when the  
74 topsoil is not replaced on a backfill area within a time short  
75 enough to avoid deterioration of the topsoil, maintain a  
76 successful vegetative cover by quick growing plants or by  
77 other similar means in order to protect topsoil from wind and  
78 water erosion and keep it free of any contamination by other  
79 acid or toxic material: *Provided*, That if topsoil is of  
80 insufficient quantity or of poor quality for sustaining  
81 vegetation, or if other strata can be shown to be more suitable  
82 for vegetation requirements, then the operator shall remove,  
83 segregate and preserve in a like manner any other strata  
84 which is best able to support vegetation;

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

87 (7) Ensure that all prime farmlands are mined and  
88 reclaimed in accordance with the specifications for soil  
89 removal, storage, replacement and reconstruction established  
90 by the United States Secretary of Agriculture and the Soil  
91 Conservation Service pertaining thereto. The operator, at a

92 minimum, shall: (A) Segregate the A horizon of the natural  
93 soil, except where it can be shown that other available soil  
94 materials will create a final soil having a greater productive  
95 capacity and, if not utilized immediately, stockpile this  
96 material separately from other spoil and provide needed  
97 protection from wind and water erosion or contamination by  
98 other acid or toxic material; (B) segregate the B horizon of  
99 the natural soil, or underlying C horizons or other strata, or  
100 a combination of the horizons or other strata that are shown  
101 to be both texturally and chemically suitable for plant growth  
102 and that can be shown to be equally or more favorable for  
103 plant growth than the B horizon, in sufficient quantities to  
104 create in the regraded final soil a root zone of comparable  
105 depth and quality to that which existed in the natural soil and,  
106 if not utilized immediately, stockpile this material separately  
107 from other spoil and provide needed protection from wind  
108 and water erosion or contamination by other acid or toxic  
109 material; (C) replace and regrade the root zone material  
110 described in paragraph (B) of this subdivision with proper

111 compaction and uniform depth over the regraded spoil  
112 material; and (D) redistribute and grade in a uniform manner  
113 the surface soil horizon described in paragraph (A) of this  
114 subdivision;

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

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

128 (10) Minimize the disturbances to the prevailing  
129 hydrologic balance at the mine site and in associated off-site

130 areas and to the quality and quantity of water in surface and  
131 groundwater systems both during and after surface mining  
132 operations and during reclamation by: (A) Avoiding acid or  
133 other toxic mine drainage by such measures as, but not  
134 limited to: (i) Preventing or removing water from contact  
135 with toxic producing deposits; (ii) treating drainage to reduce  
136 toxic content which adversely affects downstream water upon  
137 being released to water courses; and (iii) casing, sealing or  
138 otherwise managing boreholes, shafts and wells and keep  
139 acid or other toxic drainage from entering ground and surface  
140 waters; (B) conducting surface mining operations so as to  
141 prevent to the extent possible, using the best technology  
142 currently available, additional contributions of suspended  
143 solids to streamflow or runoff outside the permit area, but in  
144 no event may contributions be in excess of requirements set  
145 by applicable state or federal law; (C) constructing an  
146 approved drainage system pursuant to paragraph (B) of this  
147 subdivision, prior to commencement of surface mining  
148 operations, the system to be certified by a person approved

149 by the director to be constructed as designed and as approved  
150 in the reclamation plan; (D) avoiding channel deepening or  
151 enlargement in operations requiring the discharge of water  
152 from mines; (E) unless otherwise authorized by the director,  
153 cleaning out and removing temporary or large settling ponds  
154 or other siltation structures after disturbed areas are  
155 revegetated and stabilized, and depositing the silt and debris  
156 at a site and in a manner approved by the director; (F)  
157 restoring recharge capacity of the mined area to approximate  
158 premining conditions; and (G) any other actions prescribed  
159 by the director;

160 (11) With respect to surface disposal of mine wastes,  
161 tailings, coal processing wastes and other wastes in areas other  
162 than the mine working excavations: (A) Stabilize all waste piles  
163 in designated areas through construction in compacted layers,  
164 including the use of noncombustible and impervious materials  
165 if necessary, and assure the final contour of the waste pile will  
166 be compatible with natural surroundings and that the site will  
167 be stabilized and revegetated according to the provisions of this

168 article; and (B) assure that the construction of any coal waste  
169 pile or other coal waste storage area utilizes appropriate  
170 technologies, such as capping or the use of liners, or any other  
171 demonstrated technologies or measures which are consistent  
172 with good engineering practices, to prevent an acid mine  
173 drainage discharge;

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

181 (13) Refrain from surface mining within five hundred feet  
182 of any active and abandoned underground mines in order to  
183 prevent breakthroughs and to protect health or safety of  
184 miners: *Provided*, That the director shall permit an operator  
185 to mine near, through or partially through an abandoned  
186 underground mine or closer to an active underground mine if:

187 (A) The nature, timing and sequencing of the approximate  
188 coincidence of specific surface mine activities with specific  
189 underground mine activities are coordinated jointly by the  
190 operators involved and approved by the director; and (B) the  
191 operations will result in improved resource recovery,  
192 abatement of water pollution or elimination of hazards to the  
193 health and safety of the public: *Provided, however,* That any  
194 breakthrough which does occur shall be sealed;

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

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



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

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

213 (16) Ensure that all reclamation efforts proceed in an  
214 environmentally sound manner and as contemporaneously  
215 as practicable with the surface mining operations. Time  
216 limits shall be established by the director requiring  
217 backfilling, grading and planting to be kept current:  
218 *Provided*, That where surface mining operations and  
219 underground mining operations are proposed on the same  
220 area, which operations must be conducted under separate  
221 permits, the director may grant a variance from the  
222 requirement that reclamation efforts proceed as  
223 contemporaneously as practicable to permit underground  
224 mining operations prior to reclamation:

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

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

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

233 (iii) The applicant has satisfactorily demonstrated that the  
234 plan for the underground mining operations conforms to  
235 requirements for underground mining in the jurisdiction and  
236 that permits necessary for the underground mining operations  
237 have been issued by the appropriate authority;

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

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

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

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

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

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

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

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

277 (19) Establish on the regraded areas, and all other lands  
278 affected, a diverse, effective and permanent vegetative cover  
279 of the same seasonal variety native to the area of land to be  
280 affected or of a fruit, grape or berry producing variety  
281 suitable for human consumption and capable of

282 self-regeneration and plant succession at least equal in extent  
283 of cover to the natural vegetation of the area, except that  
284 introduced species may be used in the revegetation process  
285 where desirable or when necessary to achieve the approved  
286 post-mining land use plan;

287 (20) Assume the responsibility for successful revegetation,  
288 as required by subdivision (19) of this subsection, for a period  
289 of not less than five growing seasons, as defined by the director,  
290 after the last year of augmented seeding, fertilizing, irrigation  
291 or other work in order to assure compliance with subdivision  
292 (19) of this subsection: *Provided*, That when the director issues  
293 a written finding approving a long-term agricultural  
294 post-mining land use as a part of the mining and reclamation  
295 plan, the director may grant exception to the provisions of  
296 subdivision (19) of this subsection: *Provided, however*, That  
297 when the director approves an agricultural post-mining land  
298 use, the applicable five growing seasons of responsibility for  
299 revegetation begins on the date of initial planting for the  
300 agricultural post-mining land use;

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

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

316        (22) Place all excess spoil material resulting from surface  
317 mining activities in a manner that: (A) Spoil is transported  
318 and placed in a controlled manner in position for concurrent  
319 compaction and in a way as to assure mass stability and to

320 prevent mass movement; (B) the areas of disposal are within  
321 the bonded permit areas and all organic matter is removed  
322 immediately prior to spoil placements; (C) appropriate  
323 surface and internal drainage system or diversion ditches are  
324 used to prevent spoil erosion and movement; (D) the  
325 disposal area does not contain springs, natural water courses  
326 or wet weather seeps, unless lateral drains are constructed  
327 from the wet areas to the main under drains in a manner that  
328 filtration of the water into the spoil pile will be prevented;  
329 (E) if placed on a slope, the spoil is placed upon the most  
330 moderate slope among those upon which, in the judgment of  
331 the director, the spoil could be placed in compliance with all  
332 the requirements of this article, and is placed, where  
333 possible, upon, or above, a natural terrace, bench or berm, if  
334 placement provides additional stability and prevents mass  
335 movement; (F) where the toe of the spoil rests on a  
336 downslope, a rock toe buttress, of sufficient size to prevent  
337 mass movement, is constructed; (G) the final configuration  
338 is compatible with the natural drainage pattern and

339 surroundings and suitable for intended uses; (H) the design  
340 of the spoil disposal area is certified by a qualified registered  
341 professional engineer in conformance with professional  
342 standards; and (I) all other provisions of this article are met:  
343 *Provided*, That where the excess spoil material consists of at  
344 least eighty percent, by volume, sandstone, limestone or  
345 other rocks that do not slake in water and will not degrade to  
346 soil material, the director may approve alternate methods for  
347 disposal of excess spoil material, including fill placement by  
348 dumping in a single lift, on a site-specific basis: *Provided*,  
349 *however*, That the services of a qualified registered  
350 professional engineer experienced in the design and  
351 construction of earth and rockfill embankment are utilized:  
352 *Provided further*, That the approval may not be  
353 unreasonably withheld if the site is suitable;  
354 (23) Meet any other criteria necessary to achieve  
355 reclamation in accordance with the purposes of this article,  
356 taking into consideration the physical, climatological and  
357 other characteristics of the site;



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

363 (25) Retain a natural barrier to inhibit slides and erosion  
364 on permit areas where outcrop barriers are required:

365 *Provided*, That constructed barriers may be allowed where:

366 (A) Natural barriers do not provide adequate stability; (B)  
367 natural barriers would result in potential future water quality  
368 deterioration; and (C) natural barriers would conflict with the  
369 goal of maximum utilization of the mineral resource:

370 *Provided, however*, That at a minimum, the constructed  
371 barrier shall be of sufficient width and height to provide  
372 adequate stability and the stability factor shall equal or  
373 exceed that of the natural outcrop barrier: *Provided further*,

374 That where water quality is paramount, the constructed  
375 barrier shall be composed of impervious material with

376 controlled discharge points; and

377       (26) The director shall promulgate for review and  
378 consideration by the West Virginia Legislature legislative  
379 rules or emergency rules during the 2016 Regular Session of  
380 the West Virginia Legislature, revisions to rules for  
381 contemporaneous reclamation as required under subdivision  
382 (16), subsection (b) of this section. The secretary shall  
383 specifically consider the adoption of federal standards  
384 codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R.  
385 §§817.100-116 (1983) when proposing revisions to the state  
386 rule.

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

390       (2) Where an applicant meets the requirements of  
391 subdivisions (3) and (4) of this subsection, a permit without  
392 regard to the requirement to restore to approximate original  
393 contour set forth in subsection (b) or (d) of this section may  
394 be granted for the surface mining of coal where the mining  
395 operation will remove an entire coal seam or seams running

396 through the upper fraction of a mountain, ridge or hill, except  
397 as provided in paragraph (A), subdivision (4) of this  
398 subsection, by removing all of the overburden and creating  
399 a level plateau or a gently rolling contour with no highwalls  
400 remaining and capable of supporting post-mining uses in  
401 accordance with the requirements of this subsection.

402 (3) In cases where an industrial, commercial, agricultural,  
403 commercial forestry, residential or public facility including  
404 recreational uses is proposed for the post-mining use of the  
405 affected land, the director may grant a permit for a surface  
406 mining operation of the nature described in subdivision (2) of  
407 this subsection where: (A) The proposed post-mining land  
408 use is determined to constitute an equal or better use of the  
409 affected land, as compared with premining use; (B) the  
410 applicant presents specific plans for the proposed  
411 post-mining land use and appropriate assurances that the use  
412 will be: (i) Compatible with adjacent land uses; (ii)  
413 practicable with respect to achieving the proposed use; (iii)  
414 obtainable according to data regarding expected need and

415 market; (iv) supported by commitments from public agencies  
416 where appropriate; (v) practicable with respect to private  
417 financial capability for completion of the proposed use; (vi)  
418 planned pursuant to a schedule attached to the reclamation  
419 plan so as to integrate the mining operation and reclamation  
420 with the post-mining land use; and (vii) designed by a person  
421 approved by the director in conformance with standards  
422 established to assure the stability, drainage and configuration  
423 necessary for the intended use of the site; (C) the proposed  
424 use would be compatible with adjacent land uses, and  
425 existing state and local land use plans and programs; (D) the  
426 director provides the county commission of the county in  
427 which the land is located and any state or federal agency  
428 which the director, in his or her discretion, determines to  
429 have an interest in the proposed use, an opportunity of not  
430 more than sixty days to review and comment on the proposed  
431 use; and (E) all other requirements of this article will be met.

432 (4) In granting any permit pursuant to this subsection, the  
433 director shall require that: (A) A natural barrier be retained

434 to inhibit slides and erosion on permit areas where outcrop  
435 barriers are required: *Provided*, That constructed barriers  
436 may be allowed where: (i) Natural barriers do not provide  
437 adequate stability; (ii) natural barriers would result in  
438 potential future water quality deterioration; and (iii) natural  
439 barriers would conflict with the goal of maximum utilization  
440 of the mineral resource: *Provided, however*, That, at a  
441 minimum, the constructed barrier shall be sufficient in width  
442 and height to provide adequate stability and the stability  
443 factor shall equal or exceed that of the natural outcrop  
444 barrier: *Provided further*, That where water quality is  
445 paramount, the constructed barrier shall be composed of  
446 impervious material with controlled discharge points; (B) the  
447 reclaimed area is stable; (C) the resulting plateau or rolling  
448 contour drains inward from the outslopes except at specific  
449 points; (D) no damage will be done to natural watercourses;  
450 (E) spoil will be placed on the mountaintop bench as is  
451 necessary to achieve the planned post-mining land use: *And*  
452 *provided further*, That all excess spoil material not retained

453 on the mountaintop shall be placed in accordance with the  
454 provisions of subdivision (22), subsection (b) of this section;  
455 and (F) ensure stability of the spoil retained on the  
456 mountaintop and meet the other requirements of this article.

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

463 (d) In addition to those general performance standards  
464 required by this section, when surface mining occurs on  
465 slopes of twenty degrees or greater, or on lesser slopes as  
466 may be defined by rule after consideration of soil and  
467 climate, no debris, abandoned or disabled equipment, spoil  
468 material or waste mineral matter will be placed on the natural  
469 downslope below the initial bench or mining cut: *Provided*,  
470 That soil or spoil material from the initial cut of earth in a  
471 new surface mining operation may be placed on a limited

472 specified area of the downslope below the initial cut if the  
473 permittee can establish to the satisfaction of the director that  
474 the soil or spoil will not slide and that the other requirements  
475 of this section can still be met.

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

485 (f) The director shall propose rules for legislative  
486 approval in accordance with article three, chapter  
487 twenty-nine-a of this code for the design, location,  
488 construction, maintenance, operation, enlargement,  
489 modification, removal and abandonment of new and existing  
490 coal mine waste piles. In addition to engineering and other

491 technical specifications, the standards and criteria developed  
492 pursuant to this subsection shall include provisions for  
493 review and approval of plans and specifications prior to  
494 construction, enlargement, modification, removal or  
495 abandonment; performance of periodic inspections during  
496 construction; issuance of certificates of approval upon  
497 completion of construction; performance of periodic safety  
498 inspections; and issuance of notices and orders for required  
499 remedial or maintenance work or affirmative action:  
500 *Provided*, That whenever the director finds that any coal  
501 processing waste pile constitutes an imminent danger to  
502 human life, he or she may, in addition to all other remedies  
503 and without the necessity of obtaining the permission of any  
504 person prior or present who operated or operates a pile or the  
505 landowners involved, enter upon the premises where any coal  
506 processing waste pile exists and may take or order to be taken  
507 any remedial action that may be necessary or expedient to  
508 secure the coal processing waste pile and to abate the  
509 conditions which cause the danger to human life: *Provided*,



510 *however*, That the cost reasonably incurred in any remedial  
511 action taken by the director under this subsection may be  
512 paid for initially by funds appropriated to the division for  
513 these purposes and the sums expended shall be recovered  
514 from any responsible operator or landowner, individually or  
515 jointly, by suit initiated by the Attorney General at the  
516 request of the director. For purposes of this subsection,  
517 “operates” or “operated” means to enter upon a coal  
518 processing waste pile, or part of a coal processing waste pile,  
519 for the purpose of disposing, depositing, dumping coal  
520 processing wastes on the pile or removing coal processing  
521 waste from the pile, or to employ a coal processing waste pile  
522 for retarding the flow of or for the impoundment of water.

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

- 1 (a) (1) Any valid permit issued pursuant to this article  
2 carries with it the right of successive renewal upon expiration

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

22 requested as required pursuant to sections eleven or twelve of  
23 this article; or (E) any additional revised or updated  
24 information as required pursuant to rules promulgated by the  
25 secretary has not been provided.

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

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

39 (4) Any renewal application for an active permit shall be  
40 on forms prescribed by the secretary and shall be

41 accompanied by a filing fee of \$3,000. The application shall  
42 contain such information as the secretary requires pursuant to  
43 rule.

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

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

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

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

68 (d) No transfer, assignment or sale of the rights granted  
69 under any permit issued pursuant to this article may be made  
70 without the prior written approval of the secretary,  
71 application for which shall be accompanied by a filing fee of  
72 \$1,500 for transfer or \$1,500 for assignment.

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

78       (f) The secretary shall promulgate for review and  
79 consideration by the West Virginia Legislature legislative  
80 rules or emergency rules during the 2016 Regular Session of  
81 the West Virginia Legislature revisions to rules for granting  
82 inactive status under this article. The secretary shall  
83 specifically consider the adoption of federal standards  
84 codified at 30 C. F. R. §816.131 (1979) and 30 C. F. R.  
85 §817.131 (1979).

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

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

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

4       (1) Where necessary and proper, the secretary may  
5 specify a reasonable time for persons not complying with  
6 such standards and limitations to comply therewith and upon  
7 the expiration of any such period of time, the secretary shall  
8 revoke or modify any permit previously issued which

9 authorized the discharge of treated or untreated sewage,  
10 industrial wastes or other wastes into the waters of this state  
11 which result in reduction of the quality of such waters below  
12 the standards and limitations established therefor by rules of  
13 the board or secretary;

14 (2) ~~Notwithstanding any rule or permit condition to the~~  
15 ~~contrary, and except for any standard imposed under section~~  
16 ~~307 of the federal Water Pollution Control Act for a toxic~~  
17 ~~pollutant injurious to human health, For purposes of both this~~  
18 ~~article and sections 309 and 505 of the federal Water~~  
19 ~~Pollution Control Act, compliance with a permit issued~~  
20 ~~pursuant to this article shall be deemed compliance for~~  
21 ~~purposes of both this article and sections 301, 302, 303, 306,~~  
22 ~~307 and 403 of the federal Water Pollution Control Act and~~  
23 ~~with all applicable state and federal water quality standards,~~  
24 ~~except for any such standard imposed under section 307 of~~  
25 ~~the federal Water Pollution Control Act for a toxic pollutant~~  
26 ~~injurious to human health. Notwithstanding any provision of~~  
27 ~~this code or rule or permit condition to the contrary, water~~

28 quality standards themselves shall not be considered “effluent  
29 standards or limitations” for the purposes of both this article  
30 and sections 309 and 505 of the federal Water Pollution  
31 Control Act and shall not be independently or directly  
32 enforced or implemented except through the development of  
33 terms and conditions of a permit issued pursuant to this  
34 article. Nothing in this section, however, prevents the  
35 secretary from modifying, reissuing or revoking a permit  
36 during its term. The provisions of this section addressing  
37 compliance with a permit are intended to apply to all existing  
38 and future discharges and permits without the need for permit  
39 modifications; ~~However, should any such modification be~~  
40 ~~necessary under the terms of this article, then the secretary~~  
41 ~~shall immediately commence the process to effect such~~  
42 ~~modifications; and~~

43 (3) The Legislature finds that there are concerns within  
44 West Virginia regarding the applicability of the research  
45 underlying the federal selenium criteria to a state such as  
46 West Virginia which has high precipitation rates and



47 free-flowing streams and that the alleged environmental  
48 impacts that were documented in applicable federal research  
49 have not been observed in West Virginia and, further, that  
50 considerable research is required to determine if selenium is  
51 having an impact on West Virginia streams, to validate or  
52 determine the proper testing methods for selenium and to  
53 better understand the chemical reactions related to selenium  
54 mobilization in water.

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

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

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

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

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

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

75 (6) Within twenty-four months of the effective date of  
76 this subdivision, the secretary shall propose rules for  
77 legislative approval in accordance with the provisions of  
78 article three, chapter twenty-nine of this code which establish  
79 a state-specific selenium standard that protects aquatic life.  
80 Concurrent with proposing a legislative rule, the secretary  
81 shall also submit the proposed standard and supporting  
82 documentation to the administrator of the Environmental  
83 Protection Agency. The secretary shall also consult with and  
84 consider research and data from the West Virginia Water

85 Research Institute at West Virginia University, the regulated  
86 community and other appropriate groups in developing the  
87 state-specific selenium standard.

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

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

1 (a) The secretary may, after public notice and opportunity  
2 for public hearing, issue a permit for the discharge or  
3 disposition of any pollutant or combination of pollutants into  
4 waters of this state upon condition that the discharge or  
5 disposition meets or will meet all applicable state and federal  
6 water quality standards and effluent limitations and all other  
7 requirements of this article and article three, chapter

8 twenty-two-b of this code. While permits shall contain  
9 conditions that are designed to meet all applicable state and  
10 federal water quality standards and effluent limitations, water  
11 quality standards themselves shall not be incorporated  
12 wholesale either expressly or by reference as effluent  
13 standards or limitations in a permit issued pursuant to this  
14 article.

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

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

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

25 (3) Acquire, construct, install, modify or operate a  
26 disposal system or part thereof for the direct or indirect

27 discharge or deposit of treated or untreated sewage, industrial  
28 wastes or other wastes, or the effluent therefrom, into the  
29 waters of this state, or any extension to or addition to the  
30 disposal system;

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

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

39 (6) Construct, install, modify, open, reopen, operate or  
40 abandon any mine, quarry or preparation plant, or dispose of  
41 any refuse or industrial wastes or other wastes from the mine  
42 or quarry or preparation plant: *Provided*, That the  
43 department's permit is only required wherever the  
44 aforementioned activities cause, may cause or might  
45 reasonably be expected to cause a discharge into or pollution

46 of waters of the state, except that a permit is required for any  
47 preparation plant: *Provided, however,* That unless waived in  
48 writing by the secretary, every application for a permit to  
49 open, reopen or operate any mine, quarry or preparation plant  
50 or to dispose of any refuse or industrial wastes or other  
51 wastes from the mine or quarry or preparation plant shall  
52 contain a plan for abandonment of the facility or operation,  
53 which plan shall comply in all respects to the requirements of  
54 this article. The plan of abandonment is subject to  
55 modification or amendment upon application by the permit  
56 holder to the secretary and approval of the modification or  
57 amendment by the secretary; or

58 (7) Operate any disposal well for the injection or  
59 reinjection underground of any industrial wastes, including,  
60 but not limited to, liquids or gases, or convert any well into  
61 such a disposal well or plug or abandon any such disposal  
62 well.

63 (c) Where a person has a number of outlets emerging into  
64 the waters of this state in close proximity to one another, the

65 outlets may be treated as a unit for the purposes of this  
66 section, and only one permit issued for all the outlets.

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

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

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

21       (2) In determining the amount of a civil penalty the  
22 circuit court shall consider the seriousness of the violation or  
23 violations, the economic benefit, if any, resulting from the  
24 violation, any history of the violations, any good-faith efforts  
25 to comply with the applicable requirements, cooperation by  
26 the permittee with the secretary, the economic impact of the  
27 penalty on the violator, and other matters as justice may  
28 require.

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



35 provisions of this article or article eleven-a of this chapter or  
36 any order of the secretary or board, and the venue of any such  
37 actions shall be the county in which the violations or  
38 noncompliance exists or is taking place or in any county in  
39 which the waters thereof are polluted as the result of the  
40 violation or noncompliance. The court or the judge thereof in  
41 vacation may issue a temporary or preliminary injunction in  
42 any case pending a decision on the merits of any injunction  
43 application filed. Any other section of this code to the contrary  
44 notwithstanding, the state is not required to furnish bond as a  
45 prerequisite to obtaining injunctive relief under this article or  
46 article eleven-a of this chapter. An application for an  
47 injunction under the provisions of this section may be filed and  
48 injunctive relief granted notwithstanding that all of the  
49 administrative remedies provided in this article have not been  
50 pursued or invoked against the person or persons against  
51 whom such relief is sought and notwithstanding that the person  
52 or persons against whom such relief is sought have not been  
53 prosecuted or convicted under the provisions of this article.

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

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

73 (b) The secretary may assess a civil administrative  
74 penalty whenever he or she finds that a person who holds a  
75 permit to operate a coal mining operation issued under article  
76 three of this chapter has violated any provision of this article  
77 or article eleven-a of this chapter, any permit issued under or  
78 subject to the provisions of this article or article eleven-a of  
79 this chapter or any rule or order issued pursuant to this article  
80 or article eleven-a of this chapter. A civil administrative  
81 penalty may be assessed unilaterally by the director in  
82 accordance with this subsection.

83 (1) Any civil administrative penalty assessed pursuant  
84 to this section shall not exceed \$10,000 per violation and  
85 the maximum amount of any civil administrative penalty  
86 assessed pursuant to this section shall not exceed \$125,000:  
87 *Provided*, That any stipulated penalties accrued after the  
88 date of the draft order shall not be included for purposes of  
89 determining the total amount of the civil administrative  
90 penalty. For purposes of this section, a single operational  
91 upset which leads to simultaneous violations of more than

92 one pollutant parameter shall be treated as a single  
93 violation.

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

102 (3) No assessment may be levied pursuant to this  
103 subsection until after the alleged violator has been notified  
104 by certified mail or personal service pursuant to the West  
105 Virginia rules of civil procedure. The notice shall include a  
106 proposed order which refers to the provision of the statute,  
107 rule, order or permit alleged to have been violated, a  
108 concise statement of the facts alleged to constitute the  
109 violation, a statement of the amount of the administrative  
110 penalty to be imposed and a statement of the alleged

111 violator's right to an informal hearing prior to the issuance  
112 of the proposed order.

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

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

118 (C) If an informal hearing is requested, the director shall  
119 inform the alleged violator of the time and place of the  
120 hearing. The secretary may appoint an assessment officer to  
121 conduct the informal hearing and make a written  
122 recommendation to the secretary concerning the proposed  
123 order and the assessment of a civil administrative penalty.

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

130 (4) The secretary shall provide the opportunity for the  
131 public to comment on any draft order by publishing a Class  
132 II legal advertisement in the newspaper with the largest  
133 circulation in the county in which the violation occurred, and  
134 by other such means as the secretary deems appropriate,  
135 which shall provide notice of the draft order, including the  
136 civil administrative penalty assessment. The secretary shall  
137 consider any comments received in determining whether to  
138 revise the draft order before issuance of a final order. During  
139 the thirty-day public comment period, any person may  
140 request a public hearing regarding the draft order and the  
141 secretary may grant or deny the request at his or her  
142 discretion. If a request for a public hearing is denied, the  
143 secretary shall provide notice to the person requesting a  
144 hearing and reasons for such denial.

145 (5) Within thirty days of the close of the public comment  
146 period on a draft order, the secretary shall issue a final order  
147 or make a determination not to issue a final order, and shall  
148 provide written notice by certified mail or personal service

149 pursuant to the West Virginia rules of civil procedure to the  
150 alleged violator and shall provide notice by certified mail or  
151 personal service pursuant to the West Virginia rules of civil  
152 procedure to those persons who submitted written comments  
153 on the draft order during the public comment period.

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

162 (7) The authority to levy a civil administrative penalty is  
163 in addition to all other enforcement provisions of this article  
164 and the payment of any assessment does not affect the  
165 availability of any other enforcement provision in connection  
166 with the violation for which the assessment is levied:  
167 *Provided*, That no combination of assessments against a

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

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

181 (d) The secretary shall propose, for legislative review,  
182 rules, including emergency rules, in accordance with the  
183 provisions of article three, chapter twenty-nine-a of this code  
184 to establish procedures for assessing civil administrative  
185 penalties in accordance with this section by no later than July  
186 1, 2015.



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

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

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

1       (a) *Legislative findings.* –

2       (1) In the past six years, West Virginia's coal industry  
3 has been battered by constant judicial and regulatory assaults,  
4 which have disproportionately raised the cost of mining coal  
5 in West Virginia compared with production costs in other  
6 coal producing states. These increased costs of production  
7 have caused West Virginia coal to become uncompetitive  
8 with other coals in the declining worldwide and domestic  
9 coal markets.

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

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

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

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

34 (6) The economic stress to the coal industry and to the  
35 state as a whole is evident in the estimated loss of nearly  
36 \$300 million in direct mining wages paid since 2011. This  
37 loss is exponentially higher when you factor in indirect  
38 wages lost as mining support jobs decline.

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

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

54 (b) *Coal Jobs and Safety Act of 2015*. – Therefore, in  
55 order to encourage the recovery of the West Virginia coal  
56 industry and to increase direct and indirect employment thus  
57 created, the Legislature enacts the Coal Jobs and Safety Act  
58 of 2015 and it is collectively comprised of:

59 (1) This section;

60 (2) The amendments to:

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

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

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

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

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

70 (F) Sections three hundred one, three hundred eight, three  
71 hundred nine, three hundred ten, four hundred two, four  
72 hundred three, four hundred four, four hundred five, five

73 hundred one, six hundred one, six hundred two, six hundred  
74 three and six hundred four, article two-a of this chapter; and

75 (3) The following new sections:

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

78 (B) Section two hundred four-a, article two-a of this  
79 chapter that were adopted and enacted during the 2015  
80 Regular Session of the Legislature.

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

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

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

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

- 8 (A) Amphetamines;
- 9 (B) Cannabinoids/THC;
- 10 (C) Cocaine;
- 11 (D) Opiates;
- 12 (E) Phencyclidine (PCP);
- 13 (F) Benzodiazepines;
- 14 (G) Propoxyphene;
- 15 (H) Methadone;
- 16 (I) Barbiturates; and
- 17 (J) Synthetic narcotics.

18 Split samples shall be collected by providers who are  
19 certified as complying with standards and procedures set out  
20 in the United States Department of Transportation's rule, 49  
21 C. F. R. Part 40, which may be amended, from time to time,  
22 by legislative rule of the Office of Miners' Health, Safety and  
23 Training. Collected samples shall be tested by laboratories  
24 certified by the United States Department of Health and  
25 Human Services, Substance Abuse and Mental Health  
26 Services Administration (SAMHSA) for collection and

27 testing. Notwithstanding the provisions of this subdivision,  
28 the mine operator may implement a more stringent substance  
29 abuse screening policy and program;

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

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

43 (b) For purposes of this subsection, preemployment  
44 testing shall be required upon hiring by a new employer,  
45 rehiring by a former employer following a termination of the

46 employer/employee relationship or transferring to a West  
47 Virginia mine from an employer's out-of-state mine to the  
48 extent that any substance abuse test required by the employer  
49 in the other jurisdiction does not comply with the minimum  
50 standards for substance abuse testing required by this article.  
51 Furthermore, the provisions of this section apply to all  
52 employers that employ certified persons who work in mines,  
53 regardless of whether that employer is an operator,  
54 contractor, subcontractor or otherwise.

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

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

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



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

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

69 (2) With respect to any certified person subject to a  
70 collective bargaining agreement, the employer shall notify  
71 the director, on a form prescribed by the director, within  
72 seven days of any of the following: *Provided, That*  
73 ~~notification pursuant to this subdivision shall not result in the~~  
74 ~~immediate temporary suspension, suspension or revocation~~  
75 ~~of any certificate held by a certified person who is subject to~~  
76 ~~a collective bargaining agreement unless and until the~~  
77 ~~arbitration is concluded and the discharge is upheld:~~

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

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

85 (C) A certified person possessing a substituted sample or

86 an adulterated sample; or

87 (D) A certified person submitting a substituted sample or

88 an adulterated sample.

89 (3) When the employer submits the completed

90 notification form prescribed by the director, the employer

91 shall also submit a copy of the laboratory test results showing

92 the substances tested for and the results of the test.

93 (4) Notice shall result in the immediate temporary

94 suspension of all certificates held by the certified person who

95 failed the screening, pending a hearing before the board of

96 appeals pursuant to section two of this article. *Provided, That*

97 ~~notification pursuant to this subsection shall not result in the~~

98 ~~immediate temporary suspension of any certificate held by a~~

99 ~~certified person who is subject to a collective bargaining~~

100 ~~agreement unless and until the arbitration is concluded and~~

101 ~~the discharge is upheld, and no certificate held by a certified~~

102 ~~person who is subject to a collective bargaining agreement~~

103 ~~shall be suspended or revoked unless the discharge is upheld~~  
104 ~~in arbitration. *Provided, however,* That if the certified person~~  
105 ~~terminates his or her employment or voluntarily removes~~  
106 ~~himself or herself from the grievance or arbitration~~  
107 ~~procedure, the certified person may be immediately,~~  
108 ~~temporarily decertified pursuant to this article.~~

109 (d) Suspension or revocation of a certified person's  
110 certificate as a miner or other miner specialty in another  
111 jurisdiction by the applicable regulatory or licensing  
112 authority for substance abuse-related matters shall result in  
113 the director immediately and temporarily suspending the  
114 certified person's West Virginia certificate until such time as  
115 the certified person's certification is reinstated in the other  
116 jurisdiction.

117 (e) The provisions of this article shall not be construed  
118 to preclude an employer from developing or maintaining a  
119 drug and alcohol abuse policy, testing program or substance  
120 abuse program that exceeds the minimum requirements set

121 forth in this section. The provisions of this article shall also  
122 not be construed to require an employer to alter, amend,  
123 revise or otherwise change, in any respect, a previously  
124 established substance abuse screening policy and program  
125 that meets or exceeds the minimum requirements set forth  
126 in this section. The provisions of this article shall require  
127 an employer to subject its employees who as part of their  
128 employment are regularly present at a mine and who are  
129 employed in a safety-sensitive position to preemployment  
130 and random substance abuse tests: *Provided*, That each  
131 employer shall retain the discretion to establish the  
132 parameters of its substance abuse screening policy and  
133 program so long as it meets the minimum requirements of  
134 this article. For purposes of this section, a “safety-sensitive  
135 position” means an employment position where the  
136 employee’s job responsibilities include duties and activities  
137 that involve the personal safety of the employee or others  
138 working at a mine.

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

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

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

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

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

15 available, upon request, to an authorized representative of  
16 the secretary.

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

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

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

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

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

46 (B) Where direct current electric power is used and such  
47 electric power can be supplied only from inby the equipment  
48 being moved or transported, power may be supplied from  
49 inby such equipment provided a miner with the means to cut  
50 off the power, and in direct communication with persons  
51 actually engaged in the moving or transporting operation, is  
52 stationed outby the equipment being moved.

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

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

66       (4) Where trolley phones are utilized to satisfy the  
67 requirements of subdivision (3) of this subsection, telephones  
68 or other equivalent two-way communication devices that can  
69 readily be connected with the mine communication system  
70 shall be carried by the miner stationed at the first automatic  
71 circuit breaker outby the equipment being moved and by a



72 miner actually engaged in the moving or transporting  
73 operation; and

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

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

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

1 The use of underground mining equipment of a size that  
2 does not conform to the height of the seam being mined,  
3 which creates unsafe working conditions for the miner  
4 operating the equipment or others, is prohibited: Provided,  
5 That the addition of or use of sideboards on shuttle cars shall  
6 be permitted if the shuttle car is equipped with cameras:  
7 Provided, however, That shuttle cars with sideboards as

8 manufactured by an equipment manufacturer shall be  
9 permitted to be used without the use of cameras. The board  
10 of coal mine health and safety shall promulgate such rules as  
11 are necessary to effectuate this section. The use of  
12 sideboards on shuttle cars on which cameras are installed  
13 shall not be prohibited by rule.

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

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

12 tired vehicle is readily available: Provided, That in any case  
13 where such track is maintained to within a distance of more  
14 than five hundred feet and not more than one thousand five  
15 hundred feet of the nearest working face, a self-propelled  
16 rubber-tired vehicle capable of transporting an injured  
17 worker shall be readily available.

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

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

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

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

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

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

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

42 (i) Shelter holes shall be provided along haulage entries.  
43 Such shelter holes shall be spaced not more than ~~one hundred~~  
44 one hundred five feet apart, except when variances are  
45 authorized by the director with unanimous agreement of the  
46 mine safety and technical review committee. Shelter holes  
47 shall be on the side of the entry opposite the trolley wire  
48 except that shelter holes may be on the trolley wire and  
49 feeder wire side if the trolley wire and feeder wire are  
50 guarded in a manner approved by the director.

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

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

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

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

66 (n) Underground equipment powered by internal  
67 combustion engines using petroleum products, alcohol, or  
68 any other compound shall not be used in a coal mine, unless  
69 the equipment is diesel-powered equipment approved,

70 operated and maintained as provided in article two-a of this  
71 chapter.

72 (o) Locomotives, personnel carriers, mine cars, supply  
73 cars, shuttle cars, and all other haulage equipment shall be  
74 maintained in a safe operating condition. Each locomotive,  
75 personnel carrier, barrier tractor and other related equipment  
76 shall be equipped with a suitable lifting jack and handle. An  
77 audible warning device and headlights shall be provided on  
78 each locomotive and each shuttle car. All other mobile  
79 equipment, using the face areas of the mine, shall be provided  
80 with a conspicuous light or other approved device so as to  
81 reduce the possibility of collision.

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

87 (q) The pushing of trips, except for switching purposes,  
88 is prohibited on main haulage roads: *Provided*, That nothing

89 herein shall prohibit the use of a pusher locomotive to assist  
90 the locomotive pulling a trip. Motormen and trip riders shall  
91 use care in handling locomotives and cars. It shall be their  
92 duty to see that there is a conspicuous light on the front and  
93 rear of each trip or train of cars when in motion: *Provided,*  
94 *however,* That trip lights need not be used on cars being  
95 shifted to and from loading machines, or on cars being  
96 handled at loading heads during gathering operations at  
97 working faces. ~~No person except the operator or his assistant~~  
98 ~~shall ride on locomotives or loaded cars.~~ No person, other  
99 than the motorman and brakeman, should ride on a  
100 locomotive unless authorized by the mine foreman, and then  
101 only when safe riding facilities are provided. An empty car  
102 or cars shall be used to provide a safe distance between the  
103 locomotive and the material car when rail, pipe or long  
104 timbers are being hauled. A safe clearance shall be  
105 maintained between the end car or trips placed on side tracks  
106 and moving traffic. On haulage roads the clearance point  
107 shall be marked with an approved device.

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

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

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

124 (2) In any coal mine where more than three hundred fifty  
125 tons of coal are produced on any shift in each 24-hour period,  
126 a dispatcher shall be on duty when there are movements of



127 track equipment underground, including time when there is  
128 no production of coal. Such traffic shall move only at the  
129 direction of the dispatcher.

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

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

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

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

144 (v) A locomotive following another trip shall maintain a  
145 distance of at least three hundred feet from the rear end of the

146 trip ahead, unless such locomotive is coupled to the trip  
147 ahead.

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

153 (x) Shuttle cars shall not be altered by the addition of  
154 sideboards so as to inhibit the view of the operator: Provided,  
155 That the addition of or use of sideboards on shuttle cars shall  
156 be permitted if the shuttle car is equipped with cameras:  
157 Provided, however, That shuttle cars with sideboards as  
158 manufactured by an equipment manufacturer shall be  
159 permitted to be used without the use of cameras. The use of  
160 sideboards on shuttle cars on which cameras are installed  
161 shall not be prohibited by rule.

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

164 (z) All self-propelled track haulage equipment shall be  
165 equipped with an emergency stop switch, self centering  
166 valves, or other devices designed to de-energize the traction  
167 motor circuit in the event of an emergency. All track  
168 mounted trolley equipment shall be equipped with trolley  
169 pole swing limiters or other means approved by the mine  
170 safety and technical review committee to restrict movement  
171 of the trolley pole when it is disengaged from the trolley  
172 wire. Battery-powered mobile equipment shall have the  
173 operating controls clearly marked to distinguish the forward  
174 and reverse positions.

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

**PART I. GENERAL PROVISIONS.**

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

1 Diesel-powered equipment for use in underground coal  
2 mines may only be approved, operated and maintained in  
3 accordance with rules, requirements and standards  
4 established pursuant to this article. ~~Diesel-powered~~

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

**§22A-2A-204a. Director defined.**

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

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

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

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

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

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

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

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

13 adaptability and suitability of any available technology,  
14 engineering controls and performance requirements as they  
15 relate to the use of diesel equipment in underground coal  
16 mines.

17 (b) ~~In promulgating the initial rules pursuant to~~  
18 ~~subsection (a) of this section, the commission shall follow the~~  
19 ~~procedures set forth in article three, chapter twenty-nine-a of~~  
20 ~~this code that are prescribed for an agency proposing a~~  
21 ~~legislative rule, to the point where an agency would approve~~  
22 ~~a rule for submission to the Legislature. At that point, the~~  
23 ~~commission shall proceed to final adoption of the initial rules~~  
24 ~~and file a notice of the final adoption in the state register and~~  
25 ~~with the legislative rule-making review committee. Final~~  
26 ~~adoption of the initial rules may be approved only upon a~~  
27 ~~majority vote of all six members of the commission. All six~~  
28 ~~members must be present when a vote is taken. Upon final~~  
29 ~~adoption by the commission, the initial rules are thereby~~  
30 ~~promulgated and have the effect of law without further action~~  
31 ~~by the commission or the Legislature. The initial rules shall~~

32 ~~be published in the code of state rules and continue in effect~~  
33 ~~until modified or superseded in accordance with the~~  
34 ~~provisions of this article.~~ All rules promulgated and adopted  
35 by the commission in effect prior to the effective date of this  
36 section shall remain in effect until changed or superseded by  
37 legislative rule enacted pursuant to subsection (a) of this  
38 section.

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

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

1 The ~~commission is hereby authorized to~~ director may  
2 approve limited site-specific requests for experimental and  
3 testing use of diesel-powered equipment in underground coal  
4 mines prior to promulgation of initial rules in accordance  
5 with subsections (b), (c), (d), (e), (f) and (g), section three



6 hundred ten of this article. ~~Final approval of a site-specific~~  
7 ~~request may be approved only upon a majority vote of all six~~  
8 ~~members of the commission. All six members must be~~  
9 ~~present when a vote is taken.~~

**§22A-2A-310. Duties of director.**

1 (a) ~~After the promulgation of the initial rules, the~~  
2 ~~commission shall have as its primary duties the~~  
3 ~~implementation of this article and the evaluation and~~  
4 ~~adoption of~~ It is the duty of the director to carry out and  
5 implement this article and to evaluate and adopt state-of-the-  
6 art technology and methods, reflected in engines and engine  
7 components, emission control equipment and procedures, that  
8 which when applied to diesel-powered underground mining  
9 machinery, shall reasonably reduce or eliminate diesel  
10 exhaust emissions and enhance protections of the health and  
11 safety of miners. The technology and methods adopted by  
12 the ~~commission~~ director shall have been demonstrated to be  
13 reliable. In making a decision to adopt new technology and  
14 methods, the ~~commission~~ director shall consider the highest

15 achievable measures of protection for miners' health and  
16 safety through available technology, engineering controls and  
17 performance requirements and shall further consider the cost,  
18 availability, adaptability and suitability of any available  
19 technology, engineering controls and performance  
20 requirements as they relate to the use of diesel equipment in  
21 underground coal mines. Any state-of-the-art technology or  
22 methods adopted by the ~~commission~~ director shall not reduce  
23 or compromise the level of health and safety protection of  
24 miners.

25 (b) Upon application of a coal mine operator, the  
26 ~~commission~~ director shall consider site-specific requests for  
27 the use of diesel equipment in underground coal mines and  
28 for the use of alternative diesel-related health and safety  
29 technologies and methods. The ~~commission's~~ director's  
30 action on applications submitted under this subsection shall  
31 be on a mine-by-mine basis. Upon receipt of a site-specific  
32 application, the ~~commission~~ director shall conduct an  
33 investigation, which investigation shall include consultation

34 with the mine operator and the authorized representatives of  
35 the miners at the mine. Authorized representatives of the  
36 miners shall include a mine health and safety committee  
37 elected by miners at the mine, a person or persons employed  
38 by an employee organization representing miners at the mine  
39 or a person or persons authorized as the representative or  
40 representatives of miners of the mine in accordance with  
41 MSHA regulations at 30 C. F. R. Pt. 40 (relating to  
42 representative of miners). Where there is no authorized  
43 representative of the miners, the ~~commission~~ director shall  
44 consult with a reasonable number of miners at the mine.  
45 Upon completion of the investigation, the ~~commission~~  
46 director may approve the application for the site-specific  
47 request. ~~Provided, That an application for a site-specific~~  
48 ~~request under this subsection may be approved only upon a~~  
49 ~~majority vote of all six members of the commission. All six~~  
50 ~~members must be present when a vote is taken.~~

51 (1) Within one hundred eighty days of receipt of an  
52 application for use of alternative technologies or methods, the

53 ~~commission~~ director shall complete its investigation.  
54 However, the director has an additional one hundred eighty  
55 days to complete investigations upon applications filed prior  
56 to the effective date of the reenactment of this section. The  
57 time period may be extended with the consent of the  
58 applicant.

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

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

69 (4) The written approval of an application for the use of  
70 alternative technologies or methods shall include the results  
71 of the ~~commission's~~ director's investigation and describe the

72 specific conditions of use for the alternative technology or  
73 method.

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

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

81 (d) ~~In performing its functions, the commission~~ The  
82 director shall have access to the services of the Board of Coal  
83 Mine Health and Safety necessary for the director to implement  
84 and carry out the provisions of this article. The board, at the  
85 request of the director, shall provide administrative support and  
86 assistance pursuant to section six, article six of this chapter to  
87 enable the ~~commission~~ director to carry out ~~its duties~~ the duties  
88 imposed upon the director in this article.

89 (e) Any action taken by the commission, prior to the  
90 effective date of the reenactment of this section, or by the

91 director to either approve or reject the use of an alternative  
92 technology or method, or establish conditions under  
93 subsection (c) of this section shall be final and binding and  
94 not subject to further review except where a decision by the  
95 commission, prior to the effective date of the reenactment  
96 of this section, or by the director may be deemed to be an  
97 abuse of discretion or contrary to law. If any party affected  
98 by a decision of the commission, prior to the effective date  
99 of the reenactment of this section, or by the director  
100 believes that the decision is an abuse of discretion or  
101 contrary to law, that party may file a petition for review  
102 with the circuit court of Kanawha County in accordance  
103 with the provisions of the administrative procedures act  
104 relating to judicial review of governmental determinations.  
105 The court, in finding that any decision made by the  
106 commission, prior to the effective date of the reenactment  
107 of this section, or by the director is an abuse of discretion or  
108 contrary to law, shall vacate and, if appropriate, remand the  
109 case.

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

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

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

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

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

6 article, and be certified or approved, as applicable, by MSHA  
7 and maintained in accordance with MSHA certification or  
8 approval.

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

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

10 ~~The rules of the commission shall require all~~ All exhaust  
11 emissions control and conditioning systems ~~to~~ must undergo  
12 an initial series of laboratory tests, using test equipment  
13 requirements and standard procedures approved by the  
14 ~~commission~~ director for testing for gaseous and particulate  
15 emissions. The ~~commission~~ director shall compile a list of



16 acceptable third-party laboratories where testing is performed  
17 competently and reliable results are produced.

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

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

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

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

32 (4) Any additional requirements established by the rules  
33 of the commission prior to the enactment of this section, as  
34 may be supplemented or amended by legislative rules

35 promulgated by the director or MSHA regulations relating to  
36 requirements for permissible mobile diesel-powered  
37 transportation equipment set forth in part 36, title thirty of the  
38 code of federal regulations, 30 C. F. R. §36.1, *et seq.*

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

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

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

1 (a) For monitoring and controlling exhaust gases, the  
2 ~~rules of the commission~~ director shall establish the  
3 maximum allowable ambient concentration of exhaust gases  
4 in the mine atmosphere. Standards for exhaust gases, stated  
5 in parts per million, shall be established for carbon  
6 monoxide and oxides of nitrogen. The rules shall establish  
7 the location in the mine at which the concentration of these  
8 exhaust gases is to be measured, the frequency at which

9 measurements are to be made, and requirements prescribing  
10 the sampling instruments to be used in the measurement of  
11 exhaust gases.

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

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

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

PART 5. VENTILATION.

§22A-2A-501. Ventilation.

1       (a) ~~Rules of the commission~~ The director shall establish  
2 values to be maintained for the minimum quantities of  
3 ventilating air where diesel-powered equipment is operated.

4 The purpose of these rules is to ensure that necessary  
5 minimum ventilating air quantity is provided where  
6 diesel-powered equipment is operated.

7       (b) ~~Rules of the commission~~ The director shall require  
8 that each specific model of diesel-powered equipment shall  
9 be approved before it is taken underground. ~~The rules shall~~  
10 ~~provide that in addition to requiring that each~~ Each diesel  
11 engine shall have an assigned MSHA approval number  
12 securely attached to the engine with the information required  
13 by 30 C. F. R. §§7.90 and 7.105, the approval plate shall also  
14 specify the minimum ventilating air quantity required by the  
15 ~~commission~~ director for the specific piece of diesel-powered  
16 equipment. ~~The rules shall provide that~~ The minimum  
17 ventilating air quantity shall be determined by the director

18 based on the amount of air necessary at all times to maintain  
19 the exhaust emissions at levels not exceeding the exposure  
20 limits established by the commission pursuant to section four  
21 hundred six of this article.

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

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

35 (e) ~~Rules of the commission shall provide that~~ Minimum  
36 quantities of air in any split where any diesel-powered

37 equipment is operated shall not be less than the minimum air  
38 quantities established pursuant to subsections (a) and (b) of  
39 this section and shall be specified in the mine diesel  
40 ventilation plan.

PART 6. FUEL.

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

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

10 (b) ~~Rules of the commission shall require~~ Each coal mine  
11 using diesel equipment underground ~~to~~ shall establish a  
12 quality control plan for assuring that the diesel fuel used  
13 complies with the standards established pursuant to this

14 section. The ~~rules~~ director shall also establish a procedure  
15 under which each mine operator will provide evidence that  
16 the diesel fuel used in diesel-powered equipment  
17 underground meets the standards for fuel established by the  
18 commission.

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

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

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

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

9 (B) That a stationary underground diesel fuel tank may  
10 only be authorized through a petitioning process that permits  
11 a stationary underground diesel fuel tank to be located in a  
12 permanent underground diesel fuel storage facility, on a  
13 site-specific basis. Stationary underground diesel fuel tanks

14 may not be located in temporary underground diesel fuel  
15 storage areas.

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

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

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

1 ~~Rules of the commission~~ The director shall establish  
2 requirements governing the refueling of diesel-powered  
3 equipment which shall, at a minimum, comply with the  
4 provisions of part 75 of the Code of Federal Regulations  
5 dealing with the dispensing of diesel fuel, set forth in 30 C.  
6 F. R. §75.1905, effective April 25, 1997.

**§22A-2A-604. Location of fueling.**

1 (a) ~~Rules of the commission shall require that~~ Fueling of  
2 diesel-powered equipment is not to be conducted in the



3 intake escapeways unless the mine design and entry  
4 configuration make it necessary. For those cases where  
5 fueling in the intake escapeways is necessary, the ~~rules~~  
6 director shall establish a procedure whereby the mine  
7 operator shall submit a plan for approval, outlining the  
8 special safety precautions that will be taken to insure the  
9 protection of miners. The plan shall specify a fixed location  
10 where fueling will be conducted in the intake escapeway and  
11 all other safety precautions that will be taken, which shall  
12 include an examination of the area for spillage or fire by a  
13 qualified person.

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