

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Originating

House Bill 4726

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ZATEZALO, UPSON, CADLE, WHITE, P., MCCUSKEY
AND STORCH)

[Originating in the Committee on Energy;
reported on February 26, 2016.]

1 A BILL to repeal §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-
2 3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended; to amend
3 and reenact §16-4C-6c of said code; to amend and reenact §22-1-7 of said code; to amend
4 and reenact §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a of said code;
5 to amend said code by adding thereto six new sections, designated §22-3-34, §22-3-35,
6 §22-3-36, §22-3-37, §22-3-38 and §22-3-39; to amend and reenact §22-3A-2, §22-3A-4,
7 §22-3A-5, §22-3A-6, §22-3A-8 and §22-3A-10 of said code; to amend and reenact §22-
8 11-6 of said code; to amend and reenact §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19,
9 §22A-1-20, §22A-1-31 and §22A-1-35 of said code; to amend and reenact §22A-1A-2 of
10 said code; to amend and reenact §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25,
11 §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code; to amend and reenact
12 §22A-7-7 of said code, all relating to coal mining generally; making findings; eliminating
13 the Department of Environmental Protection Office of Explosives and Blasting and
14 consolidating the remaining duties and responsibilities related to blasting to the
15 Department of Environmental Protection Division of Mining and Reclamation; adding
16 blasting oversight; providing that the Department of Environmental Protection to revise
17 rules on hydrologic protection and stormwater runoff analyses on mining operations and
18 to promulgate rules that conform with the federal regulations requirements to minimize the
19 disturbances to the prevailing hydrologic balance at a mine site and in associated off-site
20 areas; providing that cumulative hydrologic impact assessment may be conducted;
21 requiring a statement of probable hydrologic consequences and to prevent flooding;
22 modifying certain findings, ventilation requirements, and roof or rib requirements; requiring
23 the Department of Environmental Protection to follow deadlines for approving or denying
24 applications for site specific water quality criteria; providing that state mine rescue teams
25 may serve as backup mine rescue teams for mines in this state; providing that the Director
26 of the Office of Miners' Health, Safety and Training to have the authority to amend and

27 propose rules for the use of diesel equipment in the state’s mines; providing that the Board
28 of Mine Health and Safety to have the authority to propose rules for the use of diesel
29 equipment in the state’s mines; providing for hearings over suspensions for positive drug
30 tests, transferring certification authority to the Director of the Office of Miners’ Health
31 Safety and Training for mining emergency medical technicians; requiring the State Board
32 of Appeals to allow evidence of testing procedures and test results be introduced through
33 notarized affidavits from Medical Review Officers and testify if necessary; providing for
34 telephonic testimony under oath; providing that the penalty for not reporting accidents in
35 fifteen minutes to the Office of Miners’ Health, Safety and Training be modified to “up to
36 \$100,000”; providing that the Director of Office of Miners’ Health, Safety and Training shall
37 have the authority to modify assessed penalties and penalties may be modified by the
38 State Board of Appeals based on a vote of two Board members; providing a method incase
39 a miners’ wireless emergency communications device fails; and allowing company input
40 into state supervisory training and how it is scheduled during the year.

Be it enacted by the Legislature of West Virginia:

1 That §22-3A-1, §22-3A-3, §22-3A-7 and §22-3A-9 of the Code of West Virginia, 1931, as
2 amended, be repealed; that §16-4C-6c of said code be amended and reenacted; that §22-1-7 of
3 said code be amended and reenacted; that §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a,
4 §22-3-30a of said code be amended and reenacted; that said code be amended by adding thereto
5 six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37, §22-3-38 and §22-3-39;
6 that §22-3A-2, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-8 and §22-3A-10 of said code be amended
7 and reenacted; that §22-11-6 of said code be amended and reenacted; that §22A-1-13,
8 §22A-1-14, §22A-1-15, §22A-1-31 and §22A-1-35 of said code be amended and reenacted; that
9 §22A-1A-2 of said code be amended and reenacted; that §22A-2-3, §22A-2-8, §22A-2-14, §22A-
10 2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code be amended
11 and reenacted; and that §22A-7-7 of said code be amended and reenacted; all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6c. Certification requirements for emergency medical technician ~~industrial~~ mining.

1 (a) Commencing July 1, ~~2014~~ 2016, an applicant for certification as an emergency medical
2 technician ~~industrial~~ mining shall:

3 (1) Be at least eighteen years old;

4 (2) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety
5 and Training;

6 (3) Pay the application fee;

7 (4) Possess a valid cardiopulmonary resuscitation (CPR) certification;

8 (5) Successfully complete an emergency medical technician-~~industrial~~ mining education
9 program authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in
10 consultation with the Board of Miner Training, Education and Certification; and

11 (6) Successfully complete emergency medical technician-~~industrial~~ mining cognitive and
12 skills examinations authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and
13 Training in consultation with the Board of Miner Training, Education and Certification.

14 (b) The emergency medical technician ~~industrial~~ mining certification is valid for three
15 years.

16 (c) A certified emergency medical technician ~~industrial~~ mining ~~is only authorized to~~ may
17 only practice during his or her regular employment on ~~industrial~~ mining property. ~~For the purposes~~
18 ~~of this section, "industrial property" means property being used for production, extraction or~~
19 ~~manufacturing activities.~~

20 (d) To be recertified as an emergency medical technician ~~industrial~~ mining, a certificate
21 holder shall:

22 (1) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety
23 and Training.

24 (2) Pay the application fee;

25 (3) Possess a valid cardiopulmonary resuscitation (CPR) certification;

26 (4) Successfully complete one of the following:

27 (A) A one-time thirty-two hour emergency medical technician-~~industrial~~ mining
28 recertification course authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and
29 Training in consultation with the Board of Miner Training, Education and Certification; or

30 (B) Three annual eight-hour retraining and testing programs authorized by the
31 ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of
32 Miner Training, Education and Certification; and

33 (5) Successfully complete emergency medical technician-~~industrial~~ mining cognitive and
34 skills recertification examinations authorized by the ~~Commissioner~~ Director of Miners' Health,
35 Safety and Training in consultation with the Board of Miner Training, Education and Certification.

36 ~~(e) Commencing July 1, 2014, the certification for emergency medical technician-miner,~~
37 ~~also known as emergency medical technician-mining, shall be known as the certification for~~
38 ~~emergency medical technician-industrial, and the certification is valid until the original expiration~~
39 ~~date, at which time the person may recertify as an emergency medical technician-industrial miner~~
40 ~~pursuant to this section.~~

41 ~~(f)~~(e) The education program, training, courses, and cognitive and skills examinations
42 required for certification and recertification as an emergency medical technician-miner, also
43 known as emergency medical technician ~~industrial~~ mining, in existence on January 1, 2014, shall
44 remain in effect for the certification and recertification of emergency medical technician-industrial
45 until they are changed by legislative rule by the commissioner in consultation with the board of
46 Miner Training, Education and Certification.

47 ~~(g)~~(f) The administration of the emergency medical technician ~~industrial~~ mining
48 certification and recertification program by the ~~Commissioner~~ Director of Miners' Health, Safety

49 and Training shall be done in consultation with the Board of Miner Training, Education and
50 Certification.

51 ~~(h)~~(g) The ~~Commissioner~~ Director of Miners' Health, Safety and Training shall propose
52 rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of
53 this code, in consultation with the Board of Miner Training, Education and Certification, and may
54 propose emergency rules, to:

55 (1) Establish emergency medical technician-~~industrial~~ mining certification and
56 recertification courses and examinations;

57 (2) Authorize providers to administer the certification and recertification courses and
58 examinations, including mine training personnel, independent trainers, community and technical
59 colleges, and Regional Educational Service Agencies (RESA): *Provided*, That the mine training
60 personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR)
61 certification and must be an approved MSHA or OSHA certified instructor;

62 (3) Establish a fee schedule: *Provided*, That the application fee may not exceed \$10 and
63 there shall be no fee for a certificate; and

64 (4) Implement the provisions of this section.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division.

1 Consistent with the provisions of this article, the Secretary shall, at a minimum, maintain
2 the following offices within the division:

3 (1) The Office of Abandoned Mine Lands and Reclamation, which is charged, at a
4 minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the
5 provisions of article two of this chapter;

6 (2) The Division of Mining and Reclamation, which is charged, at a minimum, with
7 administering and enforcing, under the supervision of the ~~director~~ secretary the provisions of
8 articles three and four of this chapter;

9 (3) The Division of Air Quality, which is charged, at a minimum, with administering and
10 enforcing, under the supervision of the ~~director~~ secretary, the provisions of article five of this
11 chapter;

12 (4) The Office of Oil and Gas, which is charged, at a minimum, with administering and
13 enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles six, seven,
14 eight, nine and ten of this chapter; and

15 (5) The Division of Water and Waste Management, which is charged, at a minimum, with
16 administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of
17 articles eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and
18 twenty of this chapter; ~~and~~

19 ~~(6) The Office of Explosives and Blasting, which is charged, at a minimum, with~~
20 ~~administering and enforcing, under the supervision of the director, the provisions of article three~~
21 ~~a of this chapter.~~

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

**§22-3-2. Legislative findings and purpose; jurisdiction vested in Division of Environmental
Protection; authority of ~~director~~ secretary; inter-departmental cooperation.**

1 (a) The Legislature finds that it is essential to the economic and social well-being of the
2 citizens of the State of West Virginia to strike a careful balance between the protection of the
3 environment and the economical mining of coal needed to meet energy requirements.

4 (1) Further, the Legislature finds that there is great diversity in terrain, climate, biological,
5 chemical and other physical conditions in parts of this nation where mining is conducted; that the
6 State of West Virginia in particular needs an environmentally sound and economically healthy
7 mining industry; and ~~by reason of the above~~ therefor it may be necessary for the ~~director~~ secretary

8 to promulgate rules which vary from federal regulations as is provided for in sections 101 (f) and
9 201 (c)(9) of the federal Surface Mining Control and Reclamation Act of 1977, as amended,
10 "Public Law 95-87".

11 (2) Further, the Legislature finds that unregulated surface coal mining operations may
12 result in disturbances of surface and underground areas that burden and adversely affect
13 commerce, public welfare and safety by destroying or diminishing the utility of land for
14 commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing
15 erosion and landslides; by contributing to floods; by polluting the water and river and stream beds;
16 by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the
17 property of citizens; by creating hazards dangerous to life and property; and by degrading the
18 quality of life in local communities, all where proper mining and reclamation is not practiced.

19 (3) Further, the Legislature finds that the reasonable control of blasting associated with
20 surface mining within the State of West Virginia is in the public interest and will promote the
21 protection of the citizens of the State of West Virginia and their property without sacrificing
22 economic development. It is the policy of the State of West Virginia, in cooperation with other
23 governmental agencies, public and private organizations, and the citizens of this state, to use
24 reasonable means and measures to prevent harm from the effects of blasting to its property and
25 citizens.

26 (b) Therefore, it is the purpose of this article to:

27 (1) Expand the established and effective statewide program to protect the public and the
28 environment from the adverse effects of surface-mining operations;

29 (2) Assure that the rights of surface and mineral owners and other persons with legal
30 interest in the land or appurtenances to land are adequately protected from ~~such~~ the operations;

31 (3) Assure that surface-mining operations are not conducted where reclamation as
32 required by this article is not feasible;

33 (4) Assure that surface-mining operations are conducted in a manner to adequately
34 protect the environment;

35 (5) Assure that adequate procedures are undertaken to reclaim surface areas as
36 contemporaneously as possible with the surface-mining operations;

37 (6) Assure that adequate procedures are provided for public participation where
38 appropriate under this article;

39 (7) Assure the exercise of the full reach of state common law, statutory and Constitutional
40 powers for the protection of the public interest through effective control of surface-mining
41 operations; ~~and~~

42 (8) Assure that the coal production essential to the nation's energy requirements and to
43 the state's economic and social well-being is provided; and

44 (9) Vest in the secretary the authority to enforce all of the laws, regulations and rules
45 established to regulate blasting consistent with the authority granted in sections thirty-four through
46 thirty-nine of this article.

47 (c) In recognition of these findings and purposes, the Legislature ~~hereby~~ vests authority in
48 the ~~director~~ secretary of the Department of Environmental Protection to:

49 (1) Administer and enforce the provisions of this article as it relates to surface mining to
50 accomplish the purposes of this article;

51 (2) Conduct hearings and conferences or appoint persons to conduct them in accordance
52 with this article;

53 (3) Promulgate, administer and enforce rules pursuant to this article;

54 (4) Enter into a cooperative agreement with the Secretary of the United States Department
55 of the Interior to provide for state regulation of surface-mining operations on federal lands within
56 West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation
57 Act of 1977, as amended; and

58 (5) Administer and enforce rules promulgated pursuant to this chapter to accomplish the
59 requirements of programs under the federal Surface Mining Control and Reclamation Act of 1977,
60 as amended.

61 (d) The ~~director~~ secretary of the Department of Environmental Protection and the director
62 of the Office of Miners' Health, Safety and Training shall cooperate with respect to each agency's
63 programs and records to effect an orderly and harmonious administration of the provisions of this
64 article. The ~~director~~ secretary of the Department of Environmental Protection may avail himself or
65 herself of any services which may be provided by other state agencies in this state and other
66 states or by agencies of the federal government, and may reasonably compensate them for ~~such~~
67 those services. Also, he or she may receive any federal funds, state funds or any other funds,
68 and enter into cooperative agreements, for the reclamation of land affected by surface mining.

§22-3-4. Reclamation; duties and functions of ~~director~~ secretary.

1 (a) The ~~director~~ secretary shall administer the provisions of this article relating to surface-
2 mining operations. The ~~director~~ secretary has within his or her jurisdiction and supervision all
3 lands and areas of the state, mined or susceptible of being mined, for the removal of coal and all
4 other lands and areas of the state deforested, burned over, barren or otherwise denuded,
5 unproductive and subject to soil erosion and waste. Included within ~~such~~ the lands and areas are
6 lands seared and denuded by chemical operations and processes, abandoned coal mining areas,
7 swamplands, lands and areas subject to flowage easements and backwaters from river locks and
8 dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The
9 jurisdiction and supervision exercised by the ~~director~~ secretary shall be consistent with other
10 provisions of this chapter.

11 (b) The ~~director has the authority to:~~ secretary may

12 (1) ~~Promulgate rules~~ Propose rules for promulgation, in accordance with the provisions of
13 article three, chapter twenty-nine-a of this code, to implement the provisions of this article:
14 *Provided*, That the ~~director~~ secretary shall give notice by publication of the public hearing required
15 in article three, chapter twenty-nine-a of this code: *Provided, however*, That any forms, handbooks
16 or similar materials having the effect of a rule as defined in article three, chapter twenty-nine-a of
17 this code were issued, developed or distributed by the director pursuant to or as a result of a rule
18 are subject to the provisions of article three, chapter twenty-nine-a of this code;

19 (2) Make investigations or inspections necessary to ensure complete compliance with the
20 provisions of this code;

21 (3) Conduct hearings or appoint persons to conduct hearings under provisions of this
22 article or rules adopted by the ~~director~~ secretary; and for the purpose of any investigation or
23 hearing ~~hereunder~~ under this article, the ~~director~~ secretary or his or her designated representative,
24 may administer oaths or affirmations, subpoena witnesses, compel their attendance, take
25 evidence and require production of any books, papers, correspondence, memoranda,
26 agreements, or other documents or records relevant or material to the inquiry;

27 (4) Enforce the provisions of this article as provided ~~herein~~ in this article; and

28 (5) Appoint such advisory committees as may be of assistance to the ~~director~~ secretary in
29 the development of programs and policies: *Provided*, That such advisory committees shall, in
30 each instance, include members representative of the general public; and

31 (6) In relation to blasting on all surface-mining operations and all surface-blasting activities
32 related to underground mining operations:

33 (A) Regulate blasting on all surface-mining operations;

34 (B) Implement and oversee the preblast survey process, as set forth in section thirteen-a,
35 article three of this chapter;

36 (C) Maintain and operate a system to receive and address questions, concerns and
37 complaints relating to mining operations;

38 (D) Set the qualifications for individuals and firms performing preblast surveys;

39 (E) Educate, train, examine and certify blasters; and

40 (F) Propose rules for legislative approval pursuant to the provisions of section fifteen,
41 article three, chapter twenty-nine-a of this code for the implementation of sections thirty-four
42 through thirty-nine of this article.

43 (c)(1) After the ~~director~~ secretary has adopted the rules required by this article, any person
44 may petition the ~~director~~ secretary to initiate a proceeding for the issuance, amendment or appeal
45 of a rule under this article.

46 (2) The petition shall be filed with the ~~director~~ secretary and shall set forth the facts which
47 support the issuance, amendment or appeal of a rule under this article.

48 (3) The ~~director~~ Secretary may hold a public hearing or may conduct such investigation or
49 proceeding as he or she considers appropriate in order to determine whether the petition should
50 be granted or denied.

51 (4) Within ninety days after filing of a petition described in subdivision (1) of this
52 subsection, the ~~director~~ secretary shall either grant or deny the petition. If the ~~director~~ secretary
53 grants the petition, he or she shall promptly commence an appropriate proceeding in accordance
54 with the provisions of chapter twenty-nine-a of this code. If the ~~director~~ secretary denies the
55 petition, he or she shall notify the petitioner in writing setting forth the reasons for the denial.

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

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

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

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

9 (2) Restore the land affected to a condition capable of supporting the uses which it was
10 capable of supporting prior to any mining, or higher or better uses of which there is reasonable
11 likelihood so long as the use or uses do not present any actual or probable hazard to public health
12 or safety or pose any actual or probable threat of water diminution or pollution and the permit
13 applicants' declared proposed land use following reclamation is not considered to be impractical

14 or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable
15 delay in implementation or is violative of federal, state or local law;

16 (3) Except as provided in subsection (c) of this section, with respect to all surface mines,
17 backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials and
18 grade in order to restore the approximate original contour: *Provided*, That in surface mining which
19 is carried out at the same location over a substantial period of time where the operation transects
20 the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is
21 large and where the operator demonstrates that the overburden and other spoil and waste
22 materials at a particular point in the permit area or otherwise available from the entire permit area
23 is insufficient, giving due consideration to volumetric expansion, to restore the approximate
24 original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable,
25 using all available overburden and other spoil and waste materials to attain the lowest practicable
26 grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-
27 forming and other toxic materials in order to achieve an ecologically sound land use compatible
28 with the surrounding region: *Provided, however*, That in surface mining where the volume of
29 overburden is large relative to the thickness of the coal deposit and where the operator
30 demonstrates that due to volumetric expansion the amount of overburden and other spoil and
31 waste materials removed in the course of the mining operation is more than sufficient to restore
32 the approximate original contour, the operator shall, after restoring the approximate contour,
33 backfill, grade and compact, where advisable, the excess overburden and other spoil and waste
34 materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-
35 forming and other toxic materials in order to achieve an ecologically sound land use compatible
36 with the surrounding region and the overburden or spoil shall be shaped and graded in a way as
37 to prevent slides, erosion and water pollution and revegetated in accordance with the
38 requirements of this article: *Provided further*, That the ~~director~~ secretary shall propose rules for
39 legislative approval in accordance with article three, chapter twenty-nine-a of this code governing

40 variances to the requirements for return to approximate original contour or highwall elimination
41 and where adequate material is not available from surface mining operations permitted after the
42 effective date of this article for: (A) Underground mining operations existing prior to August 3,
43 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;

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

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

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

57 (7) Ensure that all prime farmlands are mined and reclaimed in accordance with the
58 specifications for soil removal, storage, replacement and reconstruction established by the United
59 States Secretary of Agriculture and the Soil Conservation Service pertaining thereto. The
60 operator, at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can
61 be shown that other available soil materials will create a final soil having a greater productive
62 capacity and, if not utilized immediately, stockpile this material separately from other spoil and
63 provide needed protection from wind and water erosion or contamination by other acid or toxic
64 material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata,
65 or a combination of the horizons or other strata that are shown to be both texturally and chemically

66 suitable for plant growth and that can be shown to be equally or more favorable for plant growth
67 than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of
68 comparable depth and quality to that which existed in the natural soil and, if not utilized
69 immediately, stockpile this material separately from other spoil and provide needed protection
70 from wind and water erosion or contamination by other acid or toxic material; (C) replace and
71 regrade the root zone material described in paragraph (B) of this subdivision with proper
72 compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in
73 a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

74 (8) Create, if authorized in the approved surface mining and reclamation plan and permit,
75 permanent impoundments of water on mining sites as part of reclamation activities in accordance
76 with rules promulgated by the ~~director~~ secretary.

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

83 (10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in
84 associated off-site areas and to the quality and quantity of water in surface and groundwater
85 systems both during and after surface mining operations and during reclamation by: (A) Avoiding
86 acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or
87 removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic
88 content which adversely affects downstream water upon being released to water courses; and
89 (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other
90 toxic drainage from entering ground and surface waters; (B) conducting surface mining operations
91 so as to prevent to the extent possible, using the best technology currently available, additional

92 contributions of suspended solids to streamflow or runoff outside the permit area, but in no event
93 may contributions be in excess of requirements set by applicable state or federal law; (C)
94 constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to
95 commencement of surface mining operations, the system to be certified by a person approved by
96 the ~~director~~ secretary to be constructed as designed and as approved in the reclamation plan; (D)
97 avoiding channel deepening or enlargement in operations requiring the discharge of water from
98 mines; (E) unless otherwise authorized by the ~~director~~ secretary, cleaning out and removing
99 temporary or large settling ponds or other siltation structures after disturbed areas are revegetated
100 and stabilized, and depositing the silt and debris at a site and in a manner approved by the ~~director~~
101 secretary; (F) restoring recharge capacity of the mined area to approximate premining conditions;
102 and (G) any other actions prescribed by the ~~director~~ secretary;

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

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

117 (13) Refrain from surface mining within five hundred feet of any active and abandoned
118 underground mines in order to prevent breakthroughs and to protect health or safety of miners:

119 *Provided*, That the ~~director~~ secretary shall permit an operator to mine near, through or partially
120 through an abandoned underground mine or closer to an active underground mine if: (A) The
121 nature, timing and sequencing of the approximate coincidence of specific surface mine activities
122 with specific underground mine activities are coordinated jointly by the operators involved and
123 approved by the ~~director~~ secretary; and (B) the operations will result in improved resource
124 recovery, abatement of water pollution or elimination of hazards to the health and safety of the
125 public: *Provided, however*, That any breakthrough which does occur shall be sealed;

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

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

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

136 (B) Require that all blasting operations be conducted by persons certified by the ~~Office of~~
137 Explosives and Blasting Division of Mining and Reclamation.

138 (16) Ensure that all reclamation efforts proceed in an environmentally sound manner and
139 as contemporaneously as practicable with the surface mining operations. Time limits shall be
140 established by the ~~director~~ secretary requiring backfilling, grading and planting to be kept current:

141 *Provided*, That where surface mining operations and underground mining operations are
142 proposed on the same area, which operations must be conducted under separate permits, the
143 ~~director~~ secretary may grant a variance from the requirement that reclamation efforts proceed as
144 contemporaneously as practicable to permit underground mining operations prior to reclamation:

145 (A) If the ~~director~~ secretary finds in writing that:

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

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

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

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

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

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

160 (B) If the ~~director~~ Secretary has promulgated specific rules to govern the granting of the
161 variances in accordance with the provisions of this subparagraph and has imposed any additional
162 requirements as the ~~director~~ Secretary considers necessary;

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

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

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

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

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

186 (20) Assume the responsibility for successful revegetation, as required by subdivision (19)
187 of this subsection, for a period of not less than five growing seasons, as defined by the ~~director~~
188 secretary, after the last year of augmented seeding, fertilizing, irrigation or other work in order to
189 assure compliance with subdivision (19) of this subsection: *Provided,* That when the ~~director~~
190 secretary issues a written finding approving a long-term agricultural post-mining land use as a
191 part of the mining and reclamation plan, the director may grant exception to the provisions of
192 subdivision (19) of this subsection: *Provided, however,* That when the director approves an
193 agricultural post-mining land use, the applicable five growing seasons of responsibility for
194 revegetation begins on the date of initial planting for the agricultural post-mining land use;

195 On lands eligible for remaining assume the responsibility for successful revegetation, as
196 required by subdivision (19) of this subsection, for a period of not less than two growing seasons,

197 as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other
198 work in order to assure compliance with subdivision (19) of this subsection;

199 (21) Protect off-site areas from slides or damage occurring during surface mining
200 operations and not deposit spoil material or locate any part of the operations or waste
201 accumulations outside the permit area: *Provided*, That spoil material may be placed outside the
202 permit area if approved by the ~~director~~ secretary after a finding that environmental benefits will
203 result from the placing of spoil material outside the permit area;

204 (22) Place all excess spoil material resulting from surface mining activities in a manner
205 that: (A) Spoil is transported and placed in a controlled manner in position for concurrent
206 compaction and in a way as to assure mass stability and to prevent mass movement; (B) the
207 areas of disposal are within the bonded permit areas and all organic matter is removed
208 immediately prior to spoil placements; (C) appropriate surface and internal drainage system or
209 diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not
210 contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed
211 from the wet areas to the main under drains in a manner that filtration of the water into the spoil
212 pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope
213 among those upon which, in the judgment of the ~~director~~ secretary, the spoil could be placed in
214 compliance with all the requirements of this article, and is placed, where possible, upon, or above,
215 a natural terrace, bench or berm, if placement provides additional stability and prevents mass
216 movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient
217 size to prevent mass movement, is constructed; (G) the final configuration is compatible with the
218 natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the
219 spoil disposal area is certified by a qualified registered professional engineer in conformance with
220 professional standards; and (I) all other provisions of this article are met: *Provided*, That where
221 the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or
222 other rocks that do not slake in water and will not degrade to soil material, the ~~director~~ secretary

223 may approve alternate methods for disposal of excess spoil material, including fill placement by
224 dumping in a single lift, on a site-specific basis: *Provided, however,* That the services of a qualified
225 registered professional engineer experienced in the design and construction of earth and rockfill
226 embankment are utilized: *Provided further,* That the approval may not be unreasonably withheld
227 if the site is suitable;

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

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

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

243 ~~(26) The director secretary shall promulgate for review and consideration by the West~~
244 ~~Virginia Legislature legislative rules or emergency rules during the 2016 Regular Session of the~~
245 ~~West Virginia Legislature, revisions to rules for contemporaneous reclamation as required under~~
246 ~~subdivision (16), subsection (b) of this section. The secretary shall specifically consider the~~
247 ~~adoption of federal standards codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R.~~
248 ~~§§817.100-116 (1983) when proposing revisions to the state rule.~~

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

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

259 (3) In cases where an industrial, commercial, agricultural, commercial forestry, residential
260 or public facility including recreational uses is proposed for the post-mining use of the affected
261 land, the ~~director~~ Secretary may grant a permit for a surface mining operation of the nature
262 described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is
263 determined to constitute an equal or better use of the affected land, as compared with premining
264 use; (B) the applicant presents specific plans for the proposed post-mining land use and
265 appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable
266 with respect to achieving the proposed use; (iii) obtainable according to data regarding expected
267 need and market; (iv) supported by commitments from public agencies where appropriate; (v)
268 practicable with respect to private financial capability for completion of the proposed use; (vi)
269 planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining
270 operation and reclamation with the post-mining land use; and (vii) designed by a person approved
271 by the ~~director~~ secretary in conformance with standards established to assure the stability,
272 drainage and configuration necessary for the intended use of the site; (C) the proposed use would
273 be compatible with adjacent land uses, and existing state and local land use plans and programs;
274 (D) the ~~director~~ secretary provides the county commission of the county in which the land is

275 located and any state or federal agency which the ~~director~~ secretary, in his or her discretion,
276 determines to have an interest in the proposed use, an opportunity of not more than sixty days to
277 review and comment on the proposed use; and (E) all other requirements of this article will be
278 met.

279 (4) In granting any permit pursuant to this subsection, the ~~director~~ Secretary shall require
280 that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop
281 barriers are required: *Provided*, That constructed barriers may be allowed where: (i) Natural
282 barriers do not provide adequate stability; (ii) natural barriers would result in potential future water
283 quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization
284 of the mineral resource: *Provided, however*, That, at a minimum, the constructed barrier shall be
285 sufficient in width and height to provide adequate stability and the stability factor shall equal or
286 exceed that of the natural outcrop barrier: *Provided further*, That where water quality is
287 paramount, the constructed barrier shall be composed of impervious material with controlled
288 discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour
289 drains inward from the out slopes except at specific points; (D) no damage will be done to natural
290 watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the
291 planned post-mining land use: *And provided further*, That all excess spoil material not retained on
292 the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection
293 (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the
294 other requirements of this article.

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

299 (d) In addition to those general performance standards required by this section, when
300 surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be

301 defined by rule after consideration of soil and climate, no debris, abandoned or disabled
302 equipment, spoil material or waste mineral matter will be placed on the natural downslope below
303 the initial bench or mining cut: *Provided*, That soil or spoil material from the initial cut of earth in a
304 new surface mining operation may be placed on a limited specified area of the downslope below
305 the initial cut if the permittee can establish to the satisfaction of the ~~director~~ secretary that the soil
306 or spoil will not slide and that the other requirements of this section can still be met.

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

313 (f) The ~~director~~ secretary shall propose rules for legislative approval in accordance with
314 article three, chapter twenty-nine-a of this code for the design, location, construction,
315 maintenance, operation, enlargement, modification, removal and abandonment of new and
316 existing coal mine waste piles. In addition to engineering and other technical specifications, the
317 standards and criteria developed pursuant to this subsection shall include provisions for review
318 and approval of plans and specifications prior to construction, enlargement, modification, removal
319 or abandonment; performance of periodic inspections during construction; issuance of certificates
320 of approval upon completion of construction; performance of periodic safety inspections; and
321 issuance of notices and orders for required remedial or maintenance work or affirmative action:
322 *Provided*, That whenever the ~~director~~ secretary finds that any coal processing waste pile
323 constitutes an imminent danger to human life, he or she may, in addition to all other remedies and
324 without the necessity of obtaining the permission of any person prior or present who operated or
325 operates a pile or the landowners involved, enter upon the premises where any coal processing
326 waste pile exists and may take or order to be taken any remedial action that may be necessary

327 or expedient to secure the coal processing waste pile and to abate the conditions which cause
328 the danger to human life: *Provided, however,* That the cost reasonably incurred in any remedial
329 action taken by the ~~director~~ secretary under this subsection may be paid for initially by funds
330 appropriated to the division for these purposes and the sums expended shall be recovered from
331 any responsible operator or landowner, individually or jointly, by suit initiated by the Attorney
332 General at the request of the ~~director~~ secretary. For purposes of this subsection, “operates” or
333 “operated” means to enter upon a coal processing waste pile, or part of a coal processing waste
334 pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or
335 removing coal processing waste from the pile, or to employ a coal processing waste pile for
336 retarding the flow of or for the impoundment of water.

337 (g) The Secretary shall promulgate for review and consideration by the West Virginia
338 Legislature during the 2017 Regular Session of the West Virginia Legislature revisions to the rules
339 for minimizing the disturbances to the prevailing hydrologic balance at a mine site and in
340 associated off-site areas both during and after surface mining operations and during reclamation
341 as required under subdivision (10), subsection (b) of this section, including specifically the rules
342 for stormwater runoff and control plans. The secretary shall specifically conform these rules to
343 the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983)
344 when proposing revisions to the state rule. The secretary shall not propose rules more stringent
345 than the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983)
346 when proposing revisions to the state rule.

§22-3-13a. Preblast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of
2 this article, an operator or an operator’s designee shall make the following notifications in writing
3 to all owners and occupants of man-made dwellings or structures that the operator or operator’s
4 designee will perform preblast surveys in accordance with subsection (f) of this section:

5 (1) For surface mining operations that are less than two hundred acres in a single
6 permitted area or less than three hundred acres of contiguous or nearly contiguous area of two

7 or more permitted areas, the required notifications shall be to all owners and occupants of man-
8 made dwellings or structures within five tenths of a mile of the permitted area or areas;

9 (2) For all other surface mining operations, the required notifications shall be to all owners
10 and occupants of man-made dwellings or structures within five tenths of a mile of the permitted
11 area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater; and

12 (3) For permitted surface disturbance of underground mines, the required notifications
13 shall be to all owners and occupants of man-made dwellings or structures within five tenths of a
14 mile of the permitted surface area or areas.

15 (b) ~~Within thirty days of the effective date of this section, any~~ Any operator identified in
16 subdivision (2), subsection (a) of this section that has already completed preblast surveys for
17 man-made dwellings or structures within five tenths of a mile of the permit area and has
18 commenced operations by the effective date of this section shall notify in writing all additional
19 owners and occupants of man-made dwellings or structures within seven tenths of a mile of the
20 proposed blasting site. Except for those dwellings or structures for which the operator secures a
21 written waiver or executes an affidavit in accordance with the requirements of subsection (c) of
22 this section, the operator or the operator's designee must perform the additional preblast surveys
23 in accordance with subsection (f) of this section, ~~within ninety days of the effective date of this~~
24 ~~section.~~

25 (c) An occupant or owner of a man-made dwelling or structure within the areas described
26 in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast survey in
27 writing. If a dwelling is occupied by a person other than the owner, both the owner and the
28 occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-
29 made dwelling or structure refuses to allow the operator or the operator's designee access to the
30 dwelling or structure and refuses to waive in writing the right to a preblast survey or to the extent
31 that access to any portion of the structure, underground water supply or well is impossible or
32 impractical under the circumstances, the preblast survey shall indicate that access was refused,

33 impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit
34 explaining the reasons and circumstances surrounding the refusals. The ~~office of explosives and~~
35 ~~blasting~~ Division of Mining and Reclamation may not determine the preblast survey to be
36 incomplete because it indicates that access to a particular structure, underground water supply
37 or well was refused, impossible or impractical. The operator shall send copies of all written waivers
38 and affidavits executed pursuant to this subsection to the ~~office of explosives and blasting.~~
39 Division of Mining and Reclamation.

40 (d) If a preblast survey was waived by the owner and was within the requisite area and
41 the property was sold, the new owner may request a preblast survey from the operator.

42 (e) An owner within the requisite area may request, from the operator, a preblast survey
43 on structures constructed after the original preblast survey.

44 (f) The preblast survey shall include:

45 (1) The names, addresses or description of structure location and telephone numbers of
46 the owner and the residents of the structure being surveyed and the structure number from the
47 permit blasting map;

48 (2) The current home insurer of the owner and the residents of the structure;

49 (3) The names, addresses and telephone numbers of the surface mining operator and the
50 permit number;

51 (4) The current general liability insurer of the surface mining operator;

52 (5) The name, address and telephone number of the person or firm performing the preblast
53 survey;

54 (6) The current general liability insurer of the person or firm performing the preblast survey;

55 (7) The date of the preblast survey and the date it was mailed or delivered to the ~~office of~~
56 ~~explosives and blasting~~ Division of Mining and Reclamation.

57 (8) A general description of the structure and its appurtenances, including, but not limited
58 to: (A) The number of stories; (B) the construction materials for the frame and the exterior and

59 interior finish; (C) the type of construction including any unusual or substandard construction; and
60 (D) the approximate age of the structure;

61 (9) A general description of the survey methods and the direction of progression of the
62 survey, including a key to abbreviations used;

63 (10) Written documentation and drawings, videos or photographs of the preblast defects
64 and other physical conditions of all structures, appurtenances and water sources which could be
65 affected by blasting;

66 (11) Written documentation and drawings, videos or photographs of the exterior and
67 interior of the structure to indicate preblast defects and condition;

68 (12) Written documentation and drawings, videos or photographs of the exterior and
69 interior of any appurtenance of the structure to indicate preblast defects and condition;

70 (13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the
71 structure and its appurtenances to indicate preblast defects and the condition of the structure and
72 appurtenances;

73 (14) Written documentation and drawings, videos or photographs of any unusual or
74 substandard construction technique and materials used on the structure or its appurtenances or
75 both structure and appurtenances;

76 (15) Written documentation relating to the type of water supply, including a description of
77 the type of system and treatment being used, an analysis of untreated water supplies, a water
78 analysis of water supplies other than public utilities and information relating to the quantity and
79 quality of water;

80 (16) When the water supply is a well, written documentation, where available, relating to
81 the type of well; the well log; the depth, age and type of casing or lining; the static water level;
82 flow data; the pump capacity; the drilling contractor; and the source or sources of the
83 documentation;

84 (17) A description of any portion of the structure and appurtenances not documented or
85 photographed and the reasons;

86 (18) The signature of the person performing the survey; and

87 (19) Any other information required by the chief which additional information shall be
88 established by rule in accordance with article three, chapter twenty-nine-a of this code.

89 (g) Except for additional preblast surveys prepared within one hundred twenty days of the
90 effective date of this section, pursuant to subsection (b) of this section, the preblast survey shall
91 be submitted to the ~~office of explosives and blasting~~ Division of Mining and Reclamation at least
92 fifteen days prior to the commencement of any production blasting. The ~~office of explosives and~~
93 ~~blasting~~ Division of Mining and Reclamation shall review each preblast survey as to form and
94 completeness only and notify the operator of any deficiencies: *Provided*, That once all required
95 surveys have been reviewed and accepted by the ~~office of explosives and blasting~~ Division of
96 Mining and Reclamation, blasting may commence sooner than fifteen days after submittal. The
97 ~~office of explosives and blasting~~ Division of Mining and Reclamation shall provide a copy of the
98 preblast survey to the owner or occupant.

99 (h) The surface mining operator shall file notice of the preblast survey or the waiver in the
100 office of the county clerk of the county commission of the county where the man-made dwelling
101 or structure is located to notify the public that a preblast survey has been conducted or waived.
102 The notice shall be on a form prescribed by the ~~office of explosives and blasting~~ Division of Mining
103 and Reclamation.

104 (i) ~~The chief of the office of explosives shall propose rules for legislative approval in~~
105 ~~accordance with article three, chapter twenty-nine-a of this code dealing with preblast survey~~
106 ~~requirements and setting the qualifications for individuals and firms performing preblast surveys.~~
107 All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code
108 [include language from §22-3A-4] is hereby transferred from the office of explosives and blasting
109 to the Division of Mining and Reclamation as of the effective date of enactment of this section and

110 article during the 2016 session of the Legislature; *Provided*, That any rule promulgated by office
111 of explosives and blasting shall remain in force and effect as though promulgated by the Division
112 of Mining and Reclamation until the Secretary amends the rules in accordance with the provisions
113 of article three, chapter twenty-nine-a of this code.

114 (j) The provisions of this section do not apply to the extraction of minerals by underground
115 mining methods.

§22-3-22a. Blasting restrictions; site specific blasting design requirement.

1 (a) For purposes of this section, the term “production blasting” means blasting that
2 removes the overburden to expose underlying coal seams and does not include construction
3 blasting.

4 (b) For purposes of this section, the term “construction blasting” means blasting to develop
5 haul roads, mine access roads, coal preparation plants, drainage structures or underground coal
6 mine sites and does not include production blasting.

7 (c) For purposes of this section, the term “protected structure” means any of the following
8 structures that are situated outside the permit area: An occupied dwelling; a temporarily
9 unoccupied dwelling which has been occupied within the past ninety days; a public building; a
10 structure for commercial purposes; a school; a church; a community or institutional building; and
11 a public park or a water well.

12 (d) Production blasting is prohibited within three hundred feet of a protected structure or
13 within one hundred feet of a cemetery.

14 (e) Blasting within one thousand feet of a protected structure shall have a site-specific
15 blast design approved by the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

16 The site-specific blast design shall limit the type of explosives and detonating equipment, the size,
17 the timing and frequency of blasts to do the following:

18 (1) Prevent injury to persons; (2) prevent damage to public and private property outside
19 the permit area; (3) prevent adverse impacts on any underground mine; (4) prevent change in the

20 course, channel or availability of ground or surface water outside the permit area; and (5) reduce
21 dust outside the permit area.

22 In the development of a site-specific blasting plan, consideration shall be given, but is not
23 limited to, the physical condition, type and quality of construction of the protected structure, the
24 current use of the protected structure and the concerns of the owner or occupant living in the
25 protected structures identified in the blasting schedule notification area.

26 (f) An owner or occupant of a protected structure may waive the blasting prohibition within
27 three hundred feet. If a protected structure is occupied by a person other than the owner, both
28 the owner and the occupant of the protected structure shall waive the blasting prohibition within
29 three hundred feet in writing. The operator shall send copies of all written waivers executed
30 pursuant to this subsection to the ~~office of explosives and blasting~~ Division of Mining and
31 Reclamation. Written waivers executed and filed with the ~~office of explosives and blasting~~ Division
32 of Mining and Reclamation are valid during the life of the permit or any renewals of the permit and
33 are enforceable against any subsequent owners or occupants of the protected structure.

34 (g) The provisions of this section do not apply to the following: (1) Underground coal mining
35 operations; (2) the surface operations and surface impacts incident to an underground coal mine;
36 and (3) the extraction of minerals by underground mining methods or the surface impacts of the
37 underground mining methods: *Provided*, That nothing contained in this section may be construed
38 to exempt any coal mining operation from the general performance standards as contained in
39 section thirteen of this article and any rules promulgated pursuant to said section.

**§22-3-30a. Blasting requirements; liability and civil penalties in the event of property
damage.**

1 (a) Blasting shall be conducted in accordance with the rules and laws established to
2 regulate blasting.

3 (b) If the Division of Environmental Protection establishes after an inspection that a blast
4 at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a),

5 section thirteen-a of this article was not in compliance with the regulations governing blasting
6 parameters and resulted in property damage to a protected structure, as defined in section twenty-
7 two-a of this article, other than water wells, the following penalties shall be imposed for each
8 permit area or contiguous permit areas where the blasting was out of compliance:

9 (1) For the first offense, the operator shall be assessed a penalty of not less than \$1,000
10 nor more than \$5,000.

11 (2) For the second offense and each subsequent offense within one year of the first
12 offense, the surface mining operator shall be assessed a penalty of not less than \$5,000 nor more
13 than \$10,000.

14 (3) For the third offense and any subsequent offense within one year of the first offense,
15 or for the failure to pay any assessment set forth within a reasonable time established by the
16 ~~director~~ Secretary, the surface mining operator's permit is subject to an immediate issuance of a
17 cessation order, as set out in section sixteen of this article. The cessation order shall only be
18 released upon written order of the ~~director~~ Secretary of the Department of Environmental
19 Protection when the following conditions have been met:

20 (A) A written plan has been established and filed with the ~~director~~ Secretary assuring that
21 additional violations will not occur;

22 (B) The permittee has provided compensation for the property damages or the assurance
23 of adequate compensation for the property damages that have occurred; and

24 (C) A permittee shall provide such monetary and other assurances as the ~~director~~
25 Secretary considers appropriate to compensate for future property damages. The monetary
26 assurances required shall be in an amount at least equal to the amount of compensation required
27 in paragraph (B), subdivision (3) of this subsection.

28 (4) In addition to the penalties described in subdivisions (1), (2) and (3) of this subsection
29 for the second and subsequent offenses on any one permitted area regardless of the time period,
30 the owner of the protected structure is entitled to a rebuttable presumption that the property

31 damage is a result of the blast if: (A) A preblast survey was performed; and (B) the blasting site
32 to which the second or subsequent offense relates is within seven tenths of a mile of the protected
33 structure.

34 (5) No more than one offense may arise out of any one shot. For purposes of this section,
35 "shot" means a single blasting event composed of one or multiple detonations of explosive
36 material or the assembly of explosive materials for this purpose. One "shot" may be composed of
37 numerous explosive charges detonated at intervals measured in milliseconds.

38 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, the
39 Department of Environmental Protection may not impose penalties, as provided for in subsection
40 (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this
41 section that is merely administrative in nature.

42 (d) The remedies provided in this section are not exclusive and may not bar an owner or
43 occupant from any other remedy accorded by law.

44 (e) Where inspection by the Department of Environmental Protection establishes that
45 production blasting, in violation of section twenty-two-a of this article, was done within three
46 hundred feet of a protected structure, without an approved site-specific blast design or not in
47 accordance with an approved site-specific blast design for production blasting within one
48 thousand feet of any protected structure as defined in section twenty-two-a of this article or within
49 one hundred feet of a cemetery, the monetary penalties and revocation, as set out in subsection
50 (b) of this section, apply.

51 (f) All penalties and liabilities as set forth in subsection (b) of this section shall be assessed
52 by the ~~director~~ Secretary, collected by the ~~director~~ Secretary and deposited with the Treasurer of
53 the State of West Virginia in the "General School Fund".

54 (g) The ~~director~~ Secretary shall propose rules for legislative approval pursuant to article
55 three, chapter twenty-nine-a of this code for the implementation of this section.

56 (h) The provisions of this section do not apply to the extraction of minerals by underground
57 mining methods: *Provided*, That nothing contained in this section may be construed to exempt
58 any coal mining operation from the general performance standards as contained in section
59 thirteen of this article and any rules promulgated pursuant thereto.

§22-3-34. Office of explosives and blasting terminated; transfer of functions; responsibilities.

1 The office of explosives and blasting within the Department of Environmental Protection
2 is hereby terminated.

§22-3-35. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.

1 (a) The Division of Mining and Reclamation shall apply and enforce the previously existing
2 rules of the former office of explosive and blasting at 199 CSR 1 until such time as it adopts rules
3 of its own to implement this section, but shall promulgate rules for legislative approval in
4 accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code
5 as necessary to reflect the repeal of section seven, article three-a, of this chapter of the Code of
6 West Virginia, as amended. Any rules promulgated by the Division of Mining and Reclamation
7 shall include, but not be limited to, the following:

8 (1) A procedure for the review, modification and approval, prior to the issuance of any
9 permit, of any blasting plan required to be submitted with any application for a permit to be issued
10 by the secretary pursuant to article three of this chapter, which sets forth procedures for the
11 inspection and monitoring of blasting operations for compliance with blasting laws and rules, and
12 for the review and modification of the blasting plan of any operator against whom an enforcement
13 action is taken by the Division of Environmental Protection;

14 (2) Specific minimum requirements for preblast surveys, as set forth in section thirteen-a,
15 article three of this chapter;

16 (3) A procedure for review of preblast surveys required to be submitted under section
17 thirteen-a, article three of this chapter;

18 (4) A procedure for the use of seismographs for production blasting which shall be made
19 part of the blasting log;

20 (5) A procedure to warn of impending blasting to the owners or occupants adjoining the
21 blasting area;

22 (6) A procedure to limit the type of explosives and detonating equipment, the size, the
23 timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent
24 injury to persons; (B) prevent damage to public and private property outside the permit area; (C)
25 prevent adverse impacts on any underground mine; (D) prevent change in the course, channel or
26 availability of ground or surface water outside the permit area; and (E) reduce dust outside the
27 permit area;

28 (7) Provisions for requiring mining operators to publish the planned blasting schedule in a
29 newspaper of general circulation in the locality of the mining operation;

30 (8) Provisions for requiring mining operators to provide adequate advance written notice
31 of the proposed blasting schedule to local governments, owners and occupants living within the
32 distances prescribed in subsection (a), section thirteen-a, article three of this chapter.

33 (9) Provisions for establishing a process for the education, training, examination and
34 certification of blasters working on surface-mining operations; and

35 (10) Provisions for establishing disciplinary procedures for all certified blasters responsible
36 for blasting on surface-mining operations conducted within this state in violation of any law or rule
37 promulgated by the Department of Environmental Protection to regulate blasting.

§22-3-36. Claims process for blasting.

1 (a) The Division of Mining and Reclamation shall establish and manage a process for the
2 filing, administration and resolution of claims related to blasting.

3 (b) Claims which may be filed and determined under the provisions of this section shall be
4 those arising from both of the following:

5 (1) Damage to property arising from blasting activities conducted pursuant to a permit
6 granted under article three of this chapter; and

7 (2) The damage is incurred by a claimant who is the owner or occupant of the property.

8 (c) The claims process established by the Division of Mining and Reclamation shall include
9 the following:

10 (1) An initial determination by the Division of Mining and Reclamation of the merit of the
11 claim; and

12 (2) An arbitration process whereby the claim can be determined and resolved by an
13 arbitrator in a manner which is inexpensive, prompt and fair to all parties.

14 (d) If the operator disagrees with the initial determination made by the Division of Mining
15 and Reclamation and requests arbitration, then the following shall apply:

16 (1) Any party may be represented by a representative of their choice;

17 (2) At the request of the claimant, the Division of Mining and Reclamation shall provide
18 the claimant with representation in the arbitration process, which representation shall not
19 necessarily be an attorney-at-law; and

20 (3) If the claim is upheld, in whole or in part, then the operator shall pay the costs of the
21 proceeding, as well as reasonable representation fees and costs of the claimant, in an amount
22 not to exceed \$1,000.

23 (e) Participation in the claims process created by this section shall be voluntary for the
24 claimant. However, once the claimant has submitted a claim for determination under the
25 provisions of this section, it is intended that the finding of the Division of Mining and Reclamation,
26 if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of
27 such arbitration shall be final. The Division of Mining and Reclamation shall provide written
28 notification to the claimant of the provisions of this subsection and shall secure a written
29 acknowledgment from the claimant prior to processing a claim pursuant to the provisions of this
30 section.

31 (f) The operator shall pay any claim for which the operator is adjudged liable within thirty
32 days of a final determination. If the claim is not paid within thirty days, the secretary shall issue a
33 cessation order pursuant to section sixteen, article three of this chapter for all sites operated by
34 the operator.

35 (g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject
36 to the terms of this section.

37 (h) To fulfill its responsibilities pursuant to this section, the Division of Mining and
38 Reclamation may retain the services of inspectors, experts and other persons or firms as may be
39 necessary.

§22-3-37. Rules, orders and permits to remain in effect regarding blasting; proceedings not affected.

1 (a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses,
2 waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed
3 to become effective prior to the enactment of this article shall remain in effect according to their
4 terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a
5 court of competent jurisdiction, or by operation of law.

6 (b) Any proceedings, including notices of proposed rule-making, or any application for any
7 license, permit or certificate pending before the division are not affected by this enactment.

§22-3-38. Transfer of personnel and assets.

1 The secretary shall transfer to the Division of Mining and Reclamation any personnel and
2 assets presently used to perform or used in the performance of the duties and functions required
3 by sections thirty-four through thirty-nine of this article.

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-1. Legislative findings; policy and purposes.

1 ~~(a) The Legislature declares that the establishment of an office within the Division of~~
2 ~~Environmental Protection to enforce blasting laws pursuant to surface mining within the State of~~

3 ~~West Virginia is in the public interest and will promote the protection of the property and citizens~~
4 ~~of the State of West Virginia without sacrificing economic development. It is the policy of the State~~
5 ~~of West Virginia, in cooperation with other governmental agencies, public and private~~
6 ~~organizations, and the citizens of this state, to use reasonable means and measures to prevent~~
7 ~~harm from the effects of blasting to its property and citizens.~~

8 ~~(b) It is the purpose of this article to create the office of explosives and blasting within the~~
9 ~~Division of Environmental Protection, and to vest in the office the authority to enforce all the rules~~
10 ~~and laws established to regulate blasting consistent with the authority granted in this article.~~

**§22-3A-2. Office of explosives and blasting created terminated; transfer of functions;
responsibilities.**

1 ~~(a) There is hereby created the The office of explosives and blasting within the Division of~~
2 ~~Environmental Protection is hereby terminated. The director shall appoint a chief to administer~~
3 ~~the office. The chief shall serve at the will and pleasure of the director.~~

4 ~~(b) As of the effective date of this article, the office of explosives and blasting Division of~~
5 ~~Mining and Reclamation shall assume responsibility for the enforcement of all the rules and laws~~
6 ~~established to regulate blasting consistent with the authority granted in this article.~~

7 ~~(c) Terms used in this article shall have the definitions set forth in article three of this~~
8 ~~chapter, unless used in a context that clearly requires a different meaning or as otherwise defined~~
9 ~~herein.~~

§22-3A-3. Powers and duties.

1 ~~The duties of the office shall include, but are not limited to:~~

2 ~~(a) Regulating blasting on all surface mining operations;~~

3 ~~(b) Implementing and overseeing the preblast survey process, as set forth in section~~
4 ~~thirteen-a, article three of this chapter;~~

5 ~~(c) Maintaining and operating a system to receive and address questions, concerns and~~
6 ~~complaints relating to mining operations;~~

7 ~~(d) Setting the qualifications for individuals and firms performing preblast surveys;~~

8 ~~(e) The education, training, examination and certification of blasters; and~~

9 ~~(f) Proposing rules for legislative approval pursuant to article three, chapter twenty-nine-a~~
10 ~~of this code for the implementation of this article.~~

§22-3A-4. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.

1 ~~(a) The office of explosives and blasting Division of Mining and Reclamation shall propose~~
2 ~~rules for legislative approval in accordance with the provisions of article three, chapter twenty-~~
3 ~~nine-a of this code. for the purposes of implementing this article The rules shall include, but not~~
4 ~~be limited to, the following:~~

5 ~~(1) A procedure for the review, modification and approval, prior to the issuance of any~~
6 ~~permit, of any blasting plan required to be submitted with any application for a permit to be issued~~
7 ~~by the director pursuant to article three of this chapter, which sets forth procedures for the~~
8 ~~inspection and monitoring of blasting operations for compliance with blasting laws and rules, and~~
9 ~~for the review and modification of the blasting plan of any operator against whom an enforcement~~
10 ~~action is taken by the Division of Environmental Protection;~~

11 ~~(2) Specific minimum requirements for preblast surveys, as set forth in section thirteen-a,~~
12 ~~article three of this chapter;~~

13 ~~(3) A procedure for review of preblast surveys required to be submitted under section~~
14 ~~thirteen-a, article three of this chapter;~~

15 ~~(4) A procedure for the use of seismographs for production blasting which shall be made~~
16 ~~part of the blasting log;~~

17 ~~(5) A procedure to warn of impending blasting to the owners or occupants adjoining the~~
18 ~~blasting area;~~

19 ~~(6) A procedure to limit the type of explosives and detonating equipment, the size, the~~
20 ~~timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent~~

21 ~~injury to persons; (B) prevent damage to public and private property outside the permit area; (C)~~
22 ~~prevent adverse impacts on any underground mine; (D) prevent change in the course, channel or~~
23 ~~availability of ground or surface water outside the permit area; and (E) reduce dust outside the~~
24 ~~permit area;~~

25 ~~(7) Provisions for requiring mining operators to publish the planned blasting schedule in a~~
26 ~~newspaper of general circulation in the locality of the mining operation; and~~

27 ~~(8) Provisions for requiring mining operators to provide adequate advance written notice~~
28 ~~of the proposed blasting schedule to local governments, owners and occupants living within the~~
29 ~~distances prescribed in subsection (a), section thirteen-a, article three of this chapter.~~

30 ~~(b) The office of explosives and blasting shall propose rules for legislative approval in~~
31 ~~accordance with the provisions of article three, chapter twenty-nine-a of this code. The rules shall~~
32 ~~include, but not be limited to, the following:~~

33 ~~(1) (9) Provisions for establishing a process for the education, training, examination and~~
34 ~~certification of blasters working on surface-mining operations; and~~

35 ~~(2) (10) Provisions for establishing disciplinary procedures for all certified blasters~~
36 ~~responsible for blasting on surface-mining operations conducted within this state in violation of~~
37 ~~any law or rule promulgated by the Division of Environmental Protection to regulate blast.~~

§22-3A-5. Claims process for blasting.

1 ~~(a) The office of explosives and blasting Division of Mining and Reclamation shall establish~~
2 ~~and manage a process for the filing, administration and resolution of claims related to blasting.~~

3 ~~(b) Claims which may be filed and determined under the provisions of this section shall be~~
4 ~~those arising from both of the following:~~

5 ~~(1) Damage to property arising from blasting activities conducted pursuant to a permit~~
6 ~~granted under article three of this chapter; and~~

7 ~~(2) The damage is incurred by a claimant who is the owner or occupant of the property.~~

8 ~~(c) The claims process established by the office of explosives and blasting Division of~~
9 ~~Mining and Reclamation shall include the following:~~

10 ~~(1) An initial determination by the office Division of Mining and Reclamation of the merit of~~
11 ~~the claim; and~~

12 ~~(2) An arbitration process whereby the claim can be determined and resolved by an~~
13 ~~arbitrator in a manner which is inexpensive, prompt and fair to all parties.~~

14 ~~The office Division of Mining and Reclamation shall propose promulgate rules for~~
15 ~~legislative approval in accordance with section fifteen, article three, chapter twenty-nine-a of this~~
16 ~~code for the development of standards for establishing rules relating to the initial claim~~
17 ~~determination and the arbitration process provided in this subsection.~~

18 ~~(d) If the operator disagrees with the initial determination made by the office Division of~~
19 ~~Mining and Reclamation and requests arbitration, then the following shall apply:~~

20 ~~(1) Any party may be represented by a representative of their choice;~~

21 ~~(2) At the request of the claimant, the office Division of Mining and Reclamation shall~~
22 ~~provide the claimant with representation in the arbitration process, which representation shall not~~
23 ~~necessarily be an attorney-at-law; and~~

24 ~~(3) If the claim is upheld in whole or in part, then the operator shall pay the costs of the~~
25 ~~proceeding, as well as reasonable representation fees and costs of the claimant, in an amount~~
26 ~~not to exceed \$1,000.~~

27 ~~(e) Participation in the claims process created by this section shall be voluntary for the~~
28 ~~claimant. However, once the claimant has submitted a claim for determination under the~~
29 ~~provisions of this section, it is intended that the finding of the office Division of Mining and~~
30 ~~Reclamation, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that~~
31 ~~the results of such arbitration shall be final. The office Division of Mining and Reclamation shall~~
32 ~~provide written notification to the claimant of the provisions of this subsection and shall secure a~~
33 ~~written acknowledgment from the claimant prior to processing a claim pursuant to the provisions~~
34 ~~of this section.~~

35 ~~(f) The operator shall pay any claim for which the operator is adjudged liable within thirty~~
36 ~~days of a final determination. If the claim is not paid within thirty days, the director secretary shall~~
37 ~~issue a cessation order pursuant to section sixteen, article three of this chapter for all sites~~
38 ~~operated by the operator.~~

39 ~~(g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject~~
40 ~~to the terms of this section.~~

41 ~~(h) To fulfill its responsibilities pursuant to this section, the office Division of Mining and~~
42 ~~Reclamation may retain the services of inspectors, experts and other persons or firms as may be~~
43 ~~necessary.~~

**§22-3A-6. Rules, orders and permits to remain in effect; proceedings regarding blasting
not affected.**

1 ~~(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses,~~
2 ~~waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed~~
3 ~~to become effective prior to the enactment of this article shall remain in effect according to their~~
4 ~~terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a~~
5 ~~court of competent jurisdiction, or by operation of law.~~

6 ~~(b) Any proceedings, including notices of proposed rule-making, or any application for any~~
7 ~~license, permit or certificate pending before the division are not affected by this enactment.~~

§22-3A-7. Funding.

1 ~~(a) The office shall assess each operator permitted under the provisions of this chapter a~~
2 ~~fee on each quantity of explosive material used for any purpose on the surface mining operations.~~

3 ~~(b) The office shall propose a legislative rule for promulgation in accordance with article~~
4 ~~three, chapter twenty-nine-a of this code establishing the fees required by this section. The fees~~
5 ~~shall be calculated to generate sufficient money to provide for the operation of this office and the~~
6 ~~Division of Energy as provided for in article two-f, chapter five-b of this code. These fees cannot~~

7 ~~be increased except by legislative rule and cannot be used to fund additional positions in the~~
8 ~~Division of Energy in future years.~~

9 ~~(c) The office shall deposit all moneys received from these fees into a special revenue~~
10 ~~fund to be known as the Mountaintop Removal Fund in the state Treasury to be expended by the~~
11 ~~offices and the Division of Energy in the performance of their duties. The expenditure of moneys~~
12 ~~in the fund is not authorized from collections, but shall be appropriated by the Legislature.~~

§22-3A-8. Transfer of personnel and assets.

1 ~~The director secretary shall transfer to the office Division of Mining and Reclamation any~~
2 ~~personnel and assets presently used to perform or used in the performance of the duties and~~
3 ~~functions required by this article.~~

§22-3A-9. Limitation of article.

1 ~~Except for sections five and seven of this article, all provisions of this article are also~~
2 ~~applicable to surface blasting activities related to underground mining operations.~~

§22-3A-10. Office to conduct study.

1 ~~(a) The office Division of Mining and Reclamation shall conduct or participate in studies or~~
2 ~~research to develop scientifically based data and recommendations of the following:~~

3 ~~(1) Ground vibrations associated with blasting and how the vibrations impact protected~~
4 ~~structures;~~

5 ~~(2) The proper size and shot parameters to assure protection of protected structures;~~

6 ~~(3) The necessity of expanding the parameters where blasting is prohibited in relation to~~
7 ~~protected structures to assure that the shots do not cause damage to protected structures;~~

8 ~~(4) The appropriateness of modifying preblast survey requirements that reflect a pattern~~
9 ~~of excessive ground vibration and air blast has occurred within a measured distance;~~

10 ~~(5) Analysis of the appropriate air blast limitations to determine damage criteria; and~~

11 ~~(6) Any other data or recommendations the office deems appropriate.~~

12 ~~(b) The office Division of Mining and Reclamation shall report the data and~~
13 ~~recommendations to the Joint Committee on Government and Finance on or before January 1,~~
14 ~~2001, and annually thereafter or as otherwise required.~~

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 standards and effluent limitations
2 shall promptly comply ~~therewith~~ with the rules: *Provided, That*:

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

10 (2) For purposes of both this article and sections 309 and 505 of the federal Water
11 Pollution Control Act, compliance with a permit issued pursuant to this article shall be ~~deemed~~
12 considered compliance for purposes of both this article and sections 301, 302, 303, 306, 307 and
13 403 of the federal Water Pollution Control Act and with all applicable state and federal water
14 quality standards, except for any ~~such~~ standard imposed under section 307 of the federal Water
15 Pollution Control Act for a toxic pollutant injurious to human health. Notwithstanding any provision
16 of this code or rule or permit condition to the contrary, water quality standards themselves shall
17 not be considered "effluent standards or limitations" for the purposes of both this article and
18 sections 309 and 505 of the federal Water Pollution Control Act and shall not be independently or
19 directly enforced or implemented except through the development of terms and conditions of a
20 permit issued pursuant to this article. Nothing in this section, however, prevents the secretary
21 from modifying, reissuing or revoking a permit during its term. The provisions of this section

22 addressing compliance with a permit are intended to apply to all existing and future discharges
23 and permits without the need for permit modifications; and

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

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

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

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

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

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

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

45 (6) Within twenty-four months of the effective date of this subdivision, the secretary shall
46 propose rules for legislative approval in accordance with the provisions of article three, chapter
47 twenty-nine of this code which establish a state-specific selenium standard that protects aquatic

48 life. Concurrent with proposing a legislative rule, the secretary shall also submit the proposed
49 standard and supporting documentation to the administrator of the Environmental Protection
50 Agency. The secretary shall also consult with and consider research and data from the West
51 Virginia Water Research Institute at West Virginia University, the regulated community and other
52 appropriate groups in developing the state-specific selenium standard.

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

58 (8) The secretary shall, within ninety days of receipt of any completed request for a site
59 specific water quality criterion, approve or deny the request. Any denial of an application shall
60 detail the specific basis for the denial and any revisions needed to the application. Any denial of
61 a request may be appealed to the environmental quality board pursuant to section twenty-one of
62 this article.

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

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

§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

1 (a) The office shall employ as many surface mine inspectors as the director determines to
2 be reasonably necessary in fully and effectively carrying out the applicable provisions of this
3 chapter.

4 (b) To be eligible for employment as a surface mine inspector the applicant shall be: (1) A
5 a citizen of West Virginia, in good health, not less than twenty-four years of age, of good character
6 and reputation and of temperate habits; (2) a person who has had at least five years of practical
7 experience in coal mines, at least two years of which have been in on surface mines in this state:
8 *Provided*, That graduation from any accredited college of mining engineering may be considered
9 the equivalent of two years of practical experience; and (3) a person who has a good theoretical
10 and practical knowledge of surface mines, surface mining methods, sound safety practices and
11 applicable mining laws and rules. For the purpose of this section, practical experience means the
12 performance of normal mining duties requiring a person to hold a certificate of competency and
13 qualification as an experienced surface miner prior to actually performing ~~such~~ the duties.

14 (c) (1) In order to qualify for appointment as a surface mine inspector, an eligible applicant
15 shall submit to written, oral and practical examinations administered by the mine inspectors'
16 examining board and furnish evidence of good health, character and other facts establishing
17 eligibility as the board may require. The examinations shall relate to the duties to be performed
18 by a surface mine inspector and, subject to the approval of the mine inspectors' examining board,
19 may be prepared by the director.

20 (2) If the board finds after investigation and examination that an applicant is: (A) Eligible
21 for appointment; and (B) has passed each required examination with a grade of at least seventy-
22 five percent, or an overall combined average score of eighty percent, the board shall add the
23 applicant's name and grades to the register of qualified eligible candidates and promptly certify
24 its action in writing to the director. The director shall then appoint one of the candidates from the
25 three having the highest grades.

26 (d) Surface mine inspectors shall be paid an annual salary of not less than \$37,332, which
27 shall be fixed by the director, who shall take into consideration ability, performance of duty, and
28 experience. Surface mine inspectors shall devote all of their time to the duties of the office.

29 (e) Except as expressly provided in this section to the contrary, all provisions of this article
30 relating to the eligibility, qualification, appointment, tenure, and removal of underground mine
31 inspectors, as well as those provisions relating to compensatory time and reimbursement for
32 necessary expenses, are applicable to surface mine inspectors.

**§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to
examine mines; no advance notice of an inspection; reports after fatal
accidents.**

1 (a) The director, or his or her authorized representative, has authority to visit, enter, and
2 examine any mine, whether underground or on the surface, and may call for the assistance of
3 any district mine inspector or inspectors whenever assistance is necessary in the examination of
4 any mine. The operator of every coal mine shall furnish the director or his or her authorized
5 representative proper facilities for entering the mine and making examination or obtaining
6 information.

7 (b) If miners or one of their authorized representatives, have reason to believe, at any
8 time, that dangerous conditions are existing or that the law is not being complied with, they may
9 request the director to have an immediate investigation made. Provided, That miners are always
10 encouraged to work with mine management with regards to safety concerns.

11 (c) Mine inspectors shall devote their full-time and undivided attention to the performance
12 of their duties, and they shall examine all of the mines in their respective districts at least four
13 times annually, and as often, in addition thereto, as the director may direct, or the necessities of
14 the case or the condition of the mine or mines may require, with no advance notice of inspection
15 provided to any person, and they shall make a personal examination of each working face and all
16 entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of
17 determining whether an imminent danger, referred to in section fifteen of this article, exists in the
18 mine, or whether any provision of article two of this chapter is being violated or has been violated
19 within the past forty-eight hours in the mine. No other person shall, with the intent of undermining

20 the integrity of an unannounced mine inspection, provide advance notice of any inspection or of
21 an inspector's presence at a mine to any person at that mine. Any person who, with the requisite
22 intent, knowingly causes or conspires to provide advance notice of any inspection or of an
23 inspector's presence at a mine is guilty of a felony and, upon conviction thereof, shall be fined not
24 more than \$15,000 or imprisoned in a state correctional facility not less than one year and not
25 more than five years, or both fined and imprisoned.

26 (d) In addition to the other duties imposed by this article and article two of this chapter, it
27 is the duty of each inspector to note each violation he or she finds and issue a finding, order, or
28 notice, as appropriate for each violation so noted. During the investigation of any accident, any
29 violation may be noted whether or not the inspector actually observes the violation and whether
30 or not the violation exists at the time the inspector notes the violation, so long as the inspector
31 has clear and convincing evidence the violation has occurred or is occurring.

32 (e) ~~On or after July 1, 2012, an~~ An inspector shall require the operator or other employer
33 to investigate all complaints received by the Office of Miners' Health, Safety and Training involving
34 a certified person's substance abuse or alcohol related impairment at a mine. Within thirty days
35 following notification by the Office of Miners' Health, Safety and Training to the operator or other
36 employer of the complaint, the operator or other employer shall file with the Director a summary
37 of its investigation into the alleged substance abuse or alcohol related impairment of a certified
38 person.

39 (f) The mine inspector shall visit the scene of each fatal accident occurring in any mine
40 within his or her district and shall make an examination into the particular facts of the accident;
41 make a report to the director, setting forth the results of the examination, including the condition
42 of the mine and the cause or causes of the fatal accident, if known, and all the reports shall be
43 made available to the interested parties, upon written requests.

44 (g) At the commencement of any inspection of a coal mine by an authorized representative
45 of the director, the authorized representative of the miners at the mine, as well as a salaried

46 employee of management, at the time of the inspection shall be given an opportunity to
47 accompany the authorized representative of the director on the inspection.

§22A-1-15. Findings, orders and notices.

1 (a) If upon any inspection of a coal mine an authorized representative of the director finds
2 that an imminent danger exists, the representative shall determine the area throughout which the
3 danger exists and shall immediately issue an order requiring the operator of the mine or the
4 operator's agent to cause immediately all persons, except those referred to in subdivisions (1),
5 (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from
6 entering the area until an authorized representative of the director determines that the imminent
7 danger no longer exists.

8 (b) If upon any inspection of a coal mine an authorized representative of the director finds
9 that there has been a violation of the law, but the violation has not created an imminent danger,
10 he or she shall issue a notice to the operator or the operator's agent fixing a reasonable time for
11 the abatement of the violation. If upon the expiration of the period of time, as originally fixed or
12 subsequently extended, an authorized representative of the director finds that the violation has
13 not been totally abated, and if the director also finds that the period of time should not be further
14 extended, the director shall find the extent of the area affected by the violation and shall promptly
15 issue an order requiring the operator of the mine or the operator's agent to cause immediately all
16 persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section,
17 to be withdrawn from and to be prohibited from entering the area until an authorized representative
18 of the director determines that the violation has been abated.

19 (c) If upon any inspection of a coal mine an authorized representative of the director finds
20 that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to
21 subsection (a) of this section, the director shall review the compliance record of the mine.

22 (1) A review of the compliance record conducted in accordance with this subsection shall,
23 at a minimum, include a review of the following:

24 (A) Any closure order issued pursuant to subsection (a) of this section;

25 (B) Any closure order issued pursuant to subsection (b) of this section;

26 (C) Any enforcement measures taken pursuant to this chapter, other than those authorized
27 under subsections (a) and (b) of this section;

28 (D) Any evidence of the operator's lack of good faith in abating significant and substantial
29 violations at the mine;

30 (E) Any accident, injury or illness record that demonstrates a serious safety or health
31 management problem at the mine; and

32 ~~(F) The number of employees at the mine, the size, layout and physical features of the~~
33 ~~mine and the length of time the mine has been in operation; and~~

34 ~~(G)~~ (F) Any mitigating circumstances.

35 (2) If, after review of the mine's compliance record, the director determines that the mine
36 has a history of repeated significant and substantial violations of a particular standard caused by
37 unwarrantable failure to comply or a history of repeated significant and substantial violations of
38 standards related to the same hazard caused by unwarrantable failure to comply and the history
39 or histories demonstrate the operator's disregard for the health and safety of miners, the director
40 shall issue a closure order for the entire mine or area throughout which the director determines
41 the dangerous condition exists and shall immediately issue an order requiring the operator of the
42 mine or the operator's agent to cause immediately all persons, except those referred to in
43 subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be
44 prohibited from entering the mine or area throughout which the director determines the dangerous
45 condition until a thorough inspection of the mine or area has been conducted by the office and
46 the director determines that the operator has abated all violations related to the imminent danger
47 and any violations unearthed in the course of the inspection.

48 (d) All employees on the inside and outside of a mine who are idled as a result of the
49 posting of a withdrawal order by a mine inspector shall be compensated by the operator at their

50 regular rates of pay for the period they are idled, but not for more than the balance of the shift. If
51 the order is not terminated prior to the next working shift, all the employees on that shift who are
52 idled by the order are entitled to full compensation by the operator at their regular rates of pay for
53 the period they are idled, but for not more than four hours of the shift.

54 (e) The following persons are not required to be withdrawn from or prohibited from entering
55 any area of the coal mine subject to an order issued under this section:

56 (1) Any person whose presence in the area is necessary, in the judgment of the operator
57 or an authorized representative of the director, to eliminate the condition described in the order;

58 (2) Any public official whose official duties require him or her to enter the area;

59 (3) Any representative of the miners in the mine who is, in the judgment of the operator or
60 an authorized representative of the director, qualified to make coal mine examinations or who is
61 accompanied by such a person and whose presence in the area is necessary for the investigation
62 of the conditions described in the order; and

63 (4) Any consultant to any of the persons set forth in this subsection.

64 (f) Notices and orders issued pursuant to this section shall contain a detailed description
65 of the conditions or practices which cause and constitute an imminent danger or a violation of any
66 mandatory health or safety standard and, where appropriate, a description of the area of the coal
67 mine from which persons must be withdrawn and prohibited from entering.

68 (g) Each notice or order issued under this section shall be given promptly to the operator
69 of the coal mine or the operator's agent by an authorized representative of the director issuing
70 the notice or order and all the notices and orders shall be in writing and shall be signed by the
71 representative and posted on the bulletin board at the mine.

72 (h) A notice or order issued pursuant to this section may be modified or terminated by an
73 authorized representative of the director.

74 (i) Each finding, order and notice made under this section shall promptly be given to the
75 operator of the mine to which it pertains by the person making the finding, order or notice.

76 (j) *Definitions.* — For the purposes of this section only, the following terms have the
77 following meanings:

78 (1) “Unwarrantable failure” means aggravated conduct, constituting more than ordinary
79 negligence, by a mine operator in relation to a violation of this chapter of the code; and

80 (2) “Significant and substantial violation” shall have the same meaning as that established
81 in 6 FMSHRC 1 (1984).

§22A-1-19. Judicial review.

1 (a) Any order or decision issued by the director under this law, ~~except an order or decision~~
2 ~~under section fifteen of this article~~ is subject to judicial review by the circuit court of the county in
3 which the mine affected is located ~~or the circuit court of Kanawha County~~ upon the filing in such
4 court or with the judge thereof in vacation of a petition by any person aggrieved by the order or
5 decision praying that the order or decision be modified or set aside, in whole or in part, except
6 that the court shall not consider such petition unless such person has exhausted the
7 administrative remedies available under this law and files within thirty days from date of such
8 order or decision.

9 (b) The party making such appeal shall forthwith send a copy of such petition for appeal,
10 by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall
11 promptly certify and file in such court a complete transcript of the record upon which the order or
12 decision complained of was issued. The court shall hear such petition on the record made before
13 the director. The findings of the director, if supported by substantial evidence on the record
14 considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or
15 decision or may remand the proceedings to the director for such further action as it may direct.

16 (c) In the case of a proceeding to review any order or decision issued by the director under
17 this law, except an order or decision pertaining to an order issued under subsection (a), section
18 fifteen of this article or an order or decision pertaining to a notice issued under subsection (b),

19 section fifteen of this article, the court may, under such conditions as it may prescribe, grant such
20 temporary relief as it deems appropriate pending final determination of the proceedings if:

21 (A) All parties to the proceeding have been notified and given an opportunity to be heard
22 on a request for temporary relief;

23 (B) The person requesting such relief shows that there is a substantial likelihood that the
24 person will prevail on the merits of the final determination of the proceeding; and

25 (C) Such relief will not adversely affect the health and safety of miners in the coal mine.

26 (d) The judgment of the court is subject to review only by the Supreme Court of Appeals
27 of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the
28 order and decision of the circuit court upon such appeal from the director.

29 (e) The commencement of a proceeding under this section shall not, unless specifically
30 ordered by the court, operate as a stay of the order or decision of the director.

31 (f) Subject to the direction and control of the Attorney General, attorneys appointed for the
32 director may appear for and represent the director in any proceeding instituted under this section.

§22A-1-20. Injunctions.

1 The director may institute a civil action for relief, including a permanent or temporary
2 injunction, restraining order, or any other appropriate order in the circuit court of the county in
3 which the mine is located ~~or the circuit court of Kanawha County~~, whenever the operator or the
4 operator's agent: (a) Violates or fails or refuses to comply with any order or decision issued under
5 this law; or (b) interferes with, hinders or delays the director or his or her authorized representative
6 in carrying out the provisions of this law; or (c) refuses to admit such representatives to the mine;
7 or (d) refuses to permit the inspection of the mine, or the investigation of an accident or
8 occupational disease occurring in, or connected with, such mine; or (e) refuses to furnish any
9 information or report requested by the director in furtherance of the provisions of this law; or (f)
10 refuses to permit access to, and copying of, such records as the director determines necessary
11 in carrying out the provisions of this law. ~~Each~~ The court shall have jurisdiction to provide such

12 relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court
13 to enforce an order under clause (a) of this section shall continue in effect until the completion or
14 final termination of all proceedings for review of such order under this law, unless, prior thereto,
15 the circuit court granting such relief sets it aside or modifies it. In any action instituted under this
16 section to enforce an order or decision issued by the director after a public hearing, the findings
17 of the director, if supported by substantial evidence on the record considered as a whole, shall be
18 conclusive.

§22A-1-31. Withdrawal of certification.

1 (a) *Charge of breach of duty.* — A mine inspector or the director may charge a mine
2 foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to
3 perform any duty mandated pursuant to this article or article two of this chapter. The charge shall
4 state the name of the person charged, the duty or duties he or she is alleged to have violated, the
5 approximate date and place so far as is known of the violation of duty, the capacity of the person
6 making the charge, and shall be verified on the basis of information and belief or personal
7 knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy
8 of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly
9 to the director. The director shall maintain a file of each charge and of all related documents which
10 shall be open to the public.

11 (b) *Evaluation of charge by board of appeals.* — Within twenty days after receipt of the
12 charge the board shall evaluate the charge and determine whether or not a violation of duty has
13 been stated. In making such a determination the board shall evaluate all documents submitted to
14 it by all persons to determine as nearly as possible the substance of the charge and if the board
15 of appeals is unable to determine the substance of the charge it may request the director to
16 investigate the charge. Upon request, the director shall cause the charge to be investigated and
17 report the results of the investigation to the board of appeals within ten days of the director's
18 receipt of the charge. If the board determines that probable cause exists to support the allegation

19 that the person charged has violated his or her duty, the board by the end of the twenty-day period
20 shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice
21 of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the
22 charge shall be mailed by certified mail, return receipt requested, to the charging party, the
23 charged party, the director, the representative of the miner or miners affected and to any
24 interested person of record. Thereafter the board shall maintain the file of the charge which shall
25 contain all documents, testimony and other matters filed which shall be open for public inspection.

26 (c) *Hearing.* — The Board of Appeals shall hold a hearing, may appoint a hearing examiner
27 to take evidence and report to the Board of Appeals within the time allotted, may direct or
28 authorize taking of oral depositions under oath by any participant, or adopt any other method for
29 the gathering of sworn evidence which affords the charging party, the charged party, the director
30 and any interested party of record due process of law and a fair opportunity to present and make
31 a record of evidence. Any member of the board shall have the power to administer oaths. The
32 board may subpoena witnesses and require production of any books, papers, records or other
33 documents relevant or material to the inquiry. The board shall consider all evidence offered in
34 support of the charge and on behalf of the persons so charged at the time and place designated
35 in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented
36 in any such hearing. No continuance shall be granted except for good cause shown.

37 The Board of Appeals may accept as evidence a notarized affidavit of drug testing
38 procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO.
39 If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify
40 under oath telephonically or by an Internet based program in lieu of physically attending the
41 hearing.

42 At the conclusion of the hearing the board shall proceed to determine the case upon
43 consideration of all the evidence offered and shall render a decision containing its findings of fact
44 and conclusions of law. If the board finds by a preponderance of the evidence that the certificate

45 or certificates of the charged person should be suspended or revoked, as hereinafter provided, it
46 shall enter an order to that effect. No renewal of the certificate shall be granted except as herein
47 provided.

48 (d) *Failure to cooperate.* — Any person charged who without just cause refuses or fails to
49 appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his
50 or her certificate or certificates for a period to be determined by the board, not to exceed five
51 years, and such certificate or certificates may not be renewed except upon a successful
52 completion of the examination prescribed by the law for mine foremen, assistant mine foremen,
53 fire bosses or other certified persons.

54 (e) *Penalties.* — The board may suspend or revoke the certificate or certificates of a
55 charged party for a minimum of thirty days or more including an indefinite period or may revoke
56 permanently the certificate or certificates of the charged party, as it sees fit, subject to the
57 prescribed penalties and monetary fines imposed elsewhere in this chapter.

58 (f) *Integrity of penalties imposed.* — No person whose certification is suspended or
59 revoked under this provision can perform any duties under any other certification issued under
60 this chapter, during the period of the suspension imposed herein.

61 (g) Any party adversely affected by a final order or decision issued by the board hereunder
62 is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of
63 this code.

§22A-1-35. Mine rescue teams.

1 (a) ~~It is the responsibility of the~~ The operator to shall provide mine rescue coverage at
2 each active underground mine.

3 (b) Mine rescue coverage may be provided by:

4 (1) Establishing at least two mine rescue teams which are available at all times when
5 miners are underground; or

6 (2) Entering into an arrangement for mine rescue services which assures that at least two
7 mine rescue teams are available at all times when miners are underground.

8 (3) A West Virginia Office of Miners' Health, Safety and Training Mine Rescue Team may
9 serve as a second or backup team for mines within the state and qualify as one of the two teams
10 required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4).
11 The operator shall contact the office and obtain the state's agreement to serve as a backup team
12 in the form of a written notification signed by the director and this notification shall be kept posted
13 at the mine.

14 (c) As used in this section, mine rescue teams shall be considered available where teams
15 are capable of presenting themselves at the mine site(s) within a reasonable time after notification
16 of an occurrence which might require their services. Rescue team members will be considered
17 available even though performing regular work duties or while in an off-duty capacity. The
18 requirement that mine rescue teams be available does not apply when teams are participating in
19 mine rescue contests or providing rescue services to another mine.

20 (d) In the event of a fire, explosion or recovery operations in or about any mine, the director
21 is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and
22 property. The director may also assign mine rescue and recovery work to inspectors, instructors
23 or other qualified employees of the office as he or she deems necessary.

24 (e) The ground travel time between any mine rescue station and any mine served by that
25 station shall not exceed two hours. To ensure adequate rescue coverage for all underground
26 mines, no mine rescue station may provide coverage for more than seventy mines within the two-
27 hour ground travel limit as defined in this subsection.

28 (f) Each mine rescue team shall consist of five members and one alternate, who are fully
29 qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue
30 team shall be trained by a state certified mine rescue instructor.

31 (g) Each member of a mine rescue team must have been employed in an underground
32 mine for a minimum of one year. For the purpose of mine rescue work only, miners who are
33 employed on the surface but work regularly underground meet the experience requirement. The
34 underground experience requirement is waived for those members of a mine rescue team on the
35 effective date of this statute.

36 (h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a
37 physical examination by a licensed physician certifying his or her fitness to perform mine rescue
38 work. A record that such examination was taken, together with pertinent data relating thereto,
39 shall be kept on file by the operator and a copy shall be furnished to the director.

40 (i) Upon completion of the initial training, all mine rescue team members shall receive at
41 least forty hours of refresher training annually. This training shall be given at least four hours each
42 month, or for a period of eight hours every two months, and shall include:

43 (1) Sessions underground at least once every six months;

44 (2) The wearing and use of a breathing apparatus by team members for a period of at
45 least two hours, while under oxygen, once every two months;

46 (3) Where applicable, the use, care, capabilities and limitations of auxiliary mine rescue
47 equipment, or a different breathing apparatus;

48 (4) Mine map training and ventilation procedures.

49 (j) When engaged in rescue work required by an explosion, fire or other emergency at a
50 mine, all members of mine rescue teams assigned to rescue operations shall, during the period
51 of their rescue work, be employees of the operator of the mine where the emergency exists, and
52 shall be compensated by the operator at the rate established in the area for such work. In no case
53 shall this rate be less than the prevailing wage rate in the industry for the most skilled class of
54 inside mine labor. During the period of their emergency employment, members of mine rescue
55 teams shall be protected by the workers' compensation subscription of ~~such emergency employer~~
56 the mine operator.

57 (k) During the recovery work and prior to entering any mine at the start of each shift, all
58 rescue or recovery teams shall be properly informed of existing conditions and work to be
59 performed by the designated company official in charge.

60 (1) For every two teams performing rescue or recovery work underground, one six-
61 member team shall be stationed at the mine portal.

62 (2) Each rescue or recovery team performing work with a breathing apparatus shall be
63 provided with a backup team of equal number, stationed at each fresh air base.

64 (3) The mine operator shall provide ~~Two~~-way communication and a lifeline or its
65 equivalent ~~shall be provided~~ at each fresh air base for all mine rescue or recovery teams and no
66 mine rescue team member shall advance more than one thousand feet in by the fresh air base:
67 *Provided*, That if a life may possibly be saved and existing conditions do not create an
68 unreasonable hazard to mine rescue team members, the rescue team may advance a distance
69 agreed upon by those persons directing the mine rescue or recovery operations: *Provided*,
70 *however*, That the mine operator shall provide a lifeline or its equivalent ~~shall be provided~~ in each
71 fresh air base for all mine rescue or recovery teams.

72 (4) A rescue or recovery team shall immediately return to the fresh air base when the
73 atmospheric pressure of any member's breathing apparatus depletes to sixty atmospheres, or its
74 equivalent.

75 (l) Mine rescue stations shall provide a centralized storage location for rescue equipment.
76 This storage location may be either at the mine site, affiliated mines or a separate mine rescue
77 structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary
78 equipment manual. Each mine rescue station shall be provided with at least the following
79 equipment:

80 (1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two
81 hours capacity, and any necessary equipment for testing such breathing apparatuses;

82 (2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating
83 or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and
84 sufficient to sustain each team for six hours while using the breathing apparatuses during rescue
85 operations;

86 (3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen
87 breathing apparatus, as required under subdivision (1) of this subsection;

88 (4) One oxygen pump or a cascading system, compatible with the supplied breathing
89 apparatuses;

90 (5) Twelve permissible cap lamps and a charging rack;

91 (6) Two gas detectors appropriate for each type of gas which may be encountered at the
92 mines served;

93 (7) Two oxygen indicators ~~or two flame safety lamps~~;

94 (8) One portable mine rescue communication system or a sound-powered communication
95 system. The wires or cable to the communication system shall be of sufficient tensile strength to
96 be used as a manual communication system. The communication system shall be at least one
97 thousand feet in length; and

98 (9) Necessary spare parts and tools for repairing the breathing apparatuses and
99 communication system, as presently prescribed by the manufacturer.

100 (m) Mine rescue apparatuses and equipment shall be maintained in a manner that will
101 ensure readiness for immediate use. A person trained in the use and care of breathing
102 apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall
103 certify by signature and date that the inspections and tests were done. When the inspection
104 indicates that a corrective action is necessary, the corrective action shall be made and recorded
105 by said person. The certification and corrective action records shall be maintained at the mine
106 rescue station for a period of one year and made available on request to an authorized
107 representative of the director.

108 (n) Authorized representatives of the director have the right of entry to inspect any
109 designated mine rescue station.

110 (o) When an authorized representative finds a violation of any of the mine rescue
111 requirements, the representative shall take appropriate corrective action in accordance with
112 section fifteen of this article.

113 (p) Operators affiliated with a station issued an order by an authorized representative will
114 be notified of that order and that their mine rescue program is invalid. The operators shall have
115 twenty-four hours to submit to the director a revised mine rescue program.

116 (q) Every operator of an underground mine shall develop and adopt a mine rescue
117 program for submission to the director within thirty days of the effective date of this statute:
118 *Provided, That a new program need only be submitted when conditions exist as defined in*
119 *subsection (p) of this section, or when information contained within the program has changed.*

120 (r) A copy of the mine rescue program shall be posted at the mine and kept on file at the
121 operator's mine rescue station or rescue station affiliate and the state regional office where the
122 mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a)
123 will satisfy the requirements of subsection (q) of this section if submitted to the director.

124 (s) The operator shall immediately notify the director of any changed conditions materially
125 affecting the information submitted in the mine rescue program.

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

§22A-1A-2. Board of Appeals hearing procedures.

1 (a) Any hearing conducted after the temporary suspension of a certified person's
2 certificate pursuant to this article, shall be conducted within sixty days of the temporary
3 suspension. The Board of Appeals shall make every effort to hold the hearing within forty days of
4 the temporary suspension.

5 (b) All hearings of the Board of Appeals pursuant to this section shall be conducted in
6 accordance with the provisions of subsection (c), section thirty-one, article one of this chapter.

7 In addition to the rules and procedures in section thirty-one, article one of this chapter in
8 hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of
9 drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony
10 by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO
11 may testify under oath telephonically or by an Internet based program in lieu of physically
12 attending the hearing.

13 The Board of Appeals may suspend the certificate or certificates of a certified person for
14 violation of this article or for any other violation of this chapter pertaining to substance abuse. The
15 Board of Appeals may impose further disciplinary actions for repeat violations. The director shall
16 have the authority to propose legislative rules for promulgation in accordance with article three,
17 chapter twenty-nine-a of this code to establish the disciplinary actions referenced in this section
18 following the receipt of recommendations from the Board of Coal Mine Health and Safety following
19 completion of the study required pursuant to section fourteen, article six of this chapter. The
20 legislative rules authorized by this subsection shall not, however, include any provisions requiring
21 an employer to take or refrain from taking any specific personnel action or mandating any
22 employer to establish or maintain an employer-funded substance abuse rehabilitation program.

23 (c) No person whose certification is suspended or revoked under this section may perform
24 any duties under any other certification issued under this chapter, during the period of the
25 suspension imposed by the board of Appeals.

26 (d) Any party adversely affected by a final order or decision issued by the board of Appeals
27 hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-
28 nine-a of this code.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-3. Fans.

1 (a) The ventilation of mines, the systems for which extend for more than two hundred feet
2 underground and which are opened after the effective date of this article, shall be produced by a
3 mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is
4 prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written
5 permission to do otherwise be granted by the director. In case of interruption to a ventilating fan
6 or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken
7 by the mine operator or the operator's management personnel, in all mines, to cut off the power
8 and withdraw the men from the face regions or other areas of the mine affected. If ventilation is
9 restored in fifteen minutes, the face regions and other places in the affected areas where gas
10 (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of
11 explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen
12 minutes, all underground employees shall be removed from the mine, all power shall be cut off in
13 a timely manner, and the underground employees shall not return until ventilation is restored and
14 the mine examined by certified persons, mine examiners or other persons holding a certificate to
15 make preshift examination. If ventilation is restored to the mine before miners reach the surface,
16 the miners may return to underground working areas only after an examination of the areas is
17 made by a certified person and the areas are determined to be safe.

18 (b) All main fans installed after the effective date of this article shall be located on the
19 surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine
20 opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and
21 operated from an independent power circuit. In lieu of the requirements for the location of fans
22 and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: *Provided,*
23 That such opening is not in direct line with possible forces coming out of the mine if an explosion
24 occurs: *Provided, however,* That there is another opening having a weak-wall stopping or
25 explosion doors that would be in direct line with forces coming out of the mine. All main fans shall
26 be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of

27 all main fans and machinery connected therewith by a certified electrician and a record kept of
28 the same in a book prescribed for this purpose or by adequate facilities provided to permanently
29 record the performance of the main fans and to give warning of an interruption to a fan.

30 (c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with
31 line brattice to provide adequate ventilation to the working faces: *Provided*, That auxiliary fans be
32 so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved
33 and maintained as permissible.

34 (d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be
35 stopped and the power disconnected at the power source until ventilation in the working place is
36 restored. During such stoppage, the ventilation shall be by means of the primary air current
37 conducted into the place in a manner to prevent accumulation of methane.

38 (e) In places where auxiliary fans and tubing are used, the ventilation between shifts,
39 weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to
40 prevent accumulation of methane.

41 (f) The director may require that when continuous mine equipment is being used, all face
42 ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted
43 diffuser fans, and such fans shall be continuously operated during mining operations.

44 (g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not
45 intentionally be started, stopped, speed increased or decreased or the direction of the air current
46 changed without the approval of the general mine foreman, and, if he or she is not immediately
47 available, a representative of the Office of Miners' Health, Safety and Training. A duly authorized
48 representative of the employees should be consulted if practical under the circumstances.

**§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man
doors; instruction of apprentice miners.**

1 (a) The duties of the mine foreman shall be to keep a careful watch over the ventilating
2 apparatus, the airways, traveling ways, pumps and drainage. He or she shall see that, as the

3 miners advance their excavations, proper breakthroughs are made so as to ventilate properly the
4 mine; that all loose coal, slate and rock overhead in the working places and along the haulways
5 are removed or carefully secured so as to prevent danger to persons employed in such mines,
6 and that sufficient suitable props, caps, timbers, roof bolts or other approved methods of roof
7 supports are furnished for the places where they are to be used and delivered at suitable points.
8 The mine foreman shall have all water drained or hauled out of the working places where
9 practicable, before the miners enter, and such working places shall be kept dry as far as
10 practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper
11 crosscuts are made and that the ventilation is conducted by means of such crosscuts through the
12 rooms by means of checks or doors placed on the entries or other suitable places, and he or she
13 shall not permit any room to be opened in advance of the ventilation current. The mine foreman,
14 or other certified persons designated by him or her, shall measure the air current with an
15 anemometer or other approved device at least weekly at the inlet and outlet at or near the faces
16 of the advanced headings, and shall keep a record of such measurements in a book or upon a
17 form prescribed by the director. Signs directing the way to outlets or escapeways shall be
18 conspicuously placed throughout the mine.

19 (b) After July 1, 1971, hinged man doors, at least thirty inches square or the height of the
20 coal seam, shall be installed between the intake and return at intervals of three hundred feet when
21 the height of the coal is below forty-eight inches and at intervals of ~~five~~ six hundred feet when the
22 height of the coal is above forty-eight inches.

23 (c) The duties of the mine foreman and assistant mine foreman shall include the instruction
24 of apprentice miners in the hazards incident to any new work assignments; to assure that any
25 individual given a work assignment in the working face without prior experience on the face is
26 instructed in the hazards incident thereto and supervised by a miner with experience in the tasks
27 to be performed.

§22A-2-14. Safety inspections; removal of gases.

1 It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine
2 all working places under his or her supervision for hazards at least once every two hours during
3 each coal-producing shift, or more often if necessary for safety. In all mines such examinations
4 shall include tests with an approved detector for methane and oxygen deficiency. ~~which tests for~~
5 ~~oxygen deficiency may be with a permissible flame safety lamp: *Provided*, That a flame safety~~
6 ~~lamp may be used for methane testing when a malfunction occurs with a methane detector~~ It shall
7 also be his or her duty to remove as soon as possible after its discovery any accumulations of
8 explosive or noxious gases in active workings, and where practicable, any accumulations of
9 explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the
10 duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three
11 hours prior to the beginning of a shift and before any miner in such shift enters the active workings
12 of the mine.

**§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such
prior to examination; report; records open for inspection.**

1 (a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger
2 signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his
3 or her shift or prior to his or her entering the mine to make his or her examination and, except for
4 those persons already on assigned duty, no person except the mine owner, operator or agent,
5 and only then in the case of necessity, shall pass beyond this danger signal until the mine has
6 been examined by the fire boss or other certified person and the mine or certain parts thereof
7 reported by him or her to be safe. When reported by him or her to be safe, the danger sign or
8 color thereof shall be changed to indicate that the mine is safe in order that employees going on
9 shift may begin work. Each person designated to make the fire boss examinations shall be
10 assigned a definite underground area of the mine, and, in making his or her examination shall
11 examine all active working places in the assigned area and make tests with an approved device

12 for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test
13 the roof, face and ribs in the working places and on active roadways and travelways, approaches
14 to abandoned workings, accessible falls in active sections and areas where any person is
15 scheduled to work or travel underground. He or she shall place his or her initials and the date at
16 or near the face of each place he or she examines. Should he or she find a condition which he or
17 she considers dangerous to persons entering the areas, he or she shall place a conspicuous
18 danger sign at all entrances to the place or places. Only persons authorized by the mine
19 management may enter the places while the sign is posted and only for the purpose of eliminating
20 the dangerous condition. Upon completing his or her examination he or she shall report by suitable
21 communication system or in person the results of this examination to a certified person trained as
22 a certified miner with at least two years mining experience designated by mine management to
23 receive and record the report, at a designated station on the surface of the premises of the mine
24 or underground, before other persons enter the mine to work in coal-producing shifts. He or she
25 shall also record the results of his or her examination with ink or indelible pencil in a book
26 prescribed by the director, kept for the purpose at a place on the surface of the mine designated
27 by mine management. All records of daily and weekly reports, as prescribed herein, shall be open
28 for inspection by interested persons.

29 (b) *Supplemental examination.* — When it becomes necessary to have workers enter
30 areas of the mine not covered during the preshift examination, a supplemental examination shall
31 be performed by a fire boss or certified person acting as such within three hours before any person
32 enters the area. The fire boss or certified person acting as such shall examine the area for
33 hazardous conditions, determine if air is traveling in its proper direction and test for oxygen
34 deficiency and methane.

35 (c) Each examined area shall be certified by date, time and the initials of the examiner.

36 (d) The results of the examination shall be recorded with ink or indelible pencil by the
37 examiner in the book referenced in subsection (a) of this section before he or she leaves the mine
38 on that shift.

ROOF—FACE—RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

1 (a) Each operator shall undertake to carry out on a continuing basis a program to improve
2 the roof control system of each coal mine and the means and measures to accomplish such
3 system. The roof and ribs of all active underground roadways, travelways and working places
4 shall be supported or otherwise controlled adequately to protect persons from falls of the roof or
5 ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems
6 of each coal mine and approved by the director shall be adopted and set out in printed form before
7 new operations. The safety committee of the miners of each mine where such committee exists
8 shall be afforded the opportunity to review and submit comments and recommendations to the
9 director and operator concerning the development, modification or revision of such roof control
10 plans. The plan shall show the type of support and spacing approved by the director. Such plan
11 shall be reviewed periodically, at least every six months by the director, taking into consideration
12 any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished
13 to the director or his or her authorized representative and shall be available to the miners and
14 their representatives.

15 (b) The operator, in accordance with the approved plan, shall provide at or near each
16 working face and at such other locations in the coal mine, as the director may prescribe, an ample
17 supply of suitable materials of proper size with which to secure the roof thereof of all working
18 places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect
19 the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes
20 are being drilled, roof bolts are being installed and in such other circumstances as may be
21 appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or
22 supported. When overhangs or brows occur along rib lines they shall be promptly removed. All
23 sections shall be maintained as near as possible on center. Except in the case of recovery work,
24 supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set

25 temporary supports on a working section without the direct immediate supervision of a certified
26 miner.

27 (c) The operator of a mine has primary responsibility to prevent injuries and deaths
28 resulting from working under unsupported roof. Every operator shall require that no person may
29 proceed beyond the last permanent support unless adequate temporary support is provided or
30 temporary support is not required under an approved roof control plan and absence of such
31 support will not pose a hazard to the miners.

32 (d) The immediate supervisor of any area in which unsupported roof is located shall not
33 direct or knowingly permit any person to proceed beyond the last permanent support unless
34 adequate temporary support is provided or temporary support is not required under an approved
35 roof control plan and absence of such support will not pose a hazard to the miners.

36 (e) No miner shall proceed beyond the last permanent support in violation of a direct or
37 standing order of an operator, a foreman or an assistant foreman, unless adequate temporary
38 support is provided or temporary support is not required under an approved roof control plan and
39 absence of such support will not pose a hazard to the miner.

40 (f) The immediate supervisor of each miner who will be engaged in any activity involving
41 the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those
42 parts of the roof control plan relevant to the type of mining and roof control to be pursued by such
43 miner. ~~The time and parts of the plan reviewed shall be recorded in a log book kept for such~~
44 ~~purpose. Each log book entry so recorded shall be signed by such immediate supervisor making~~
45 ~~such entry.~~

46 (g) Any action taken against a miner due, in whole or in part, to his or her refusal to work
47 under unsupported roof, where such work would constitute a violation of this section, is prohibited
48 as an act of discrimination pursuant to section twenty-two, article one of this chapter. Upon a
49 finding of discrimination by the appeals board pursuant to subsection (b), section twenty-two,

50 article one of this chapter, the miner shall be awarded by the appeals board all reliefs available
51 pursuant to subsections (b) and (c), section twenty-two, article one of this chapter.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

1 (a) The operator of every coal mine worked by shaft shall provide and maintain a metal
2 tube, telephone or other approved means of communication from the top to the bottom and
3 intermediate landings of such shafts, suitably adapted to the free passage of sound, through
4 which conversation may be held between persons at the top and at the bottom of the shaft; a
5 standard means of signaling; an approved safety catch, bridle chains, automatic stopping device,
6 or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting
7 persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of
8 every machine used to lower or hoist persons in such shaft. Such operator shall have the
9 machinery used for lowering and hoisting persons into or out of the mine kept in safe condition,
10 equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified
11 electrician. Where a hoisting engineer is required, he or she shall be readily available at all times
12 when men are in the mine. He or she shall operate the empty cage up and down the shaft at least
13 one round trip at the beginning of each shift, ~~and after the hoist has been idle for one hour or more~~
14 ~~before hoisting or lowering men~~; there shall be cut out around the side of the hoisting shaft or
15 driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high
16 and three feet wide to enable a person to pass the shaft in going from one side of it to the other
17 without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails
18 shall be placed near the top and at all intermediate landings of slopes and surface inclines and at
19 approaches to all shaft landings. A waiting station with sufficient room, ample clearance from
20 moving equipment, and adequate seating facilities shall be provided where men are required to

21 wait for man trips or man cages, and the miners shall remain in such station until the man trip or
22 man cage is available.

23 (b) No operator of any coal mine worked by shaft, slope or incline shall place in charge of
24 any engine or drum used for lowering or hoisting persons employed in such mine any but
25 competent and sober engineers or drum runners; and no engineer or drum runner in charge of
26 such machinery shall allow any person, except such as may be designated for this purpose by
27 the operator, to interfere with any part of the machinery; and no person shall interfere with any
28 part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner
29 in the discharge of his or her duties. Where the mine is operated or worked by shaft or slope, a
30 minimum space of two and one-half square feet per person shall be available for each person on
31 any cage or car where men are transported. In no instance shall more than twenty miners be
32 transported on a cage or car without the approval of the director. No person shall ride on a loaded
33 cage or car in any shaft, slope, or incline: *Provided*, That this does not prevent any trip rider from
34 riding in the performance of his or her authorized duties. No engineer is required for automatically
35 operated cages, elevators, or platforms. Cages and elevators shall have an emergency power
36 source unless provided with other escapeway facilities.

37 (c) Each automatic elevator shall be provided with a telephone or other effective
38 communication system by which aid or assistance can be obtained promptly.

39 (d) A "stop" switch shall be provided in the automatic elevator compartment that will permit
40 the elevator to be stopped at any location in the shaft.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or goggles to protect their eyes. All
2 employees shall have approved goggles or shields and use the same where there is a hazard
3 from flying particles or other eye hazards.

4 (b) Employees engaged in haulage operations and all other persons employed around
5 moving equipment on the surface and underground shall wear snug-fitting clothing.

6 (c) Protective gloves shall be worn when material which may injure hands is handled, but
7 gloves with gauntleted cuffs shall not be worn around moving equipment.

8 (d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a
9 mine: *Provided*, That metatarsal guards are not required to be worn by persons when working in
10 those areas of underground mine workings which average less than forty-eight inches in height
11 as measured from the floor to the roof of the underground mine workings.

12 (e) Approved eye protection shall be worn by all persons while being transported in open-
13 type man trips.

14 (f) (1) A self-contained self-rescue device approved by the director shall be worn by each
15 person underground or kept within his or her immediate reach and the device shall be provided
16 by the operator. The self-contained self-rescue device shall be adequate to protect a miner for
17 one hour or longer. Each operator shall train each miner in the use of the device and refresher
18 training courses for all underground employees shall be held once each quarter. Quarters shall
19 be based on a calendar year.

20 (2) In addition to the requirements of subdivision (1) of this subsection, the operator shall
21 also provide caches of additional self-contained self-rescue devices throughout the mine in
22 accordance with a plan approved by the director. Each additional self-contained self-rescue
23 device shall be adequate to protect a miner for one hour or longer. The total number of additional
24 self-contained self-rescue devices, the total number of storage caches and the placement of each
25 cache throughout the mine shall be established by rule pursuant to subsection (i) of this section.
26 A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-
27 CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent
28 direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with
29 reflective material at twenty-five foot intervals, shall be attached to each cache from the last open
30 crosscut to the surface. The operator shall conduct weekly inspections of each cache and each
31 lifeline cord or other similar device to ensure operability.

32 (3) Any person that, without the authorization of the operator or the director, knowingly
33 removes or attempts to remove any self-contained self-rescue device or lifeline cord from the
34 mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord
35 or knowingly tampers with or attempts to tamper with the device or lifeline cord shall be guilty of
36 a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not
37 less than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000,
38 or both.

39 (g) (1) A wireless emergency communication device approved by the director and provided
40 by the operator shall be worn by each person underground: Provided, That if a miner's wireless
41 emergency communications device shall malfunction or cease to operate then such miner shall
42 be assigned to be in sight or sound of a certified miner until such time an operating device shall
43 be delivered. The wireless emergency communication device shall, at a minimum, be capable of
44 receiving emergency communications from the surface at any location throughout the mine. Each
45 operator shall train each miner in the use of the device and provide refresher training courses for
46 all underground employees during each calendar year. The operator shall install in or around the
47 mine any and all equipment necessary to transmit emergency communications from the surface
48 to each wireless emergency communication device at any location throughout the mine.

49 (2) Any person that, without the authorization of the operator or the director, knowingly
50 removes or attempts to remove any wireless emergency communication device or related
51 equipment, from the mine or mine site with the intent to permanently deprive the operator of the
52 device or equipment or knowingly tampers with or attempts to tamper with the device or equipment
53 shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional
54 facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more
55 than \$100,000, or both find and confined.

56 (h) (1) A wireless tracking device approved by the director and provided by the operator
57 shall be worn by each person underground. In the event of an accident or other emergency, the

58 tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical
59 location of each person underground: *Provided*, That no person shall discharge or discriminate
60 against any miner based on information gathered by a wireless tracking device during
61 nonemergency monitoring. Each operator shall train each miner in the use of the device and
62 provide refresher training courses for all underground employees during each calendar year. The
63 operator shall install in or around the mine all equipment necessary to provide real-time
64 emergency monitoring of the physical location of each person underground.

65 (2) Any person that, without the authorization of the operator or the director, knowingly
66 removes or attempts to remove any wireless tracking device or related equipment, approved by
67 the director, from a mine or mine site with the intent to permanently deprive the operator of the
68 device or equipment or knowingly tampers with or attempts to tamper with the device or equipment
69 shall be guilty of a felony and, upon conviction ~~thereof~~, shall be imprisoned in a state correctional
70 facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more
71 than \$100,000, or both fined and confined.

72 (i) The director may promulgate emergency and legislative rules to implement and enforce
73 this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.

1 (a) For the purposes of this section, the term "accident" means:

2 (1) The death of an individual at a mine;

3 (2) An injury to an individual at a mine which has a reasonable potential to cause death;

4 (3) The entrapment of an individual;

5 (4) The unplanned inundation of a mine by a liquid or gas;

6 (5) The unplanned ignition or explosion of gas or dust;

7 (6) The unplanned ignition or explosion of a blasting agent or an explosive;

8 (7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;

9 (8) An unplanned roof fall at or above the anchorage zone in active workings where roof
10 bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or
11 impedes passage;

12 (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular
13 mining activity for more than one hour;

14 (10) An unstable condition at an impoundment, refuse pile or culm bank which requires
15 emergency action in order to prevent failure, or which causes individuals to evacuate an area, or
16 the failure of an impoundment, refuse pile or culm bank;

17 (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or
18 which interferes with use of the equipment for more than thirty minutes; and

19 (12) An event at a mine which causes death or bodily injury to an individual not at the mine
20 at the time the event occurs.

21 (b) Whenever any accident occurs in or about any coal mine or the machinery connected
22 therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice,
23 within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial
24 Accident Emergency Operations Center at the statewide telephone number established by the
25 Director of the Division of Homeland Security and Emergency Management pursuant to the
26 provisions of article five-b, chapter fifteen of this code stating the particulars of the accident:
27 *Provided*, That the operator or the mine foreman in charge of the mine may comply with this notice
28 requirement by immediately providing notice to the appropriate local organization for emergency
29 services as defined in section eight, article five of said chapter, or the appropriate local emergency
30 telephone system operator as defined in article six, chapter twenty-four of this code: *Provided*,
31 *however*, That if, immediately upon ascertaining the occurrence of an accident, the operator or
32 the mine foreman in charge of the mine provides notice to the local organization for emergency
33 services as defined in section eight, article five, chapter fifteen of this code, or the appropriate
34 local emergency telephone system operator as defined in article six, chapter twenty-four of this

35 code, then, in order to comply with this subsection, the operator or mine foreman in charge of the
36 mine shall also give notice to the Mine and Industrial Accident Emergency Operations Center at
37 the statewide number identified in this subsection within fifteen minutes of completing the
38 telephone call to the local organization for emergency services or the appropriate local emergency
39 telephone system operator, as applicable: *Provided further*, That nothing in this subsection shall
40 be construed to relieve the operator from any reporting or notification requirement under federal
41 law.

42 (c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant
43 to rules authorized in this section, a civil administrative penalty of up to \$100,000 on the operator
44 if it is determined that the operator or the mine foremen in charge of the mine failed to give
45 immediate notice as required in this section. The director may later amend the assessment of a
46 penalty under this section if so warranted: *Provided*, That the director may waive imposition of the
47 civil administrative penalty at any time if he or she finds that the failure to give immediate notice
48 was caused by circumstances wholly outside the control of the operator: *Provided, however*, That
49 the assessment of the civil administrative penalty set forth in this subsection may be appealed to
50 the Board of Appeals, and the Board of Appeals may, by ~~unanimous vote~~ a vote of two Board of
51 Appeals Members, reduce the amount of the civil administrative penalty upon a finding of
52 mitigating circumstances warranting the imposition of a lesser amount.

53 (d) If anyone is fatally injured, the inspector shall immediately go to the scene of the
54 accident and make recommendations and render assistance as he or she may deem necessary
55 for the future safety of the men and investigate the cause of the explosion or accident and make
56 a record. He or she shall preserve the record with the other records in his or her office. The cost
57 of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A
58 copy shall be furnished to the operator and other interested parties. To enable him or her to make
59 an investigation, he or she has the power to compel the attendance of witnesses and to administer

60 oaths or affirmations. The director has the right to appear and testify and to offer any testimony
61 that may be relevant to the questions and to cross-examine witnesses.

**§22A-2-77. ~~Monthly~~ Quarterly report by operator of mine; exception as to certain inactive
mines.**

1 On or before the end of each ~~calendar month~~ quarter, the operator of each mine, regulated
2 under the provisions of this chapter or article three or four, chapter twenty-two of this code, shall
3 file with the director a report with respect thereto covering the next preceding ~~calendar month~~
4 quarter which shall reflect the number of accidents which have occurred at each such mine, the
5 number of persons employed, the days worked and the actual raw tonnage mined. Quarters are
6 based on a calendar year. Such report shall be made upon forms furnished by the director. Other
7 provisions of this section to the contrary notwithstanding, no such report shall be required with
8 respect to any mine on approved inactive status if no employees were present at such mine at
9 any time during the next preceding calendar month.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

1 (~~a~~) ~~An existing underground mine foreman-fire boss certified pursuant to this article shall~~
2 ~~complete the continuing education requirements in this section within two years from the effective~~
3 ~~date of this section and every two years thereafter.~~ An underground mine foreman-fire boss
4 certified pursuant to this article on or after the effective date of this section shall complete the
5 continuing education requirements in this section within two years of their certification and every
6 two years thereafter. The continuing education requirements of this section may not be satisfied
7 by the completion of other training requirements mandated by the provisions of this chapter.

8 (b) In order to receive continuing education credit pursuant to this section, a mine foreman-
9 fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course
10 approved by the board and taught by a qualified instructor approved by the director. The mine
11 foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The

12 mine foreman-fire boss shall submit documentation to the office certified by the instructor that
13 indicates the required continuing education has been completed prior to the deadlines set forth in
14 this subsection: *Provided*, That a mine foreman-fire boss may submit documentation of continuing
15 education completed in another state for approval and acceptance by the board.

16 (c) The mine foreman-fire boss shall complete at least eight hours of continuing education
17 every two years.

18 (d) The content of the continuing education course shall include, but not be limited to:

19 (1) Selected provisions of this chapter and 30 U. S. C. §801, *et seq.*;

20 (2) Selected provisions of the West Virginia and federal underground coal mine health and
21 safety rules and regulations;

22 (3) The responsibilities of a mine foreman-fire boss;

23 (4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training,
24 the ~~board~~ Board of Coal Mine Health and Safety, and the ~~board~~ Board of Miner Training,
25 Education and Certification, and from any safety analysis performed by the company.

26 (5) A review of fatality and accident trends in underground coal mines; and

27 (6) Other subjects as determined by the Board of Miner Training, Education and
28 Certification. The Board shall solicit input from mining companies on the substance of the training
29 and discuss how the training shall be scheduled during the year.

30 (e) The board may approve alternative training programs tailored to specific mines.

31 (f) ~~Failure~~ A mine foreman-fire boss who fails to complete the requirements of this section
32 shall result in suspension of a mine foreman-fire boss certification have his or her certification
33 suspended pending completion of the continuing education requirements. During the pendency
34 of the suspension, the individual may not perform statutory duties assigned to a mine foreman-
35 fire boss under West Virginia law. The office shall send notice of any suspension to the last
36 address the certified mine foreman-fire boss reported to the director. If the requirements are not
37 met within two years of the suspension date, the director may file a petition with the board of

38 appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and,
39 upon determining that the requirements have not been met, the Board of Appeals may revoke the
40 mine foreman-fire boss' certification, which shall not be renewed except upon successful
41 completion of the examination prescribed by law for mine foremen-fire bosses or upon completion
42 of other training requirements established by the board: *Provided*, That an individual having his
43 or her mine foreman-fire boss certification suspended pursuant to this section who also holds a
44 valid mine foreman-fire boss certification from another state may have the suspension lifted by
45 completing training requirements established by the board.

46 (g) The office shall make a program of instruction that meets the requirements for
47 continuing education set forth in this section regularly available in regions of the state, based on
48 demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a
49 mine foreman-fire boss capacity: *Provided*, That the office may collect a fee from program
50 participants to offset the cost of the program.

51 (h) The office shall make available to operators and other interested parties a list of
52 individuals whose mine foreman-fire boss certification is in suspension or has been revoked
53 pursuant to this section.

NOTE: The purpose of this bill is to enhance the state's mine safety and environmental statutes. The bill makes findings. The bill eliminates the Department of Environmental Protection Office of Explosives and Blasting and consolidates the remaining duties and responsibilities related to blasting to the Department of Environmental Protection Division of Mining and Reclamation. The bill adds blasting oversight. The bill provides that the Department of Environmental Protection shall revise rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal regulations requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas. The bill provides that cumulative hydrologic impact assessment may be conducted. The bill requires a statement of probable hydrologic consequences and to prevent flooding. The bill requires the Department of Environmental Protection to follow deadlines for approving or denying applications for site specific water quality criteria. The bill modifies certain findings, ventilation requirements, safety inspection for gases, and roof or rib requirements. The bill permits the director to amend penalties. The bill provides that state mine rescue teams may serve as back up mine rescue teams for mines in this state. The bill provides that the Director of the Office of Miners' Health, Safety and Training shall have the authority to amend rules for the use of diesel equipment in the state's mines. The bill provides that in hearings over suspensions for positive drug tests, the state Board of Appeals to allow

evidence of testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary. The bill provides for telephonic testimony under oath. The bill provides that the penalty for not reporting accidents in fifteen minutes to the Office of Miners' Health, Safety and Training be modified to "up to \$100,000". The bill provides that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties and that assessed penalties may be modified by the state Board of Appeals based on a vote of two board members. The bill allows company input into state supervisory training and how it is to be scheduled during the year. The bill provides a method in case a miners' wireless emergency communication device fails.

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