

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Originating

Senate Bill 626

BY SENATOR SMITH

[Originating in the Committee on Energy, Industry,
and Mining; Reported on February 19, 2018]

1 A BILL to amend and reenact §22-3-9 and §22-3-20 of the Code of West Virginia, 1931, as
2 amended; to amend and reenact §22-11-7a of said code; to amend and reenact §22A-1-
3 36 of said code; to amend said code by adding thereto a new section, designated §22A-
4 1-42; to amend and reenact §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-
5 2-25, §22A-2-26, §22A-2-37, and §22A-2-55 of said code; and to amend and reenact
6 §22A-2A-1001 of said code, all relating generally to coal mining; establishing new notice
7 requirements regarding permit applications under the Surface Coal Mining and
8 Reclamation Act; clarifying when a certification is granted under the Water Pollution
9 Control Act; clarifying when a comprehensive mine safety program is subject to annual
10 review; establishing the use of MSHA-approved ground control plans for surface
11 operations; requiring automated external defibrillators be present on surface operations;
12 requiring the Director of the Office of Miners' Health, Safety, and Training to promulgate
13 emergency rules; providing that one MSHA-approved plan may be submitted to the
14 director in lieu of separate state-approved plans for ventilation, seals, roof control, belt air,
15 self-contained self-rescuer storage, tracking and communication, and emergency
16 shelters; requiring that the MSHA-approved comprehensive safety plan be forwarded to
17 the director in a timely manner; and permitting the use of diesel-powered generators in
18 underground mines under certain conditions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-9. Permit application requirements and contents.

- 1 (a) The surface mining permit application shall contain:
- 2 (1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the
3 property, surface, and mineral to be mined; (C) the holders of record of any leasehold interest in

4 the property; (D) any purchaser of record of the property under a real estate contract; (E) the
5 operator, if different from the applicant; and (F) if any of these are business entities other than a
6 single proprietor, the names and addresses of the principals, officers, and resident agent;

7 (2) The names and addresses of the owners of record of all surface and subsurface areas
8 contiguous to any part of the proposed permit area: *Provided*, That all residents living on property
9 contiguous to the proposed permit area shall be notified by the applicant, by registered or certified
10 mail, of such application on or before the first day of publication of the notice provided for in §22-
11 3-9(a)(6) of this code;

12 (3) A statement of any current surface mining permits held by the applicant in the state
13 and the permit number and each pending application;

14 (4) If the applicant is a partnership, corporation, association, or other business entity, the
15 following where applicable: The names and addresses of every officer, partner, resident agent,
16 director or person performing a function similar to a director, together with the names and
17 addresses of any person owning of record 10 percent or more of any class of voting stock of the
18 applicant; and a list of all names under which the applicant, officer, director, partner, or principal
19 shareholder previously operated a surface mining operation in the United States within the five-
20 year period preceding the date of submission of the application;

21 (5) A statement of whether the applicant, or any officer, partner, director, principal
22 shareholder of the applicant, any subsidiary, affiliate, or persons controlled by or under common
23 control with the applicant, has ever been an officer, partner, director, or principal shareholder in a
24 company which has ever held a federal or state mining permit which in the five-year period prior
25 to the date of submission of the application has been permanently suspended or revoked or has
26 had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief
27 explanation of the facts involved;

28 (6) A copy of the applicant's advertisement to be published ~~in a newspaper of general~~
29 ~~circulation in the locality of the proposed permit area at least once a week for four successive~~

30 ~~weeks~~ on a form and in a manner prescribed by the secretary, which manner may be electronic.

31 The advertisement shall contain, in abbreviated form, the information required by this section
32 including the ownership and map of the tract location and boundaries of the proposed site so that
33 the proposed operation is readily locatable by local residents, the location of the office of the
34 ~~division~~ department where the application is available for public inspection, and stating that written
35 protests will be accepted by the ~~director~~ secretary until a certain date which is at least 30 days
36 after the last publication of the applicant's advertisement;

37 (7) A description of the type and method of surface mining operation that exists or is
38 proposed, the engineering techniques used or proposed, and the equipment used or proposed to
39 be used;

40 (8) The anticipated starting and termination dates of each phase of the surface mining
41 operation and the number of acres of land to be affected;

42 (9) A description of the legal documents upon which the applicant's legal right to enter and
43 conduct surface mining operations on the proposed permit area is based and whether that right
44 is the subject of pending court litigation: *Provided*, That nothing in this article may be construed
45 as vesting in the ~~director~~ secretary the jurisdiction to adjudicate property-rights disputes;

46 (10) The name of the watershed and location of the surface stream or tributary into which
47 surface and pit drainage will be discharged;

48 (11) A determination of the probable hydrologic consequences of the mining and
49 reclamation operations, both on and off the mine site, with respect to the hydrologic regime,
50 quantity and quality of water in surface and groundwater systems, including the dissolved and
51 suspended solids under seasonal flow conditions and the collection of sufficient data for the mine
52 site and surrounding areas so that an assessment can be made by the ~~director~~ secretary of the
53 probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area,
54 and particularly upon water availability: *Provided*, That this determination is not required until ~~such~~
55 the time as hydrologic information on the general area prior to mining is made available from an

56 appropriate federal or state agency or, if existing and in the possession of the applicant, from the
57 applicant: *Provided, however,* That the permit application shall not be approved until the
58 information is available and is incorporated into the application;

59 (12) Accurate maps to an appropriate scale clearly showing: (A) The land to be affected
60 as of the date of application; (B) the area of land within the permit area upon which the applicant
61 has the legal right to enter and conduct surface mining operations; and (C) all types of information
62 set forth on enlarged topographical maps of the United States geological survey of a scale of
63 1:24,000 or larger, including all man-made features and significant known archaeological sites
64 existing on the date of application. In addition to other things specified by the ~~director~~ secretary,
65 the map shall show the boundary lines and names of present owners of record of all surface areas
66 abutting the proposed permit area and the location of all structures within 1,000 feet of the
67 proposed permit area;

68 (13) Cross-section maps or plans of the proposed affected area, including the actual area
69 to be mined, prepared by, or under the direction of, and certified by a person approved by the
70 ~~director~~ secretary, showing pertinent elevation and location of test borings or core samplings,
71 where required by the ~~director~~ secretary, and depicting the following information: (A) The nature
72 and depth of the various strata or overburden; (B) the location of subsurface water, if encountered,
73 and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be
74 mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all
75 mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be
76 affected; (F) existing or previous surface mining limits; (G) the location and extent of known
77 workings of any underground mines, including mine openings to the surface; (H) the location of
78 any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil,
79 waste, or refuse areas and topsoil preservation areas; (K) the location of all impoundments for
80 waste or erosion control; (L) any settling or water treatment facility or drainage system; (M)
81 constructed or natural drainways and the location of any discharges to any surface body of water

82 on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate
83 cross sections of the anticipated final surface configuration that will be achieved pursuant to the
84 operator's proposed reclamation plan;

85 (14) A statement of the result of test borings or core samples from the permit area,
86 including: (A) Logs of the drill holes; (B) the thickness of the coal seam to be mined and analysis
87 of the chemical and physical properties of the coal; (C) the sulfur content of any coal seam; (D)
88 chemical analysis of potentially acid or toxic forming sections of the overburden; and (E) chemical
89 analysis of the stratum lying immediately underneath the coal to be mined: *Provided*, That the
90 provisions of this subdivision may be waived by the ~~director~~ secretary with respect to the specific
91 application by a written determination that such requirements are unnecessary;

92 (15) For those lands in the permit application which a reconnaissance inspection suggests
93 may be prime farmlands, a soil survey shall be made or obtained according to standards
94 established by the ~~secretary~~ Commissioner of Agriculture in order to confirm the exact location of
95 ~~such~~ the prime farmlands;

96 (16) A reclamation plan as presented in §22-3-10 of this code;

97 (17) Information pertaining to coal seams, test borings, core samplings, or soil samples as
98 required by this section shall be made available to any person with an interest who is or may be
99 adversely affected: *Provided*, That information which pertains only to the analysis of the chemical
100 and physical properties of the coal, except information regarding mineral or elemental content
101 which is potentially toxic to the environment, shall be kept confidential and not made a matter of
102 public record;

103 (18) When requested by the ~~director~~ secretary, the climatological factors that are peculiar
104 to the locality of the land to be affected, including the average seasonal precipitation, the average
105 direction and velocity of prevailing winds, and the seasonal temperature ranges; and

106 (19) Other information that may be required by rules reasonably necessary to effectuate
107 the purposes of this article.

108 (b) If the ~~director~~ secretary finds that the probable total annual production at all locations
109 of any coal surface mining operator will not exceed 300,000 tons, the determination of probable
110 hydrologic consequences including the engineering analyses and designs necessary as required
111 by this article or rules promulgated thereunder; the development of cross-section maps and plans
112 as required by this article or rules promulgated thereunder; the geologic drilling and statement of
113 results of test borings and core samplings as required by this article or rules promulgated
114 thereunder; preblast surveys required by this article or rules promulgated thereunder; the
115 collection of site-specific resource information and production of protection and enhancement
116 plans for fish and wildlife habitats and other environmental values required by this article or rules
117 promulgated thereunder; and the collection of archaeological and historical information required
118 by this article and rules promulgated thereunder and any other archaeological and historical
119 information required by the federal Department of the Interior and the preparation of plans that
120 may be necessitated thereby shall, upon the written request of the operator, be performed by a
121 qualified public or private laboratory designated by the ~~director~~ secretary and a reasonable cost
122 of the preparation of ~~such~~ the determination and statement shall be assumed by the ~~division~~
123 department from funds provided by the United States Department of the Interior pursuant to the
124 federal Surface Mining Control and Reclamation Act of 1977, as amended.

125 (c) Before the first publication of the applicant's advertisement as provided in this section,
126 each applicant for a surface mining permit shall file, except for that information pertaining to the
127 coal seam itself, a copy of the application for public inspection in the nearest office of the ~~division~~
128 department as specified in the applicant's advertisement.

129 (d) Each applicant for a permit shall be required to submit to the ~~director~~ secretary as a
130 part of the permit application a certificate issued by an insurance company authorized to do
131 business in this state covering the surface mining operation for which the permit is sought, or
132 evidence that the applicant has satisfied state self-insurance requirements. The policy shall
133 provide for personal injury and property damage protection in an amount adequate to compensate

134 any persons damaged as a result of surface coal mining and reclamation operations, including
135 use of explosives, and entitled to compensation under the applicable provisions of state law. The
136 policy shall be maintained in full force and effect during the terms of the permit or any renewal,
137 including the length of all reclamation operations.

138 (e) Each applicant for a surface mining permit shall submit to the ~~director~~ secretary as part
139 of the permit application a blasting plan where explosives are to be used, which shall outline the
140 procedures and standards by which the operator will meet the provisions of the blasting
141 performance standards.

142 (f) The applicant shall file, as part of the permit application, a schedule listing all notices
143 of violation, bond forfeitures, permit revocations, cessation orders, or permanent suspension
144 orders resulting from a violation of the federal Surface Mining Control and Reclamation Act of
145 1977, as amended, this article or any law or regulation of the United States or any department or
146 agency of any state pertaining to air or environmental protection received by the applicant in
147 connection with any surface mining operation during the three-year period prior to the date of
148 application, and indicating the final resolution of any notice of violation, forfeiture, revocation,
149 cessation, or permanent suspension.

150 (g) Within five working days of receipt of an application for a permit, the ~~director~~ secretary
151 shall notify the operator in writing, stating whether the application is administratively complete and
152 whether the operator's advertisement may be published. If the application is not administratively
153 complete, the ~~director~~ secretary shall state in writing why the application is not administratively
154 complete.

§22-3-20. Public notice; written objections; public hearings; informal conferences.

1 (a) At the time of submission of an application for a surface mining permit or a significant
2 revision of an existing permit pursuant to the provisions of this article, the applicant shall submit
3 to the department a copy of the required advertisement for public notice on a form and in a manner
4 prescribed by the secretary, which manner may be electronic. ~~At the time of submission, the~~

5 ~~applicant shall place the advertisement in a local newspaper of general circulation in the county~~
6 ~~of the proposed surface-mining operation at least once a week for four consecutive weeks.~~ The
7 secretary shall notify various appropriate federal and state agencies as well as local governmental
8 bodies, planning agencies, and sewage and water treatment authorities or water companies in
9 the locality in which the proposed surface mining operation will take place, notifying them of the
10 operator's intention to mine on a particularly described tract of land and indicating the application
11 number and where a copy of the proposed mining and reclamation plan may be inspected. These
12 local bodies, agencies, authorities, or companies may submit written comments within a
13 reasonable period established by the secretary on the mining application with respect to the effect
14 of the proposed operation on the environment which is within their area of responsibility. ~~Such~~
15 The comments shall be immediately transmitted by the secretary to the applicant and to the
16 appropriate office of the department. The secretary shall provide the name and address of each
17 applicant to the Commissioner of the Division of Labor who shall, within 15 days from receipt,
18 notify the secretary as to the applicant's compliance, if necessary, pursuant to §21-5-14 of this
19 code.

20 (b) Any person having an interest which is or may be adversely affected, or the officer or
21 head of any federal, state, or local governmental agency, has the right to file written objections to
22 the proposed initial or revised permit application for a surface mining operation with the secretary
23 within 30 days after the last publication of the advertisement required in §22-3-20(a) of this code.
24 ~~Such~~ The objections shall be immediately transmitted to the applicant by the secretary and shall
25 be made available to the public. If written objections are filed and an informal conference
26 requested within 30 days of the last publication of the above notice, the secretary shall then hold
27 a conference in the locality of the proposed mining within a reasonable time after the close of the
28 public comment period. Those requesting the conference shall be notified and the date, time, and
29 location of the informal conference shall also be advertised by the secretary ~~in a newspaper of~~
30 general circulation in the locality on a form and in a manner prescribed by the secretary, which

31 manner may be electronic, at least two weeks prior to the scheduled conference date. The
32 secretary may arrange with the applicant, upon request by any party to the conference
33 proceeding, access to the proposed mining area for the purpose of gathering information relevant
34 to the proceeding. An electronic or stenographic record shall be made of the conference
35 proceeding unless waived by all parties. The record shall be maintained and shall be accessible
36 to the parties at their respective expense until final release of the applicant's bond or other security
37 posted in lieu thereof. The secretary's authorized agent shall preside over the conference. In the
38 event all parties requesting the informal conference stipulate agreement prior to the conference
39 and withdraw their request, a conference need not be held.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; ~~effective date.~~

1 (a) Any applicant for the water quality certification that seeks certification of activities
2 covered by the United States Army Corps of Engineers permits issued in accordance with 33
3 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 ~~for use at or in conjunction with a surface coal~~
4 ~~mining operation as defined in section three, article three of this chapter, certification may be~~
5 ~~issued subject to the following conditions:~~ in accordance with the legislative rules entitled Rules
6 for Individual State Certification of Activities Requiring a Federal Permit, 47 C.S.R. 5A.

7 ~~(1) If the applicant's surface coal mining operation will not impact waters of the state~~
8 ~~designated as national resource waters and streams where trout naturally reproduce and will not~~
9 ~~impact wetlands of the state in a manner inconsistent with all applicable state or federal standards~~
10 ~~as the case may be, as required by the federal Clean Water Act, and if the watershed above the~~
11 ~~toe of the farthest downstream permanent structure authorized pursuant to the United States~~
12 ~~Army Corps of Engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts~~
13 ~~323 or 330 is less than two hundred fifty acres, then the director may issue a water quality~~
14 ~~certification pursuant to the requirements of this section. If the watershed above the toe of the~~
15 ~~farthest downstream permanent structure impacted is equal to or greater than two hundred fifty~~

16 ~~acres, the director shall require that mitigation be undertaken. Additionally, the director may~~
17 ~~require mitigation for temporary impacts to waters of the state as specified in subdivision (2) of~~
18 ~~this subsection.~~

19 ~~(2) If the watershed above the toe of the farthest downstream permanent structure~~
20 ~~authorized pursuant to the United States Army Corps of Engineers permits issued in accordance~~
21 ~~with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is greater than or equal to two hundred fifty~~
22 ~~acres and all other necessary requirements are met consistent with this section, the director shall~~
23 ~~further condition a water quality certification on a requirement that the applicant mitigate the~~
24 ~~expected water quality impacts under the following conditions:~~

25 ~~(A) The water quality certification may require mitigation at a ratio appropriate to the type~~
26 ~~of waters impacted, consistent with state or federal standards as required by the federal Clean~~
27 ~~Water Act, for the types and locations of waters impacted;~~

28 ~~(B) The Director may accept mitigation on the permitted area, mitigation off the permitted~~
29 ~~area, mitigation banking of waters of the state, or any combination thereof, or any other mitigation~~
30 ~~measure acceptable to the Director; and~~

31 ~~(C) The Director shall provide credit for any mitigation that is a required component of the~~
32 ~~permit issued by the United States Army Corps of Engineers pursuant to 33 U.S.C. §1344 to the~~
33 ~~extent that it satisfies required mitigation pursuant to this section.~~

34 ~~(D) Upon completion of the work required by an agreement to conduct operations~~
35 ~~authorized by this subsection the surface coal mining operation shall obtain a certification from a~~
36 ~~registered professional engineer that all mitigation work specified in the agreement has been~~
37 ~~completed in accordance with the conditions of the water quality certification. The director shall~~
38 ~~promptly review the certification and provide to the surface coal mining operation with notice that~~
39 ~~all mitigation work has been successfully completed, or that further mitigation work is necessary~~
40 ~~to meet the conditions imposed by the water quality certification. The mitigation amount may not~~
41 ~~exceed \$200,000 per acre of stream disturbed above the toe of the farthest downstream~~

42 permanent structure. ~~Those moneys shall be deposited in the stream restoration fund under the~~
43 ~~jurisdiction of the Division of Environmental Protection and any expenditures from this fund after~~
44 ~~June 30, 1998, shall not be authorized from collections but shall only be authorized by~~
45 ~~appropriation by the Legislature. Additionally, the expenditures are only authorized in those~~
46 ~~counties where the activity leading to the mitigation occurred or in those counties adjacent to the~~
47 ~~counties where the activity leading to the mitigation occurred. The Director shall by December 31,~~
48 ~~of each year provide a report to the Joint Committee on Government and Finance on receipts and~~
49 ~~expenditures from the stream restoration fund, the number of acreage reclaimed by the Division~~
50 ~~through the use of these funds and the effectiveness of achieving stream restoration through the~~
51 ~~payment of the mitigation amounts into the fund in lieu of reclamation by the certificate holder.~~

52 ~~(3) The Director shall confer with representatives of the surface coal mining industry and~~
53 ~~representatives of environmental organizations with an interest in water quality in developing a~~
54 ~~manual of approval options for mitigation on permitted areas, mitigation off permitted areas and~~
55 ~~mitigation involving banking of waters of the state.~~

56 ~~(4) (1) The proposed surface coal mining operation activity shall comply with all applicable~~
57 ~~state and federal laws, rules, and regulations.~~

58 ~~(5) (2) The ~~director~~ secretary shall propose rules for legislative approval in accordance~~
59 ~~with §29A-3-1 *et seq.* of this code, for the purpose of implementing the provisions of this section~~
60 ~~which rules shall include, but not be limited to, the following:~~

61 ~~(A) Establishing all necessary operational and performance requirements for ~~an operator~~~~
62 ~~a person undertaking activities covered by this section;~~

63 ~~(B) Modifying the provisions of this section, when necessary and appropriate to bring the~~
64 ~~provisions of this section into compliance with state or federal law or regulation; and~~

65 ~~(C) Establishing the specific operational requirements for ~~mining operations~~ the activity~~
66 ~~consistent with this section appropriate to protect the waters of this state during and following~~
67 ~~mining operations the activity.~~

68 (b) The Joint Committee on Government and Finance may undertake or facilitate a study
69 of the impact of mountaintop mining and valley fills upon the State of West Virginia.

70 (1) To facilitate the study, the Joint Committee on Government and Finance is further
71 authorized to coordinate with and seek funding from appropriate federal agencies to facilitate the
72 study including, but not limited to: The federal Environmental Protection Agency, Army Corps of
73 Engineers, Office of Surface Mining Reclamation and Enforcement, and ~~the~~ Fish and Wildlife
74 Service.

75 (2) In order to facilitate the research, the Joint Committee on Government and Finance
76 shall appoint a council to coordinate and direct the research. The composition of the council shall
77 be determined by the joint committee, but shall include representatives from the various interested
78 parties as determined solely by the joint committee.

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

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

§22A-1-36. Mandatory safety programs; penalties.

1 (a) The director, in consultation with the state Board of Coal Mine Health and Safety, shall
2 promulgate rules in accordance with §29A-1-1 *et seq.* of this code, detailing the requirements for
3 mine safety programs to be established by coal operators, as provided in §22A-1-36(b) of this
4 code. The rules may require different types of safety programs to be developed, depending upon
5 the output of the particular mine, the number of employees of the particular mine, the location of
6 the particular mine, the physical features of the particular mine, or any other factor deemed
7 relevant by the director.

8 (b) Within six months of the date when the rules required in §22A-1-36(a) of this code
9 become final, each operator shall develop and submit to the director a comprehensive mine safety
10 program for each mine, in accordance with such rules. Each employee of the mine shall be

11 afforded an opportunity to review and submit comments to the director regarding the modification
12 or revision of such program, prior to submission of such program to the director. Upon submission
13 of such program the director has ~~ninety~~ 90 days to approve, reject, or modify such program. If the
14 program is rejected, the director shall give the operator a reasonable time to correct and resubmit
15 such program. ~~Each program which is approved shall be reviewed, at least annually, by the~~
16 ~~director.~~ An up-to-date copy of each program shall be placed on file in the office and further
17 copies shall be made available to the miners of each mine and their representatives. Each
18 operator shall undertake all efforts necessary to assure total compliance with the appropriate
19 safety program at each mine and shall fully implement all portions of such program. Once
20 approved, a comprehensive mine safety program shall not be subject to annual review by the
21 director: *Provided*, That a program may be subject to annual review by the director after a fatality
22 or serious accident involving bodily harm has occurred, or, if the operator has shown a pattern of
23 mine safety violations as defined by §22A-1-15(2) of this code, such a finding shall also warrant
24 annual review by the director. The director shall promulgate emergency rules in order to comply
25 with this subsection.

26 (c) Any person violating any provision of this section is guilty of a misdemeanor, and, upon
27 conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or imprisoned in the
28 county jail for not more than six months, or both fined and imprisoned.

§22A-1-42. Surface ground control plan; automated external defibrillator.

1 (a) The MSHA-approved surface ground control plan shall serve as the state-approved
2 plan, and the operator, upon approval by MSHA, shall provide a copy of the MSHA-approved
3 surface ground control plan to the director.

4 (b) Automated external defibrillators (AEDs) shall be required on all surface mining
5 operations. The director shall promulgate emergency rules in order to comply with this section of
6 code, giving special consideration to the climate sensitive nature of AEDs.

ARTICLE 2. UNDERGROUND MINES.

VENTILATION

§22A-2-2. Submittal of detailed ventilation plan to director.

1 (a) A mine operator shall submit a detailed ventilation plan and any addenda to the
2 director for review and comment. The mine operator shall review the plan with the director and
3 address concerns to the extent practicable. The operator shall deliver to the miners'
4 representative employed by the operator at the mine, if any, a copy of the operator's proposed
5 annual ventilation plan at least 10 days prior to the date of submission. The miners' representative,
6 if any, shall be afforded the opportunity to submit written comments to the operator prior to such
7 submission; in addition, the miners' representative, if any, may submit written comments to the
8 director. The director shall submit any concern that is not addressed to the United States
9 Department of Labor - Mine Safety and Health Administration (MSHA) through comments to the
10 plan. The mine operator shall provide a copy of the plan to the director 10 days prior to the
11 submittal of the plan to MSHA. The MSHA-approved plan shall serve as the state-approved plan:
12 Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as
13 set forth in state code or code of state rules.

14 (b) The operator shall give the director a copy of the MSHA-approved plan and any
15 addenda as soon as the operator receives the approval.

16 (c) In the event of an unforeseen situation requiring immediate action on a plan revision,
17 the operator shall submit the proposed revision to the director and the miners' representative, if
18 any, employed by the operator at the mine when the proposed revision is submitted to MSHA.
19 The director shall work with the operator to review and comment on the proposed plan revision to
20 MSHA as quickly as possible.

21 (d) Upon approval by MSHA, the plan is enforceable by the director. The approved plan
22 and all revisions and addenda thereto shall be posted on the mine bulletin board and made
23 available for inspection by the miners at that mine for the period of time that they are in effect.

§22A-2-3. Fans.

1 (a) The ventilation of mines, the systems for which extend for more than 200 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 15 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 15
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 15 feet from the nearest side of the mine opening,
20 equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from
21 an independent power circuit. In lieu of the requirements for the location of fans and pressure-
22 relief facilities, a fan may be directly in front of, or over a mine opening: *Provided*, That such
23 opening is not in direct line with possible forces coming out of the mine if an explosion occurs:
24 *Provided, however*, That there is another opening having a weak wall stopping or explosion doors
25 that would be in direct line with forces coming out of the mine. All main fans shall be provided with

26 pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and
27 machinery connected therewith by a certified electrician and a record kept of the same in a book
28 prescribed for this purpose or by adequate facilities provided to permanently record the
29 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.

49 (h) The MSHA-approved plan relating to fans shall serve as the state-approved plan:
50 *Provided*, That the MSHA-approved plan shall comply with all provisions of state mining law as
51 set forth in state code or code of state rules.

§22A-2-4. Ventilation of mines in general.

1 (a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or
2 drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines
3 the quantity of air passing through the last open crosscut between the intake and return in any
4 pair or set of entries shall be not less than 9,000 cubic feet of air per minute and as much more
5 as is necessary to dilute and render harmless and carry away flammable and harmful gases. All
6 working faces in a working section between the intake and return airway entries shall be ventilated
7 with a minimum quantity of 3,000 cubic feet of air per minute and as much more as is necessary
8 to dilute and render harmless and carry away flammable and harmful gases. The quantity of air
9 reaching the last crosscut in pillar sections may be less than 9,000 cubic feet of air per minute if
10 at least 9,000 cubic feet of air per minute is being delivered to the intake of the pillar line. The air
11 current shall under any conditions have a sufficient volume and velocity to reduce and carry away
12 smoke from blasting and any flammable or harmful gases. The operator shall provide to the safety
13 committee access to anonometers and smoke tubes while performing their duties. All active
14 underground working places in a mine shall be ventilated by a current of air containing not less
15 than 19 and five-tenths percent of oxygen, not more than five-tenths percent of carbon dioxide,
16 and no harmful quantities of other noxious or poisonous gases.

17 (b) Airflow shall be maintained in all intake and return air courses of a mine and, where
18 multiple fans are used, neutral areas created by pressure equalization between main fans shall
19 not be permitted. Production activities in working faces shall cease while tubing, line brattice or
20 other ventilation devices are being installed inby the machine operator.

21 (c) Properly installed and adequately maintained line brattice or other approved devices
22 shall be continuously used from the last open crosscut of an entry or room of each working section
23 to provide adequate ventilation to the working faces for the miners and to remove flammable,
24 explosive and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise,
25 such line brattice or other devices shall be repaired immediately.

26 (d) Brattice cloth used underground shall be of flame-resistant material. The space
27 between the line brattice or other approved device and the rib shall be large enough to permit the
28 flow of a sufficient volume and velocity of air to keep the working face clear of flammable,
29 explosive and noxious gases, dust, and explosive fumes.

30 (e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a
31 separate split of air: *Provided*, That in areas already under development and in areas where
32 physical conditions prevent compliance with this provision, the director may grant temporary relief
33 from compliance until such time as physical conditions make compliance possible. The quantity
34 of air reaching the last crosscut shall not be less than 9,000 cubic feet of air per minute and shall
35 under any condition have sufficient volume and velocity to reduce and carry away smoke and
36 flammable or harmful gases from each working face in the section.

37 (f) As working places advance, crosscuts for air shall be made not more than 105 feet
38 apart. Where necessary to render harmless and carry away noxious or flammable gases, line
39 brattice or other approved methods of ventilation shall be used so as to properly ventilate the
40 face. All crosscuts between the main intake and return airways not required for passage of air
41 and equipment shall be closed with stoppings substantially built with incombustible or fire-
42 resistant material so as to keep working places well ventilated. In mines where it becomes
43 necessary to provide larger pillars for adequate roof support, working places shall not be driven
44 more than 200 feet without providing a connection that will allow the free flow of air currents. In
45 such cases, a minimum of 12,000 cubic feet of air a minute shall be delivered to the last open
46 crosscut and as much more as is necessary to dilute and render harmless and carry away
47 flammable and noxious gases.

48 (g) In special instances for the construction of sidetracks, haulageways, airways, or
49 openings in shaft bottom or slope bottom layouts where the size and strength of pillars is
50 important, the director may issue a permit approving greater distances. The permit shall specify
51 the conditions under which such places may be driven.

52 (h) In all mines a system of bleeder openings on air courses, designed to provide positive
53 movement of air through and/or around abandoned or caved areas, sufficient to prevent
54 dangerous accumulation of gas in such areas, and to minimize the effect of variations in
55 atmospheric pressure shall be made a part of pillar recovery plans projected after July 1, 1971.

56 (i) If a bleeder return is closed as a result of roof falls or water during pillar recovery
57 operations, pillar operations may continue without reopening the bleeder return if at least 20,000
58 cubic feet of air per minute is delivered to the intake of the pillar line.

59 (j) No operator or mine foreman shall permit any person to work where he or she is unable
60 to maintain the quantity and quality of the air current as heretofore required: *Provided*, That such
61 provisions shall not prohibit the employment of men to make place of employment safe.

62 (k) The ventilation of any mine shall be so arranged by means of air locks, overcasts or
63 undercasts, that the use of doors on passageways where men or equipment travel may be kept
64 to a minimum. Where doors are used in a mine, they shall be erected in pairs so as to provide a
65 ventilated air lock unless the doors are operated mechanically.

66 (l) A crosscut shall be provided at or near the face of each entry or room before such
67 places are abandoned.

68 (m) Overcasts or undercasts shall be constructed of incombustible material and
69 maintained in good condition.

70 (n) After January 1, 1987, all run through check curtains shall be substantially constructed
71 of translucent material, except that where belting material has to be used because of high velocity,
72 there shall be a window of translucent material at least 30 inches square or one-half the height of
73 the coal seam, whichever is less.

74 (o) The MSHA-approved plan shall serve as the state-approved plan: *Provided*, That the
75 MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code
76 or code of state rules.

§22A-2-4a. Use of belt air.

1 (a) *Definitions.* — For purposes of this section, “belt air” means the use of a belt conveyor
2 entry as an intake air course to ventilate the working sections of a mine or areas where
3 mechanized mining equipment is being installed or removed.

4 (b) Upon the effective date of the enactment of this section, belt air may not be used to
5 ventilate the working sections of a mine or areas where mechanized mining equipment is being
6 installed or removed: *Provided*, That if an alternative method of ventilation will at all times
7 guarantee no less than the same measure of protection afforded the miners of an underground
8 mine by the foregoing or if the application of the foregoing to an underground mine will result in a
9 diminution of safety to the miners in the mine, the director may approve the interim use of belt air
10 pursuant to the following: The MSHA-approved plan for use of belt air shall serve as the state-
11 approved plan: *Provided*, That the MSHA-approved plan shall contain all provisions of state
12 mining law as set forth in state code or code of state rules.

13 ~~(1) For those operators using belt air pursuant to a ventilation plan approved by the director~~
14 ~~in accordance with the provisions of section two of this article prior to the effective date of the~~
15 ~~enactment of this section, the director shall cause an inspection to be made of the mine ventilation~~
16 ~~system and ventilation equipment. The director may allow the continued use of belt air in that~~
17 ~~mine if he or she determines that: (i) The use meets the minimum requirements of 30 CFR~~
18 ~~75.350(b); and (ii) the use, as set forth in the ventilation plan and as inspected, will at all times~~
19 ~~guarantee no less than the same measure of protection afforded the miners of the mine if belt air~~
20 ~~were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of~~
21 ~~safety to the miners in the mine.~~

22 ~~(2) For those operators submitting on or after the effective date of the enactment of this~~
23 ~~section, a ventilation plan proposing the use of belt air to the director pursuant to section two of~~
24 ~~this article, the director shall immediately upon receipt of the plan give notice of the plan to the~~
25 ~~representative of the miners in that mine and cause any investigation to be made that the director~~
26 ~~considers appropriate: *Provided*, That the investigation shall include a review of any comments~~

27 ~~on the plan submitted by the representative of miners in the mine. Upon receiving the report of~~
28 ~~the investigation, the director shall make findings of fact and issue a written decision, incorporating~~
29 ~~in the decision his or her findings and an order approving or denying the use of belt air pursuant~~
30 ~~to the terms of the ventilation plan. To approve the use of belt air pursuant to a ventilation plan,~~
31 ~~the director shall, at a minimum, determine that: (i) The operator's proposed use of belt air meets~~
32 ~~the minimum requirements of 30 CFR 75.350(b); and (ii) approval of the proposed use of belt air~~
33 ~~will at all times guarantee no less than the same measure of protection afforded the miners of the~~
34 ~~mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in~~
35 ~~a diminution of safety to the miners in the mine.~~

36 ~~(3) The interim use of belt air shall be accurately reflected in operator's plan of ventilation,~~
37 ~~as approved by the director in accordance with the provisions of section two of this article.~~

38 ~~(c) Upon completion of the independent scientific and engineering review concerning the~~
39 ~~use of belt air and the composition and fire retardant properties of belt materials in underground~~
40 ~~coal mining by the technical study panel created pursuant to the provisions of 30 U. S. C. §963~~
41 ~~and the Secretary of the United States Department of Labor's corresponding report to Congress~~
42 ~~pursuant to the review, the Board of Coal Mine Health and Safety shall, within thirty days of the~~
43 ~~Secretary of Labor's report to Congress, provide the Governor with its recommendations, if any,~~
44 ~~for the enactment, repeal or amendment of any statute or rule which would enhance the safe~~
45 ~~ventilation of underground mines and the health and safety of miners: *Provided*, That at least sixty~~
46 ~~days after the Secretary of Labor's report to Congress, the Board of Coal Mine Health, Safety and~~
47 ~~Training shall promulgate emergency rules regulating the use of belt air in light of that report:~~
48 ~~*Provided, however*, That the provisions of subsections (a) and (b) of this section shall expire and~~
49 ~~no longer have any force and effect upon the filing of such emergency rules.~~

§22A-2-5. Unused and abandoned parts of mine.

1 (a) In any mine, all workings which are abandoned after July 1, 1971, shall be sealed or
2 ventilated. If the workings are sealed, the sealing shall be done with incombustible material in a

3 manner prescribed by the director and one or more of the seals of every sealed area shall be
4 fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic
5 pressure behind the seals. For the purpose of this section, working within a panel shall not be
6 considered to be abandoned until the panel is abandoned.

7 (b) Air that has passed through an abandoned area or an area which is inaccessible or
8 unsafe for inspection shall not be used to ventilate any working place in any working mine, unless
9 permission is granted by the director with unanimous agreement of the technical and mine safety
10 review committee. Air that has been used to ventilate seals shall not be used to ventilate any
11 working place in any working mine. Air which has been used to ventilate an area from which the
12 pillars have been removed shall not be used to ventilate any working place in a mine, except that
13 the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate
14 enough advancing working places immediately adjacent to the line of retreat to maintain an
15 orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or
16 permanent, are reopened, the director shall be notified.

17 (c) On or after the effective date of the amendment and reenactment of this section during
18 the 2007 regular session of the Legislature, a professional engineer registered with the Board of
19 Registration for Professional Engineers pursuant to §30-13-1 *et seq.* of this code shall certify the
20 design of all new seals as meeting the criteria established by the director. Every seal design shall
21 have the professional engineer's certificate and signature, in addition to his or her seal, in the
22 following form:

23 "I the undersigned, do hereby certify that this seal design is, to the best of my knowledge,
24 in accordance with all applicable requirements under state and federal law, rules and regulations.

25 _____ P.E."

26 (d) On or after the effective date of the amendment and reenactment of this section during
27 the 2007 regular session of the Legislature, the director shall approve the construction of all new
28 seals in accordance with rules authorized in this section. The construction shall also be:

29 (1) Certified by the mine foreman-fire boss of the mine as being in accordance with the
30 design certified by a professional engineer pursuant to 22A-2-5(c) of this code; and

31 (2) (A) Constructed of solid concrete blocks and in accordance with the other provisions
32 of 30 CFR 75.335(a)(1); or

33 (B) Constructed in a manner that the director has approved as having the capability to
34 withstand pressure equal to or greater than a seal constructed in accordance with the provisions
35 of 30 CFR 75.335(a)(1).

36 (e) On or after the effective date of the amendment and reenactment of this section during
37 the 2007 regular session of the Legislature, the operator shall inspect the physical condition of all
38 seals and measure the atmosphere behind all seals in accordance with protocols developed by
39 the Board of Coal Mine Health and Safety, pursuant to rules authorized in this section and
40 consistent with a mine-specific atmospheric measurement plan submitted to and approved by the
41 director. The atmospheric measurements shall include, but not be limited to, the methane and
42 oxygen concentrations and the barometric pressure. The atmospheric measurements also shall
43 be recorded with ink or indelible pencil in a book kept for that purpose on the surface at a location
44 designated by the operator. The protocols shall specify appropriate methods for inspecting the
45 physical condition of seals, measuring the mine atmosphere in sealed workings, and inerting the
46 mine atmosphere behind the seals, where appropriate.

47 (f) (1) In all mines containing workings sealed using seals constructed in accordance with
48 the provisions of 30 CFR 75.335(a)(2) which are constructed: (A) Of cementitious foam blocks;
49 or (B) with methods or materials that the Board of Coal Mine Health and Safety determines do
50 not provide an adequate level of protection to miners, the operator shall, pursuant to a plan
51 submitted to and approved by the director, remediate the seals by either enhancing the seals or
52 constructing new seals in place of or immediately outby the seals. After being remediated, all
53 seals must have the capability to withstand pressure equal to or greater than a seal constructed
54 in accordance with the provisions of 30 CFR 75.335(a)(1). The design, development, submission

55 and implementation of the remediation plan is the responsibility of the operator of each mine.
56 Pursuant to rules authorized in this section, the Board of Coal Mine Health and Safety shall specify
57 appropriate methods of enhancing the seals.

58 (2) Notwithstanding any provision of this code to the contrary, if the director determines
59 that any seal described in §22A-2-5(f)(1) of this code is incapable of being remediated in a safe
60 and effective manner, the mine foreman-fire boss shall, at least once every 24 hours, inspect the
61 physical condition of the seal and measure the atmosphere behind the seal. The daily inspections
62 and measurements shall otherwise be performed in accordance with the protocols and
63 atmospheric measurement plan established pursuant to §22A-2-5(e) of this code.

64 (g) Upon the effective date of the amendment and reenactment of this section during the
65 2007 regular session of the Legislature, second mining of lower coal on retreat, also known as
66 bottom mining, shall not be permitted in workings that will be sealed unless an operator has first
67 submitted and received approval by the director of a remediation plan that sets forth measures
68 that will be taken to mitigate the effects of remnant ramps and other conditions created by bottom
69 mining on retreat which can increase the force of explosions originating in and emanating out of
70 workings that have been bottom mined. The director shall require that certification in a manner
71 similar to that set forth in §22A-2-5(c) of this code shall be obtained by the operator from a
72 professional engineer and the mine foreman-fire boss for the plan design and plan
73 implementation, respectively.

74 (h) No later than 60 days after the effective date of the amendment and reenactment of
75 this section during the 2007 regular session of the Legislature, the Board of Coal Mine Health and
76 Safety shall develop and promulgate rules pursuant to the provisions of §22A-6-4 of this code to
77 implement and enforce the provisions of this section.

78 (i) Upon the issuance of mandatory health and safety standards relating to the sealing of
79 abandoned areas in underground coal mines by the Secretary of the United States Department
80 of Labor pursuant to 30 U. S. C. §811, as amended by section 10 of the federal Mine Improvement

81 and New Emergency Response Act of 2006, the director, working in consultation with the Board
82 of Coal Mine Health and Safety, shall, within 30 days, provide the Governor with his or her
83 recommendations, if any, for the enactment, repeal, or amendment of any statute or rules which
84 would enhance the safe sealing of abandoned mine workings and the health and safety of miners.

85 (j) The MSHA-approved plan for seals shall serve as the state-approved plan: *Provided,*
86 That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in
87 this code or code of state rules.

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. The MSHA-approved roof control plan shall serve as the state-approved
15 plan: *Provided,* That the MSHA-approved plan shall comply with all provisions of state mining law
16 as set forth in this code or code of state rules.

17 (b) The operator, in accordance with the approved plan, shall provide at or near each
18 working face and at such other locations in the coal mine, as the director may prescribe, an ample
19 supply of suitable materials of proper size with which to secure the roof thereof of all working
20 places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect
21 the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes
22 are being drilled, roof bolts are being installed, and in such other circumstances as may be
23 appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or
24 supported. When overhangs or brows occur along rib lines they shall be promptly removed. All
25 sections shall be maintained as near as possible on center. Except in the case of recovery work,
26 supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set
27 temporary supports on a working section without the direct immediate supervision of a certified
28 miner.

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

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

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

42 (f) The immediate supervisor of each miner who will be engaged in any activity involving

43 the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those
44 parts of the roof control plan relevant to the type of mining and roof control to be pursued by such
45 miner.

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 §22A-1-22 of this code. Upon a finding of discrimination
49 by the appeals board pursuant to §22A-1-22(b) of this code, the miner shall be awarded by the
50 appeals board all reliefs available pursuant to §22A-1-22(b) and §22A-1-22(c) of this code.

§22A-2-26. Roof support; specific requirements.

1 (a) *Generally.* — The method of mining followed in any coal mine ~~shall~~ may not expose
2 the miner to unusual dangers from roof falls-, and the MSHA-approved plan shall serve as the
3 state-approved plan: *Provided, That the MSHA-approved plan shall comply with all provisions of*
4 state mining law as set forth in this code or code of state rules.

5 (b) *Roadways, intersections, and arches.* — The width of roadways shall not exceed 16
6 feet unless additional support is added cross sectional. During the development of intersections,
7 the roof between the tangents of the arches in the entry or room shall be supported with artificial
8 roof supports prior to the development of such intersections. All areas where the arch is broken
9 shall be considered as having unsupported roof and such roof should have artificial roof supports
10 installed prior to any other work being performed in the area.

11 (c) *Examinations and corrections.* — Where miners are exposed to danger from falls of
12 roof, face and ribs, the operator shall examine and test the roof, face and ribs before any work or
13 machine is started, and as frequently thereafter as may be necessary to insure safety. When
14 dangerous conditions are found, they shall be corrected immediately. A probe or probes for
15 methane detectors shall be provided on each working section other than longwall sections and
16 sections mined solely with continuous miners with integral roof bolters.

17 (d) *Roof bolt recovery.* — Roof bolts shall not be recovered where complete extraction of

18 pillars is attempted, where adjacent to clay veins or at the locations of other irregularities, whether
19 natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall
20 be conducted only in accordance with methods prescribed in the approved roof control plan, and
21 shall be conducted by experienced miners and only where adequate temporary support is
22 provided.

TRANSPORTATION

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

1 (a) Use of haulage roads and equipment along with signals and inspection shall meet
2 standards established by the U. S. Mine Safety and Health Administration. The roadbed, rails,
3 joints, switches, frogs, and other elements of all haulage roads shall be constructed, installed,
4 and maintained in a manner consistent with speed and type of haulage operations being
5 conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track
6 shall be maintained to within 1,500 feet of the nearest working face, except that when any section
7 is fully developed and being prepared for retreating, then the track shall be maintained to within
8 1,500 feet of that retreat mining section if a rubber tired vehicle is readily available: *Provided*, That
9 in any case where such track is maintained to within a distance of more than 500 feet and not
10 more than 1,500 feet of the nearest working face, a self-propelled, rubber-tired vehicle capable of
11 transporting an injured worker shall be readily available.

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

15 (c) Haulage roads on entries shall have a continuous, unobstructed clearance of at least
16 24 inches from the farthest projection of any moving equipment on the clearance side.

17 (d) On haulage roads where trolley lines are used, the clearance shall be on the side

18 opposite the trolley lines.

19 (e) On the trolley wire or “tight” side, there shall be at least 12 inches of clearance from
20 the farthest projection of any moving equipment.

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

23 (g) The clearance space on all haulage roads shall be kept free of loose rock, coal,
24 supplies, or other material: *Provided*, That not more than 24 inches need be kept free of such
25 obstructions.

26 (h) Ample clearance shall be provided at all points where supplies are loaded or unloaded
27 along haulage roads or conveyors which in no event shall be less than 24 inches.

28 (i) Shelter holes shall be provided along haulage entries. Such shelter holes shall be
29 spaced not more than 105 feet apart, except when variances are authorized by the director with
30 unanimous agreement of the Mine Safety and Technical Review Committee. Shelter holes shall
31 be on the side of the entry opposite the trolley wire except that shelter holes may be on the trolley
32 wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by
33 the director. The MSHA-approved plan shall serve as the state-approved plan governing the use
34 of shelters: *Provided*, That the MSHA-approved plan shall comply with all other provisions of state
35 mining law as set forth in state code or code of state rules.

36 (j) Shelter holes shall be at least five feet in depth, not more than four feet in width and
37 as high as the traveling space, unless the director with unanimous agreement of the Mine Safety
38 and Technical Review Committee grants a waiver. Room necks and crosscuts may be used as
39 shelter-holes even though their width exceeds four feet.

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

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

43 (m) No steam locomotive shall be used in mines where miners are actually employed in

44 the extraction of coal, but this shall not prevent operation of a steam locomotive through any
45 tunnel haulway or part of a mine that is not in actual operation and producing coal.

46 (n) Underground equipment powered by internal combustion engines using petroleum
47 products, alcohol, or any other compound shall not be used in a coal mine, unless the equipment
48 is diesel-powered equipment approved, operated and maintained as provided in §22A-2-1 *et seq.*
49 of this code.

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

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

59 (q) The pushing of trips, except for switching purposes, is prohibited on main haulage
60 roads: *Provided*, That nothing herein shall prohibit the use of a pusher locomotive to assist the
61 locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and
62 cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip
63 or train of cars when in motion: *Provided, however*, That trip lights need not be used on cars being
64 shifted to and from loading machines, or on cars being handled at loading heads during gathering
65 operations at working faces. No person, other than the motorman and brakeman, should ride on
66 a locomotive unless authorized by the mine foreman, and then only when safe riding facilities are
67 provided. An empty car or cars shall be used to provide a safe distance between the locomotive
68 and the material car when rail, pipe, or long timbers are being hauled. A safe clearance shall be
69 maintained between the end car or trips placed on side tracks and moving traffic. On haulage

70 roads the clearance point shall be marked with an approved device.

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

75 (s) Flying or running switches and riding on the front bumper of a car or locomotive are
76 prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not
77 over 80 feet), or when going up extremely steep grades and then only at slow speed. The operator
78 of a shuttle car shall face in the direction of travel except during the loading operation when he or
79 she shall face the loading machine.

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

82 (2) In any coal mine where more than 350 tons of coal are produced on any shift in each
83 24-hour period, a dispatcher shall be on duty when there are movements of track equipment
84 underground, including time when there is no production of coal. Such traffic shall move only at
85 the direction of the dispatcher.

86 (3) The dispatcher's only duty shall be to direct traffic: *Provided*, That the dispatcher's
87 duties may also include those of the responsible person required by §22A-2-42 of this code:
88 *Provided, however*, That the dispatcher may perform other duties which do not interfere with his
89 or her dispatching responsibilities and do not require him or her to leave the dispatcher's station
90 except as approved by the Mine Safety and Technical Review Committee.

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

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

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

95 (v) A locomotive following another trip shall maintain a distance of at least 300 feet from

96 the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

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

100 (x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view
101 of the operator: *Provided*, That the addition of or use of sideboards on shuttle cars shall be
102 permitted if the shuttle car is equipped with cameras: *Provided, however*, That shuttle cars with
103 sideboards as manufactured by an equipment manufacturer shall be permitted to be used without
104 the use of cameras if permitted by the director.

105 (y) Mining equipment shall not be parked within 15 feet of a check curtain or fly curtain.

106 (z) All self-propelled track haulage equipment shall be equipped with an emergency stop
107 switch, self-centering valves, or other devices designed to de-energize the traction motor circuit
108 in the event of an emergency. All track-mounted trolley equipment shall be equipped with trolley
109 pole swing limiters or other means approved by the Mine Safety and Technical Review Committee
110 to restrict movement of the trolley pole when it is disengaged from the trolley wire. Battery
111 powered mobile equipment shall have the operating controls clearly marked to distinguish the
112 forward and reverse positions.

§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 48 inches in height as
11 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 §22A-2-55(f)(1) of this code, the operator shall also
21 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 §22A-2-55(i) of this code. A
26 luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED
27 SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs
28 shall be posted leading to each cache. Lifeline cords or other similar device, with reflective
29 material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the
30 surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or
31 other similar device to ensure operability.

32 (3) Any person ~~that~~ who, 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~~ is guilty
36 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not
37 less than one year nor more than 10 years, or fined not less than \$10,000 nor more than \$100,000,
38 or both imprisoned and fined.

39 (g) The MSHA-approved emergency response plan (ERP) shall serve as the state-
40 approved plan governing the storage of self-contained self-rescuers (SCSR): *Provided*, That the
41 MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code
42 or code of state rules: *Provided, however*, The operator's ERP shall include one additional SCSR
43 than is required by MSHA on the working section for each person present. The operator shall
44 provide at least three SCSRs, which shall include one on the working section, one additional in
45 storage, and one on the mantrip. Nothing in this subsection shall be construed to require a miner
46 to wear a one-hour SCSR if all other SCSRs are stored pursuant to this subsection. The director
47 may issue a special assessment pursuant to §22A-1-21 of this code for failure to comply with this
48 subsection.

49 ~~(g)~~(h)(1) A wireless emergency communication device approved by the director and
50 provided by the operator shall be worn by each person underground: *Provided*, That if a miner's
51 wireless emergency communications device shall malfunction or cease to operate then such
52 miner shall be assigned to be in sight or sound of a certified miner until such time an operating
53 device shall be delivered. The wireless emergency communication device shall, at a minimum,
54 be capable of receiving emergency communications from the surface at any location throughout
55 the mine. Each operator shall train each miner in the use of the device and provide refresher
56 training courses for all underground employees during each calendar year. The operator shall
57 install in or around the mine any and all equipment necessary to transmit emergency
58 communications from the surface to each wireless emergency communication device at any
59 location throughout the mine.

60 (2) Any person ~~that~~ who, without the authorization of the operator or the director, knowingly

61 removes or attempts to remove any wireless emergency communication device or related
62 equipment from the mine or mine site with the intent to permanently deprive the operator of the
63 device or equipment or knowingly tampers with or attempts to tamper with the device or equipment
64 ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
65 correctional facility for not less than one year nor more than 10 years, or fined not less than
66 \$10,000 nor more than \$100,000, or both imprisoned and fined.

67 ~~(h)~~(i)(1) A wireless tracking device approved by the director and provided by the operator
68 shall be worn by each person underground. In the event of an accident or other emergency, the
69 tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical
70 location of each person underground: *Provided*, That no person shall discharge or discriminate
71 against any miner based on information gathered by a wireless tracking device during
72 nonemergency monitoring. Each operator shall train each miner in the use of the device and
73 provide refresher training courses for all underground employees during each calendar year. The
74 operator shall install in or around the mine all equipment necessary to provide real-time
75 emergency monitoring of the physical location of each person underground.

76 (2) The MSHA-approved ERP shall serve as the state-approved plan: *Provided*, That the
77 MSHA-approved plan shall comply with all other provisions of state mining law as set forth in state
78 code or the code of state rules.

79 (3) ~~(2)~~ Any person ~~that~~ who, without the authorization of the operator or the director,
80 knowingly removes or attempts to remove any wireless tracking device or related equipment,
81 approved by the director, from a mine or mine site with the intent to permanently deprive the
82 operator of the device or equipment or knowingly tampers with or attempts to tamper with the
83 device or equipment ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be imprisoned
84 in a state correctional facility for not less than one year nor more than 10 years, or fined not less
85 than \$10,000 nor more than \$100,000, or both imprisoned and fined.

86 ~~(i)~~(j) The director ~~may~~ shall promulgate emergency and legislative rules to implement and

87 enforce this section pursuant to the provisions of §29A-3-1 *et seq.* of this code.

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

PART X. EXISTING RULES TO BE REVISED.

§22A-2A-1001. Existing state rules to be revised.

1 Unless otherwise revised, Bby August 31, ~~2017~~ 2018, the director shall revise state rules
2 promulgated pursuant to the authority of this chapter as follows:

3 (1) To reflect the abolishment of the West Virginia Diesel Equipment Commission and
4 transfer of duties and responsibilities to the director, pursuant to §22A-2A-301 of this code;

5 (2) To reflect that a mine operator shall be permitted to replace a filter or catalyst of the
6 same make and model without contacting the Office of Miners' Health, Safety, and Training;

7 (3) To reflect that ASE certified diesel mechanics shall make repairs and adjustments to
8 diesel fuel injection systems, engine timing, or exhaust emissions control and conditioning
9 systems;

10 (4) To permit a mine operator to dispose of used intake air filters, exhaust diesel particulate
11 matter filters, and engine oil filters in their original containers or other suitable enclosed containers
12 and to remove them from the underground mine to the surface no less than once in a 24-hour
13 period;

14 (5) To require that records of emissions tests, 200-hour maintenance tests, and repairs
15 shall be countersigned once each week by the certified mine electrician or mine foreman, that
16 scheduled maintenance and an independent analysis of engine oil occur at 200 hours of engine
17 operation, and that diagnostic testing of engine operation occur at 200 hours;

18 (6) To remove the requirement that a portable carbon monoxide (CO) sampling device be
19 installed into the untreated exhaust gas coupling provided in the operator's cab;

20 (7) To modify the time and duration for which the CO sampler must be started to measure

21 and record CO levels from every minute for five minutes to every 30 seconds for 90 seconds;
22 (8) To modify the alternative condition by which equipment fails under 196 C. S. R. §1-21,
23 to omit the reference to the average CO reading for untreated exhaust gas is greater than twice
24 the baseline; and
25 (9) To remove the requirement for eight hours of annual diesel equipment operator
26 refresher training separate from that required by MSHA regulations; and
27 (10) To permit the use of diesel generators in underground mines so long as the generator
28 is vented directly to the return and at least one person is present within sight and sound of the
29 generator: *Provided*, That all current state rules and statutes relating to the use of diesel-powered
30 equipment and electricity generation remain in force.

NOTE: The purpose of this bill is to establish new notice requirements under permit application requirements and contents under the Surface Coal Mining And Reclamation Act. The bill re-establishes when a certification is granted under the Water Pollution Control Act. The bill strikes the requirement that a comprehensive mine safety program (CMSP) be subject to annual review by the director. The bill provides that ventilation plans, seal plans, roof control plans, and belt air plans, having been approved by MSHA already, shall be the only required plan to be sent to the director; thereby eliminating the need for duplicative plans to be sent to the MSHA its state counterpart so long as all other mining laws and rules are being followed. The bill provides that self-contained self-rescuer (SCSR) storage plans, tracking/communications plans, and shelter plans established by the MSHA-approved emergency response plan (ERP) shall be the only required plan to be sent to the director. The bill requires that the surface mine ground control plan approved by MSHA be the only plan required by the director. The bill permits the use of diesel generators underground under some circumstances. The bill requires that AEDs be present on all surface mining operations.

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

§22A-1-42 is new; therefore, it has all been underscored.