

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Engrossed**

**Senate Bill 635**

BY SENATOR SMITH

[Originating in the Committee on Energy, Industry, and

Mining; Reported on February 15, 2019]



1 A BILL to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8, and §5B-2A-9 of the Code of West  
2 Virginia, 1931, as amended; to amend and reenact §22-3-14 of said code; to amend and  
3 reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said  
4 code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend said code  
5 by adding thereto two new sections, designated §22A-1-43 and §22A-1-44; to amend and  
6 reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-  
7 2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section,  
8 designated, §22A-2-80; to amend and reenact §22A-2A-405 of said code; to amend and  
9 reenact §22A-8-5 of said code; to amend said code by adding thereto a new section,  
10 designated §22A-8-10; to amend and reenact §61-3-12 of said code; and to amend said  
11 code by adding thereto a new section, designated §61-3B-6, all relating generally to coal  
12 mining activities; eliminating the requirement for submission of the community impact  
13 statement; requiring review of new mining activity for submission to the Office of Coalfield  
14 Community Development; eliminating requirements for submission of certain additional  
15 information; requiring the submission of certain information related to land and  
16 infrastructure needs upon request of the Office of Coalfield Community Development;  
17 requiring and authorizing the Secretary of the Department of Environmental Protection to  
18 promulgate rules relating to mine subsidence protection for dwelling owners; authorizing  
19 the Secretary of the Department of Environmental Protection to promulgate rules for  
20 permit modification and renewal fees for surface mining operations pursuant to the Water  
21 Pollution Control Act; authorizing the Secretary of the Department of Environmental  
22 Protection to promulgate rules relating to exemptions pursuant to the Aboveground  
23 Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine  
24 or appeal a violation within 30 days; requiring the Office of Miners' Health, Safety, and  
25 Training Mine Rescue Team be provided to a coal operation where the operation has no  
26 mine rescue team available within one hour's drive; permitting employers to drug test an

27 employee involved in an accident that results in physical injuries or damage to equipment  
28 or property; requiring miners testing positive for drug use to undergo a mandatory  
29 minimum six-month suspension; eliminating timing requirements for submission of a  
30 detailed mine ventilation plan to the Director of the Office of Miners' Health, Safety, and  
31 Training; authorizing the Director of the Office of Miners' Health, Safety, and Training to  
32 promulgate emergency rules for establishing a course of instruction for apprentice miners;  
33 requiring apprentice miners to work 90 days in a mine within sight and sound of a mine  
34 foreman or assistant foreman; permitting the Director of the Office of Miners' Health,  
35 Safety, and Training to decertify miners who fail to perform daily examinations; allowing  
36 the Director of the Office of Miners' Health, Safety, and Training to use the employer's  
37 tracking data of the designated daily examiner; authorizing the Director of the Office of  
38 Miners' Health, Safety, and Training to promulgate rules generally; amending standards  
39 for controlling and monitoring exhaust gases for diesel-powered underground coal mining  
40 equipment; allowing certified competent miners to supervise up to two apprentice miners;  
41 holding mine owners, the state, and person or entities engaged in rescue operations  
42 harmless for injury or death; authorizing a temporary exemption from environmental  
43 regulations during rescue operations; revoking certifications of persons convicted of mine  
44 trespass; removing underground coal mines from those places subject to the crime of  
45 unlawful entry of building other than a dwelling; creating the new criminal misdemeanor  
46 and felony offenses of mine trespass; establishing penalties for mine trespass including  
47 enhanced penalties for bodily injury or death during rescue operations; authorizing  
48 increased liability for damages caused during a mine trespass; and exempting lawful  
49 activities under the West Virginia and United States Constitutions, and state and federal  
50 law from the operation of the mine trespass criminal statute.

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

## CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

### ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

#### §5B-2A-5. Powers and duties.

1           The office has and may exercise the following duties, powers, and responsibilities:

2           ~~(1) To establish a procedure for developing a community impact statement as provided in~~  
3 ~~section six of this article and to administer the procedure so established;~~

4           ~~(2)~~ (1) To establish a procedure for determining the assets that could be developed in and  
5 maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code  
6 and to administer the procedure so established;

7           ~~(3)~~ (2) To establish a procedure for determining the land and infrastructure needs in the  
8 general area of the surface mining operations as provided in §5B-2A-9 of this code and to  
9 administer the procedure so established;

10           ~~(4)~~ (3) To establish a procedure to develop action reports and annual updates as provided  
11 in §5B-2A-10 of this code and to administer the procedure so established;

12           ~~(5)~~ (4) To determine the need for meetings to be held among the various interested parties  
13 in the communities impacted by surface mining operations and, when appropriate, to facilitate the  
14 meetings;

15           ~~(6)~~ (5) To establish a procedure to assist property owners in the sale of their property as  
16 provided in §5B-2A-11 of this code and to administer the procedure so established;

17           ~~(7)~~ (6) In conjunction with the department, to maintain and operate a system to receive  
18 and address questions, concerns, and complaints relating to surface mining; and

19           ~~(8)~~ (7) On its own initiative or at the request of a community in close proximity to a mining  
20 operation, or a mining operation, offer assistance to facilitate the development of economic or  
21 community assets. Such assistance shall include the preparation of a master land use plan  
22 pursuant to the provisions of §5B-2A-9 of this code.

**§5B-2A-6. Community impact statement review.**

1           ~~(a)(1) The office shall, no less frequently than quarterly, either consult with representatives~~  
2 ~~of the department's Office of Mining and Reclamation or review the department's permit~~  
3 ~~application database(s) to determine whether newly proposed surface mines or significant~~  
4 ~~modifications to existing surface mining operations may present opportunities for mine operators~~  
5 ~~to cooperate with local landowners and local governmental officials to mine and reclaim properties~~  
6 ~~so as to develop community assets or secure developable land and infrastructure pursuant to this~~  
7 ~~article. The operator shall develop a community impact statement, as described in this section,~~  
8 ~~which shall be submitted to the office within sixty days of the filing of a surface mining application~~  
9 ~~pursuant to the provisions of article three, chapter twenty two of this code. Failure to submit a~~  
10 ~~community impact statement to the office shall be considered a violation under the provisions of~~  
11 ~~section seventeen of said article; and~~

12           ~~(2) The operator shall provide copies of the community impact statement to the~~  
13 ~~department's Office of Mining Reclamation and Office of Explosives and Blasting and to the~~  
14 ~~county commissions, county clerks' offices and local, county or regional development or~~  
15 ~~redevelopment authorities of the areas to be affected by the surface mining operations.~~

16           ~~(b) The community impact statement, where practicable, shall not be a highly technical or~~  
17 ~~legalistic document, but shall be written in a clear and concise manner understandable to all~~  
18 ~~citizens. The community impact statement shall include the following:~~

19           ~~(1) The amount and location of land to be mined or used in the actual mining operations;~~

20           ~~(2) The expected duration of the mining operations in each area of the community;~~

21           ~~(3) The extent of anticipated mining-related property acquisitions, to the extent that such~~  
22 ~~acquisitions are known or knowable;~~

23           ~~(4) The intentions of the surface and mineral owners relative to the acquired property, to~~  
24 ~~the extent that such intentions are known or knowable;~~

25           ~~(5) A statement of the post-mining land use for all land within the permit boundary;~~

26           ~~(6) The intended blasting plan and the expected time and duration it will affect each~~  
27 ~~community;~~

28           ~~(7) Information concerning the extent and nature of valley fills and the watersheds to be~~  
29 ~~affected;~~

30           ~~(8) Economic information, such as the number of jobs created and annual coal production~~  
31 ~~resulting from the surface mining operation, the anticipated life of the mining operation and such~~  
32 ~~other information as may be deemed appropriate; and~~

33           ~~(9) An acknowledgment of the recommendations of any approved master land use plan~~  
34 ~~that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure~~  
35 ~~components needed to accomplish the designated post-mine land use required by the plan.~~

36           ~~(c) Where the operator makes any significant revision to the permit application under~~  
37 ~~section eighteen, article three, chapter twenty-two of this code, which revision substantially affects~~  
38 ~~any of the information provided in subsection (b) of this section, the operator shall revise the~~  
39 ~~affected provisions of its community impact statement and shall submit such revisions as set forth~~  
40 ~~in subsection (a) of this section.~~

41           ~~(d) Within thirty days of receipt of a community impact statement pursuant to subdivision~~  
42 ~~(2), subsection (a) of this section or a revised community impact statement pursuant to subsection~~  
43 ~~(c) of this section, the local, county or regional development or redevelopment authorities of the~~  
44 ~~areas to be affected by the surface mining operations shall provide a written acknowledgment of~~  
45 ~~the receipt of this community impact statement or revised community impact statement to the~~  
46 ~~department's Division of Mining Reclamation, to the county commission or county commissions~~  
47 ~~and to the office.~~

48           ~~(e) (b) The provisions of this section shall apply as follows: to all surface mining permit~~  
49 ~~applications granted after July 1, 2018.~~

50           ~~(1) To all surface mining permits granted after June 11, 1999; and~~

51 ~~(2) At the first renewal date of all previously issued permits: *Provided*, That the permittee~~  
52 ~~shall be afforded ninety days from said date to comply with the provisions of this section.~~

**§5B-2A-8. Determining and developing needed community assets.**

1 (a) The office shall determine the community assets that may be developed by the  
2 community, county, or region to foster its viability when surface mining operations are completed.

3 (b) Community assets to be identified pursuant to subsection (a) of this section may  
4 include the following:

5 (1) Water and wastewater services;

6 (2) Developable land for housing, commercial development, or other community purposes;

7 (3) Recreation facilities and opportunities; and

8 (4) Education facilities and opportunities.

9 ~~(c) The operator shall be required to prepare and submit to the office the information set~~  
10 ~~forth in this subsection as follows:~~

11 ~~(1) A map of the area for which a permit under article three, chapter twenty two of this~~  
12 ~~code is being sought or has been obtained;~~

13 ~~(2) The names of the surface and mineral owners of the property to be mined pursuant to~~  
14 ~~the permit; and~~

15 ~~(3) A statement of the post-mining land use for all land which may be affected by the~~  
16 ~~mining operations.~~

17 ~~(d)~~ (c) In determining the nature and extent of the needed community assets, the office  
18 shall consider at least the following:

19 (1) An evaluation of the future of the community once mining operations are completed;

20 (2) The prospects for the long-term viability of any asset developed under this section;

21 (3) The desirability of foregoing some or all of the asset development required by this  
22 section in lieu of the requirements of §5B-2A-9 of this code; and



23 (4) The extent to which the community, local, state, or the federal government may  
24 participate in the development of assets the community needs to assure its viability.

**§5B-2A-9. Securing developable land and infrastructure.**

1 (a) The office shall determine the land and infrastructure needs in the general area of the  
2 surface mining operations- for which it makes the determination authorized in §5B-2A-6 of this  
3 code.

4 (b) For the purposes of this section, the term “general area” shall mean the county or  
5 counties in which the mining operations are being conducted or any adjacent county.

6 (c) To assist the office, the operator, upon request by the office, shall be required to  
7 prepare and submit to the office the information set forth in this subsection as follows:

8 (1) A map of the area for which a permit under §22-3-1 *et seq.* of this code is being sought  
9 or has been obtained;

10 (2) The names of the surface and mineral owners of the property to be mined pursuant to  
11 the permit; and

12 (3) A statement of the post-mining land use for all land which may be affected by the  
13 mining operations.

14 (d) In making a determination of the land and infrastructure needs in the general area of  
15 the mining operations, the office shall consider at least the following:

16 (1) The availability of developable land in the general area;

17 (2) The needs of the general area for developable land;

18 (3) The availability of infrastructure, including, but not limited to, access roads, water  
19 service, wastewater service, and other utilities;

20 (4) The amount of land to be mined and the amount of valley to be filled;

21 (5) The amount, nature, and cost to develop and maintain the community assets identified  
22 in §5B-2A-8 of this code; and

23           (6) The availability of federal, state, and local grants and low-interest loans to finance all  
24 or a portion of the acquisition and construction of the identified land and infrastructure needs of  
25 the general area.

26           (e) In making a determination of the land and infrastructure needs in the general area of  
27 the surface mining operations, the office shall give significant weight to developable land on or  
28 near existing or planned multilane highways.

29           (f) The office may secure developable land and infrastructure for a Development Office or  
30 county through the preparation of a master land use plan for inclusion into a reclamation plan  
31 prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be  
32 construed to modify requirements of §22-3-1 *et seq.* of this code.

33           (1) The county commission or other governing body for each county in which there are  
34 surface mining operations that are subject to this article shall determine land and infrastructure  
35 needs within their jurisdictions through the development of a master land use plan which  
36 incorporates post-mining land use needs, including, but not limited to, renewable and alternative  
37 energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses,  
38 public facility uses, or recreational facility uses. A county commission or other governing body of  
39 a county may designate a local, county, or regional development or redevelopment authority to  
40 assist in the preparation of a master land use plan. A county commission or other governing body  
41 of a county may adopt a master land use plan developed after July 1, 2009, only after a  
42 reasonable public comment period.

43           (2) Upon the request of a county or designated development or redevelopment authority,  
44 the office shall assist the county or development or redevelopment authority with the development  
45 of a master land use plan.

46           (3)(A) The Department of Environmental Protection and the Office of Coalfield Community  
47 Development shall review master land use plans existing as of July 1, 2009. If the office

48 determines that a master land use plan complies with the requirements of this article and the rules  
49 promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010.

50 (B) Master land use plans developed after July 1, 2009, shall be submitted to the  
51 department and the office for review. The office shall determine whether to approve a master land  
52 use plan submitted pursuant to this subdivision within three months of submission. The office shall  
53 approve the plan if it complies with the requirements of this article and the rules promulgated  
54 pursuant to this article.

55 (C) The office shall review a master land use plan approved under this section every three  
56 years. No later than six months before the review of a master land use plan, the county or  
57 designated development or redevelopment authority shall submit an updated master land use  
58 plan to the department and the office for review. The county may submit its updated master land  
59 use plan only after a reasonable public comment period. The office shall approve the master land  
60 use plan if the updated plan complies with the requirements of this article and the rules  
61 promulgated pursuant to this article.

62 (D) If the office does not approve a master land use plan, the county or designated  
63 development or redevelopment authority shall submit a supplemental master land use plan to the  
64 office for approval.

65 (4) The required infrastructure component standards needed to accomplish the  
66 designated post-mining land uses identified in a master land use plan shall be developed by the  
67 county or its designated development or redevelopment authority. These standards must be in  
68 place before the respective county or development or redevelopment authority can accept  
69 ownership of property donated pursuant to a master land use plan. Acceptance of ownership of  
70 such property by a county or development or redevelopment authority may not occur unless it is  
71 determined that: ~~(i) The property use is compatible with adjacent land uses; (ii) the use satisfies~~  
72 ~~the relevant county or development or redevelopment authority's anticipated need and market~~  
73 ~~use; (iii) the property has in place necessary infrastructure components needed to achieve the~~

74 ~~anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property~~  
75 ~~is eligible for bond release in accordance with section twenty three, article three, chapter twenty-~~  
76 ~~two of this code; and (vi) the use is feasible. Required infrastructure component standards require~~  
77 ~~approval of the relevant county commission, commissions or other county governing body before~~  
78 ~~such standards are accepted. County commission or other county governing body approval may~~  
79 ~~be rendered only after a reasonable public comment period;~~

80 (A) The property use is compatible with adjacent land uses;

81 (B) The use satisfies the relevant county or development or redevelopment authority's  
82 anticipated need and market use;

83 (C) The property has in place necessary infrastructure components needed to achieve  
84 the anticipated use;

85 (D) The use is supported by all other appropriate public agencies;

86 (E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

87 (F) The use is feasible.

88 Required infrastructure component standards require approval of the relevant county  
89 commission, commissions, or other county governing body before such standards are accepted.  
90 County commission or other county governing body approval may be rendered only after a  
91 reasonable public comment period.

92 (5) The provisions of this subsection shall not take effect until legislative rules are  
93 promulgated pursuant to ~~paragraph (C), subdivision (1), subsection (c), section twenty three,~~  
94 ~~article three, chapter twenty two~~ of this code governing bond releases which assure sound future  
95 maintenance by the local or regional economic development, redevelopment, or planning  
96 agencies.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

**§22-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.**

1 (a) The director shall promulgate separate rules directed toward the surface effects of  
2 underground coal mining operations, embodying the requirements in subsection (b) of this  
3 section: *Provided*, That in adopting such rules, the director shall consider the distinct difference  
4 between surface coal mines and underground coal mines in West Virginia. Such rules may not  
5 conflict with or supersede any provision of the federal or state coal mine health and safety laws  
6 or any rule issued pursuant thereto.

7 (b) Each permit issued by the director pursuant to this article and relating to underground  
8 coal mining shall require the operation at a minimum to:

9 (1) Adopt measures consistent with known technology in order to prevent subsidence  
10 causing material damage to the extent technologically and economically feasible, maximize mine  
11 stability and maintain the value and reasonably foreseeable use of overlying surface lands, except  
12 in those instances where the mining technology used requires planned subsidence in a  
13 predictable and controlled manner: *Provided*, That this subsection does not prohibit the standard  
14 method of room and pillar mining;

15 (2) Seal all portals, entryways, drifts, shafts, or other openings that connect the earth's  
16 surface to the underground mine workings when no longer needed for the conduct of the mining  
17 operations in accordance with the requirements of all applicable federal and state law and rules  
18 promulgated pursuant thereto;

19 (3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent  
20 technologically and economically feasible, if environmentally acceptable, return of mine and  
21 processing waste, tailings, and any other waste incident to the mining operation to the mine  
22 workings or excavations;

23 (4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and  
24 other wastes in areas other than the mine workings or excavations, stabilize all waste piles  
25 created by the operator from current operations through construction in compacted layers,  
26 including the use of incombustible and impervious materials, if necessary, and assure that any  
27 leachate therefrom will not degrade surface or groundwaters below water quality standards  
28 established pursuant to applicable federal and state law and that the final contour of the waste  
29 accumulation will be compatible with natural surroundings and that the site is stabilized and  
30 revegetated according to the provisions of this section;

31 (5) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon,  
32 in accordance with the standards and criteria developed pursuant to §22-3-13 of this ~~article~~ code,  
33 all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing  
34 wastes, and solid wastes and used either temporarily or permanently as dams or embankments;

35 (6) Establish on regraded areas and all other disturbed areas a diverse and permanent  
36 vegetative cover capable of self-regeneration and plant succession and at least equal in extent of  
37 cover to the natural vegetation of the area within the time period prescribed in §22-3-13(b)(20) of  
38 this ~~article~~ code;

39 (7) Protect off-site areas from damages which may result from such mining operations;

40 (8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to  
41 health and safety of the public;

42 (9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in  
43 associated off-site areas and to the quantity and the quality of water in surface and groundwater  
44 systems both during and after mining operations and during reclamation by: (A) Avoiding acid or  
45 other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing  
46 water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content  
47 which adversely affects downstream water before being released to water courses; and (iii)  
48 casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic

49 drainage from entering ground and surface waters; and (B) conducting mining operations so as  
50 to prevent, to the extent possible using the best technology currently available, additional  
51 contributions of suspended solids to streamflow or runoff outside the permit area, but in no event  
52 shall the contributions be in excess of requirements set by applicable state or federal law, and  
53 avoiding channel deepening or enlargement in operations requiring the discharge of water from  
54 mines: *Provided*, That in recognition of the distinct differences between surface and underground  
55 mining the monitoring of water from underground coal mine workings shall be in accordance with  
56 the provisions of the Clean Water Act of 1977;

57 (10) With respect to other surface impacts of underground mining not specified in this  
58 subsection, including the construction of new roads or the improvement or use of existing roads  
59 to gain access to the site of such activities and for haulage, repair areas, storage areas,  
60 processing areas, shipping areas, and other areas upon which are sited structures, facilities, or  
61 other property or materials on the surface, resulting from or incident to such activities, operate in  
62 accordance with the standards established under §22-3-13 of this code for such effects which  
63 result from surface-mining operations: *Provided*, That the director shall make such modifications  
64 in the requirements imposed by this subdivision as are necessary to accommodate the distinct  
65 difference between surface and underground mining in West Virginia;

66 (11) To the extent possible using the best technology currently available, minimize  
67 disturbances and adverse impacts of the operation on fish, aquatic life, wildlife, and related  
68 environmental values, and achieve enhancement of such resources where practicable; and

69 (12) Unless otherwise permitted by the director and in consideration of the relevant safety  
70 and environmental factors, locate openings for all new drift mines working in acid producing or  
71 iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

72 (c) In order to protect the stability of the land, the director shall suspend underground  
73 mining under urbanized areas, cities, towns, and communities and adjacent to industrial or

74 commercial buildings, major impoundments, or permanent streams if he or she finds imminent  
75 danger to inhabitants of the urbanized areas, cities, towns, or communities.

76 (d) The provisions of this article relating to permits, bonds, insurance, inspections,  
77 reclamation and enforcement, public review, and administrative and judicial review are also  
78 applicable to surface operations and surface impacts incident to an underground mine with such  
79 modifications by rule to the permit application requirements, permit approval, or denial procedures  
80 and bond requirements as are necessary to accommodate the distinct difference between surface  
81 mines and underground mines in West Virginia.

82 (e) The secretary shall promulgate for review and consideration by the West Virginia  
83 Legislature during the regular session of the Legislature, 2020, revisions to legislative rules (38  
84 CSR 2) pertaining to surface owner protection from material damage due to subsidence under  
85 this article. The secretary shall specifically consider adoption of the federal standards codified at  
86 30 C.F.R. § 817.121.

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

### **§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.**

1 (a) The special revenue fund designated the Water Quality Management Fund established  
2 in the State Treasury on July 1, 1989, is hereby continued.

3 (b) The permit application fees and annual permit fees established and collected pursuant  
4 to this section; any interest or surcharge assessed and collected by the secretary; interest  
5 accruing on investments and deposits of the fund; and any other moneys designated by the  
6 secretary shall be deposited into the Water Quality Management Fund. The secretary shall  
7 expend the proceeds of the Water Quality Management Fund for the review of initial permit  
8 applications, renewal permit applications, and permit issuance activities.



9 (c) The secretary shall propose for promulgation, legislative rules in accordance with the  
10 provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of application fees for all  
11 applications except for surface coal mining operations as defined in §22-3-13 of this code. The  
12 appropriate fee shall be submitted by the applicant to the department with the application filed  
13 pursuant to this article for any state water pollution control permit or national pollutant discharge  
14 elimination system permit. The schedule of application fees shall be designed to establish  
15 reasonable categories of permit application fees based upon the complexity of the permit  
16 application review process required by the department pursuant to the provisions of this article  
17 and the rules promulgated under this article: *Provided*, That no initial application fee may exceed  
18 \$15,000 for any facility nor may any permit renewal application fee exceed \$5,000. The  
19 department may not process any permit application pursuant to this article until the required  
20 permit application fee has been received.

21 (d) The secretary shall propose for promulgation legislative rules in accordance with the  
22 provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of permit fees to be assessed  
23 annually upon each person holding a state water pollution control permit or national pollutant  
24 discharge elimination system permit issued pursuant to this article except for permits held by  
25 surface coal mining operations as defined in §22-3-1 *et seq.* of this ~~chapter~~ code. Each person  
26 holding a permit shall pay the prescribed annual permit fee to the department pursuant to the  
27 rules promulgated under this section: *Provided*, That no person holding a permit for a home  
28 aerator of ~~six hundred~~ 600 gallons and under shall be required to pay an annual permit fee. The  
29 schedule of annual permit fees shall be designed to establish reasonable categories of annual  
30 permit fees based upon the relative potential of categories or permits to degrade the waters of  
31 the state: *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may  
32 declare any permit issued pursuant to this article void when the annual permit fee is more than  
33 ~~ninety~~ 90 days past due pursuant to the rules promulgated under this section. Voiding of the

34 permit will only become effective upon the date the secretary mails, by certified mail, written notice  
35 to the permittee's last known address notifying the permittee that the permit has been voided.

36 (e) The secretary shall file a quarterly report with the Joint Committee on Government and  
37 Finance setting forth the fees established and collected pursuant to this section.

38 (f) On July 1, 2002, and each year thereafter, a \$1,000 fee shall be assessed for permit  
39 applications and renewals submitted pursuant to this article for surface coal mining operations,  
40 as defined in §22-3-1 *et seq.* of this code. On July 1, 2002, and each year thereafter, a \$500 fee  
41 shall be assessed for application for permit modifications submitted pursuant to this article for  
42 surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. Beginning July 1, 2002  
43 and every year thereafter, an annual permit fee shall be assessed on the issuance anniversary  
44 dates of all permits issued pursuant to this article for surface coal mining operations as defined in  
45 §22-3-1 *et seq.* of this code. The annual permit fee shall be collected as follows: ~~Five hundred~~  
46 ~~dollars~~ \$500 for the fiscal year beginning on July 1, 2002, and \$1,000 for each fiscal year  
47 thereafter. For all other categories of permitting actions pursuant to this article related to surface  
48 coal mining operations, the secretary shall propose for promulgation legislative rules in  
49 accordance with the provisions of §29A-1-1 *et seq.* of this code to establish a schedule of  
50 permitting fees.

## **ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.**

### **§22-30-3. Definitions.**

1 For purposes of this article:

2 (1) "Aboveground storage tank" or "tank" or "AST" means a device made to contain an  
3 accumulation of more than ~~one thousand three hundred twenty~~ 1,320 gallons of fluids that are  
4 liquid at standard temperature and pressure, which is constructed primarily of nonearthen  
5 materials, including concrete, steel, plastic, or fiberglass reinforced plastic, which provide  
6 structural support, more than ~~ninety percent~~ 90 percent of the capacity of which is above the

7 surface of the ground, and includes all ancillary pipes and dispensing systems up to the first point  
8 of isolation. The term includes stationary devices which are permanently affixed, and mobile  
9 devices which remain in one location on a continuous basis for ~~three hundred sixty five~~ 365 or  
10 more days. A device meeting this definition containing hazardous waste subject to regulation  
11 under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. §  
12 265.201 is included in this definition but is not a regulated tank. Notwithstanding any other  
13 provision of this code to the contrary, the following categories of devices are not subject to the  
14 provisions of this article:

15 (A) Shipping containers that are subject to state or federal laws or regulations governing  
16 the transportation of hazardous materials, including, but not limited to, railroad freight cars subject  
17 to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as  
18 amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R.  
19 ~~Parts~~ §§172, 173, or 174;

20 (B) Barges or boats subject to federal regulation under the United States Coast Guard,  
21 United States Department of Homeland Security, including, but not limited to, federal regulations  
22 promulgated at 33 C. F. R. 1, *et seq.* or subject to other federal law governing the transportation  
23 of hazardous materials-;

24 (C) Swimming pools;

25 (D) Process vessels;

26 (E) Devices containing drinking water for human or animal consumption, surface water or  
27 groundwater, demineralized water, noncontact cooling water, or water stored for fire or  
28 emergency purposes;

29 (F) Devices containing food or food-grade materials used for human or animal  
30 consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-  
31 392);

32 (G) Except when located in a zone of critical concern, a device located on a farm, the  
33 contents of which are used exclusively for farm purposes and not for commercial distribution;

34 (H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier,  
35 chlorine contact chamber, batch reactor, etc.);

36 (I) Empty tanks held in inventory or offered for sale;

37 (J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline  
38 Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline  
39 facility regulated by the West Virginia Public Service Commission or otherwise regulated under  
40 any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968  
41 or the Hazardous Liquid Pipeline Safety Act of 1979;

42 (K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related  
43 to oil or gas production and gathering operations;

44 (L) Electrical equipment such as transformers, circuit breakers, and voltage regulator  
45 transformers;

46 (M) Devices having a capacity of ~~two hundred ten~~ 210 barrels or less, containing brine  
47 water or other fluids produced in connection with hydrocarbon production activities, that are not  
48 located in a zone of critical concern; and

49 (N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or  
50 calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of  
51 critical concern: *Provided*, That all such devices exempted under subdivisions (M) and (N) of this  
52 subdivision must still meet the registration requirements contained in §22-30-4 of this code, the  
53 notice requirements contained in §22-30-10 of this code, and the signage requirements contained  
54 in §22-30-11 of this code.

55 (2) "Department" means the West Virginia Department of Environmental Protection.

56 (3) "First point of isolation" means the valve, pump, dispenser, or other device or  
57 equipment on or nearest to the tank where the flow of fluids into or out of the tank may be shut  
58 off manually or where it automatically shuts off in the event of a pipe or tank failure.

59 (4) "Nonoperational storage tank" means an empty aboveground storage tank in which  
60 fluids will not be deposited or from which fluids will not be dispensed on or after the effective date  
61 of this article.

62 (5) "Operator" means any person in control of, or having responsibility for, the daily  
63 operation of an aboveground storage tank.

64 (6) "Owner" means a person who holds title to, controls, or owns an interest in an  
65 aboveground storage tank, including the owner immediately preceding the discontinuation of its  
66 use. "Owner" does not mean a person who holds an interest in a tank for financial security unless  
67 the holder has taken possession of and operated the tank.

68 (7) "Person", "persons", or "people" means any individual, trust, firm, owner, operator,  
69 corporation, or other legal entity, including the United States government, an interstate  
70 commission or other body, the state or any agency, board, bureau, office, department, or political  
71 subdivision of the state, but does not include the Department of Environmental Protection.

72 (8) "Process vessel" means a tank that forms an integral part of a production process  
73 through which there is a steady, variable, recurring, or intermittent flow of materials during the  
74 operation of the process or in which a biological, chemical, or physical change in the material  
75 occurs. This does not include tanks used for storage of materials prior to their introduction into  
76 the production process or for the storage of finished products or by-products of the production  
77 process.

78 (9) "Public groundwater supply source" means a primary source of water supply for a  
79 public water system which is directly drawn from a well, underground stream, underground  
80 reservoir, underground mine, or other primary sources of water supplies which are found  
81 underneath the surface of the state.

82 (10) "Public surface water supply source" means a primary source of water supply for a  
83 public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or  
84 other primary sources of water supplies which are found on the surface of the state.

85 (11) "Public surface water influenced groundwater supply source" means a source of water  
86 supply for a public water system which is directly drawn from an underground well, underground  
87 river or stream, underground reservoir, or underground mine, and the quantity and quality of the  
88 water in that underground supply source is heavily influenced, directly or indirectly, by the quantity  
89 and quality of surface water in the immediate area.

90 (12) "Public water system" means:

91 (A) Any water supply or system which regularly supplies or offers to supply water for  
92 human consumption through pipes or other constructed conveyances, if serving at least an  
93 average of ~~twenty-five~~ 25 individuals per day for at least ~~sixty~~ 60 days per year, or which has at  
94 least ~~fifteen~~ 15 service connections, and shall include:

95 (i) Any collection, treatment, storage, and distribution facilities under the control of the  
96 owner or operator of the system and used primarily in connection with the system; and

97 (ii) Any collection or pretreatment storage facilities not under such control which are used  
98 primarily in connection with the system.

99 (B) A public water system does not include a bathhouse located on coal company property  
100 solely for the use of its employees or a system which meets all of the following conditions:

101 (i) Consists only of distribution and storage facilities (and does not have any collection and  
102 treatment facilities);

103 (ii) Obtains all of its water from, but is not owned or operated by, a public water system  
104 which otherwise meets the definition;

105 (iii) Does not sell water to any person; and

106 (iv) Is not a carrier conveying passengers in interstate commerce.

107 (13) "Regulated level 1 aboveground storage tank" or "level 1 regulated tank" means:

108 (A) An AST located within a zone of critical concern, source water protection area, public  
109 surface water influenced groundwater supply source area, or any AST system designated by the  
110 secretary as a level 1 regulated tank; or

111 (B) An AST that contains substances defined in section 101(14) of the Comprehensive  
112 Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance”  
113 (42 U. S. C. § 9601(14)); or is on EPA’s Consolidated List of Chemicals Subject to the Emergency  
114 Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act  
115 (CAA) (known as the List of Lists) as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a  
116 concentration of one percent or greater, regardless of the AST’s location, except ASTs containing  
117 petroleum are not level 1 regulated tanks based solely upon containing constituents recorded on  
118 the CERCLA lists; or

119 (C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or  
120 location.

121 (14) “Regulated level 2 aboveground storage tank” or “level 2 regulated tank” means an  
122 AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

123 (15) “Regulated aboveground storage tank” or “regulated tank” means an AST that meets  
124 the definition of a level 1 or level 2 regulated tank.

125 (16) “Release” means any spilling, leaking, emitting, discharging, escaping, or leaching of  
126 fluids from an aboveground storage tank into the waters of the state or escaping from secondary  
127 containment.

128 (17) “Secondary containment” means a safeguard applied to one or more aboveground  
129 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the  
130 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as  
131 secondary containment, the barrier and containment field must be sufficiently impervious to  
132 contain fluids in the event of a release, and may include double-walled tanks, dikes, containment  
133 curbs, pits, or drainage trench enclosures that safely confine the release from a tank in a facility

134 catchment basin or holding pond. Earthen dikes and similar containment structures must be  
135 designed and constructed to contain, for a minimum of ~~seventy-two~~ 72 hours, fluid that escapes  
136 from a tank.

137 (18) "Secretary" means the Secretary of the Department of Environmental Protection, or  
138 his or her designee.

139 (19) "Source water protection area" for a public groundwater supply source is the area  
140 within an aquifer that supplies water to a public water supply well within a five-year time of travel;  
141 and is determined by the mathematical calculation of the locations from which a drop of water  
142 placed at the edge of the protection area would theoretically take five years to reach the well.

143 (20) "Zone of critical concern" for a public surface water supply source and for a public  
144 surface water influenced groundwater supply source is a corridor along streams within a  
145 watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the  
146 intake's susceptibility to potential contaminants within that corridor. The zone of critical concern  
147 is determined using a mathematical model that accounts for stream flows, gradient and area  
148 topography. The length of the zone of critical concern is based on a five-hour time of travel of  
149 water in the streams to the intake. The width of the zone of critical concern is ~~one thousand~~ 1,000  
150 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet  
151 measured horizontally from each bank of the tributaries draining into the principal stream.

152 (21) "Zone of peripheral concern" for a public surface water supply source and for a public  
153 surface water influenced groundwater supply source is a corridor along streams within a  
154 watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's  
155 susceptibility to potential contaminants within that corridor. The zone of peripheral concern is  
156 determined using a mathematical model that accounts for stream flows, gradient, and area  
157 topography. The length of the zone of peripheral concern is based on an additional five-hour time  
158 of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates  
159 a protection zone of ~~ten~~ 10 hours above the water intake. The width of the zone of peripheral



160 concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream  
161 and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into  
162 the principal stream.

**§22-30-24. Powers and duties of secretary.**

1 (a) In addition to the powers and duties prescribed in this chapter or otherwise provided  
2 by law, the secretary has the exclusive authority to perform all acts necessary to implement this  
3 article.

4 (b) The secretary may receive and expend money from the federal government or any  
5 other sources to implement this article.

6 (c) The secretary may revoke any registration or certificate to operate for a significant  
7 violation of this article or the rules promulgated hereunder.

8 (d) The secretary may issue orders, assess civil penalties, institute enforcement  
9 proceedings, and prosecute violations of this article as necessary.

10 (e) The secretary, in accordance with this article, may order corrective action to be  
11 undertaken, take corrective action, or authorize a third party to take corrective action.

12 (f) The secretary may recover the costs of taking corrective action, including costs  
13 associated with authorizing third parties to perform corrective action. Costs may not include  
14 routine inspection and administrative activities not associated with a release.

15 (g) The secretary shall promulgate for review and consideration by the West Virginia  
16 Legislature in the regular session of the Legislature, 2020, legislative rules to incorporate the  
17 relevant provisions of this article in the Groundwater Protection Rules for Coal Mining, 38 CSR  
18 2F, for tanks and devices located at coal mining operations.

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

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

**§22A-1-21. Penalties.**

1           (a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs  
2 or who violates any other provisions of this chapter shall be assessed a civil penalty by the director  
3 under subdivision (3) of this subsection, which shall be not more than \$5,000, for each violation,  
4 unless the director determines that it is appropriate to impose a special assessment for the  
5 violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each  
6 violation constitutes a separate offense. In determining the amount of the penalty, the director  
7 shall consider the operator's history of previous violations, whether the operator was negligent,  
8 the appropriateness of the penalty to the size of the business of the operator charged, the gravity  
9 of the violation, and the demonstrated good faith of the operator charged in attempting to achieve  
10 rapid compliance after notification of a violation.

11           (2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in  
12 accordance with the provisions of §29A-3-1 *et seq.* of this code.

13           (3) Any miner who knowingly violates any health or safety provision of this chapter or  
14 health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed  
15 by the director under subdivision (4) of this subsection which shall not be more than \$250 for each  
16 occurrence of the violation. Any miner issued a violation under this subsection shall either appeal  
17 the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not  
18 appealed or paid within 30 days shall become delinquent.

19           Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid  
20 shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for  
21 purposes of §22A-1-31 of this code.

22           (4) A civil penalty under subdivision (1) or (2), subsection (a) of this section or subdivision  
23 (1) or (2), subsection (b) of this section shall be assessed by the director only after the person  
24 charged with a violation under this chapter or rule promulgated pursuant to this chapter has been  
25 given an opportunity for a public hearing and the director has determined, by a decision

26 incorporating the director's findings of fact in the decision, that a violation did occur and the  
27 amount of the penalty which is warranted and incorporating, when appropriate, an order in the  
28 decision requiring that the penalty be paid. Any hearing under this section shall be of record.

29 (5) If the person against whom a civil penalty is assessed fails to pay the penalty within  
30 the time prescribed in the order, the director may file a petition for enforcement of the order in any  
31 appropriate circuit court. The petition shall designate the person against whom the order is sought  
32 to be enforced as the respondent. A copy of the petition shall immediately be sent by certified  
33 mail, return receipt requested, to the respondent and to the representative of the miners at the  
34 affected mine or the operator, as the case may be. The director shall certify and file in the court  
35 the record upon which the order sought to be enforced was issued. The court has jurisdiction to  
36 enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in  
37 part, the order and decision of the director or it may remand the proceedings to the director for  
38 any further action it may direct. The court shall consider and determine de novo all relevant issues,  
39 except issues of fact which were or could have been litigated in review proceedings before a  
40 circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues  
41 of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the  
42 court shall determine the amount of the penalty to be imposed. Subject to the direction and control  
43 of the Attorney General, attorneys appointed for the director may appear for and represent the  
44 director in any action to enforce an order assessing civil penalties under this subdivision.

45 (b) (1) Any operator who knowingly violates a health or safety provision of this chapter or  
46 health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses  
47 to comply with any order issued under §22A-1-15 of this ~~article~~ code, or any order incorporated  
48 in a final decision issued under this article, except an order incorporated in a decision under §22A-  
49 1-22(a) or §22A-1-22(b) of this ~~article~~ code, shall be assessed a civil penalty by the director under  
50 subdivision (5), subsection (a) of this section of not more than \$5,000 and for a second or  
51 subsequent violation assessed a civil penalty of not more than \$10,000, unless the director

52 determines that it is appropriate to impose a special assessment for the violation, pursuant to the  
53 provisions of subdivision (2) of this subsection.

54 (2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this  
55 section or subdivision (1) of this subsection, the director may impose a special assessment if an  
56 operator violates a health or safety provision of this chapter or health or safety rule promulgated  
57 pursuant to this chapter and the violation is of serious nature and involves one or more of the  
58 following by the operator:

- 59 (A) Violations involving fatalities and serious injuries;
- 60 (B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;
- 61 (C) Operation of a mine in the face of a closure order;
- 62 (D) Violations involving an imminent danger;
- 63 (E) Violations involving an extraordinarily high degree of negligence or gravity or other  
64 unique aggravating circumstances; or
- 65 (F) A discrimination violation under §22A-1-22 of this code.

66 In situations in which the director determines that there are factors present which would  
67 make it appropriate to impose a special assessment, the director shall assess a civil penalty of at  
68 least \$5,000 and not more than \$10,000.

69 (c) Whenever a corporate operator knowingly violates a health or safety provision of this  
70 chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or  
71 fails or refuses to comply with any order issued under this law or any order incorporated in a final  
72 decision issued under this law, except an order incorporated in a decision issued under §22A-1-  
73 22(a) or §22A-1-22(b) of this ~~article~~ code, any director, officer, or agent of the corporation who  
74 knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same  
75 civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

76 (d) Whoever knowingly makes any false statement, representation, or certification in any  
77 application, record, report, plan, or other document filed or required to be maintained pursuant to

78 this law or any order or decision issued under this law is guilty of a misdemeanor and, upon  
79 conviction thereof, shall be fined not more than \$10,000 or confined in jail not more than one year,  
80 or both fined and confined. The conviction of any person under this subsection shall result in the  
81 revocation of any certifications held by the person under this chapter which certified or authorized  
82 the person to direct other persons in coal mining by operation of law and bars that person from  
83 being issued any license under this chapter, except a miner's certification, for a period of not less  
84 than one year or for a longer period as may be determined by the director.

85 (e) Whoever willfully distributes, sells, offers for sale, introduces, or delivers in commerce  
86 any equipment for use in a coal mine, including, but not limited to, components and accessories  
87 of the equipment, who willfully misrepresents the equipment as complying with the provisions of  
88 this law, or with any specification or rule of the director applicable to the equipment, and which  
89 does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction  
90 thereof, is subject to the same fine and confinement that may be imposed upon a person under  
91 subsection (d) of this section.

92 (f) Any person who willfully violates any safety standard pursuant to this chapter or a rule  
93 promulgated thereunder that causes a fatality or who willfully orders or carries out such violation  
94 that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more  
95 than \$10,000 or confined in a state correctional facility not less than one year and not more than  
96 five years, or both fined and ~~imprisoned~~ confined.

97 (g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety  
98 and Training Fund. All civil penalty assessments collected under this section shall be collected by  
99 the director and deposited with the Treasurer of the State of West Virginia to the credit of the  
100 Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized  
101 to expend the moneys in the fund for the administration of this chapter.

**§22A-1-35. Mine rescue teams.**

1 (a) The operator shall provide mine rescue coverage at each active underground mine.

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

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

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

7 (3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team ~~may~~  
8 shall serve as a second or backup team for mines within the state and qualify as one of the two  
9 teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part  
10 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The  
11 operator shall contact the office and ~~obtain the state's agreement to serve as a backup team in~~  
12 ~~the form of a written notification signed by the director and this notification shall be kept posted at~~  
13 ~~the mine~~ notify them of the need for mine rescue services beginning July 1, 2019. The director  
14 shall utilize surplus funds from the West Virginia Office of Miners' Health, Safety, and Training's  
15 special revenue fund to provide backup mine rescue services.

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

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

26 (e) The ground travel time between any mine rescue station and any mine served by that  
27 station shall not exceed two hours. To ensure adequate rescue coverage for all underground

28 mines, no mine rescue station may provide coverage for more than ~~seventy~~ 70 mines within the  
29 two-hour ground travel limit as defined in this subsection.

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

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

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

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

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

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

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

50 (4) Mine map training and ventilation procedures.

51 (j) When engaged in rescue work required by an explosion, fire, or other emergency at a  
52 mine, all members of mine rescue teams assigned to rescue operations shall, during the period  
53 of their rescue work, be employees of the operator of the mine where the emergency exists, and

54 shall be compensated by the operator at the rate established in the area for such work. In no case  
55 shall this rate be less than the prevailing wage rate in the industry for the most skilled class of  
56 inside mine labor. During the period of their emergency employment, members of mine rescue  
57 teams shall be protected by the workers' compensation subscription of the mine operator.

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

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

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

65 (3) The mine operator shall provide two-way communication and a lifeline or its equivalent  
66 at each fresh air base for all mine rescue or recovery teams and no mine rescue team member  
67 shall advance more than 1,000 feet in by the fresh air base: *Provided*, That if a life may possibly  
68 be saved and existing conditions do not create an unreasonable hazard to mine rescue team  
69 members, the rescue team may advance a distance agreed upon by those persons directing the  
70 mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a  
71 lifeline or its equivalent in each 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~~ 60 atmospheres, or  
74 its 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;

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~~ 1,000 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~~ 30 days and  
103 shall 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 §22A-  
112 1-15 of this ~~article~~ code.

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~~ 24 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~~ 30 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.

**§22A-1-43. Hold harmless clause; decision to enter mine.**

1 (a) If any injury or death shall occur to any person who has entered any mine, whether  
2 active workings or abandoned workings, without permission, neither:

3 (1) The owner of that mine or property; nor

4 (2) The State of West Virginia or any of its political subdivisions, or any agency operating  
5 under color of law thereunder; nor

6           (3) Any person, organization, or entity involved in any rescue or attempted rescue of such  
7 person who has committed an entry without permission, shall be held liable in any court or other  
8 forum for such injury or death.

9           (b) The director is authorized to make the decision on whether a mine is too dangerous,  
10 and this decision is not subject to review by a court of this state.

11           (c) A company shall not be required or ordered to conduct rescue operations.

**§22A-1-44. Temporary exemption for environmental regulations.**

1           In the event of an unauthorized entry by any person or persons into any mine whether  
2 active workings or abandoned workings, neither the owner of that mine or property, nor any other  
3 person, organization, or entity involved in any rescue or attempted rescue of such person, may  
4 be held liable for any violation of any environmental regulation, if such violation occurred as part  
5 of any rescue efforts.

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

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

1           (a) Every employer of certified persons, as defined in §22A-1-2 of this ~~chapter~~ code, shall  
2 implement a substance abuse screening policy and program that shall, at a minimum, include:

3           (1) A preemployment, ~~ten~~ 10-panel urine test for the following and any other substances  
4 as set out in rules adopted by the Office of Miners' Health, Safety, and Training:

- 5           (A) Amphetamines;
- 6           (B) Cannabinoids/THC;
- 7           (C) Cocaine;
- 8           (D) Opiates;
- 9           (E) Phencyclidine (PCP);

- 10 (F) Benzodiazepines;
- 11 (G) Propoxyphene;
- 12 (H) Methadone;
- 13 (I) Barbiturates; and
- 14 (J) Synthetic narcotics.

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

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

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

32 (b) For purposes of this subsection, preemployment testing shall be required upon hiring  
33 by a new employer, rehiring by a former employer following a termination of the  
34 employer/employee relationship or transferring to a West Virginia mine from an employer's out-  
35 of-state mine to the extent that any substance abuse test required by the employer in the other

36 jurisdiction does not comply with the minimum standards for substance abuse testing required by  
37 this article. Furthermore, the provisions of this section apply to all employers that employ certified  
38 persons who work in mines, regardless of whether that employer is an operator, contractor,  
39 subcontractor or otherwise.

40 (c) Any employee involved in an accident that results in physical injuries or damage to  
41 equipment or property may be subject to a drug test by his or her employer.

42 ~~(e)~~ (d) (1) Every employer shall notify the director, on a form prescribed by the director,  
43 within seven days of any of the following:

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

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

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

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

51 (2) With respect to any certified person subject to a collective bargaining agreement, the  
52 employer shall notify the director, on a form prescribed by the director, within seven days of any  
53 of the following:

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

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

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

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

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

64           (4) Notice shall result in the immediate temporary suspension of all certificates held by the  
65 certified person who failed the screening, pending a hearing before the board of appeals pursuant  
66 to §22A-1-2 of this ~~article~~ code.

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

72           ~~(e)~~ (f) The provisions of this article shall not be construed to preclude an employer from  
73 developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse  
74 program that exceeds the minimum requirements set forth in this section. The provisions of this  
75 article shall also not be construed to require an employer to alter, amend, revise or otherwise  
76 change, in any respect, a previously established substance abuse screening policy and program  
77 that meets or exceeds the minimum requirements set forth in this section. The provisions of this  
78 article shall require an employer to subject its employees who as part of their employment are  
79 regularly present at a mine and who are employed in a safety-sensitive position to preemployment  
80 and random substance abuse tests: *Provided*, That each employer shall retain the discretion to  
81 establish the parameters of its substance abuse screening policy and program so long as it meets  
82 the minimum requirements of this article. For purposes of this section, a "safety-sensitive position"  
83 means an employment position where the employee's job responsibilities include duties and  
84 activities that involve the personal safety of the employee or others working at a mine.

**§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~~ 60 days of the temporary  
3 suspension. The Board of Appeals shall make every effort to hold the hearing within ~~forty~~ 40 days  
4 of 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 §22A-1-31 of this ~~chapter~~ code. In addition to the rules and  
7 procedures in §22A-1-31 of this ~~chapter~~ code in hearings under this section, the Board of Appeals  
8 may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical  
9 Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires  
10 testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an  
11 Internet-based program in lieu of physically attending the hearing. The Board of Appeals may  
12 suspend the certificate or certificates of a certified person for violation of this article or for any  
13 other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose  
14 further disciplinary actions for repeat violations. The director shall have the authority to propose  
15 legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the  
16 disciplinary actions referenced in this section following the receipt of recommendations from the  
17 Board of Coal Mine Health and Safety following completion of the study required pursuant to  
18 §22A-6-14 of this ~~chapter~~ code. The legislative rules authorized by this subsection shall not,  
19 however, include any provisions requiring an employer to take or refrain from taking any specific  
20 personnel action or mandating any employer to establish or maintain an employer-funded  
21 substance abuse rehabilitation program.

22 (c) No person whose certification is suspended or revoked under this section may perform  
23 any duties under any other certification issued under this chapter, during the period of the  
24 suspension imposed by the Board of Appeals. For all miners determined to have a positive drug  
25 or alcohol test as determined pursuant to the provisions of this article, the board shall suspend  
26 the miner's certification card(s) for a minimum of six months from the date of the drug test. This

27 six-month minimum suspension shall also apply to miners who enter into a treatment program  
28 after testing positive in a drug test administered pursuant to the provisions of this article and are  
29 placed under probationary treatment and testing agreements by the board. The director shall  
30 promulgate an emergency rule and legislative rule by July 1, 2019, requiring all miners who have  
31 a positive drug or alcohol test shall have their miner certification card(s) suspended for a minimum  
32 of six months.

33 (d) Any party adversely affected by a final order or decision issued by the Board of Appeals  
34 hereunder is entitled to judicial review thereof pursuant to §29A-5-4 of this code.

## **ARTICLE 2. UNDERGROUND MINES.**

### **§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) (a) The A mine operator shall give the director a copy of the MSHA United States~~  
15 ~~Department of Labor's Mine Safety and Health Administration (MSHA)-approved plan and any~~



16 addenda as soon as the operator receives the approval from MSHA. The MSHA-approved plan  
17 shall serve as the state-approved plan: *Provided*, That the MSHA-approved plan shall comply  
18 with all provisions of state mining law as set forth in this code or state rules.

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

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

**§22A-2-12. Instruction of employees and supervision of apprentices; annual examination  
of persons using approved methane-detecting devices; records of examination;  
maintenance of methane detectors, etc.**

1 (a) The Office of Miners' Health, Safety, and Training shall prescribe and establish a  
2 course of instruction in mine safety and particularly in dangers incident to employment in mines  
3 and in mining laws and rules, which course of instruction shall be successfully completed within  
4 ~~twelve~~ 12 weeks after any person is first employed as a miner. It is further the duty and  
5 responsibility of the Office of Miners' Health, Safety, and Training to see that the course is given  
6 to all persons as above provided after their first being employed in any mine in this state. In  
7 addition to other enforcement actions available to the director, upon a finding by the director of  
8 the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall  
9 notify the ~~Board of Miners' Training, Education and Certification~~ Board of Coal Mine Health and  
10 Safety, which shall cause additional training to occur at the mine addressing such safety issue or  
11 issues identified by the director, pursuant to §22A-7-1 *et seq.* of this ~~chapter~~ code. The Office of

12 Miners' Health, Safety, and Training is authorized to promulgate emergency and legislative rules  
13 establishing a course of instruction.

14 (b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in  
15 this state to see that every person employed to work in the mine is, before beginning work therein,  
16 instructed in the particular danger incident to his or her work in the mine, and furnished a copy of  
17 the mining laws and rules of the mine. It is the duty of every mine operator who employs  
18 apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this ~~chapter~~ code to ensure that  
19 the apprentices are effectively supervised with regard to safety practices and to instruct  
20 apprentices in safe mining practices. Every apprentice shall work under the direction of the mine  
21 foreman or his or her assistant mine foreman and they are responsible for his or her safety. The  
22 mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an  
23 experienced miner, but the foreman and his or her assistant mine foreman remain responsible for  
24 the apprentice. During the first ~~one hundred twenty~~ 90 days of employment in a mine, the  
25 apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an  
26 experienced miner, and in a location that the mine foreman, assistant mine foreman, or  
27 experienced miner can effectively respond to cries for help of the apprentice. The location shall  
28 be on the same side of any belt, conveyor, or mining equipment.

29 (c) Persons whose duties require them to use an approved methane-detecting device or  
30 other approved methane detectors shall be examined at least annually as to their competence by  
31 a qualified official from the Office of Miners' Health, Safety, and Training and a record of the  
32 examination shall be kept by the operator and the office. Approved methane-detecting devices  
33 and other approved methane detectors shall be given proper maintenance and shall be tested  
34 before each working shift. Each operator shall provide for the proper maintenance and care of the  
35 permissible approved methane-detecting device or any other approved device for detecting  
36 methane and oxygen deficiency by a person trained in the maintenance, and, before each shift,

37 care shall be taken to ensure that the approved methane-detecting device or other device is in a  
38 permissible condition and maintained according to manufacturer's specifications.

**§22A-2-13. Daily inspection of working places; records.**

1 Before the beginning of any shift upon which they shall perform supervisory duties, the  
2 mine foreman or his or her assistant shall review carefully and countersign all books and records  
3 reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which  
4 the operator is required to keep under this chapter. The mine foreman, assistant mine foreman,  
5 or fire boss shall visit and carefully examine each working place in which miners will be working  
6 at the beginning of each shift before any face equipment is energized and shall examine each  
7 working place in the mine at least once every two hours each shift while such miners are at work  
8 in such places, and shall direct that each working place shall be secured by props, timbers, roof  
9 bolts, or other approved methods of roof support or both where necessary to the end that the  
10 working places shall be made safe. The mine foreman or his or her assistants upon observing a  
11 violation or potential violation of §22A-2-1 *et seq.* of this ~~chapter~~ code or any regulation or any  
12 plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction  
13 thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant  
14 mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself  
15 or herself. Should the mine foreman or his or her assistants find a place to be in a dangerous  
16 condition, they shall not leave the place until it is made safe, or shall remove the persons working  
17 therein until the place is made safe by some competent person designated for that purpose.

18 He or she shall place his or her initials, time and the date at or near each place he or she  
19 examines. He or she shall also record any dangerous conditions and practices found during his  
20 or her examination in a book provided for that purpose.

21 Notwithstanding any other law to the contrary, the director may use any data collected  
22 from a tracking device as evidence that a person designated to perform daily examinations under

23 this section neglected or failed to perform a duty mandated by this section under §22A-1-31 of  
24 this code and may decertify any miner who is found to have failed to perform his or her duties.

**§22A-2-80. Existing regulations to be revised.**

1 By August 31, 2019, all existing rules or regulations under authority of this article shall be  
2 revised to reflect the changes enacted during the 2019 Regular Session of the Legislature.

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

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

1 (a) For monitoring and controlling exhaust gases, the director shall establish the  
2 maximum allowable ambient concentration of exhaust gases in the mine atmosphere. Standards  
3 for exhaust gases, stated in parts per million, shall be established for carbon monoxide and oxides  
4 of nitrogen. The rules shall establish the location in the mine at which the concentration of these  
5 exhaust gases is to be measured, the frequency at which measurements are to be made, and  
6 requirements prescribing the sampling instruments to be used in the measurement of exhaust  
7 gases: Provided, That the measurement of nitrogen oxide shall not be required for any operator  
8 in the state unless the measurement of ambient concentrations is required for those miners  
9 working within sight and sound of the equipment.

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

14 (c) The director shall provide for the remedial action to be taken if the concentration of any  
15 of the gases listed in subsection (a) of this section exceeds the exposure limit.

16 (d) In addition to the other maintenance requirements required by this article, the director  
17 shall establish requirements provide for service, maintenance and tests which are specific to an  
18 engine's fuel delivery system, timing, or exhaust emissions control and conditioning system.

**ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.**

**§22A-8-5. Supervision of apprentices.**

1 Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner  
2 holding a certificate of competency and qualification may have ~~one~~ two persons working with him  
3 or her, and under his or her supervision and direction, as an apprentice, for the purpose of learning  
4 and being instructed in the duties and calling of mining. Any mine foreman or fire boss, or assistant  
5 mine foreman or fire boss, may have three persons working with him or her under his or her  
6 supervision and direction, as apprentices, for the purpose of learning and being instructed in the  
7 duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman, or fire boss  
8 supervising apprentices in an area where no coal is being produced or which is outby the working  
9 section may have as many as five apprentices under his or her supervision and direction, as  
10 apprentices, for the purpose of learning and being instructed in the duties and calling of mining or  
11 where the operator is using a production section under program for training of apprentice miners,  
12 approved by the ~~Board of Miner Training, Education and Certification~~ Board of Coal Mine Health  
13 and Safety.

14 Every apprentice working at a surface mine shall be at all times under the supervision and  
15 control of at least one person who holds a certificate of competency and qualification.

16 In all cases, it is the duty of every mine operator who employs apprentices to ensure that  
17 such persons are effectively supervised and to instruct such persons in safe mining practices.  
18 Each apprentice shall wear a red hat which identifies the apprentice as such while employed at  
19 or near a mine. No person shall be employed as an apprentice for a period in excess of eight

20 months, except that in the event of illness or injury, time extensions shall be permitted as  
21 established by the Director of the Office of Miners' Health, Safety, and Training.

**§22A-8-10. Loss of certification for unlawful trespass.**

1 Upon a conviction under the provisions of §61-3B-6 of this code, the certification of any  
2 person certified under the provision of §22A-8-1 et seq. of this code, including a safety sensitive  
3 certification issued pursuant to 56 CSR 19, shall be deemed revoked and person shall be  
4 permanently barred from holding a certification under the provisions of §22A-8-1 et seq. of this  
5 code.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar,  
steamboat, or other vessel; penalties; counts in indictment.**

1 If any person shall, at any time, break and enter, or shall enter without breaking, any office,  
2 shop, ~~underground coal mine~~, storehouse, warehouse, banking house, or any house or building,  
3 other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or  
4 traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel,  
5 or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure  
6 erected with the intent of the property owner of protecting or securing the area within and its  
7 contents from unauthorized persons, within the jurisdiction of any county in this state, with intent  
8 to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon  
9 conviction, shall be confined in a state correctional facility not less than one nor more than 10  
10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any  
11 automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he  
12 or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less  
13 than two nor more than 12 months and be fined not exceeding \$100.

14 An indictment for burglary may contain one or more counts for breaking and entering, or  
15 for entering without breaking, the house or building mentioned in the count for burglary under the  
16 provisions of this section and §61-3-11 of this code.

**ARTICLE 3B. TRESPASS.**

**§61-3B-6. Mine trespass; penalties.**

1 (a) A person who willfully enters an underground coal mine, whether active workings or  
2 abandoned workings, without permission, and the underground mine is either: (1) Sealed; or (2)  
3 clearly identified by signage at some conspicuous place near the entrance of the mine that  
4 includes a notice that the unauthorized entry into the mine is a felony criminal offense, is guilty of  
5 a felony and, upon conviction thereof shall be imprisoned in a correctional facility not less than  
6 one year and nor more than 10 years and shall be fined not less than \$5,000 nor more than  
7 \$10,000.

8 (b) A person who willfully enters a surface coal mine, whether active workings or  
9 abandoned workings, without permission, and with the intent to commit a felony or any larceny,  
10 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than one  
11 week and not more than one month and shall be fined not less than \$1,000 nor more than \$5,000.  
12 For a second conviction the person shall be guilty of a felony and shall be confined in a  
13 correctional facility not less than one year and not more than five years and shall be fined not less  
14 than \$5,000 nor more than \$10,000. For a third or subsequent conviction, the person is guilty of  
15 a felony and shall be confined in a correctional facility not less than five year and not more than  
16 10 years and shall be fined not less than \$10,000, nor more than \$25,000.

17 (c) A person who violates subsections (a) or (b) of this section, and during any rescue  
18 efforts for any such person, there occurs an injury that causes substantial physical pain, illness,  
19 or any impairment of physical condition to any person other than himself or herself, is guilty of a  
20 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week

21 and not more than one year and shall be fined not less than \$1,000 nor more than \$5,000:

22 Provided, That such jail term shall include actual confinement of not less than seven days.

23 (d) A person who violates subsections (a) or (b) of this section, and during any rescue  
24 efforts for any such person, there occurs an injury that creates a substantial risk of death, causes  
25 serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or  
26 impairment of the function of any bodily organ to any person other than himself or herself, is guilty  
27 of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less  
28 than two nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000.

29 (e) A person who violates subsections (a) or (b) of this section, and during any rescue  
30 efforts of such person, the death of any person occurs, is guilty of a felony and, upon conviction  
31 thereof, shall be imprisoned in a correctional facility for not less than three nor more than 15 years  
32 and shall be fined not less than \$10,000 nor more than \$25,000.

33 (f) Notwithstanding and in addition to any other penalties provided by law, any person who  
34 performs or causes damage to property in the course of a willful trespass in violation of this section  
35 is liable to the property owner in the amount of twice the amount of such damage.

36 (g) The terms "mine", "active workings", and "abandoned workings" have the same  
37 meaning ascribed to such terms as set forth in §22A-1-2 of this code.

38 (h) Nothing in this section shall be construed to prevent lawful assembly and petition for  
39 the lawful redress of grievances, including, but not limited to, activities protected by the West  
40 Virginia Constitution or the United States Constitution or any statute of this state or the United  
41 States.