

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2875

FISCAL
NOTE

BY DELEGATES J. KELLY, CADLE, CRISS, HAMRICK, J.
JEFFRIES, MANDT, C. MARTIN, STEELE, SUMMERS AND
MAYNARD

[Introduced February 6, 2019; Referred to the
Committee on Industry and Labor then Energy.]

1 A BILL to amend and reenact §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia,
2 1931, as amended; to amend and reenact §22-3-14 of said code; to amend and reenact
3 §22-11-10 of said code; amend and reenact §22-30-3 of said code; to amend and reenact
4 §22A-1-14 of said code; to amend said code by adding thereto a new section, designated
5 §22A-1-43; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend said
6 code by adding thereto a new section, designated §22A-1A-5; to amend and reenact
7 §22A-2-2, §22A-2-4, §22A-2-12 and §22A-2-78 of said code; to amend said code by
8 adding thereto two new sections, designated §22A-2-80, and §22A-2-81; to amend and
9 reenact §22A-8-1, §22A-8-5 and §22A-8-6 of said code; and to amend said code by
10 adding thereto a new section, designated §22A-8-10, all relating generally to coal mine
11 safety; adding an additional permit requirement; addressing water pollution control; adding
12 a definition; altering mine inspectors' duties; providing for additional drug testing and for
13 positive drug tests; altering the ventilation of mines and ventilation plan requirements;
14 altering the examination requirements to determine compliance with permits; addressing
15 unauthorized entry into active, closed and abandoned coal mines; requiring certain
16 existing rules to be revised; exempting properly trained mine communications persons
17 from having to have a certificate of competency and qualification permit; altering
18 apprentice supervision requirements; differentiating underground miners and surface
19 miners for certificates of competency and qualification purposes; setting forth the
20 requirements of surface miners' certificates of competency and qualification; providing
21 criminal penalties; providing effective dates; and requiring rule-making.

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 review statement.

1 ~~(a)(1) The operator shall develop a community impact statement, as described in this~~
2 ~~section, which shall be submitted to the office within sixty days of the filing of a surface mining~~
3 ~~application pursuant to the provisions of article three, chapter twenty-two of this code. Failure to~~

4 ~~submit a community impact statement to the office shall be considered a violation under the~~
5 ~~provisions of section seventeen of said article; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

42 ~~(e) The provisions of this section shall apply as follows:~~

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

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

46 (a) The office shall, no less frequently than quarterly, either consult with representatives
47 of the department's Office of Mining and Reclamation or review the department's permit
48 application database(s) to determine whether newly proposed surface mines or significant
49 modifications to existing surface mining operations may present opportunities for mine operators
50 to cooperate with local landowners and local governmental officials to mine and reclaim properties
51 so as to develop community assets or secure developable land and infrastructure pursuant to this
52 article.

53 (b) The provisions of this section apply to all surface mining permit applications advertised
54 after July 1, 2018.

§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 prepare
7 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 §22-3-23 of this code; and (vi) the use is feasible.
76 Required infrastructure component standards require approval of the relevant county
77 commission, commissions or other county governing body before such standards are accepted.
78 County commission or other county governing body approval may be rendered only after a

79 reasonable public comment period;

80 (5) The provisions of this subsection shall not take effect until legislative rules are
81 promulgated pursuant to §22-3-23(c)(1)(C) of this code governing bond releases which assure
82 sound future maintenance by the local or regional economic development, redevelopment or
83 planning agencies.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND 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(f) of this code, all
33 existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes
34 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 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 §22-3-13of 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 and

73 (13) Promptly repair, or compensate for, material damage resulting from subsidence
74 caused to any occupied residential dwelling and structures related thereto, or noncommercial
75 building due to underground coal mining operations. The operator shall choose between repairing
76 subsidence damage caused to occupied residential dwellings, related structures or non-
77 commercial buildings, or compensating the owner for such damage. If the operator chooses the
78 repair option, repair of damage shall include rehabilitation, restoration, or replacement of the
79 damaged occupied residential dwelling, structures related thereto or non-commercial building. If
80 the operator chooses the compensation option, compensation shall be provided to the owner of
81 the damaged occupied residential dwelling, structures related thereto or noncommercial building,
82 and shall be in the full amount of the diminution in value resulting from subsidence damage.
83 Compensation may also be accomplished by the purchase, prior to mining, of a noncancelable
84 premium-prepaid insurance policy. The director shall make such modifications to the rules
85 promulgated pursuant to this article as are necessary to ensure that those rules do not conflict
86 with or supersede any provision in this section.

87 (c) In order to protect the stability of the land, the director shall suspend underground
88 mining under urbanized areas, cities, towns and communities and adjacent to industrial or
89 commercial buildings, major impoundments or permanent streams if he or she finds imminent
90 danger to inhabitants of the urbanized areas, cities, towns or communities.

91 (d) The provisions of this article relating to permits, bonds, insurance, inspections,
92 reclamation and enforcement, public review and administrative and judicial review are also
93 applicable to surface operations and surface impacts incident to an underground mine with such

94 modifications by rule to the permit application requirements, permit approval or denial procedures
95 and bond requirements as are necessary to accommodate the distinct difference between surface
96 mines and underground mines in West Virginia.

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"
2 established 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 expend
7 the proceeds of the water quality management fund for the review of initial permit applications,
8 renewal permit applications and permit issuance activities.

9 (c) The secretary shall propose for promulgation, legislative rules in accordance with the
10 provisions of chapter 29A of this code, to establish a schedule of application fees for all
11 applications except for surface coal mining operations as defined in §22-3-1 *et seq.* of this code.
12 The appropriate fee shall be submitted by the applicant to the department with the application
13 filed pursuant to this article for any state water pollution control permit or national pollutant
14 discharge elimination system permit. The schedule of application fees shall be designed to
15 establish reasonable categories of permit application fees based upon the complexity of the
16 permit application review process required by the department pursuant to the provisions of this
17 article and the rules promulgated under this article: *Provided*, That no initial application fee may
18 exceed \$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 chapter 29A 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 code. Each person holding a
26 permit shall pay the prescribed annual permit fee to the department pursuant to the rules
27 promulgated under this section: *Provided*, That no person holding a permit for a home aerator of
28 six hundred gallons and under shall be required to pay an annual permit fee. The schedule of
29 annual permit fees shall be designed to establish reasonable categories of annual permit fees
30 based upon the relative potential of categories or permits to degrade the waters of the state:
31 *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may declare
32 any permit issued pursuant to this article void when the annual permit fee is more than 90 days
33 past due pursuant to the rules promulgated under this section. Voiding of the permit will only
34 become effective upon the date the secretary mails, by certified mail, written notice to the
35 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 for the fiscal year beginning on July 1, 2002 and \$1,000 for each fiscal year thereafter.

47 For all other categories of permitting actions pursuant to this article related to surface coal mining
48 operations, the secretary shall propose for promulgation legislative rules in accordance with the
49 provisions of chapter 29A of this code to establish a schedule of 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 1,320 gallons of fluids that are liquid at standard temperature and
4 pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic
5 or fiberglass reinforced plastic, which provide structural support, more than 90 percent of the
6 capacity of which is above the surface of the ground, and includes all ancillary pipes and
7 dispensing systems up to the first point of isolation. The term includes stationary devices which
8 are permanently affixed, and mobile devices which remain in one location on a continuous basis
9 for 365 or more days. A device meeting this definition containing hazardous waste subject to
10 regulation under 40 C.F.R. Parts 264 and 265, exclusive of tanks subject to regulation under 40
11 C. F. R. § 265.201 is included in this definition but is not a regulated tank. Notwithstanding any
12 other provision of this code to the contrary, the following categories of devices are not subject to
13 the provisions of this article:

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

19 (B) Barges or boats subject to federal regulation under the United States Coast Guard,
20 United States Department of Homeland Security, including, but not limited to, federal regulations

21 promulgated at 33 C. F. R. 1, *et seq.* or subject to other federal law governing the transportation
22 of hazardous materials.;

23 (C) Swimming pools;

24 (D) Process vessels;

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

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

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

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

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

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

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

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

45 (M) Devices having a capacity of two hundred ten barrels or less, containing brine water or
46 other fluids produced in connection with hydrocarbon production activities, that are not located in

47 a zone of critical concern; ~~and~~

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

54 (O) Devices located at coal mining operations and facilities subject to regulation under
55 §22-3-1 et seq. and §22-11-1 et seq. of this code for which a groundwater protection plan has
56 been developed and approved by the department pursuant to the requirements of §22-12-1 et
57 seq. of this code.

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

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

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

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

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

71 (7) "Person", "persons" or "people" means any individual, trust, firm, owner, operator,
72 corporation or other legal entity, including the United States government, an interstate

73 commission or other body, the state or any agency, board, bureau, office, department or political
74 subdivision of the state, but does not include the Department of Environmental Protection.

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

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

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

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

93 (12) "Public water system" means:

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

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

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

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

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

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

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

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

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

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

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

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

124 (14) "Regulated level 2 aboveground storage tank" or "level 2 regulated tank" means an
125 AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

126 (15) "Regulated aboveground storage tank" or "regulated tank" means an AST that meets
127 the definition of a level 1 or level 2 regulated tank.

128 (16) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching of
129 fluids from an aboveground storage tank into the waters of the state or escaping from secondary
130 containment.

131 (17) "Secondary containment" means a safeguard applied to one or more aboveground
132 storage tanks that prevents the discharge into the waters of the state of the entire capacity of the
133 largest single tank and sufficient freeboard to contain precipitation. In order to qualify as
134 secondary containment, the barrier and containment field must be sufficiently impervious to
135 contain fluids in the event of a release, and may include double-walled tanks, dikes, containment
136 curbs, pits or drainage trench enclosures that safely confine the release from a tank in a facility
137 catchment basin or holding pond. Earthen dikes and similar containment structures must be
138 designed and constructed to contain, for a minimum of 72 hours, fluid that escapes from a tank.

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

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

145 (20) "Zone of critical concern" for a public surface water supply source and for a public
146 surface water influenced groundwater supply source is a corridor along streams within a
147 watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the
148 intake's susceptibility to potential contaminants within that corridor. The zone of critical concern
149 is determined using a mathematical model that accounts for stream flows, gradient and area

150 topography. The length of the zone of critical concern is based on a five-hour time-of-travel of
151 water in the streams to the intake. The width of the zone of critical concern is one thousand feet
152 measured horizontally from each bank of the principal stream and five hundred feet measured
153 horizontally from each bank of the tributaries draining into the principal stream.

154 (21) "Zone of peripheral concern" for a public surface water supply source and for a public
155 surface water influenced groundwater supply source is a corridor along streams within a
156 watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's
157 susceptibility to potential contaminants within that corridor. The zone of peripheral concern is
158 determined using a mathematical model that accounts for stream flows, gradient and area
159 topography. The length of the zone of peripheral concern is based on an additional five-hour time-
160 of-travel of water in the streams beyond the perimeter of the zone of critical concern, which
161 creates a protection zone of 10 hours above the water intake. The width of the zone of peripheral
162 concern is one thousand feet measured horizontally from each bank of the principal stream and
163 five hundred feet measured horizontally from each bank of the tributaries draining into the
164 principal stream.

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

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

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

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

6 information.

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

11 (c) Mine inspectors shall devote their full-time and undivided attention to the performance
12 of their duties, and they shall ~~examine~~ visit all of the underground mines in their respective districts
13 at least four times:

14 (1) Three times for compliance assistance. During a compliance assistance visit, when an
15 inspector finds conditions that violate standards set by the U.S. Mine Safety & Health
16 Administration or other standards in this chapter, the inspector may not, except for imminent
17 danger withdrawal orders, issue any notices of violations or citations. Instead, the inspector shall
18 perform Job Safety Analysis (JSAs) of miner's carrying out their regularly assigned duties. The
19 inspectors will document JSAs and inform miners of their safe mining practices and where
20 improvements are suggested. The JSA sheet shall be given to the miner at the end of his or her
21 shift by the inspector and copied to the mine operator with identifying information removed. Also,
22 during a compliance assistance visit, the inspector shall provide compliance assistance to
23 operators in safe operating practices, plan improvements, accident prevention, how to correct any
24 unsafe conditions found, and improve the overall safety of the mine.

25 (2) Surface mines shall be inspected one time per year and one other time for a
26 compliance assistance visit as described in this section.

27 (3) One time annually, and as often, in addition thereto, as the director may direct, or the
28 necessities of the case or the condition of the mine or mines may require, with no advance notice
29 of inspection provided to any person, ~~and they~~ inspectors shall make a personal examination of
30 each working face and all entrances to abandoned parts of the mine where gas is known to
31 liberate, for the purpose of determining whether an imminent danger, referred to in §22A-1-15 of

32 this code, exists in the mine, or whether any provision of §22A-2-1 *et seq.* of this code is being
33 violated or has been violated within the past 48 hours in the mine. No other person shall, with the
34 intent of undermining the integrity of an unannounced mine inspection, provide advance notice of
35 any inspection or of an inspector's presence at a mine to any person at that mine. Any person
36 who, with the requisite intent, knowingly causes or conspires to provide advance notice of any
37 inspection or of an inspector's presence at a mine is guilty of a felony and, upon conviction thereof,
38 shall be fined not more than \$15,000 or imprisoned in a state correctional facility not less than
39 one year and not more than five years, or both fined and imprisoned.

40 (d) In addition to the other duties imposed by this article and §22A-2-1 *et seq.* of this code,
41 it is the duty of each inspector to note each violation he or she finds during an inspection and
42 issue a finding, order, or notice, as appropriate for each violation so noted, except for compliance
43 assistance inspections carried out pursuant to subdivision (1), subsection (c) of this section.

44 During the investigation of any accident, any violation may be noted whether or not the inspector
45 actually observes the violation and whether or not the violation exists at the time the inspector
46 notes the violation, so long as the inspector has clear and convincing evidence the violation has
47 occurred or is occurring.

48 (e) An inspector shall require the operator or other employer to investigate all complaints
49 received by the Office of Miners' Health, Safety and Training involving a certified person's
50 substance abuse or alcohol related impairment at a mine. Within 30 days following notification by
51 the Office of Miners' Health, Safety and Training to the operator or other employer of the
52 complaint, the operator or other employer shall file with the Director a summary of its investigation
53 into the alleged substance abuse or alcohol related impairment of a certified person.

54 (f) The mine inspector shall visit the scene of each fatal accident occurring in any mine
55 within his or her district and shall make an examination into the particular facts of the accident;
56 make a report to the director, setting forth the results of the examination, including the condition
57 of the mine and the cause or causes of the fatal accident, if known, and all the reports shall be

58 made available to the interested parties, upon written requests.

59 (g) At the commencement of any inspection of a coal mine by an authorized representative
60 of the director, ~~the authorized representative of the miners at the mine,~~ as well as a salaried
61 employee of management, at the time of the inspection shall be given an opportunity to
62 accompany the authorized representative of the director on the inspection.

§22A-1-43. Existing regulations to be revised.

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

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

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

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

3 (1) A preemployment, ten-panel urine test for the following and any other substances as
4 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 is 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 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 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 12 months of all
65 certificates held by the certified person who failed the screening, pending a hearing before the

66 board of appeals pursuant to §22A-1-2 of this 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 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~~ do not preclude an employer
73 from developing or maintaining a drug and alcohol abuse policy, testing program or substance
74 abuse program that exceeds the minimum requirements set forth in this section. The provisions
75 of this article ~~shall also not be construed to~~ do not require an employer to alter, amend, revise or
76 otherwise change, in any respect, a previously established substance abuse screening policy and
77 program that meets or exceeds the minimum requirements set forth in this section. The provisions
78 of this article ~~shall~~ require an employer to subject its employees who as part of their employment
79 are regularly present at a mine and who are employed in a safety-sensitive position to
80 preemployment and random substance abuse tests: *Provided*, That each employer shall retain
81 the discretion to establish the parameters of its substance abuse screening policy and program
82 so long as it meets the minimum requirements of this article. For purposes of this section, a
83 "safety-sensitive position" means an employment position where the employee's job
84 responsibilities include duties and activities that involve the personal safety of the employee or
85 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 certificate
2 pursuant to this article, shall be conducted within 60 days of the temporary suspension. The Board
3 of Appeals shall make every effort to hold the hearing within 40 days of the temporary suspension.

4 (b) All hearings of the Board of Appeals pursuant to this section shall be conducted in
5 accordance with the provisions of §22A-1-31(c) of this code. In addition to the rules and

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

21 (c) No person whose certification is suspended or revoked under this section may perform
22 any duties under any other certification issued under this chapter, during the period of the
23 suspension imposed by the board of appeals. For all miners found to have a positive drug or
24 alcohol test as determined pursuant to the provisions of this article, the board shall suspend the
25 miner's certification cards for a minimum of one year from the date of the drug test. This 12-
26 month minimum suspension also applies to miners who enter into a treatment program after
27 testing positive in a drug test administered pursuant to the provisions of this article, and are placed
28 under probationary treatment and testing agreements by the board.

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

§22A-1A-5. Effective date.

1 The provisions of this article are effective beginning July 1, 2019.
2 By August 31, 2019, all existing rules under authority of this article shall be revised to
3 reflect the changes enacted during the 2019 Regular Session of the Legislature

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

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

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

20 ~~The director shall work with the operator to review and comment on the proposed plan revision to~~
21 ~~MSHA as quickly as possible.~~

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

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

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

18 (b) ~~Airflow shall be maintained in all intake and return air courses of a mine and, where~~
19 ~~multiple fans are used, neutral areas created by pressure equalization between main fans shall~~

20 ~~not be permitted. Production activities in working faces shall cease while tubing, line brattice or~~
21 ~~other ventilation devices are being installed in by the machine operator.~~

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

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

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

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

46 ~~such cases, a minimum of 12,000 cubic feet of air a minute shall be delivered to the last open~~
47 ~~crosscut and as much more as is necessary to dilute and render harmless and carry away~~
48 ~~flammable and noxious gases.~~

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

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

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

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

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

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

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

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

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

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

12 (b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in
13 this state to see that every person employed to work in the mine is, before beginning work therein,
14 instructed in the particular danger incident to his or her work in the mine, and furnished a copy of
15 the mining laws and rules of the mine. It is the duty of every mine operator who employs
16 apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this code to ensure that the

17 apprentices are effectively supervised with regard to safety practices and to instruct apprentices
18 in safe mining practices. Every apprentice shall work under the direction of the mine foreman or
19 his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman
20 or assistant mine foreman may delegate the supervision of an apprentice to an experienced
21 miner, but the foreman and his or her assistant mine foreman remain responsible for the
22 apprentice. During the first ~~one hundred twenty~~ 45 days of employment in a mine, the apprentice
23 shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced
24 miner, and in a location that the mine foreman, assistant mine foreman or experienced miner can
25 effectively respond to cries for help of the apprentice. ~~The location shall be on the same side of~~
26 ~~any belt, conveyor or mining equipment.~~

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

§22A-2-78. Examinations to determine compliance with permits.

1 Whenever permits are issued by the Office of Miners' Health, Safety and Training, ~~frequent~~
2 examinations shall be made by the mine inspector during the tenure of the permit to ~~determine~~
3 ~~that~~ provide compliance assistance with the requirements and limitations of the permit are
4 complied with. The director shall determine the rate of inspections and compliance assistance for
5 visits to particular mines, but at least 75 percent of the inspection time at a particular mine shall

6 be on compliance assistance visits.

7 (b) For underground mines, there shall be three compliance assistance visits, one regular
8 inspection and one electrical inspection each year.

9 (c) At surface mines there shall be one regular inspection and one compliance visit in each
10 year. Surface mines shall also have one electrical inspection per year.

11 (d) During a compliance assistance inspection, when an inspector finds conditions that
12 violate standards set by the U.S. Mine Safety & Health Administration or other standards in this
13 chapter, the inspector may not, except for imminent danger withdrawal orders, issue any notices
14 of violations or citations.

15 Instead, the inspector shall perform Job Safety Analysis (JSAs) of miner's carrying out
16 their regularly assigned duties. The inspectors shall document JSAs and inform miners of their
17 safe mining practices and where improvements are suggested. The JSA sheet shall be given to
18 the miner at the end of his shift by the Inspector and copied to mine operator with identifying
19 information removed.

20 Also, during a compliance assistance inspection, the inspector shall provide compliance
21 assistance to operators in safe operating practices, plan improvements, accident prevention, how
22 to correct any unsafe conditions found, and improve the overall safety of the mine.

23 (e) However, during any compliance assistance visit at mines in this state, the inspector
24 may cite any individual miner for traveling under unsupported top or failing to tag and lock out
25 electrical sources before beginning electrical work.

§22A-2-80 Unauthorized entry into active or closed and abandoned coal mines.

1 (a) Notwithstanding any provisions to the contrary in this code:

2 (1) Any person who, without the authorization of the operator or the director, knowingly
3 enters or attempts to enter an active or a closed and/or abandoned underground coal mine or the
4 surface area of an underground coal mine is guilty of a felony and, upon conviction thereof, shall
5 be imprisoned in a state correctional facility, for not less than one year nor more than 10 years,

6 fined not less than \$10,000 nor more than \$100,000, or both imprisoned and fined. The surface
7 areas of the underground mine with active permits shall be marked with No Trespassing Signs as
8 required by boundary standards set in the mine's environmental permits. For mines after permit
9 release, the mine area shall be marked with No Trespassing Signs on roads leading into the
10 surface areas of the portals.

11 (2) Any person who, without the authorization of the operator and the director, knowingly
12 enters or attempts to enter an active or closed and/or abandoned surface coal mine is guilty of a
13 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility, for not less
14 than one year nor more than 10 years, fined not less than \$10,000 nor more than \$100,000, or
15 both imprisoned and fined. The operator of active surface mines shall mark their property with No
16 Trespassing Signs as required by the marking standards set in the mine's environmental permits.
17 For surface mines after permit release, the mine shall be marked with No Trespassing Signs on
18 roads leading into the surface mine areas.

19 (3) Any unauthorized entry regardless of its purpose shall violate this section.

20 (4) This provision does not apply to company or state inspectors or mine rescue teams
21 who must enter the mine to find or rescue those who have unlawfully entered such mines.
22 However, this section does not require company or state personnel to conduct rescue operations
23 when conditions in the abandoned or closed mines are too dangerous.

24 (5) The decision on whether it is too dangerous to enter an abandoned or closed mine for
25 rescue operations shall be made by the operator and director and is not reviewable by any court
26 of this state.

27 (6) Notwithstanding any other provision of this code, operators and their employees,
28 contractors and agents, along with the State of West Virginia and state employees, including
29 mining personnel, and its contractors and agents, who attempt to find and rescue individuals who
30 have unlawfully entered mine property are not liable for civil damages as the result of any act or
31 omission, including claims for negligence, either through act or omission, or whether actual or

32 imputed, or any other claim or cause of action, in the performance of the functions of attempting
33 to locate and rescue those who are unlawfully on mine property.

34 (7) Any certified miner who, without the authorization of the operator or the director,
35 knowingly enters or attempts to enter an active or a closed and/or abandoned underground coal
36 mine or the surface area of an underground coal mine shall have all miner certificates immediately
37 suspended and permanently revoked.

38 (8) Any relative, friend or associate who has knowledge of a relative, friend or associate
39 who has without the authorization of the operator or the director, knowingly enter or attempts to
40 enter an active or a closed and/or abandoned underground coal mine or the surface area of an
41 underground coal mine shall report this immediately report this knowledge to the West Virginia
42 State Police and the West Virginia Office of Homeland Security and the West Virginia Office of
43 Miners' Health, Safety and Training.

22A-2-81 Existing rules to be revised.

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

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

**§22A-8-1. Certificate of competency and qualification or permit of apprenticeship required
of all surface and underground miners.**

1 Except as hereinafter provided, no person shall work or be employed for the purpose of
2 performing normal duties as a surface or underground miner in any mine in this state unless the
3 person holds at the time he or she performs such duties a certificate of competency and
4 qualification or a permit of apprenticeship issued under the provisions of this article. This provision
5 does not apply to properly trained mine communications persons under §22A-2-42 of this code.

§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 person~~ two persons working
3 with him or her, and under his or her supervision and direction, as an apprentice, for the purpose
4 of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss
5 or assistant mine foreman or fire boss may have three persons working with him or her under his
6 or her supervision and direction, as apprentices, for the purpose of learning and being instructed
7 in the duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman or fire
8 boss supervising apprentices in an area where no coal is being produced or which is out by the
9 working section may have as many as five apprentices under his or her supervision and direction,
10 as apprentices, for the purpose of learning and being instructed in the duties and calling of mining
11 or where the operator is using a production section under program for training of apprentice
12 miners, approved by the Board of Miner Training, Education and Certification.

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

15 In all cases, it is the duty of every mine operator who employs apprentices to ensure that
16 such persons are effectively supervised and to instruct such persons in safe mining practices.
17 Each apprentice shall wear a red hat which identifies the apprentice as such while employed at
18 or near a mine. No person shall be employed as an apprentice for a period in excess of eight
19 months, except that in the event of illness or injury, time extensions shall be permitted as
20 established by the Director of the Office of Miners' Health, Safety and Training.

§22A-8-6. Certificate of competency and qualification -- Underground or surface miner.

1 (a) Underground miner. -- A certificate of competency and qualification as an underground
2 miner ~~or as surface miner~~ shall be issued by the director to any person who has at least six
3 months' total experience as an apprentice and demonstrated his or her competence as a miner
4 by successful completion of an examination given by the director or his or her representative in a
5 manner and place to be determined by the Board of Miner Training, Education and Certification:
6 *Provided*, That all examinations shall be conducted in the English language and shall be of a

7 practical nature, so as to determine the competency and qualifications of the applicant to engage
8 in the mining of coal with reasonable safety to the applicant and fellow employees: *Provided,*
9 *however,* That notice of the time and place of such examination shall be given to management at
10 the mine, to the local union thereat if there is a local union, and notice shall also be posted at the
11 place or places in the vicinity of the mine where notices to employees are ordinarily posted.
12 Examinations shall also be held at such times and places, and after such notice, as the board
13 finds necessary to enable all applicants for certificates to have an opportunity to qualify for
14 certification.

15 (2) Surface Miner. -- A certificate of competency and qualification as a surface miner shall
16 be issued by the director to any person who has at least 90 days total experience as an apprentice
17 and demonstrated his or her competence as a miner by successful completion of an examination
18 given by the director or his or her representative in a manner and place to be determined by the
19 Board of Miner Training, Education and Certification: *Provided,* That all examinations shall be
20 conducted in the English language and shall be of a practical nature, so as to determine the
21 competency and qualifications of the applicant to engage in the mining of coal with reasonable
22 safety to the applicant and fellow employees: *Provided, however,* That notice of the time and
23 place of the examination shall be given to management at the mine, to the local union at the mine
24 if there is a local union, and notice shall also be posted at the place or places in the vicinity of the
25 mine where notices to employees are ordinarily posted. Examinations shall also be held at times
26 and places, and after notice, the board finds necessary to enable all applicants for certificates to
27 have an opportunity to qualify for certification.

22A-8-10 Existing regulations to be revised.

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

1

NOTE: The purpose of this bill relates generally to coal mine safety. The bill adds an

additional permit requirement. The bill addressing water pollution control. The bill adds a definition. The bill alters mine inspectors' duties. The bill provides for additional drug testing and for positive drug tests. The bill alters the ventilation of mines and ventilation plan requirements. The bill alters the examination requirements to determine compliance with permits. The bill addresses unauthorized entry into active, closed and abandoned coal mines. The bill requires certain existing rules to be revised. The bill exempts properly trained mine communications persons from having to have a certificate of competency and qualification permit. The bill alters apprentice supervision requirements. The bill differentiates underground miners and surface miners for certificates of competency and qualification purposes. The bill sets forth the requirements of surface miners' certificates of competency and qualification. The bill provides criminal penalties. The bill provides effective dates. The bill requires rule-making.

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