

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 823

BY SENATOR RUCKER

[Passed March 31, 2025; in effect 90 days from passage (June 29, 2025)]

1 AN ACT to amend and reenact §15-5B-3a and §15-5C-2 of the Code of West Virginia, 1931, as
2 amended, relating to revising the statutes to clarify and separate duties identified in the
3 code between the Division of Emergency Management and the West Virginia Department
4 of Environmental Protection according to what each agency has the resources and
5 expertise to fulfill; delegating the duties of investigation of industrial facility emergency
6 events and emergency incidents by well and pipeline operators that are reported to the
7 Division of Emergency Management; implementing fines and penalties imposed upon
8 industrial facilities and well and pipeline operators to the Department of Environmental
9 Protection; and establishing fund into which civil penalties are to be deposited.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.

§15-5B-3a. Industrial facility emergency event notification and access.

1 (a) *Definitions.* — Unless the context in which used clearly requires a different meaning,
2 the following words and phrases as used in this section have the following meanings:

3 "Industrial facility" means:

4 (A) Any facility that is required to submit a risk management plan to the United States
5 Environmental Protection Agency pursuant to regulations promulgated under Section 112(r) of
6 the Clean Air Act of 1990, 42 U.S.C. §7412(r), including the property upon which the facility is
7 located and any buildings appurtenant thereto or associated therewith, including storage facilities;
8 or

9 (B) A facility which is a factory, mill, plant or refinery, other than a coal facility, including
10 the property upon which a factory, mill, plant or refinery is located and any buildings appurtenant
11 thereto or associated therewith, including storage facilities, found by the director to be of a type
12 to have a reasonable potential to have an emergency event: *Provided*, That before any facility
13 may be subject to the provisions of this section, the owner or operator of each facility shall be
14 placed on actual written notice via certified mail, return receipt requested, of the facility's inclusion

15 thereon, as well as the requirements imposed by the provisions of this section and any rules
16 promulgated thereunder: *Provided, however,* That the list required by the provisions of this section
17 shall be filed with the President of the Senate and the Speaker of the House of Delegates by the
18 first day of the 2010 legislative session.

19 "Appropriate state and local officials" means the Governor or his or her representative, the
20 Director of the Division of Emergency Management, a representative designated by the Secretary
21 of the Department of Homeland Security who has been trained and qualified by the Federal
22 Emergency Management Agency's (FEMA) National Incident Management System (NIMS)
23 program and/or a representative of a local emergency management agency who has been trained
24 and qualified by FEMA's NIMS program.

25 "Director" means the Director of the Division of Emergency Management.

26 "Emergency event" means an unplanned event, including, but not limited to, an explosion,
27 a fire that cannot be contained within 15 minutes of discovery, the release of a reportable quantity,
28 as specified in 40 C.F.R. §302 (2009) or its successor, of an extremely hazardous substance
29 listed in the appendices to 40 C.F.R. §355 (2009) or its successor, loss of life or serious personal
30 injury at an industrial facility: *Provided,* That the director may, by promulgation of a legislative rule,
31 establish a higher threshold report level for a particular extremely hazardous substance than is
32 set in the aforementioned Code of Federal Regulations citation.

33 (b) *Reporting requirement.* —

34 (1) Within 15 minutes of the industrial facility ascertaining the occurrence of an emergency
35 event at an industrial facility, the industrial facility shall contact the Mine and Industrial Accident
36 Emergency Operations Center by telephone at the statewide telephone number established by
37 the director or shall contact the local county 9-1-1 center, as defined in §24-6-1 *et seq.* of this
38 code, by telephone at the number established by the system to communicate the occurrence of
39 the emergency event: *Provided,* That if telephone communications fail for any reason, the

40 industrial facility shall contact local emergency services in the most expeditious manner possible.

41 The industrial facility shall provide the following information:

42 (A) The name and title of the individual making the report;

43 (B) The name and address of the facility; and

44 (C) Notification that an emergency event has occurred.

45 (2) If the caller has ready access to the following information, he or she shall also provide:

46 (A) Then-available information concerning the nature and extent of the emergency event,
47 including any information that concerns the existence or nonexistence of potential threats to the
48 public health;

49 (B) If there is an unplanned fire that cannot be contained within 15 minutes, explosion, or
50 release as defined in this section, preliminary information regarding the type of substance involved
51 and, if a release, the estimated amount released, if known; and

52 (C) The name, title, and contact information of the individual designated to serve as a
53 contact person on behalf of the industrial facility.

54 (3) Any call made pursuant to this subsection may be recorded by the agency receiving
55 the call. If an industrial facility contacts the local county 9-1-1 center to report an emergency event,
56 the local county 9-1-1 center system shall immediately forward all information received to the
57 Mine and Industrial Accident Emergency Operations Center.

58 (c) *Event communications.* — As soon as practicable after providing the notice required
59 under subsection (b) of this section, the industrial facility shall implement a communications
60 system designed to provide timely information to appropriate state and local officials. At a
61 minimum, the industrial facility shall designate a person to serve as a contact for state and local
62 emergency responders. Any person so designated shall, upon the request of an appropriate state
63 or local official, provide such additional information known or subsequently known that may be
64 necessary to assess the extent of the emergency or to provide appropriate public assistance.

65 (d) *Authorized access to public officials.* — As soon as practicable after the occurrence
66 of an emergency event, the industrial facility shall, upon request, provide appropriate state and
67 local officials with timely authorized access to the person or persons charged with managing the
68 event on behalf of the facility and the area(s) where the emergency event is being managed or
69 the industrial facility's response to the emergency event is being coordinated. The industrial facility
70 shall also provide appropriate state and local officials with timely authorized access to any areas
71 affected by the emergency event: *Provided*, That the industrial facility has determined those areas
72 to be reasonably safe: *Provided, however*, That within 30 minutes of obtaining information that
73 affects the public health, safety, and welfare, state and local officials shall notify the public of any
74 hazardous materials or events which may affect the area.

75 (e) *Civil penalties.* —

76 (1) The Department of Environmental Protection shall be responsible for investigating all
77 matters relevant to this code section.

78 (2) The Secretary of the Department of Environmental Protection shall impose a civil
79 penalty of up to \$100,000 on the industrial facility if he or she determines that the industrial facility
80 failed to comply with the reporting requirement of subsection (b) of this section at the conclusion
81 of an investigation by the Department of Environmental Protection. Collection of the civil penalty
82 will be the responsibility of the Department of Environmental Protection. No penalty may be
83 imposed upon an industrial facility giving notice pursuant to this section for unintentionally
84 providing inaccurate or incomplete preliminary information to the Mine and Industrial Accident
85 Emergency Operations Center or the local county 9-1-1 center: *Provided*, That the industrial
86 facility implemented reasonable efforts to provide the most accurate and complete preliminary
87 information possible: *Provided, however*, That the industrial facility implemented reasonable
88 efforts to correct inaccurate or incomplete preliminary information reported to the Mine and
89 Industrial Accident Emergency Operations Center or the local county 9-1-1 center once such
90 information was determined by the industrial facility to be inaccurate or incomplete.

91 (3) The Secretary of the Department of Environmental Protection shall impose a civil
92 penalty on the operator or operators of an industrial facility if he or she determines that the
93 industrial facility failed to comply with the communication or access requirements of subsections
94 (c) and (d) of this section. Application of this subdivision and amounts levied as civil penalties by
95 the director shall be determined in accordance with legislative rules promulgated pursuant to
96 §29A-3-1 *et seq.* of this code and the collection of the civil penalty will be the responsibility of the
97 Department of Environmental Protection at the conclusion of an investigation into the same.

98 (4) The Secretary of the Department of Environmental Protection may waive the imposition
99 of a civil penalty imposed under this section: *Provided*, That he or she finds that the failure to
100 comply with the requirements of this section was caused by circumstances outside the control of
101 the industrial facility at the conclusion of an investigation by the Department of Environmental
102 Protection.

103 (5) All moneys collected pursuant to this section shall be deposited in the Hazardous
104 Waste Emergency Response Fund, as established pursuant to §22-19-3 of this code.

105 (f) Nothing in this section may be construed to:

106 (1) Relieve an industrial facility from any other reporting or notification requirement
107 imposed under state or federal law;

108 (2) Limit in any way the jurisdiction of state and local emergency responders;

109 (3) Limit the police power authority of the Governor; or

110 (4) Limit the authority of the state Fire Marshal.

111 (g) The director, working in cooperation with the Department of Environmental Protection,
112 the state Fire Marshal, and the state Emergency Response Commission, shall promulgate
113 legislative rules identifying a list of industrial facilities that are subject to the requirements of this
114 section.

115 (h) The Department of Homeland Security, Division of Emergency Management, may
116 promulgate rules, including emergency rules, pursuant to the provisions of §29A-3-1 *et seq.* of
117 this code to implement the provisions of this section.

**ARTICLE 5C. REPORTING OF EMERGENCY INCIDENTS BY WELL AND PIPELINE
OPERATORS.**

§15-5C-2. Reporting requirements.

1 (a) In addition to any other requirements imposed by law, all pipeline operators and well
2 operators shall report incidents to the Department of Homeland Security, Division of Emergency
3 Management, at the Mine and Industrial Accident Call Center at 1-866-987-2338, or other such
4 number as may be identified by the director within 15 minutes of ascertaining the occurrence of
5 an incident at a well, well pad, or pipeline facility. Pipeline operators and well operators may
6 satisfy this requirement by contacting the local county 9-1-1 center and orally reporting the
7 information required by this section.

8 (b) Contents of report:

9 (1) The initial report shall include the following minimum information:

10 (A) The name, title, and business affiliation of the individual making the report;

11 (B) The identification and location of the well, well pad, or pipeline facility; and

12 (C) Notification that an incident has occurred.

13 (2) If the caller has ready access to the following information, he or she shall also provide:

14 (A) Then-available information concerning the nature and extent of the incident, including
15 any information that concerns the existence or nonexistence of potential threats to the public
16 health;

17 (B) If there is an unplanned fire that cannot be contained within 15 minutes, explosion, or
18 release, preliminary information regarding the type of substance involved and, if a release, the
19 estimated amount released, if known; and

20 (C) The name, title, business affiliation, and contact information of the individual
21 designated to serve as a contact person on behalf of the pipeline operator or well operator.

22 (c) Any local county 9-1-1 center receiving an initial notification shall immediately forward
23 all information received to the Department of Homeland Security, Division of Emergency
24 Management, at the Mine and Industrial Accident Call Center at 1-866-987-2338, or other such
25 number as may be identified by the director.

26 (d) All calls received by the Department of Homeland Security, Division of Emergency
27 Management, at the Mine and Industrial Accident Call Center shall be recorded for documentation
28 purposes. Recording of calls shall be automatic, and the recorded call information, including time
29 of call and complete voice transcripts, shall be made available to the public upon receipt of a
30 request to the Director in accordance with the West Virginia Freedom of Information Act, §29B-1-
31 1 *et seq.* of this code.

32 (e) An investigation of these matters shall be conducted by the Department of
33 Environmental Protection.

34 (f) The Secretary of the Department of Environmental Protection shall impose a civil
35 administrative penalty of not less than \$2,500 but not to exceed \$50,000 on the pipeline operator
36 or well operator if it is determined that the pipeline operator or well operator failed to give timely
37 notice as required by this section at the conclusion of an investigation by the Department of
38 Environmental Protection, with collection of the civil penalty being the responsibility of the
39 Department of Environmental Protection: *Provided*, That the Secretary of the Department of
40 Environmental Protection shall waive imposition of the civil administrative penalty if the failure to
41 give the required notice:

42 (1) Occurred as a result of circumstances wholly outside the control of the pipeline
43 operator or well operator;

44 (2) Occurred because the pipeline operator or well operator was attempting to stabilize
45 the incident;

46 (3) Occurred because the pipeline operator or well operator was rendering emergency
47 assistance; or

48 (4) Resulted from the incident occurring in a location with no or inadequate wireless
49 communications coverage and notice was provided within 15 minutes of reestablishing
50 communication.

51 (g) Any pipeline operator or well operator aggrieved by the imposition of a civil
52 administrative penalty at the conclusion of an investigation by the Department of Environmental
53 Protection may request within 30 days of receipt of a written communication imposing a civil
54 administrative penalty that the director reconsider the imposition or amount of the civil
55 administrative penalty. If reconsideration is denied, the pipeline operator or well operator shall
56 have a right of appeal to the Intermediate Court of Appeals.

57 (h) All moneys collected pursuant to this section shall be deposited in the Hazardous
58 Waste Emergency Response Fund, as established pursuant to §22-19-3 of this code.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the Senate

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Clerk of the House of Delegates

Originated in the Senate.

In effect 90 days from passage.

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President of the Senate

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Speaker of the House of Delegates

The within is this the.....
Day of, 2025.

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Governor