

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Originating

Senate Bill 942

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AND GARCIA

[Originating in the Committee on Energy, Industry,
and Mining; reported March 29, 2025]

1 A BILL to amend and reenact §22A-2A-101, §22A-2A-308, §22A-2A-309, §22A-2A-310, and
2 §22A-2A-401 of the Code of West Virginia, 1931, as amended; to amend the code by
3 adding four new sections, designated §22A-2A-1001, §22A-2A-1002, §22A-2A-1003, and
4 §22A-2A-1004; and to repeal §22A-2A-402, §22A-2A-403, §22A-2A-404, and §22A-2A-
5 405, relating to modifying the requirements for diesel-powered equipment used in mines;
6 authorizing legislative rules; removing site-specific testing; establishing regulatory
7 limitations; clarifying approval standards; and establishing diesel equipment operating
8 requirements and exemptions.

Be it enacted by the Legislature of West Virginia:

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

§22A-2A-101. Use of diesel-powered equipment authorized.

1 Diesel-powered equipment for use in underground coal mines may only be approved,
2 operated and maintained in accordance with rules, requirements and standards established
3 pursuant to this article: Provided, That diesel-powered equipment may be moved from one mine
4 in the state to another mine in the state, and operated immediately, so long as the equipment is
5 in compliance with the provisions of this article and the director is notified before the equipment
6 is put in service.

~~§22A-2A-308. Director's authority to promulgate legislative rules; continuation of rules~~
Authority of the Director to propose rules.

1 ~~(a) The director has the power and authority to propose legislative rules to carry out and~~
2 ~~implement the provisions of this article in accordance with the provisions of article three, chapter~~
3 ~~twenty-nine-a of this code. In proposing rules for legislative approval, the director shall consider~~
4 ~~the highest achievable measures of protection for miners' health and safety through available~~
5 ~~technology, engineering controls and performance requirements and shall further consider the~~
6 ~~cost, availability, adaptability and suitability of any available technology, engineering controls and~~
7 ~~performance requirements as they relate to the use of diesel equipment in underground coal~~

8 ~~mines. The Director of the Office of Miners' Health, Safety, and Training may propose rules for~~
9 ~~legislative approval necessary to carry out the provisions of this article in accordance with the~~
10 ~~provisions of §29A-3-1 et seq. of this code. Any rule promulgated under this section may not be~~
11 ~~more burdensome than the federal MSHA regulations as provided in 30 CFR 75.1900 et seq. as~~
12 ~~the provisions of such regulations exist on July 1, 2025. Any provision of rule, policy, internal~~
13 ~~procedure, or directive that is contrary to this section or more burdensome than said MSHA~~
14 ~~regulations is null and void and shall be removed.~~

15 ~~(b) All rules promulgated and adopted by the commission in effect prior to the effective~~
16 ~~date of this section shall remain in effect until changed or superseded by legislative rule enacted~~
17 ~~pursuant to subsection (a) of this section.~~

18 ~~(c) The duties imposed upon the director in this article that were previously required to be~~
19 ~~performed by the adoption of rules by the commission and that were satisfied or fulfilled by rules~~
20 ~~adopted by the commission are deemed to be the acts of the director.~~

~~**§22A-2A-309. Director's authority to approve site-specific experimental testing prior to**~~
~~**initial rules Testing requirements for diesel equipment.**~~

1 ~~The director may approve limited site-specific requests for experimental and testing use~~
2 ~~of diesel-powered equipment in underground coal mines prior to promulgation of initial rules in~~
3 ~~accordance with subsections (b), (c), (d), (e), (f) and (g), section three hundred ten of this article.~~

4 ~~Site-specific testing of diesel-powered equipment is no longer required once the~~
5 ~~equipment has been approved for use under 30 CFR Part 7, Subpart E.~~

~~**§22A-2A-310. Duties of director Additional regulatory limitations on the director's**~~
~~**authority.**~~

1 ~~(a) It is the duty of the director to carry out and implement this article and to evaluate and~~
2 ~~adopt state-of-the-art technology and methods, reflected in engines and engine components,~~
3 ~~emission control equipment and procedures, which when applied to diesel-powered underground~~
4 ~~mining machinery, shall reasonably reduce or eliminate diesel exhaust emissions and enhance~~

5 ~~protections of the health and safety of miners. The technology and methods adopted by the~~
6 ~~director shall have been demonstrated to be reliable. In making a decision to adopt new~~
7 ~~technology and methods, the director shall consider the highest achievable measures of~~
8 ~~protection for miners' health and safety through available technology, engineering controls and~~
9 ~~performance requirements and shall further consider the cost, availability, adaptability and~~
10 ~~suitability of any available technology, engineering controls and performance requirements as~~
11 ~~they relate to the use of diesel equipment in underground coal mines. Any state-of-the-art~~
12 ~~technology or methods adopted by the director shall not reduce or compromise the level of health~~
13 ~~and safety protection of miners.~~

14 ~~(b) Upon application of a coal mine operator, the director shall consider site-specific~~
15 ~~requests for the use of diesel equipment in underground coal mines and for the use of alternative~~
16 ~~diesel-related health and safety technologies and methods. The director's action on applications~~
17 ~~submitted under this subsection shall be on a mine-by-mine basis. Upon receipt of a site-specific~~
18 ~~application, the director shall investigate, which investigation shall include consultation with the~~
19 ~~mine operator and the authorized representatives of the miners at the mine. Authorized~~
20 ~~representatives of the miners shall include a mine health and safety committee elected by miners~~
21 ~~at the mine, a person or persons employed by an employee organization representing miners at~~
22 ~~the mine or a person or persons authorized as the representative or representatives of miners of~~
23 ~~the mine in accordance with MSHA regulations at 30 C. F. R. Pt. 40 (relating to representative of~~
24 ~~miners). Where there is no authorized representative of the miners, the director shall consult with~~
25 ~~a reasonable number of miners at the mine. Upon completion of the investigation, the director~~
26 ~~may approve the application for the site-specific request.~~

27 ~~(1) Within one hundred eighty days of receipt of an application for use of alternative~~
28 ~~technologies or methods, the director shall complete its investigation. However, the director has~~
29 ~~an additional one hundred eighty days to complete investigations upon applications filed prior to~~

30 ~~the effective date of the reenactment of this section. The time period may be extended with the~~
31 ~~consent of the applicant.~~

32 ~~(2) The director shall have thirty days upon completion of the investigation in which to~~
33 ~~render a final decision approving or rejecting the application.~~

34 ~~(3) The director may not approve an application made under this section if, at the~~
35 ~~conclusion of the investigation, the director determines that the use of the alternative technology~~
36 ~~or method will reduce or compromise the level of health and safety protection of miners.~~

37 ~~(4) The written approval of an application for the use of alternative technologies or~~
38 ~~methods shall include the results of the director's investigation and describe the specific~~
39 ~~conditions of use for the alternative technology or method.~~

40 ~~(5) The written decision to reject an application for the use of alternative technologies or~~
41 ~~methods shall include the results of the director's investigation and shall outline in detail the basis~~
42 ~~for the rejection.~~

43 ~~(c) The director shall establish conditions for the use of diesel-powered equipment in shaft~~
44 ~~and slope construction operations at coal mines.~~

45 ~~(d) The director shall have access to the services of the Board of Coal Mine Health and~~
46 ~~Safety necessary for the director to implement and carry out the provisions of this article. The~~
47 ~~board, at the request of the director, shall provide administrative support and assistance pursuant~~
48 ~~to section six, article six of this chapter to enable the director to carry out the duties imposed upon~~
49 ~~the director in this article.~~

50 ~~(e) Any action taken by the commission, prior to the effective date of the reenactment of~~
51 ~~this section, or by the director to either approve or reject the use of an alternative technology or~~
52 ~~method, or establish conditions under subsection (c) of this section shall be final and binding and~~
53 ~~not subject to further review except where a decision by the commission, prior to the effective~~
54 ~~date of the reenactment of this section, or by the director may be deemed to be an abuse of~~
55 ~~discretion or contrary to law. If any party affected by a decision of the commission, prior to the~~

56 ~~effective date of the reenactment of this section, or by the director believes that the decision is an~~
57 ~~abuse of discretion or contrary to law, that party may file a petition for review with the circuit court~~
58 ~~of Kanawha County in accordance with the provisions of the administrative procedures act relating~~
59 ~~to judicial review of governmental determinations. The court, in finding that any decision made by~~
60 ~~the commission, prior to the effective date of the reenactment of this section, or by the director is~~
61 ~~an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.~~

62 (f) ~~Appropriations for the funding of the commission and to effectuate the purposes of this~~
63 ~~article shall be made to a budget account hereby established for that purpose in the General~~
64 ~~Revenue Fund. Expenditures from this fund are provided for in section six, article six of this~~
65 ~~chapter.~~

66 (a) Any rule promulgated by the director under this section may not impose any
67 requirement on diesel-powered equipment that exceeds the standards set forth in 30 CFR Part 7,
68 Subpart E.

69 (b) Any provision of rule, policy, internal procedure, or directive requiring site-specific
70 testing beyond MSHA-approved testing is null and void and shall be removed.

PART 4. EXHAUST EMISSION REQUIREMENTS FOR DIESEL POWER PACKAGES.

§22A-2A-401. General provisions relating to requirements for exhaust emissions Diesel equipment approved.

1 ~~This part is intended to control the potential health hazards of diesel exhaust by requiring~~
2 ~~that diesel-powered machines be equipped with clean-burning engines, that exhaust emissions~~
3 ~~control and conditioning systems may be required on diesel engines as specified by the~~
4 ~~commission, that exhaust emissions be monitored and controlled and that standards be~~
5 ~~established for the allowable concentrations of exhaust emissions in a mine environment.~~

6 Diesel-powered equipment that meets the approval standards set forth in 30 CFR Part 7,
7 Subpart E is deemed approved for use in West Virginia underground coal mines.

§22A-2A-402. Approval of diesel power package or diesel engine.

1 [Repealed.]

§22A-2A-403. Exhaust emissions control and conditioning systems.

1 [Repealed.]

§22A-2A-404. Emissions monitoring and control.

1 [Repealed.]

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

1 [Repealed.]

PART XI. DIESEL EQUIPMENT OPERATING REQUIREMENTS.

§22A-2A-1001. Diesel power package approval.

1 (a) Diesel-powered equipment shall be deemed approved upon compliance with 30 CFR
2 Part 7, Subpart E.

3 (b) Any rule, policy, internal procedure, or directive requiring the director's approval of a
4 diesel power package is null and void and shall be removed.

§22A-2A-1002. Emissions testing.

1 All emission testing requirements that are inconsistent with MSHA emissions testing
2 standards are null and void and shall be removed.

§22A-2A-1003. Maintenance requirements.

1 (a) Any rule, policy, internal procedure, or directive requiring maintenance every 200 hours
2 of operation is null and void and shall be removed.

3 (b) Weekly examination required under 30 CFR 75.1914(f) shall satisfy all state
4 maintenance requirements for diesel-powered equipment.

§22A-2A-1004. Exemption from state requirements.

1 Notwithstanding any other provisions of this article, any diesel-powered equipment that
2 meets the approval standards set forth in 30 CFR Part 7, Subpart E is exempt from all associated
3 state requirements under this article.