WEST VIRGINIA CODE: §15-5B-3A

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

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

"Industrial facility" means:

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

(B) A facility which is a factory, mill, plant or refinery, other than a coal facility, including the property upon which a factory, mill, plant or refinery is located and any buildings appurtenant thereto or associated therewith, including storage facilities, found by the director to be of a type to have a reasonable potential to have an emergency event: *Provided,* That before any facility may be subject to the provisions of this section, the owner or operator of each facility shall be placed on actual written notice via certified mail, return receipt requested, of the facility's inclusion thereon, as well as the requirements imposed by the provisions of this section and any rules promulgated thereunder: *Provided, however*, That the list required by the provisions of this section shall be filed with the President of the Senate and the Speaker of the House of Delegates by the first day of the 2010 legislative session.

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

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

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

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(b) *Reporting requirement*. —

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

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

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

(C) Notification that an emergency event has occurred.

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

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

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

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

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

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

(d) *Authorized access to public officials*. -— As soon as practicable after the occurrence of an

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emergency event, the industrial facility shall, upon request, provide appropriate state and local officials with timely authorized access to the person or persons charged with managing the event on behalf of the facility and the area(s) where the emergency event is being managed or the industrial facility's response to the emergency event is being coordinated. The industrial facility shall also provide appropriate state and local officials with timely authorized access to any areas affected by the emergency event: *Provided*, That the industrial facility has determined those areas to be reasonably safe: *Provided, however*, That within 30 minutes of obtaining information that affects the public health, safety, and welfare, state and local officials shall notify the public of any hazardous materials or events which may affect the area.

(e) *Civil penalties*. —

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

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

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

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

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

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

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

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

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

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

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

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

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