WEST VIRGINIA CODE CHAPTER 15 ARTICLE 5B

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§15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.

(a) The Legislature finds that the health and safety of persons working in and around the mining industry and other industries is of paramount concern to the people of West Virginia and that deaths and serious injuries resulting from dangerous working conditions cause grief and suffering to workers and their families. The Legislature further finds that there is an urgent need to provide more effective means and measures for improving emergency response and communications for dealing with mine and industrial accidents. The Legislature declares that it is in the best interest of the citizens of West Virginia to designate an emergency telephone number for mining or industrial personnel to initiate a rapid emergency response to any mine or industrial accident. Provision of a single, primary emergency number through which emergency services can be quickly and efficiently obtained and through which the response of various state agencies charged by law with responding to mine and industrial emergencies can be coordinated will significantly contribute to the public good. The Mine and Industrial Accident Rapid Response System will provide a vital resource to the citizens of West Virginia by providing a critical connection between the Director of the Office of Miners' Health, Safety and Training, the Division of Homeland Security and Emergency Management, local and regional emergency services organizations and other responsible agencies.

(b) The Mine and Industrial Accident Rapid Response System is hereby created and shall consist of:

(1) The Mine and Industrial Accident Emergency Operations Center established in section two of this article; and

(2) The 24-hour-a-day statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management.

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§15-5B-2. Mine and industrial accident emergency operations center.

(a) The Director of the Division of Homeland Security and Emergency Management, working in conjunction with the Office of Miners' Health, Safety and Training, shall maintain the Mine and Industrial Accident Emergency Operations Center, which shall be the official and primary state government 24-hour-a-day communications center for dealing with mine and industrial accidents.

(b) The emergency operations center shall be operated twenty-four hours a day, seven days a week by emergency service personnel employed by the director to provide emergency assistance and coordination to mine and industrial accidents or emergencies.

(c) The emergency operations center shall be readily accessible twenty-four hours a day at a statewide telephone number established and designated by the director.

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§15-5B-3. Emergency mine response.

(a) To assist the Division of Homeland Security and Emergency Management in implementing and operating the Mine and Industrial Accident Rapid Response System, the Office of Miners' Health, Safety and Training shall, on a quarterly basis, provide the emergency operations center with a mine emergency contact list. In the event of any change in the information contained in the mine emergency contact list, the changes shall be provided immediately to the emergency operations center. The mine emergency contact list shall include the following information:

(1) The names and telephone numbers of the Director of the Office of Miners' Health, Safety and Training, or his or her designee, including at least one telephone number at which the director or designee may be reached at any time;

(2) The names and telephone numbers of all district mine inspectors, including at least one telephone number for each inspector at which each inspector may be reached at any time;

(3) A current listing of all regional offices or districts of the Office of Miners' Health, Safety and Training, including a detailed description of the geographical areas served by each regional office or district; and

(4) The names, locations and telephone numbers of all mine rescue stations, including at least one telephone number for each station that may be called twenty-four hours a day and a listing of all mines that each mine rescue station serves in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code.

(b) Upon the receipt of an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, the emergency operations center shall immediately notify:

(1) The Director of the Office of Miners' Health, Safety and Training or his or her designee;

(2) The district mine inspector assigned to the district or region in which the accident occurred; and

(3) Local emergency service personnel in the area in which the accident occurred.

(c) The director or his or her designee shall determine the necessity for and contact all mine rescue stations that provide rescue coverage to the mine in question.

(d) In the event that an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, is initially received by a county answering point, as defined in article six, chapter twenty-four of this code, the call shall be immediately forwarded to the Mine and Industrial Accident Emergency Operations Center.

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(e) Nothing in this section shall be construed to relieve an operator, as defined in section two, article one, chapter twenty-two-a of this code, from any reporting or notification obligation under section sixty-six, article two, chapter twenty-two-a of this code and under federal law.

(f) The Mine and Industrial Accident Rapid Response System and the emergency operations center are designed and intended to provide communications assistance to emergency responders and other responsible persons. Nothing in this section shall be construed to conflict with the responsibility and authority of an operator to provide mine rescue coverage in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code or the authority of the Director of the Office of Miners' Health, Safety and Training to assign mine rescue teams under the provisions of subsection (d) of said section or to exercise any other authority provided in chapter twenty-two-a of this code.

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§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.

(b) *Reporting requirement*. —

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(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 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

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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.

(5) All moneys collected pursuant to this section shall be deposited in the Hazardous Waste

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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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§15-5B-4. Study of other industrial emergencies.

The Director of the Division of Homeland Security and Emergency Management shall immediately cause a study to be conducted to determine the feasibility of providing emergency coverage to other industrial, manufacturing, chemical or other emergencies through the Mine and Industrial Accident Rapid Response System. On or before November 1, 2006, the director shall submit a report to the Governor, the President of the Senate and the Speaker of the House of Delegates setting forth the findings of his or her study and recommendations for legislation consistent with the purposes of this article.

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§15-5B-5. Rule-making authority.

The Director of the Division of Homeland Security and Emergency Management shall propose emergency and legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code regarding the implementation and administration of the Mine and Industrial Accident Rapid Response System. The requirements of this article enacted during the 2006 regular session of the Legislature in January, shall not be implemented until the emergency rule authorized herein has been approved.

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§15-5B-6. Mine Safety Anonymous Tip Hotline.

The Director of the Division of Homeland Security and Emergency Management shall maintain a toll free number that allows callers to report mine safety violations and hazardous coal mining conditions and practices. The information collected shall be provided to the Office of Miners' Health, Safety and Training. No information may be submitted to the Office of Miners' Health, Safety and Training that would allow identification of the person placing the call. The calls are confidential and any documentation thereof or related thereto is not subject to release and is exempt from the provisions of article one, chapter twenty-nine-b of this code. The director shall distribute printed information to all state mining operations alerting miners to the existence of the toll free line. Each mining operation shall post this notice at the location used to post notices pursuant to section eighteen, article one, chapter twenty-two-a of this code.

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