

WEST VIRGINIA CODE: §22-1A-3

§22-1A-3. Actions by Division of Environmental Protection; requirement for assessment.

(a) Whenever the Division of Environmental Protection considers any action within its statutory authority that is reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her private real property, it shall prepare an assessment that includes, but need not be limited to, the following:

- (1) An identification of the risk created by the private real property use, and a description of the environmental, health, safety, or other benefit to be achieved by the proposed action;
- (2) The anticipated effects, if any, on other real property owners or on the environment if the division does not take the proposed action;
- (3) An explanation of how the division believes its action advances the purpose of protecting against the risk;
- (4) The reasons that the division believes that its action is likely to result in requiring the state, under applicable Constitutional principles and case law, to compensate the owner of private real property, including a description of how the action affects the use or value of private real property;
- (5) Alternatives, if any, to the proposed action that the division believes will fulfill the legal obligations of the division, reduce the impact on the private real property owner and reduce the likelihood of requiring compensation; and
- (6) An estimate of the cost to the state for compensation in the event such compensation is required.

No assessment is required under this article, unless the West Virginia Supreme Court of Appeals or the United State Supreme Court has under similar factual circumstances required compensation to be paid.

(b) In the case of an immediate threat to human health and safety that constitutes an emergency and requires an immediate response, the assessment required by this section may be delayed until after the emergency response is completed.

(c) The following do not require an assessment under this section:

- (1) Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(2) Rules and emergency rules of the division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(3) Enforcement actions undertaken by the division pursuant to any applicable state or federal statutes, rules or regulations.