WEST VIRGINIA CODE: §22-3-30A

§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.

(a) Blasting shall be conducted in accordance with the rules and laws established to regulate blasting.

(b) If the Department of Environmental Protection establishes after an inspection that a blast at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure, as defined in section twenty-two-a of this article, other than water wells, the following penalties shall be imposed for each permit area or contiguous permit areas where the blasting was out of compliance:

(1) For the first offense, the operator shall be assessed a penalty of not less than $1,000 nor more than $5,000.

(2) For the second offense and each subsequent offense within one year of the first offense, the surface mining operator shall be assessed a penalty of not less than $5,000 nor more than $10,000.

(3) For the third offense and any subsequent offense within one year of the first offense, or for the failure to pay any assessment set forth within a reasonable time established by the secretary, the surface mining operator's permit is subject to an immediate issuance of a cessation order, as set out in section sixteen of this article. The cessation order shall only be released upon written order of the secretary of the Department of Environmental Protection when the following conditions have been met:

(A) A written plan has been established and filed with the secretary assuring that additional violations will not occur;

(B) The permittee has provided compensation for the property damages or the assurance of adequate compensation for the property damages that have occurred; and

(C) A permittee shall provide such monetary and other assurances as the secretary considers appropriate to compensate for future property damages. The monetary assurances required shall be in an amount at least equal to the amount of compensation required in paragraph (B), subdivision (3) of this subsection.

(4) In addition to the penalties described in subdivisions (1), (2) and (3) of this subsection for the second and subsequent offenses on any one permitted area regardless of the time period, the owner of the protected structure is entitled to a rebuttable presumption that the

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property damage is a result of the blast if: (A) A preblast survey was performed; and (B) the blasting site to which the second or subsequent offense relates is within seven tenths of a mile of the protected structure.

(5) No more than one offense may arise out of any one shot. For purposes of this section, “shot” means a single blasting event composed of one or multiple detonations of explosive material or the assembly of explosive materials for this purpose. One "shot" may be composed of numerous explosive charges detonated at intervals measured in milliseconds.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the Department of Environmental Protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.

(d) The remedies provided in this section are not exclusive and may not bar an owner or occupant from any other remedy accorded by law.

(e) Where inspection by the Department of Environmental Protection establishes that production blasting, in violation of section twenty-two-a of this article, was done within three hundred feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within one thousand feet of any protected structure as defined in section twenty-two-a of this article or within one hundred feet of a cemetery, the monetary penalties and revocation, as set out in subsection (b) of this section, apply.

(f) All penalties and liabilities as set forth in subsection (b) of this section shall be assessed by the secretary, collected by the secretary and deposited with the Treasurer of the State of West Virginia in the General School Fund.

(g) The secretary shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this section.

(h) The provisions of this section do not apply to the extraction of minerals by underground mining methods: Provided, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant thereto.

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