WEST VIRGINIA CODE: §22A-2A-310

§22A-2A-310. Duties of director.

(a) It is the duty of the director to carry out and implement this article and to evaluate and adopt state-of-the-art technology and methods, reflected in engines and engine components, emission control equipment and procedures, which when applied to diesel-powered underground mining machinery, shall reasonably reduce or eliminate diesel exhaust emissions and enhance protections of the health and safety of miners. The technology and methods adopted by the director shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the director shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Any state-of-the-art technology or methods adopted by the director shall not reduce or compromise the level of health and safety protection of miners.

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

(1) Within one hundred eighty days of receipt of an application for use of alternative technologies or methods, the director shall complete its investigation. However, the director has an additional one hundred eighty days to complete investigations upon applications filed prior to the effective date of the reenactment of this section. The time period may be extended with the consent of the applicant.

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

(3) The director may not approve an application made under this section if, at the conclusion of the investigation, the director determines that the use of the alternative technology or

method will reduce or compromise the level of health and safety protection of miners.

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

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

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

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

(e) Any action taken by the commission, prior to the effective date of the reenactment of this section, or by the director to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section shall be final and binding and not subject to further review except where a decision by the commission, prior to the effective date of the reenactment of this section, or by the director may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission, prior to the effective date of the reenactment of this section, or by the director believes that the decision is an abuse of discretion or contrary to law, that party may file a petition for review with the circuit court of Kanawha County in accordance with the provisions of the administrative procedures act relating to judicial review of governmental determinations. The court, in finding that any decision made by the commission, prior to the effective date of the reenactment of this section, or by the director is an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.

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

WV Legislature