WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

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ENROLLED

HOUSE BILL No. 2807

(By Delegates, Staton, Collins, Reed, Lynch,
Bibb, Whitman, and Manuel)

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Passed .................. April 10 .................. 1993

In Effect .................. From .................. Passage
AN ACT to amend article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two; to amend and reenact section nineteen, article one-a, chapter twenty-two-a of said code; and to amend and reenact section sixty-three, article two of said chapter, all relating to the powers and authority of the director of the office of miners' health, safety and training; transferring certain review functions of the director to the board of appeals; authorizing the director to promulgate a rule setting forth the procedure for assessing certain civil penalties; the revision of such rule; the director's approval and permit to open or reopen mine; certificate of approval for operator of mine; fees; revocation of certificate of approval; notice prior to revocation; effect of revocation; printing statutory provisions on permit; and district mine inspector's inspections.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two; that section nineteen, article one-a, chapter twenty-two-a be amended and reenacted; and that section sixty-three, article two of said chapter be amended and reenacted, all to read as follows:
CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. BOARD OF APPEALS.

§22-5-2. Powers transferred to the board of appeals.

(a) There are hereby transferred to the board of appeals all functions of the director of the office of miners' health, safety and training relating to the review of orders and notices as set forth in section fifteen, article one-a, chapter twenty-two-a.

(b) There are hereby transferred to the board of appeals all functions of the director of the office of miners' health, safety and training relating to the review of penalty assessments as set forth in subdivision (3), subsection (a), section nineteen, article one-a, chapter twenty-two-a of this code.

(c) Judicial review of decisions by the board of appeals shall be available and conducted in the same fashion as set forth in section seventeen, article one-a, chapter twenty-two-a of this code.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.


(a) (1) Any operator of a coal mine in which a violation occurs of any health or safety rule or regulation or who violates any other provisions of this law, shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars, for each such violation. Each such violation shall constitute a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. Not later than the thirtieth day of June, one thousand nine hundred ninety-three, the director shall promulgate as a rule the procedure for assessing such civil penalties
in effect as of the fifteenth day of January, one thousand nine hundred ninety-three, without regard to the provisions of chapter twenty-nine-a of this code: Provided, That any revisions to such rules after this date shall be promulgated as in the case of legislative rules in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule or regulation promulgated pursuant to this chapter shall be subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars for each occurrence of such violation.

(3) A civil penalty shall be assessed by the director only after the person charged with a violation under this chapter or rule or regulation promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the director may file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the director shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the director or it may remand the proceedings to the director for such further action as it
may direct. The court shall consider and determine de
novo all relevant issues, except issues of fact which were
or could have been litigated in review proceedings
before a circuit court under section eighteen of this
article, and upon the request of the respondent, such
issues of fact which are in dispute shall be submitted
to a jury. On the basis of the jury's findings the court
shall determine the amount of the penalty to be imposed.
Subject to the direction and control of the attorney
general, attorneys appointed for the commissioner may
appear for and represent him in any action to enforce
an order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or
safety provision of this chapter or health or safety rule
or regulation promulgated pursuant to this chapter, or
knowingly violates or fails or refuses to comply with any
order issued under section thirteen of this article, or any
order incorporated in a final decision issued under this
article, except an order incorporated in a decision under
subsection (a) of this section or subsection (b), section
twenty of this article, shall be assessed a civil penalty
by the director under subdivision (3), subsection (a) of
this section, of not more than five thousand dollars, and
for a second or subsequent violation assessed a civil
penalty of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates
a health or safety provision of this chapter or health or
safety rules or regulations promulgated pursuant to this
chapter, or knowingly violates or fails or refuses to
comply with any order issued under this law or any
order incorporated in a final decision issued under this
law, except an order incorporated in a decision issued
under subsection (a) of this section or subsection (b),
section twenty of this article, any director, officer or
agent of such corporation who knowingly authorized,
ordered or carried out such violation, failure or refusal,
shall be subject to the same civil penalties that may be
imposed upon a person under subsections (a) and (b) of
this section.

(d) Whoever knowingly makes any false statement,
representation or certification in any application,
100 record, report, plan or other document filed or required
101 to be maintained pursuant to this law or any order or
102 decision issued under this law, shall be guilty of a
103 misdemeanor, and, upon conviction thereof, shall be
104 fined not more than five thousand dollars or imprisoned
105 in the county jail not more than six months, or both
106 fined and imprisoned. The conviction of any person
107 under this subsection shall result in the revocation of
108 any certifications held by him under this chapter which
109 certified him or authorized him to direct other persons
110 in coal mining by operation of law and shall bar him
111 from being issued any such license under this chapter,
112 except a miner's certification, for a period of not less
113 than one year or for such longer period as may be
114 determined by the director.

(e) Whoever willfully distributes, sells, offers for sale,
115 introduces or delivers in commerce any equipment for
116 use in a coal mine, including, but not limited to,
117 components and accessories of such equipment, who
118 willfully misrepresents such equipment as complying
119 with the provisions of this law, or with any specification
120 or regulation of the director applicable to such equip-
121 ment, and which does not so comply, shall be guilty of
122 a misdemeanor, and, upon conviction thereof, shall be
123 subject to the same fine and imprisonment that may be
124 imposed upon a person under subsection (d) of this
125 section.

(f) There is hereby created under the treasury of the
127 state of West Virginia a special health, safety and
128 training fund. All civil penalty assessments collected
129 under section nineteen of this article shall be collected
130 by the director and deposited with the treasurer of the
131 state of West Virginia to the credit of the special health,
132 safety and training fund. The fund shall be used by the
133 director and he is authorized to expend the moneys in
134 the fund for the administration of this chapter and
135 chapter twenty-two of this code.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without
prior approval of the director of the office
of miners health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferrable; section to be printed on certificates of approval.

(a) After the first day of July, one thousand nine hundred seventy-one, no mine shall be opened or reopened unless prior approval has been obtained from the director of the division of health, safety and training, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of ten dollars, which payment shall be tendered with the application for such approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

Within thirty days after the first day of January of each year, the holder of such permit to open a mine shall apply for the extension of such permit for an additional year. Such permit, evidenced by a document issued by the director, shall be granted as a matter of right and without charge if, at the time such application is made, the permit holder is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments issued to the mine if operated by the permit holder and imposed under article one-a, chapter twenty-two-a of this code. Applications for extension of such permits not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of ten dollars.

(b) Permits issued pursuant to this section shall not be transferable.

(c) If the operator of a mine is not the permit holder as defined in subsection (a) above, then such operator must apply for and obtain a certificate of approval to operate the mine on which the permit is held prior to commencing operations. An operator who is not the permit holder operating such mine on the effective date
of this section must apply for a certificate of approval on or before the first day of July, one thousand nine hundred ninety-three. The operator shall pay a fee of ten dollars, which payment shall be tendered with the application for approval. Such approval, evidenced by a certificate issued by the director, shall be granted if, at the time such application is made, the applicant is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments imposed on such applicant for the certificate of approval under article one-a, chapter twenty-two-a of this code.

(d) In addition to the authority to file a petition for enforcement under subdivision (4), subsection (a) section nineteen, article one-a, chapter twenty-two-a, of this code, if an operator holding a certificate of approval issued pursuant to subsection (c) of this section, against whom a civil penalty is assessed in accordance with section nineteen, article one-a, chapter twenty-two-a of this code, and implementing regulations, and which has become final, fails to pay the penalty within the time prescribed in such order, the director or the authorized representative of the director, by certified mail, return receipt requested, shall send a notice to such operator advising the operator of the unpaid penalty. If the penalty is not paid in full within sixty days from the issuance of the notice of delinquency by the director, then the director may revoke such operator's certificate of approval: Provided, That such operator to whom the delinquency notice is issued shall have thirty days from receipt thereof to request, by certified mail, return receipt requested, a public hearing held in accordance with the procedures of section fifteen, article one-a, chapter twenty-two-a of this code, and implementing regulations, including application for temporary relief. Once such operator's certificate of approval is revoked pursuant to this subsection, such operator shall be prohibited from obtaining any certificate of approval under the provisions of this section to operate any other mine until such time as that operator pays the delinquent penalties that have become final.
(e) The provisions of this section shall be printed on the reverse side of every permit issued under subsection (a) and certificate of approval issued under subsection (d) herein.

(f) The district mine inspector shall be contacted for a pre-inspection of the area proposed for underground mining prior to issuance of any new opening permit approval.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Donald W. Young
Clay of the House of Delegates

President of the Senate

Robert C. Cizik
Speaker of the House of Delegates

The within is approved this the 12th day of May, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/30/93
Time 3:35 PM