

SB 436

FILED

2009 APR 11 PM 3:01

WEST VIRGINIA LEGISLATURE

SECRETARY OF STATE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009

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ENROLLED

Senate Bill No. 436

(BY SENATOR KESSLER)

[Passed April 3, 2009; in effect ninety days from passage.]

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[Passed April 3, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §22-3-8 of the Code of West Virginia, 1931, as amended, relating to environmental permitting of surface coal mining; and correcting antiquated language with respect to the state agencies charged with cooperating with the Department of Environmental Protection to ensure that permit applicants comply with certain fiscal and reporting requirements imposed by the state's unemployment compensation and workers' compensation laws.

Be it enacted by the Legislature of West Virginia:

That §22-3-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface mining operations
2 unless he or she has first obtained a permit from the
3 director in accordance with the following:

4 (1) All permits issued pursuant to the requirements of
5 this article shall be issued for a term not to exceed five
6 years: *Provided*, That if the applicant demonstrates that a
7 specified longer term is reasonably needed to allow the
8 applicant to obtain necessary financing for equipment and
9 the opening of the operation, and if the application is full
10 and complete for the specified longer term, the director
11 may extend a permit for a longer term: *Provided, however*,
12 That subject to the prior approval of the director, with the
13 approval being subject to the provisions of subsection (c),
14 section eighteen of this article, a successor in interest to a
15 permittee who applies for a new permit, or transfer of a
16 permit, within thirty days of succeeding to the interest and
17 who is able to obtain the bond coverage of the original
18 permittee, may continue surface mining and reclamation
19 operations according to the approved mining and reclama-
20 tion plan of the original permittee until the successor's
21 permit application or application for transfer is granted or
22 denied.

23 (2) Proof of insurance is required on an annual basis.

24 (3) A permit terminates if the permittee has not com-
25 menced the surface mining operations covered by the
26 permit within three years of the date the permit was
27 issued: *Provided*, That the director may grant reasonable
28 extensions of time upon a timely showing that the exten-
29 sions are necessary by reason of litigation precluding
30 commencement, or threatening substantial economic loss
31 to the permittee, or by reason of conditions beyond the
32 control and without the fault or negligence of the
33 permittee: *Provided, however*, That with respect to coal to
34 be mined for use in a synthetic fuel facility or specific
35 major electric-generating facility, the permittee shall be

36 considered to have commenced surface mining operations
37 at the time the construction of the synthetic fuel or
38 generating facility is initiated.

39 (4) Each application for a new surface mining permit
40 filed pursuant to this article shall be accompanied by a fee
41 of \$1,000. All permit fees and renewal fees provided for in
42 this section or elsewhere in this article shall be collected
43 by the director and deposited with the Treasurer of the
44 State of West Virginia to the credit of the operating permit
45 fees fund and shall be used, upon requisition of the
46 director, for the administration of this article.

47 (5) Prior to the issuance of any permit, the director shall
48 ascertain from the Commissioner of the Division of Labor
49 whether the applicant is in compliance with section
50 fourteen, article five, chapter twenty-one of this code.
51 Upon issuance of the permit, the director shall forward a
52 copy to the Commissioner of the Division of Labor, who
53 shall assure continued compliance under the permit.

54 (6) (A) Prior to the issuance of any permit the director
55 shall ascertain from the Executive Director of Workforce
56 West Virginia and the Insurance Commissioner whether
57 the applicant is in compliance with the provisions of
58 section six-c, article two, chapter twenty-one-a of this
59 code and section five, article two, chapter twenty-three of
60 this code with regard to any required subscription to the
61 Unemployment Compensation Fund or to the Workers'
62 Compensation Fund, the payment of premiums and other
63 charges to the fund, the timely filing of payroll reports and
64 the maintenance of adequate deposits. If the applicant is
65 delinquent or defaulted, or has been terminated by the
66 executive director or the Insurance Commissioner, the
67 permit may not be issued until the applicant returns to
68 compliance or is restored by the executive director or the
69 Insurance Commissioner under a reinstatement agreement:
70 *Provided*, That in all inquiries the Executive Director of

71 Workforce West Virginia and the Insurance Commissioner
72 shall make response to the Department of Environmental
73 Protection within fifteen calendar days; otherwise, failure
74 to respond timely is considered to indicate the applicant is
75 in compliance and the failure will not be used to preclude
76 issuance of the permit.

77 (B) It is a requirement of this article that each operator
78 maintain continued compliance with the provisions of
79 section five, article two, chapter twenty-three of this code
80 and section six-c, article two, chapter twenty-one-a of this
81 code and provide proof of compliance to the director on a
82 quarterly basis.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *7th*
Day of *April* 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 9 2009

Time 2:50 pm