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**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**

VIRGINIA  
SECRETARY OF STATE

REGULAR SESSION, 2015



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 357**

(SENATORS MULLINS, BLAIR, BOLEY, BOSO, FERNS, GAUNCH,  
D. HALL, M. HALL, KARNES, CARMICHAEL, KIRKENDOLL,  
LEONHARDT, MAYNARD, NOHE, PLYMALE, PREZIOSO,  
STOLLINGS, SYPOLT, TAKUBO, TRUMP, WALTERS  
AND WILLIAMS, *ORIGINAL SPONSORS*)

[PASSED MARCH 3, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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**FOR**

OFFICE WEST VIRGINIA  
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[Passed March 3, 2015; in effect ninety days from passage.]

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AN ACT to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said code; to amend said code by adding thereto a new section, designated §22-11-22a; to amend said code by adding thereto a new section, designated §22A-1-41; to amend and reenact §22A-1A-1 of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said code; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code; and to amend said code by adding thereto a new section, designated §22A-2A-204a, all relating to coal mining generally; providing that discharges from waste piles do not

exceed applicable water quality standards; promulgating rules regarding procedures for requesting and obtaining inactive status and rules relating to requirements for contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation Act; abolishing West Virginia Diesel Equipment Commission; transferring duties and responsibilities of West Virginia Diesel Equipment Commission to Director of the Office of Miners' Health, Safety and Training; defining terms; providing rule-making authority; providing that rules previously approved by Diesel Equipment Commission continue in full force and effect; requiring rules for statewide hardness-based aluminum water quality criteria for protection of aquatic life; prohibiting wholesale incorporation of water quality standards into permits; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; requiring suspension or revocation of a certificate held by a certified person under certain circumstances; disallowing prescription as a defense if prescription is more than one year old; setting forth requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; increasing distance from the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail; requiring certain equipment be readily available in certain circumstances; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; establishing criteria for the use of sideboards on shuttle cars; changing distance of shelter holes along haulage entries; and setting requirements for riders on locomotives.

*Be it enacted by the Legislature of West Virginia:*

That §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended, be repealed; that §22-3-13 and §22-3-19 of said code be amended and reenacted; that §22-11-6 and §22-11-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-11-22a; that said code be amended by adding thereto a new section, designated §22A-1-41; that §22A-1A-1 of said code be amended and reenacted; that §22A-2-6, §22A-2-28 and §22A-2-37 of said code be amended and reenacted; that §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22A-2A-204a, all to read as follows:

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-13. General environmental protection performance standards for surface mining; variances.**

1           (a) Any permit issued by the director pursuant to this  
 2 article to conduct surface mining operations shall require that  
 3 the surface mining operations meet all applicable  
 4 performance standards of this article and other requirements  
 5 set forth in legislative rules proposed by the director.

6           (b) The following general performance standards are  
 7 applicable to all surface mines and require the operation, at  
 8 a minimum, to:

9           (1) Maximize the utilization and conservation of the solid  
 10 fuel resource being recovered to minimize re-affecting the  
 11 land in the future through surface mining;

12           (2) Restore the land affected to a condition capable of  
13 supporting the uses which it was capable of supporting prior  
14 to any mining, or higher or better uses of which there is  
15 reasonable likelihood so long as the use or uses do not  
16 present any actual or probable hazard to public health or  
17 safety or pose any actual or probable threat of water  
18 diminution or pollution and the permit applicants' declared  
19 proposed land use following reclamation is not considered to  
20 be impractical or unreasonable, inconsistent with applicable  
21 land use policies and plans, involves unreasonable delay in  
22 implementation or is violative of federal, state or local law;

23           (3) Except as provided in subsection (c) of this section,  
24 with respect to all surface mines, backfill, compact where  
25 advisable to ensure stability or to prevent leaching of toxic  
26 materials and grade in order to restore the approximate  
27 original contour: *Provided*, That in surface mining which is  
28 carried out at the same location over a substantial period of  
29 time where the operation transects the coal deposit and the  
30 thickness of the coal deposits relative to the volume of the  
31 overburden is large and where the operator demonstrates that  
32 the overburden and other spoil and waste materials at a  
33 particular point in the permit area or otherwise available from  
34 the entire permit area is insufficient, giving due consideration  
35 to volumetric expansion, to restore the approximate original  
36 contour, the operator, at a minimum, shall backfill, grade and  
37 compact, where advisable, using all available overburden and  
38 other spoil and waste materials to attain the lowest  
39 practicable grade, but not more than the angle of repose, to  
40 provide adequate drainage and to cover all acid-forming and  
41 other toxic materials in order to achieve an ecologically  
42 sound land use compatible with the surrounding region:  
43 *Provided, however*, That in surface mining where the volume  
44 of overburden is large relative to the thickness of the coal  
45 deposit and where the operator demonstrates that due to  
46 volumetric expansion the amount of overburden and other

47 spoil and waste materials removed in the course of the mining  
48 operation is more than sufficient to restore the approximate  
49 original contour, the operator shall, after restoring the  
50 approximate contour, backfill, grade and compact, where  
51 advisable, the excess overburden and other spoil and waste  
52 materials to attain the lowest grade, but not more than the  
53 angle of repose, and to cover all acid-forming and other toxic  
54 materials in order to achieve an ecologically sound land use  
55 compatible with the surrounding region and the overburden  
56 or spoil shall be shaped and graded in a way as to prevent  
57 slides, erosion and water pollution and revegetated in  
58 accordance with the requirements of this article: *Provided*  
59 *further*, That the director shall propose rules for legislative  
60 approval in accordance with article three, chapter  
61 twenty-nine-a of this code governing variances to the  
62 requirements for return to approximate original contour or  
63 highwall elimination and where adequate material is not  
64 available from surface mining operations permitted after the  
65 effective date of this article for: (A) Underground mining  
66 operations existing prior to August 3, 1977; or (B) for areas  
67 upon which surface mining prior to July 1, 1977, created  
68 highwalls;

69 (4) Stabilize and protect all surface areas, including spoil  
70 piles, affected by the surface mining operation to effectively  
71 control erosion and attendant air and water pollution;

72 (5) Remove the topsoil from the land in a separate layer,  
73 replace it on the backfill area or, if not utilized immediately,  
74 segregate it in a separate pile from other spoil and, when the  
75 topsoil is not replaced on a backfill area within a time short  
76 enough to avoid deterioration of the topsoil, maintain a  
77 successful vegetative cover by quick growing plants or by  
78 other similar means in order to protect topsoil from wind and  
79 water erosion and keep it free of any contamination by other  
80 acid or toxic material: *Provided*, That if topsoil is of

81 insufficient quantity or of poor quality for sustaining  
82 vegetation, or if other strata can be shown to be more suitable  
83 for vegetation requirements, then the operator shall remove,  
84 segregate and preserve in a like manner any other strata  
85 which is best able to support vegetation;

86 (6) Restore the topsoil or the best available subsoil which  
87 is best able to support vegetation;

88 (7) Ensure that all prime farmlands are mined and  
89 reclaimed in accordance with the specifications for soil  
90 removal, storage, replacement and reconstruction established  
91 by the United States Secretary of Agriculture and the Soil  
92 Conservation Service pertaining thereto. The operator, at a  
93 minimum, shall: (A) Segregate the A horizon of the natural  
94 soil, except where it can be shown that other available soil  
95 materials will create a final soil having a greater productive  
96 capacity and, if not utilized immediately, stockpile this  
97 material separately from other spoil and provide needed  
98 protection from wind and water erosion or contamination by  
99 other acid or toxic material; (B) segregate the B horizon of the  
100 natural soil, or underlying C horizons or other strata, or a  
101 combination of the horizons or other strata that are shown to be  
102 both texturally and chemically suitable for plant growth and  
103 that can be shown to be equally or more favorable for plant  
104 growth than the B horizon, in sufficient quantities to create in  
105 the regraded final soil a root zone of comparable depth and  
106 quality to that which existed in the natural soil and, if not  
107 utilized immediately, stockpile this material separately from  
108 other spoil and provide needed protection from wind and water  
109 erosion or contamination by other acid or toxic material; (C)  
110 replace and regrade the root zone material described in  
111 paragraph (B) of this subdivision with proper compaction and  
112 uniform depth over the regraded spoil material; and (D)  
113 redistribute and grade in a uniform manner the surface soil  
114 horizon described in paragraph (A) of this subdivision;

115 (8) Create, if authorized in the approved surface mining  
116 and reclamation plan and permit, permanent impoundments  
117 of water on mining sites as part of reclamation activities in  
118 accordance with rules promulgated by the director;

119 (9) Where augering is the method of recovery, seal all  
120 auger holes with an impervious and noncombustible material  
121 in order to prevent drainage except where the director  
122 determines that the resulting impoundment of water in the  
123 auger holes may create a hazard to the environment or the  
124 public welfare and safety: *Provided*, That the director may  
125 prohibit augering if necessary to maximize the utilization,  
126 recoverability or conservation of the mineral resources or to  
127 protect against adverse water quality impacts;

128 (10) Minimize the disturbances to the prevailing  
129 hydrologic balance at the mine site and in associated off-site  
130 areas and to the quality and quantity of water in surface and  
131 groundwater systems both during and after surface mining  
132 operations and during reclamation by: (A) Avoiding acid or  
133 other toxic mine drainage by such measures as, but not  
134 limited to: (i) Preventing or removing water from contact  
135 with toxic producing deposits; (ii) treating drainage to reduce  
136 toxic content which adversely affects downstream water upon  
137 being released to water courses; and (iii) casing, sealing or  
138 otherwise managing boreholes, shafts and wells and keep  
139 acid or other toxic drainage from entering ground and surface  
140 waters; (B) conducting surface mining operations so as to  
141 prevent to the extent possible, using the best technology  
142 currently available, additional contributions of suspended  
143 solids to streamflow or runoff outside the permit area, but in  
144 no event may contributions be in excess of requirements set  
145 by applicable state or federal law; (C) constructing an  
146 approved drainage system pursuant to paragraph (B) of this  
147 subdivision, prior to commencement of surface mining  
148 operations, the system to be certified by a person approved by



149 the director to be constructed as designed and as approved in  
150 the reclamation plan; (D) avoiding channel deepening or  
151 enlargement in operations requiring the discharge of water  
152 from mines; (E) unless otherwise authorized by the director,  
153 cleaning out and removing temporary or large settling ponds  
154 or other siltation structures after disturbed areas are  
155 revegetated and stabilized, and depositing the silt and debris  
156 at a site and in a manner approved by the director; (F)  
157 restoring recharge capacity of the mined area to approximate  
158 premining conditions; and (G) any other actions prescribed  
159 by the director;

160 (11) With respect to surface disposal of mine wastes,  
161 tailings, coal processing wastes and other wastes in areas  
162 other than the mine working excavations: (A) Stabilize all  
163 waste piles in designated areas through construction in  
164 compacted layers, including the use of noncombustible and  
165 impervious materials if necessary, and assure the final  
166 contour of the waste pile will be compatible with natural  
167 surroundings and that the site will be stabilized and  
168 revegetated according to the provisions of this article; and (B)  
169 assure that the construction of any coal waste pile or other  
170 coal waste storage area utilizes appropriate technologies,  
171 such as capping or the use of liners, or any other  
172 demonstrated technologies or measures which are consistent  
173 with good engineering practices, to prevent an acid mine  
174 drainage discharge;

175 (12) Design, locate, construct, operate, maintain, enlarge,  
176 modify and remove or abandon, in accordance with standards  
177 and criteria developed pursuant to subsection (f) of this  
178 section, all existing and new coal mine waste piles consisting  
179 of mine wastes, tailings, coal processing wastes or other  
180 liquid and solid wastes and used either temporarily or  
181 permanently as dams or embankments;

182 (13) Refrain from surface mining within five hundred feet  
183 of any active and abandoned underground mines in order to  
184 prevent breakthroughs and to protect health or safety of  
185 miners: *Provided*, That the director shall permit an operator  
186 to mine near, through or partially through an abandoned  
187 underground mine or closer to an active underground mine if:  
188 (A) The nature, timing and sequencing of the approximate  
189 coincidence of specific surface mine activities with specific  
190 underground mine activities are coordinated jointly by the  
191 operators involved and approved by the director; and (B) the  
192 operations will result in improved resource recovery,  
193 abatement of water pollution or elimination of hazards to the  
194 health and safety of the public: *Provided, however*, That any  
195 breakthrough which does occur shall be sealed;

196 (14) Ensure that all debris, acid-forming materials, toxic  
197 materials or materials constituting a fire hazard are treated or  
198 buried and compacted, or otherwise disposed of in a manner  
199 designed to prevent contamination of ground or surface  
200 waters, and that contingency plans are developed to prevent  
201 sustained combustion: *Provided*, That the operator shall  
202 remove or bury all metal, lumber, equipment and other debris  
203 resulting from the operation before grading release;

204 (15) Ensure that explosives are used only in accordance  
205 with existing state and federal law and the rules promulgated  
206 by the director, which shall include provisions to:

207 (A) Maintain for a period of at least three years and make  
208 available for public inspection, upon written request, a log  
209 detailing the location of the blasts, the pattern and depth of  
210 the drill holes, the amount of explosives used per hole and the  
211 order and length of delay in the blasts; and

212 (B) Require that all blasting operations be conducted by  
213 persons certified by the Office of Explosives and Blasting.

214 (16) Ensure that all reclamation efforts proceed in an  
215 environmentally sound manner and as contemporaneously as  
216 practicable with the surface mining operations. Time limits  
217 shall be established by the director requiring backfilling,  
218 grading and planting to be kept current: *Provided*, That  
219 where surface mining operations and underground mining  
220 operations are proposed on the same area, which operations  
221 must be conducted under separate permits, the director may  
222 grant a variance from the requirement that reclamation efforts  
223 proceed as contemporaneously as practicable to permit  
224 underground mining operations prior to reclamation:

225 (A) If the director finds in writing that:

226 (i) The applicant has presented, as part of the permit  
227 application, specific, feasible plans for the proposed  
228 underground mining operations;

229 (ii) The proposed underground mining operations are  
230 necessary or desirable to assure maximum practical recovery  
231 of the mineral resource and will avoid multiple disturbance of  
232 the surface;

233 (iii) The applicant has satisfactorily demonstrated that the  
234 plan for the underground mining operations conforms to  
235 requirements for underground mining in the jurisdiction and  
236 that permits necessary for the underground mining operations  
237 have been issued by the appropriate authority;

238 (iv) The areas proposed for the variance have been shown  
239 by the applicant to be necessary for the implementing of the  
240 proposed underground mining operations;

241 (v) No substantial adverse environmental damage, either  
242 on-site or off-site, will result from the delay in completion of  
243 reclamation as required by this article; and

244 (vi) Provisions for the off-site storage of spoil will  
245 comply with subdivision (22), subsection (b) of this section;

246 (B) If the director has promulgated specific rules to  
247 govern the granting of the variances in accordance with the  
248 provisions of this subparagraph and has imposed any  
249 additional requirements as the director considers necessary;

250 (C) If variances granted under the provisions of this  
251 paragraph are reviewed by the director not more than three  
252 years from the date of issuance of the permit: *Provided*, That  
253 the underground mining permit shall terminate if the  
254 underground operations have not commenced within three  
255 years of the date the permit was issued, unless extended as set  
256 forth in subdivision (3), section eight of this article; and

257 (D) If liability under the bond filed by the applicant with  
258 the director pursuant to subsection (b), section eleven of this  
259 article is for the duration of the underground mining  
260 operations and until the requirements of subsection (g),  
261 section eleven of this article and section twenty-three of this  
262 article have been fully complied with;

263 (17) Ensure that the construction, maintenance and  
264 post-mining conditions of access and haul roads into and  
265 across the site of operations will control or prevent erosion  
266 and siltation, pollution of water, damage to fish or wildlife or  
267 their habitat, or public or private property: *Provided*, That  
268 access roads constructed for and used to provide infrequent  
269 service to surface facilities, such as ventilators or monitoring  
270 devices, are exempt from specific construction criteria  
271 provided adequate stabilization to control erosion is achieved  
272 through alternative measures;

273 (18) Refrain from the construction of roads or other  
274 access ways up a stream bed or drainage channel or in

275 proximity to the channel so as to significantly alter the  
276 normal flow of water;

277 (19) Establish on the regraded areas, and all other lands  
278 affected, a diverse, effective and permanent vegetative cover  
279 of the same seasonal variety native to the area of land to be  
280 affected or of a fruit, grape or berry producing variety  
281 suitable for human consumption and capable of  
282 self-regeneration and plant succession at least equal in extent  
283 of cover to the natural vegetation of the area, except that  
284 introduced species may be used in the revegetation process  
285 where desirable or when necessary to achieve the approved  
286 post-mining land use plan;

287 (20) Assume the responsibility for successful  
288 revegetation, as required by subdivision (19) of this  
289 subsection, for a period of not less than five growing seasons,  
290 as defined by the director, after the last year of augmented  
291 seeding, fertilizing, irrigation or other work in order to assure  
292 compliance with subdivision (19) of this subsection:  
293 *Provided*, That when the director issues a written finding  
294 approving a long-term agricultural post-mining land use as a  
295 part of the mining and reclamation plan, the director may  
296 grant exception to the provisions of subdivision (19) of this  
297 subsection: *Provided, however*, That when the director  
298 approves an agricultural post-mining land use, the applicable  
299 five growing seasons of responsibility for revegetation begins  
300 on the date of initial planting for the agricultural post-mining  
301 land use;

302 On lands eligible for remining assume the responsibility  
303 for successful revegetation, as required by subdivision (19)  
304 of this subsection, for a period of not less than two growing  
305 seasons, as defined by the director after the last year of  
306 augmented seeding, fertilizing, irrigation or other work in  
307 order to assure compliance with subdivision (19) of this  
308 subsection;

309 (21) Protect off-site areas from slides or damage  
310 occurring during surface mining operations and not deposit  
311 spoil material or locate any part of the operations or waste  
312 accumulations outside the permit area: *Provided*, That spoil  
313 material may be placed outside the permit area if approved by  
314 the director after a finding that environmental benefits will  
315 result from the placing of spoil material outside the permit  
316 area;

317 (22) Place all excess spoil material resulting from surface  
318 mining activities in a manner that: (A) Spoil is transported  
319 and placed in a controlled manner in position for concurrent  
320 compaction and in a way as to assure mass stability and to  
321 prevent mass movement; (B) the areas of disposal are within  
322 the bonded permit areas and all organic matter is removed  
323 immediately prior to spoil placements; (C) appropriate  
324 surface and internal drainage system or diversion ditches are  
325 used to prevent spoil erosion and movement; (D) the disposal  
326 area does not contain springs, natural water courses or wet  
327 weather seeps, unless lateral drains are constructed from the  
328 wet areas to the main under drains in a manner that filtration  
329 of the water into the spoil pile will be prevented; (E) if placed  
330 on a slope, the spoil is placed upon the most moderate slope  
331 among those upon which, in the judgment of the director, the  
332 spoil could be placed in compliance with all the requirements  
333 of this article, and is placed, where possible, upon, or above,  
334 a natural terrace, bench or berm, if placement provides  
335 additional stability and prevents mass movement; (F) where  
336 the toe of the spoil rests on a downslope, a rock toe buttress,  
337 of sufficient size to prevent mass movement, is constructed;  
338 (G) the final configuration is compatible with the natural  
339 drainage pattern and surroundings and suitable for intended  
340 uses; (H) the design of the spoil disposal area is certified by  
341 a qualified registered professional engineer in conformance  
342 with professional standards; and (I) all other provisions of  
343 this article are met: *Provided*, That where the excess spoil

344 material consists of at least eighty percent, by volume,  
345 sandstone, limestone or other rocks that do not slake in water  
346 and will not degrade to soil material, the director may  
347 approve alternate methods for disposal of excess spoil  
348 material, including fill placement by dumping in a single lift,  
349 on a site-specific basis: *Provided, however,* That the services  
350 of a qualified registered professional engineer experienced in  
351 the design and construction of earth and rockfill embankment  
352 are utilized: *Provided further,* That the approval may not be  
353 unreasonably withheld if the site is suitable;

354 (23) Meet any other criteria necessary to achieve  
355 reclamation in accordance with the purposes of this article,  
356 taking into consideration the physical, climatological and  
357 other characteristics of the site;

358 (24) To the extent possible, using the best technology  
359 currently available, minimize disturbances and adverse  
360 impacts of the operation on fish, wildlife and related  
361 environmental values, and achieve enhancement of these  
362 resources where practicable;

363 (25) Retain a natural barrier to inhibit slides and erosion  
364 on permit areas where outcrop barriers are required:  
365 *Provided,* That constructed barriers may be allowed where:  
366 (A) Natural barriers do not provide adequate stability; (B)  
367 natural barriers would result in potential future water quality  
368 deterioration; and (C) natural barriers would conflict with the  
369 goal of maximum utilization of the mineral resource:  
370 *Provided, however,* That at a minimum, the constructed  
371 barrier shall be of sufficient width and height to provide  
372 adequate stability and the stability factor shall equal or  
373 exceed that of the natural outcrop barrier: *Provided further,*  
374 That where water quality is paramount, the constructed  
375 barrier shall be composed of impervious material with  
376 controlled discharge points; and

377 (26) The director shall promulgate for review and  
378 consideration by the West Virginia Legislature legislative  
379 rules or emergency rules during the 2016 Regular Session of  
380 the West Virginia Legislature, revisions to rules for  
381 contemporaneous reclamation as required under subdivision  
382 (16), subsection (b) of this section. The secretary shall  
383 specifically consider the adoption of federal standards  
384 codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R.  
385 §§817.100-116 (1983) when proposing revisions to the state  
386 rule.

387 (c)(1) The director may prescribe procedures pursuant to  
388 which he or she may permit surface mining operations for the  
389 purposes set forth in subdivision (3) of this subsection.

390 (2) Where an applicant meets the requirements of  
391 subdivisions (3) and (4) of this subsection, a permit without  
392 regard to the requirement to restore to approximate original  
393 contour set forth in subsection (b) or (d) of this section may  
394 be granted for the surface mining of coal where the mining  
395 operation will remove an entire coal seam or seams running  
396 through the upper fraction of a mountain, ridge or hill, except  
397 as provided in paragraph (A), subdivision (4) of this  
398 subsection, by removing all of the overburden and creating a  
399 level plateau or a gently rolling contour with no highwalls  
400 remaining and capable of supporting post-mining uses in  
401 accordance with the requirements of this subsection.

402 (3) In cases where an industrial, commercial, agricultural,  
403 commercial forestry, residential or public facility including  
404 recreational uses is proposed for the post-mining use of the  
405 affected land, the director may grant a permit for a surface  
406 mining operation of the nature described in subdivision (2) of  
407 this subsection where: (A) The proposed post-mining land  
408 use is determined to constitute an equal or better use of the  
409 affected land, as compared with premining use; (B) the



410 applicant presents specific plans for the proposed post-mining  
411 land use and appropriate assurances that the use will be: (i)  
412 Compatible with adjacent land uses; (ii) practicable with  
413 respect to achieving the proposed use; (iii) obtainable  
414 according to data regarding expected need and market; (iv)  
415 supported by commitments from public agencies where  
416 appropriate; (v) practicable with respect to private financial  
417 capability for completion of the proposed use; (vi) planned  
418 pursuant to a schedule attached to the reclamation plan so as  
419 to integrate the mining operation and reclamation with the  
420 post-mining land use; and (vii) designed by a person  
421 approved by the director in conformance with standards  
422 established to assure the stability, drainage and configuration  
423 necessary for the intended use of the site; (C) the proposed  
424 use would be compatible with adjacent land uses, and  
425 existing state and local land use plans and programs; (D) the  
426 director provides the county commission of the county in  
427 which the land is located and any state or federal agency  
428 which the director, in his or her discretion, determines to  
429 have an interest in the proposed use, an opportunity of not  
430 more than sixty days to review and comment on the proposed  
431 use; and (E) all other requirements of this article will be met.

432 (4) In granting any permit pursuant to this subsection, the  
433 director shall require that: (A) A natural barrier be retained  
434 to inhibit slides and erosion on permit areas where outcrop  
435 barriers are required: *Provided*, That constructed barriers  
436 may be allowed where: (i) Natural barriers do not provide  
437 adequate stability; (ii) natural barriers would result in  
438 potential future water quality deterioration; and (iii) natural  
439 barriers would conflict with the goal of maximum utilization  
440 of the mineral resource: *Provided, however*, That, at a  
441 minimum, the constructed barrier shall be sufficient in width  
442 and height to provide adequate stability and the stability  
443 factor shall equal or exceed that of the natural outcrop  
444 barrier: *Provided further*, That where water quality is

445 paramount, the constructed barrier shall be composed of  
446 impervious material with controlled discharge points; (B) the  
447 reclaimed area is stable; (C) the resulting plateau or rolling  
448 contour drains inward from the outslopes except at specific  
449 points; (D) no damage will be done to natural watercourses;  
450 (E) spoil will be placed on the mountaintop bench as is  
451 necessary to achieve the planned post-mining land use: *And*  
452 *provided further*, That all excess spoil material not retained  
453 on the mountaintop shall be placed in accordance with the  
454 provisions of subdivision (22), subsection (b) of this section;  
455 and (F) ensure stability of the spoil retained on the  
456 mountaintop and meet the other requirements of this article.

457 (5) All permits granted under the provisions of this  
458 subsection shall be reviewed not more than three years from  
459 the date of issuance of the permit; unless the applicant  
460 affirmatively demonstrates that the proposed development is  
461 proceeding in accordance with the terms of the approved  
462 schedule and reclamation plan.

463 (d) In addition to those general performance standards  
464 required by this section, when surface mining occurs on  
465 slopes of twenty degrees or greater, or on lesser slopes as  
466 may be defined by rule after consideration of soil and  
467 climate, no debris, abandoned or disabled equipment, spoil  
468 material or waste mineral matter will be placed on the natural  
469 downslope below the initial bench or mining cut: *Provided*,  
470 That soil or spoil material from the initial cut of earth in a  
471 new surface mining operation may be placed on a limited  
472 specified area of the downslope below the initial cut if the  
473 permittee can establish to the satisfaction of the director that  
474 the soil or spoil will not slide and that the other requirements  
475 of this section can still be met.

476 (e) The director may propose rules for legislative  
477 approval in accordance with article three, chapter

478 twenty-nine-a of this code that permit variances from the  
479 approximate original contour requirements of this section:  
480 *Provided*, That the watershed control of the area is improved:  
481 *Provided, however*, That complete backfilling with spoil  
482 material is required to completely cover the highwall, which  
483 material will maintain stability following mining and  
484 reclamation.

485 (f) The director shall propose rules for legislative  
486 approval in accordance with article three, chapter  
487 twenty-nine-a of this code for the design, location,  
488 construction, maintenance, operation, enlargement,  
489 modification, removal and abandonment of new and existing  
490 coal mine waste piles. In addition to engineering and other  
491 technical specifications, the standards and criteria developed  
492 pursuant to this subsection shall include provisions for review  
493 and approval of plans and specifications prior to construction,  
494 enlargement, modification, removal or abandonment;  
495 performance of periodic inspections during construction;  
496 issuance of certificates of approval upon completion of  
497 construction; performance of periodic safety inspections; and  
498 issuance of notices and orders for required remedial or  
499 maintenance work or affirmative action: *Provided*, That  
500 whenever the director finds that any coal processing waste  
501 pile constitutes an imminent danger to human life, he or she  
502 may, in addition to all other remedies and without the  
503 necessity of obtaining the permission of any person prior or  
504 present who operated or operates a pile or the landowners  
505 involved, enter upon the premises where any coal processing  
506 waste pile exists and may take or order to be taken any  
507 remedial action that may be necessary or expedient to secure  
508 the coal processing waste pile and to abate the conditions  
509 which cause the danger to human life: *Provided, however*,  
510 That the cost reasonably incurred in any remedial action  
511 taken by the director under this subsection may be paid for  
512 initially by funds appropriated to the division for these

513 purposes and the sums expended shall be recovered from any  
514 responsible operator or landowner, individually or jointly, by  
515 suit initiated by the Attorney General at the request of the  
516 director. For purposes of this subsection, "operates" or  
517 "operated" means to enter upon a coal processing waste pile,  
518 or part of a coal processing waste pile, for the purpose of  
519 disposing, depositing, dumping coal processing wastes on the  
520 pile or removing coal processing waste from the pile, or to  
521 employ a coal processing waste pile for retarding the flow of  
522 or for the impoundment of water.

**§22-3-19. Permit revision and renewal requirements; incidental  
boundary revisions; requirements for transfer; assignment  
and sale of permit rights; operator reassignment; and  
procedures to obtain inactive status.**

1 (a) (1) Any valid permit issued pursuant to this article  
2 carries with it the right of successive renewal upon expiration  
3 with respect to areas within the boundaries of the existing  
4 permit. The holders of the permit may apply for renewal and  
5 the renewal shall be issued: *Provided*, That on application  
6 for renewal, the burden is on the opponents of renewal,  
7 unless it is established that and written findings by the  
8 secretary are made that: (A) The terms and conditions of the  
9 existing permit are not being satisfactorily met: *Provided*,  
10 *however*, That if the permittee is required to modify  
11 operations pursuant to mining or reclamation requirements  
12 which become applicable after the original date of permit  
13 issuance, the permittee shall be provided an opportunity to  
14 submit a schedule allowing a reasonable period to comply  
15 with such revised requirements; (B) the present surface  
16 mining operation is not in compliance with the applicable  
17 environmental protection standards of this article; (C) the  
18 renewal requested substantially jeopardizes the operator's  
19 continuing responsibility on existing permit areas; (D) the  
20 operator has not provided evidence that the bond in effect for

21 said operation will continue in effect for any renewal  
22 requested as required pursuant to sections eleven or twelve of  
23 this article; or (E) any additional revised or updated  
24 information as required pursuant to rules promulgated by the  
25 secretary has not been provided.

26 (2) If an application for renewal of a valid permit  
27 includes a proposal to extend the surface mining operation  
28 beyond the boundaries authorized in the existing permit, that  
29 portion of the application for renewal which addresses any  
30 new land area is subject to the full standards of this article,  
31 which includes, but is not limited to: (A) Adequate bond; (B)  
32 a map showing the disturbed area and facilities; and (C) a  
33 reclamation plan.

34 (3) Any permit renewal shall be for a term not to exceed  
35 the period of time for which the original permit was issued.  
36 Application for permit renewal shall be made at least one  
37 hundred twenty days prior to the expiration of the valid  
38 permit.

39 (4) Any renewal application for an active permit shall be  
40 on forms prescribed by the secretary and shall be  
41 accompanied by a filing fee of \$3,000. The application shall  
42 contain such information as the secretary requires pursuant to  
43 rule.

44 (b) (1) During the term of the permit, the permittee may  
45 submit to the secretary an application for a revision of the  
46 permit, together with a revised reclamation plan.

47 (2) An application for a significant revision of a permit is  
48 subject to all requirements of this article and rules  
49 promulgated pursuant thereto and shall be accompanied by a  
50 filing fee of \$2,000.

51 (3) Any extension to an area already covered by the  
52 permit, except incidental boundary revisions, shall be made  
53 by application for another permit. If the permittee desires to  
54 add the new area to his or her existing permit in order to have  
55 existing areas and new areas under one permit, the secretary  
56 may so amend the original permit: *Provided*, That the  
57 application for the new area is subject to all procedures and  
58 requirements applicable to applications for original permits  
59 under this article and a filing fee of \$550.

60 (c) The secretary shall review outstanding permits of a  
61 five-year term before the end of the third year of the permit.  
62 Other permits shall be reviewed within the time established  
63 by rules. The secretary may require reasonable revision or  
64 modification of the permit following review: *Provided*, That  
65 such revision or modification shall be based upon written  
66 findings and shall be preceded by notice to the permittee of  
67 an opportunity for hearing.

68 (d) No transfer, assignment or sale of the rights granted  
69 under any permit issued pursuant to this article may be made  
70 without the prior written approval of the secretary,  
71 application for which shall be accompanied by a filing fee of  
72 \$1,500 for transfer or \$1,500 for assignment.

73 (e) Each request for inactive status shall be submitted on  
74 forms prescribed by the secretary, shall be accompanied by  
75 a filing fee of \$2,000, and shall be granted in accordance with  
76 the procedure established in the Surface Mining and  
77 Reclamation Rule.

78 (f) The secretary shall promulgate for review and  
79 consideration by the West Virginia Legislature legislative  
80 rules or emergency rules during the 2016 Regular Session of  
81 the West Virginia Legislature revisions to rules for granting  
82 inactive status under this article. The secretary shall

83 specifically consider the adoption of federal standards  
84 codified at 30 C. F. R. §816.131 (1979) and 30 C. F. R.  
85 §817.131 (1979).

**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

**§22-11-6. Requirement to comply with standards of water quality and effluent limitations.**

1 All persons affected by rules establishing water quality  
2 standards and effluent limitations shall promptly comply  
3 therewith: *Provided*, That:

4 (1) Where necessary and proper, the secretary may  
5 specify a reasonable time for persons not complying with  
6 such standards and limitations to comply therewith and upon  
7 the expiration of any such period of time, the secretary shall  
8 revoke or modify any permit previously issued which  
9 authorized the discharge of treated or untreated sewage,  
10 industrial wastes or other wastes into the waters of this state  
11 which result in reduction of the quality of such waters below  
12 the standards and limitations established therefor by rules of  
13 the board or secretary;

14 (2) For purposes of both this article and sections 309 and  
15 505 of the federal Water Pollution Control Act, compliance  
16 with a permit issued pursuant to this article shall be deemed  
17 compliance for purposes of both this article and sections 301,  
18 302, 303, 306, 307 and 403 of the federal Water Pollution  
19 Control Act and with all applicable state and federal water  
20 quality standards, except for any such standard imposed  
21 under section 307 of the federal Water Pollution Control Act  
22 for a toxic pollutant injurious to human health.  
23 Notwithstanding any provision of this code or rule or permit  
24 condition to the contrary, water quality standards themselves  
25 shall not be considered "effluent standards or limitations" for

26 the purposes of both this article and sections 309 and 505 of  
27 the federal Water Pollution Control Act and shall not be  
28 independently or directly enforced or implemented except  
29 through the development of terms and conditions of a permit  
30 issued pursuant to this article. Nothing in this section,  
31 however, prevents the secretary from modifying, reissuing or  
32 revoking a permit during its term. The provisions of this  
33 section addressing compliance with a permit are intended to  
34 apply to all existing and future discharges and permits  
35 without the need for permit modifications; and

36 (3) The Legislature finds that there are concerns within  
37 West Virginia regarding the applicability of the research  
38 underlying the federal selenium criteria to a state such as  
39 West Virginia which has high precipitation rates and  
40 free-flowing streams and that the alleged environmental  
41 impacts that were documented in applicable federal research  
42 have not been observed in West Virginia and, further, that  
43 considerable research is required to determine if selenium is  
44 having an impact on West Virginia streams, to validate or  
45 determine the proper testing methods for selenium and to  
46 better understand the chemical reactions related to selenium  
47 mobilization in water.

48 (4) The Legislature finds that EPA has been  
49 contemplating a revision to the federally recommended  
50 criteria for several years but has yet to issue a revised  
51 standard.

52 (5) Because of the uncertainty regarding the applicability  
53 of the current selenium standard, the secretary is hereby  
54 directed to develop within six months of the effective date of  
55 this subdivision an implementation plan for the current  
56 selenium standard that will include, at minimum, the  
57 following:



58 (A) Implementing the criteria as a threshold standard;

59 (B) A monitoring plan that will include chemical  
60 speciation of any selenium discharge;

61 (C) A fish population survey and monitoring plan that  
62 will be implemented at a representative location to assess any  
63 possible impacts from selenium discharges if the threshold  
64 criteria are exceeded; and

65 (D) The results of the monitoring will be reported to the  
66 department for use in the development of state-specific  
67 selenium criteria.

68 (6) Within twenty-four months of the effective date of  
69 this subdivision, the secretary shall propose rules for  
70 legislative approval in accordance with the provisions of  
71 article three, chapter twenty-nine of this code which establish  
72 a state-specific selenium standard that protects aquatic life.  
73 Concurrent with proposing a legislative rule, the secretary  
74 shall also submit the proposed standard and supporting  
75 documentation to the administrator of the Environmental  
76 Protection Agency. The secretary shall also consult with and  
77 consider research and data from the West Virginia Water  
78 Research Institute at West Virginia University, the regulated  
79 community and other appropriate groups in developing the  
80 state-specific selenium standard.

81 (7) Within thirty days of the effective date of this section,  
82 the secretary shall promulgate an emergency rule revising the  
83 statewide aluminum water quality criteria for the protection  
84 of aquatic life to incorporate aluminum criteria values using  
85 a hardness-based equation. Concurrent with issuing an  
86 emergency rule, the secretary shall also submit the proposed  
87 revisions and supporting documentation to the administrator  
88 of the Environmental Protection Agency.

**§22-11-8. Prohibitions; permits required.**

1       (a) The secretary may, after public notice and opportunity  
2 for public hearing, issue a permit for the discharge or  
3 disposition of any pollutant or combination of pollutants into  
4 waters of this state upon condition that the discharge or  
5 disposition meets or will meet all applicable state and federal  
6 water quality standards and effluent limitations and all other  
7 requirements of this article and article three, chapter  
8 twenty-two-b of this code. While permits shall contain  
9 conditions that are designed to meet all applicable state and  
10 federal water quality standards and effluent limitations, water  
11 quality standards themselves shall not be incorporated  
12 wholesale either expressly or by reference as effluent  
13 standards or limitations in a permit issued pursuant to this  
14 article.

15       (b) It is unlawful for any person, unless the person holds  
16 a permit therefor from the department, which is in full force  
17 and effect, to:

18       (1) Allow sewage, industrial wastes or other wastes, or  
19 the effluent therefrom, produced by or emanating from any  
20 point source, to flow into the waters of this state;

21       (2) Make, cause or permit to be made any outlet, or  
22 substantially enlarge or add to the load of any existing outlet,  
23 for the discharge of sewage, industrial wastes or other wastes,  
24 or the effluent therefrom, into the waters of this state;

25       (3) Acquire, construct, install, modify or operate a  
26 disposal system or part thereof for the direct or indirect  
27 discharge or deposit of treated or untreated sewage, industrial  
28 wastes or other wastes, or the effluent therefrom, into the  
29 waters of this state, or any extension to or addition to the  
30 disposal system;

31           (4) Increase in volume or concentration any sewage,  
32 industrial wastes or other wastes in excess of the discharges  
33 or disposition specified or permitted under any existing  
34 permit;

35           (5) Extend, modify or add to any point source, the  
36 operation of which would cause an increase in the volume or  
37 concentration of any sewage, industrial wastes or other  
38 wastes discharging or flowing into the waters of the state;

39           (6) Construct, install, modify, open, reopen, operate or  
40 abandon any mine, quarry or preparation plant, or dispose of  
41 any refuse or industrial wastes or other wastes from the mine  
42 or quarry or preparation plant: *Provided*, That the  
43 department's permit is only required wherever the  
44 aforementioned activities cause, may cause or might  
45 reasonably be expected to cause a discharge into or pollution  
46 of waters of the state, except that a permit is required for any  
47 preparation plant: *Provided, however*, That unless waived in  
48 writing by the secretary, every application for a permit to  
49 open, reopen or operate any mine, quarry or preparation plant  
50 or to dispose of any refuse or industrial wastes or other  
51 wastes from the mine or quarry or preparation plant shall  
52 contain a plan for abandonment of the facility or operation,  
53 which plan shall comply in all respects to the requirements of  
54 this article. The plan of abandonment is subject to  
55 modification or amendment upon application by the permit  
56 holder to the secretary and approval of the modification or  
57 amendment by the secretary; or

58           (7) Operate any disposal well for the injection or  
59 reinjection underground of any industrial wastes, including,  
60 but not limited to, liquids or gases, or convert any well into  
61 such a disposal well or plug or abandon any such disposal  
62 well.

63 (c) Where a person has a number of outlets emerging into  
64 the waters of this state in close proximity to one another, the  
65 outlets may be treated as a unit for the purposes of this  
66 section, and only one permit issued for all the outlets.

**§22-11-22a. Civil penalties and injunctive relief; civil administrative penalties for coal mining operations.**

1 (a) Any person who holds a permit to operate a coal  
2 mining operation issued under article three of this chapter  
3 who violates any provision of any permit issued under or  
4 subject to the provisions of this article or article eleven-a of  
5 this chapter is subject to a civil penalty not to exceed \$25,000  
6 per day of the violation and any person who violates any  
7 provision of this article or of any rule or who violates any  
8 standard or order promulgated or made and entered under the  
9 provisions of this article, article eleven-a of this chapter or  
10 article one, chapter twenty-two-b of this code is subject to a  
11 civil penalty not to exceed \$25,000 per day of the violation:  
12 *Provided*, That any penalty imposed pursuant to the Surface  
13 Coal Mining and Reclamation Act [ §§ 22-3-1 *et seq.* ] shall be  
14 credited against any enforcement action under this article for  
15 violations of standards protecting state waters.

16 (1) Any such civil penalty may be imposed and collected  
17 only by a civil action instituted by the secretary in the circuit  
18 court of the county in which the violation occurred or is  
19 occurring or of the county in which the waters thereof are  
20 polluted as the result of such violation.

21 (2) In determining the amount of a civil penalty the  
22 circuit court shall consider the seriousness of the violation or  
23 violations, the economic benefit, if any, resulting from the  
24 violation, any history of the violations, any good-faith efforts  
25 to comply with the applicable requirements, cooperation by  
26 the permittee with the secretary, the economic impact of the

27 penalty on the violator, and other matters as justice may  
28 require.

29 (3) Upon application by the secretary, the circuit courts  
30 of the state or the judges thereof in vacation may by  
31 injunction compel compliance with and enjoin violations of  
32 the provisions of this article, article eleven-a of this chapter,  
33 the rules of the board or secretary, effluent limitations, the  
34 terms and conditions of any permit granted under the  
35 provisions of this article or article eleven-a of this chapter or  
36 any order of the secretary or board, and the venue of any such  
37 actions shall be the county in which the violations or  
38 noncompliance exists or is taking place or in any county in  
39 which the waters thereof are polluted as the result of the  
40 violation or noncompliance. The court or the judge thereof in  
41 vacation may issue a temporary or preliminary injunction in  
42 any case pending a decision on the merits of any injunction  
43 application filed. Any other section of this code to the  
44 contrary notwithstanding, the state is not required to furnish  
45 bond as a prerequisite to obtaining injunctive relief under this  
46 article or article eleven-a of this chapter. An application for  
47 an injunction under the provisions of this section may be filed  
48 and injunctive relief granted notwithstanding that all of the  
49 administrative remedies provided in this article have not been  
50 pursued or invoked against the person or persons against  
51 whom such relief is sought and notwithstanding that the  
52 person or persons against whom such relief is sought have  
53 not been prosecuted or convicted under the provisions of this  
54 article.

55 (4) The judgment of the circuit court upon any  
56 application filed or in any civil action instituted under the  
57 provisions of this section is final unless reversed, vacated or  
58 modified on appeal to the Supreme Court of Appeals. Any  
59 such appeal shall be sought in the manner provided by law  
60 for appeals from circuit courts in other civil cases, except that

61 the petition seeking review in any injunctive proceeding must  
62 be filed with said Supreme Court of Appeals within ninety  
63 days from the date of entry of the judgment of the circuit  
64 court.

65 (5) Legal counsel and services for the director, secretary  
66 or the board in all civil penalty and injunction proceedings in  
67 the circuit court and in the Supreme Court of Appeals of this  
68 state shall be provided by legal counsel employed by the  
69 department, the Attorney General or his or her assistants and  
70 by the prosecuting attorneys of the several counties as well,  
71 all without additional compensation, or the director, secretary  
72 or the board may employ counsel to represent him or her or  
73 it in a particular proceeding.

74 (b) The secretary may assess a civil administrative  
75 penalty whenever he or she finds that a person who holds a  
76 permit to operate a coal mining operation issued under article  
77 three of this chapter has violated any provision of this article  
78 or article eleven-a of this chapter, any permit issued under or  
79 subject to the provisions of this article or article eleven-a of  
80 this chapter or any rule or order issued pursuant to this article  
81 or article eleven-a of this chapter. A civil administrative  
82 penalty may be assessed unilaterally by the director in  
83 accordance with this subsection.

84 (1) Any civil administrative penalty assessed pursuant to  
85 this section shall not exceed \$10,000 per violation and the  
86 maximum amount of any civil administrative penalty  
87 assessed pursuant to this section shall not exceed \$125,000:  
88 *Provided*, That any stipulated penalties accrued after the date  
89 of the draft order shall not be included for purposes of  
90 determining the total amount of the civil administrative  
91 penalty. For purposes of this section, a single operational  
92 upset which leads to simultaneous violations of more than  
93 one pollutant parameter shall be treated as a single violation.

94           (2) In determining the amount of any civil administrative  
95 penalty assessed under this subsection, the secretary shall  
96 take into account the nature, circumstances, extent and  
97 gravity of the violation, or violations, and, with respect to the  
98 violator, ability to pay, any prior history of such violations,  
99 the degree of good faith, economic benefit or savings, if any,  
100 resulting from the violation, cooperation of the alleged  
101 violator, and such other matters as justice may require.

102           (3) No assessment may be levied pursuant to this  
103 subsection until after the alleged violator has been notified by  
104 certified mail or personal service pursuant to the West  
105 Virginia rules of civil procedure. The notice shall include a  
106 proposed order which refers to the provision of the statute,  
107 rule, order or permit alleged to have been violated, a concise  
108 statement of the facts alleged to constitute the violation, a  
109 statement of the amount of the administrative penalty to be  
110 imposed and a statement of the alleged violator's right to an  
111 informal hearing prior to the issuance of the proposed order.

112           (A) The alleged violator has thirty calendar days from  
113 receipt of the notice within which to deliver to the secretary  
114 a written request for an informal hearing.

115           (B) If no hearing is requested, the proposed order  
116 becomes a draft order after the expiration of the thirty-day  
117 period.

118           (C) If an informal hearing is requested, the director shall  
119 inform the alleged violator of the time and place of the  
120 hearing. The secretary may appoint an assessment officer to  
121 conduct the informal hearing and make a written  
122 recommendation to the secretary concerning the proposed  
123 order and the assessment of a civil administrative penalty.

124 (D) Within thirty days following the informal hearing, the  
125 secretary shall render and furnish to the alleged violator a  
126 written decision, and the reasons therefor, concerning the  
127 assessment of a civil administrative penalty. The proposed  
128 order shall be revised, if necessary, and shall become a draft  
129 order.

130 (4) The secretary shall provide the opportunity for the  
131 public to comment on any draft order by publishing a Class  
132 II legal advertisement in the newspaper with the largest  
133 circulation in the county in which the violation occurred, and  
134 by other such means as the secretary deems appropriate,  
135 which shall provide notice of the draft order, including the  
136 civil administrative penalty assessment. The secretary shall  
137 consider any comments received in determining whether to  
138 revise the draft order before issuance of a final order. During  
139 the thirty-day public comment period, any person may  
140 request a public hearing regarding the draft order and the  
141 secretary may grant or deny the request at his or her  
142 discretion. If a request for a public hearing is denied, the  
143 secretary shall provide notice to the person requesting a  
144 hearing and reasons for such denial.

145 (5) Within thirty days of the close of the public comment  
146 period on a draft order, the secretary shall issue a final order  
147 or make a determination not to issue a final order, and shall  
148 provide written notice by certified mail or personal service  
149 pursuant to the West Virginia rules of civil procedure to the  
150 alleged violator and shall provide notice by certified mail or  
151 personal service pursuant to the West Virginia rules of civil  
152 procedure to those persons who submitted written comments  
153 on the draft order during the public comment period.

154 (6) The issuance of a final order assessing a civil  
155 administrative penalty pursuant to subsection (b) of this  
156 section may be appealed to the environmental quality board



157 pursuant to section twenty-one of this article. Any person  
158 who submitted written comments on a draft order during the  
159 public comment period shall have the right to file such an  
160 appeal or intervene in any appeal filed by the alleged violator.

161 (7) The authority to levy a civil administrative penalty is  
162 in addition to all other enforcement provisions of this article  
163 and the payment of any assessment does not affect the  
164 availability of any other enforcement provision in connection  
165 with the violation for which the assessment is levied:  
166 *Provided*, That no combination of assessments against a  
167 violator under this section shall exceed \$25,000 for each  
168 violation: *Provided, however*, That any violation for which  
169 the violator has paid a civil administrative penalty assessed  
170 under this section may not be the subject of a separate civil  
171 penalty action. No assessment levied pursuant to this section  
172 becomes due and payable until at least thirty days after  
173 receipt of the final order or the procedures for review of the  
174 assessment, including any appeals, have been completed,  
175 whichever is later.

176 (c) In addition to the authorities set forth in this section,  
177 the secretary may also enter into agreements, settlements and  
178 other consent orders resolving alleged violations of this  
179 chapter.

180 (d) The secretary shall propose, for legislative review,  
181 rules, including emergency rules, in accordance with the  
182 provisions of article three, chapter twenty-nine-a of this code  
183 to establish procedures for assessing civil administrative  
184 penalties in accordance with this section by no later than July  
185 1, 2015.

**CHAPTER 22A. MINERS' HEALTH, SAFETY AND  
TRAINING.**

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.**

**§22A-1-41. The Coal Jobs and Safety Act of 2015; legislative findings.**

*(a) Legislative findings. –*

1           (1) In the past six years, West Virginia's coal industry has  
2    been battered by constant judicial and regulatory assaults,  
3    which have disproportionately raised the cost of mining coal  
4    in West Virginia compared with production costs in other  
5    coal producing states. These increased costs of production  
6    have caused West Virginia coal to become uncompetitive  
7    with other coals in the declining worldwide and domestic  
8    coal markets.

9           (2) Coal production in West Virginia has fallen from one  
10   hundred sixty-five million tons in 2008 to approximately one  
11   hundred fifteen million tons in 2014, a decline of thirty-one  
12   percent. Much of this decline has been concentrated in the  
13   southern coalfields.

14          (3) The number of active mines producing coal has  
15   decreased by more than fifty-three percent, from two hundred  
16   fifty-nine in 2008 to just one hundred twenty-one today.

17          (4) During that same period, direct coal mining  
18   employment has decreased by approximately four thousand  
19   jobs, from a high of twenty-two thousand three hundred  
20   thirty-six in 2011 to just eighteen thousand two hundred  
21   today, a decline of nineteen percent.

22          (5) When the coal-related jobs multiplier, established by  
23   the West Virginia University and Marshall University  
24   Colleges of Business, 2010 Joint Economic Impact Report, is

25 factored in the total direct and indirect jobs impact on the  
26 West Virginia economy shows a twenty thousand six hundred  
27 eighty-job decline in mining and mine-dependent  
28 employment in the state from one hundred thousand eleven  
29 six hundred eighty in 2011 to ninety-one thousand today. The  
30 impact of this damage to the West Virginia economy is  
31 demonstrated by the rapid rise of unemployment in the  
32 coalfields with some counties now reporting an  
33 unemployment rate of more than ten percent.

34 (6) The economic stress to the coal industry and to the  
35 state as a whole is evident in the estimated loss of nearly  
36 \$300 million in direct mining wages paid since 2011. This  
37 loss is exponentially higher when you factor in indirect wages  
38 lost as mining support jobs decline.

39 (7) As a direct result of the damage to the coal industry,  
40 West Virginia has also lost significant tax revenues, as coal  
41 severance taxes have declined by approximately twenty-four  
42 percent in just the past two years – from a high of \$527  
43 million in 2012 to an estimated \$406 million in 2014. This  
44 damage reverberates through the total economy, with  
45 reductions in money available to fund schools, highways,  
46 basic services and health care – needs that increase when  
47 income and health care is lost with the loss of jobs.

48 (8) All of these challenges must be addressed and  
49 overcome if we are to continue to provide the economic  
50 foundation for our state's economy. The encouragement of  
51 economic growth and development in the coal industry in this  
52 state is in the public interest and promotes the general welfare  
53 of the people of this state.

54 (b) *Coal Jobs and Safety Act of 2015*. – Therefore, in  
55 order to encourage the recovery of the West Virginia coal  
56 industry and to increase direct and indirect employment thus

57 created, the Legislature enacts the Coal Jobs and Safety Act  
58 of 2015 and it is collectively comprised of:

59 (1) This section;

60 (2) The amendments to:

61 (A) Sections thirteen and nineteen, article three, chapter  
62 twenty-two of this code;

63 (B) Sections six and eight, article eleven, chapter twenty-  
64 two of this code;

65 (C) Section one, article one-a of this chapter;

66 (D) Sections six, twenty-eight and thirty-seven, article  
67 two of this chapter;

68 (E) Section one hundred one, article two-a, chapter  
69 twenty-two-a of this code; and

70 (F) Sections three hundred one, three hundred eight, three  
71 hundred nine, three hundred ten, four hundred two, four  
72 hundred three, four hundred four, four hundred five, five  
73 hundred one, six hundred one, six hundred two, six hundred  
74 three and six hundred four, article two-a of this chapter; and

75 (3) The following new sections:

76 (A) Section twenty-two-a, article eleven, chapter twenty-  
77 two of this code; and

78 (B) Section two hundred four-a, article two-a of this  
79 chapter that were adopted and enacted during the 2015  
80 Regular Session of the Legislature.

**ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.**

**§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.**

1 (a) Every employer of certified persons, as defined in  
2 section two, article one of this chapter, shall implement a  
3 substance abuse screening policy and program that shall, at  
4 a minimum, include:

5 (1) A preemployment, ten-panel urine test for the  
6 following and any other substances as set out in rules adopted  
7 by the Office of Miners' Health, Safety and Training:

8 (A) Amphetamines;

9 (B) Cannabinoids/THC;

10 (C) Cocaine;

11 (D) Opiates;

12 (E) Phencyclidine (PCP);

13 (F) Benzodiazepines;

14 (G) Propoxyphene;

15 (H) Methadone;

16 (I) Barbiturates; and

17 (J) Synthetic narcotics.

18 Split samples shall be collected by providers who are  
19 certified as complying with standards and procedures set out  
20 in the United States Department of Transportation's rule, 49  
21 C. F. R. Part 40, which may be amended, from time to time,  
22 by legislative rule of the Office of Miners' Health, Safety and  
23 Training. Collected samples shall be tested by laboratories  
24 certified by the United States Department of Health and  
25 Human Services, Substance Abuse and Mental Health  
26 Services Administration (SAMHSA) for collection and  
27 testing. Notwithstanding the provisions of this subdivision,  
28 the mine operator may implement a more stringent substance  
29 abuse screening policy and program;

30 (2) A random substance abuse testing program covering  
31 the substances referenced in subdivision (1) of this  
32 subsection. "Random testing" means that each person subject  
33 to testing has a statistically equal chance of being selected for  
34 testing at random and at unscheduled times. The selection of  
35 persons for random testing shall be made by a scientifically  
36 valid method, such as a random number table or a  
37 computer-based random number generator that is matched  
38 with the persons' Social Security numbers, payroll  
39 identification numbers or other comparable identifying  
40 numbers; and

41 (3) Review of the substance abuse screening program  
42 with all persons required to be tested at the time of  
43 employment, upon a change in the program and annually  
44 thereafter.

45 (b) For purposes of this subsection, preemployment  
46 testing shall be required upon hiring by a new employer,  
47 rehiring by a former employer following a termination of the  
48 employer/employee relationship or transferring to a West  
49 Virginia mine from an employer's out-of-state mine to the  
50 extent that any substance abuse test required by the employer

51 in the other jurisdiction does not comply with the minimum  
52 standards for substance abuse testing required by this article.  
53 Furthermore, the provisions of this section apply to all  
54 employers that employ certified persons who work in mines,  
55 regardless of whether that employer is an operator,  
56 contractor, subcontractor or otherwise.

57 (c)(1) Every employer shall notify the director, on a form  
58 prescribed by the director, within seven days of any of the  
59 following:

60 (A) A positive drug or alcohol test of a certified person,  
61 whether it be a preemployment test, random test, reasonable  
62 suspicion test or post-accident test. However, for purposes of  
63 determining whether a drug test is positive the certified  
64 employee may not rely on a prescription dated more than one  
65 year prior to the date of the drug test result;

66 (B) The refusal of a certified person to submit a sample;

67 (C) A certified person possessing a substituted sample or  
68 an adulterated sample; or

69 (D) A certified person submitting a substituted sample or  
70 an adulterated sample.

71 (2) With respect to any certified person subject to a  
72 collective bargaining agreement, the employer shall notify the  
73 director, on a form prescribed by the director, within seven  
74 days of any of the following:

75 (A) A positive drug or alcohol test of a certified person,  
76 whether it be a preemployment test, random test, reasonable  
77 suspicion test or post-accident test. However, for purposes of  
78 determining whether a drug test is positive the certified  
79 employee may not rely on a prescription dated more than one  
80 year prior to the date of the drug test result;

39

[Enr. Com. Sub. for S. B. No. 357

81           **(B) The refusal of a certified person to submit a sample;**

82           **(C) A certified person possessing a substituted sample or**  
83 **an adulterated sample; or**

84           **(D) A certified person submitting a substituted sample or**  
85 **an adulterated sample.**

86           **(3) When the employer submits the completed**  
87 **notification form prescribed by the director, the employer**  
88 **shall also submit a copy of the laboratory test results showing**  
89 **the substances tested for and the results of the test.**

90           **(4) Notice shall result in the immediate temporary**  
91 **suspension of all certificates held by the certified person who**  
92 **failed the screening, pending a hearing before the board of**  
93 **appeals pursuant to section two of this article.**

94           **(d) Suspension or revocation of a certified person's**  
95 **certificate as a miner or other miner specialty in another**  
96 **jurisdiction by the applicable regulatory or licensing authority**  
97 **for substance abuse-related matters shall result in the director**  
98 **immediately and temporarily suspending the certified**  
99 **person's West Virginia certificate until such time as the**  
100 **certified person's certification is reinstated in the other**  
101 **jurisdiction.**

102           **(e) The provisions of this article shall not be construed**  
103 **to preclude an employer from developing or maintaining a**  
104 **drug and alcohol abuse policy, testing program or substance**  
105 **abuse program that exceeds the minimum requirements set**  
106 **forth in this section. The provisions of this article shall also**  
107 **not be construed to require an employer to alter, amend,**  
108 **revise or otherwise change, in any respect, a previously**  
109 **established substance abuse screening policy and program**  
110 **that meets or exceeds the minimum requirements set forth**



111 in this section. The provisions of this article shall require  
112 an employer to subject its employees who as part of their  
113 employment are regularly present at a mine and who are  
114 employed in a safety-sensitive position to preemployment  
115 and random substance abuse tests: *Provided*, That each  
116 employer shall retain the discretion to establish the  
117 parameters of its substance abuse screening policy and  
118 program so long as it meets the minimum requirements of  
119 this article. For purposes of this section, a “safety-sensitive  
120 position” means an employment position where the  
121 employee’s job responsibilities include duties and activities  
122 that involve the personal safety of the employee or others  
123 working at a mine.

**ARTICLE 2. UNDERGROUND MINES.**

**§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; pre-movement requirements; certified and qualified persons.**

1 Mining equipment being transported or trammed  
2 underground, other than ordinary sectional movements, shall  
3 be transported or trammed by qualified personnel. When  
4 equipment is being transported or trammed where trolley wire  
5 is energized on the split of air in which said equipment is  
6 being transported or trammed, no person shall be permitted  
7 to be in by the equipment in the ventilating split that is  
8 passing over such equipment, except those directly involved  
9 with transporting or tramping the equipment, and shall be  
10 under the supervision of a certified foreman. To avoid  
11 accidental contact with power lines, face equipment shall be  
12 insulated and assemblies removed, if necessary, so as to  
13 provide clearance.

**§22A-2-28. Equipment to conform with height of seam.**

1           The use of underground mining equipment of a size that  
2 does not conform to the height of the seam being mined, which  
3 creates unsafe working conditions for the miner operating the  
4 equipment or others, is prohibited: *Provided*, That the addition  
5 of or use of sideboards on shuttle cars shall be permitted if the  
6 shuttle car is equipped with cameras: *Provided, however*, That  
7 shuttle cars with sideboards as manufactured by an equipment  
8 manufacturer shall be permitted to be used without the use of  
9 cameras if permitted by the director. The board of coal mine  
10 health and safety shall promulgate such rules as are necessary  
11 to effectuate this section.

**§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.**

1           (a) The roadbed, rails, joints, switches, frogs and other  
2 elements of all haulage roads shall be constructed, installed  
3 and maintained in a manner consistent with speed and type of  
4 haulage operations being conducted to ensure safe operation.  
5 Where transportation of personnel is exclusively by rail, track  
6 shall be maintained to within one thousand five hundred feet  
7 of the nearest working face, except that when any section is  
8 fully developed and being prepared for retreating, then the  
9 track shall be maintained to within one thousand five hundred  
10 feet of that retreat mining section if a rubber tired vehicle is  
11 readily available: *Provided*, That in any case where such  
12 track is maintained to within a distance of more than five  
13 hundred feet and not more than one thousand five hundred  
14 feet of the nearest working face, a self-propelled rubber-tired  
15 vehicle capable of transporting an injured worker shall be  
16 readily available.

17           (b) Track switches, except room and entry development  
18 switches, shall be provided with properly installed throws,  
19 bridle bars and guard rails; switch throws and stands, where  
20 possible, shall be placed on the clearance side.

21 (c) Haulage roads on entries shall have a continuous,  
22 unobstructed clearance of at least twenty-four inches from the  
23 farthest projection of any moving equipment on the clearance  
24 side.

25 (d) On haulage roads where trolley lines are used, the  
26 clearance shall be on the side opposite the trolley lines.

27 (e) On the trolley wire or "tight" side, there shall be at  
28 least twelve inches of clearance from the farthest projection  
29 of any moving equipment.

30 (f) Warning lights or reflective signs or tapes shall be  
31 installed along haulage roads at locations of abrupt or sudden  
32 changes in the overhead clearance.

33 (g) The clearance space on all haulage roads shall be kept  
34 free of loose rock, coal, supplies or other material: *Provided,*  
35 That not more than twenty-four inches need be kept free of  
36 such obstructions.

37 (h) Ample clearance shall be provided at all points where  
38 supplies are loaded or unloaded along haulage roads or  
39 conveyors which in no event shall be less than twenty-four  
40 inches.

41 (I) Shelter holes shall be provided along haulage entries.  
42 Such shelter holes shall be spaced not more than one hundred  
43 five feet apart, except when variances are authorized by the  
44 director with unanimous agreement of the mine safety and  
45 technical review committee. Shelter holes shall be on the  
46 side of the entry opposite the trolley wire except that shelter  
47 holes may be on the trolley wire and feeder wire side if the  
48 trolley wire and feeder wire are guarded in a manner  
49 approved by the director.

50           (j) Shelter holes shall be at least five feet in depth, not  
51 more than four feet in width and as high as the traveling  
52 space, unless the director with unanimous agreement of the  
53 mine safety and technical review committee grants a waiver.  
54 Room necks and crosscuts may be used as shelter holes even  
55 though their width exceeds four feet.

56           (k) Shelter holes shall be kept clear of refuse and other  
57 obstructions.

58           (l) Shelter holes shall be provided at switch throws and  
59 manually operated permanent doors.

60           (m) No steam locomotive shall be used in mines where  
61 miners are actually employed in the extraction of coal, but  
62 this shall not prevent operation of a steam locomotive  
63 through any tunnel haulway or part of a mine that is not in  
64 actual operation and producing coal.

65           (n) Underground equipment powered by internal  
66 combustion engines using petroleum products, alcohol, or  
67 any other compound shall not be used in a coal mine, unless  
68 the equipment is diesel-powered equipment approved,  
69 operated and maintained as provided in article two-a of this  
70 chapter.

71           (o) Locomotives, personnel carriers, mine cars, supply  
72 cars, shuttle cars, and all other haulage equipment shall be  
73 maintained in a safe operating condition. Each locomotive,  
74 personnel carrier, barrier tractor and other related equipment  
75 shall be equipped with a suitable lifting jack and handle. An  
76 audible warning device and headlights shall be provided on  
77 each locomotive and each shuttle car. All other mobile  
78 equipment, using the face areas of the mine, shall be provided  
79 with a conspicuous light or other approved device so as to  
80 reduce the possibility of collision.

81 (p) No persons other than those necessary to operate a  
82 trip or car shall ride on any loaded car or on the outside of  
83 any car. Where pusher locomotives are not used, the  
84 locomotive operator shall have an assistant to assist him or  
85 her in his or her duties.

86 (q) The pushing of trips, except for switching purposes,  
87 is prohibited on main haulage roads: *Provided*, That nothing  
88 herein shall prohibit the use of a pusher locomotive to assist  
89 the locomotive pulling a trip. Motormen and trip riders shall  
90 use care in handling locomotives and cars. It shall be their  
91 duty to see that there is a conspicuous light on the front and  
92 rear of each trip or train of cars when in motion: *Provided*,  
93 *however*, That trip lights need not be used on cars being  
94 shifted to and from loading machines, or on cars being  
95 handled at loading heads during gathering operations at  
96 working faces. No person, other than the motorman and  
97 brakeman, should ride on a locomotive unless authorized by  
98 the mine foreman, and then only when safe riding facilities  
99 are provided. An empty car or cars shall be used to provide  
100 a safe distance between the locomotive and the material car  
101 when rail, pipe or long timbers are being hauled. A safe  
102 clearance shall be maintained between the end car or trips  
103 placed on side tracks and moving traffic. On haulage roads  
104 the clearance point shall be marked with an approved device.

105 (r) No motorman, trip rider or brakeman shall get on or  
106 off cars, trips or locomotives while they are in motion, except  
107 that a trip rider or brakeman may get on or off the rear end of  
108 a slowly moving trip or the stirrup of a slowly moving  
109 locomotive to throw a switch, align a derail or open or close  
110 a door.

111 (s) Flying or running switches and riding on the front  
112 bumper of a car or locomotive are prohibited. Back poling  
113 shall be prohibited except with precaution to the nearest

114 turning point (not over eighty feet), or when going up  
115 extremely steep grades and then only at slow speed. The  
116 operator of a shuttle car shall face in the direction of travel  
117 except during the loading operation when he or she shall face  
118 the loading machine.

119 (t) (1) A system of signals, methods or devices shall be  
120 used to provide protection for trips, locomotives and other  
121 equipment coming out onto tracks used by other equipment.

122 (2) In any coal mine where more than three hundred fifty  
123 tons of coal are produced on any shift in each 24-hour period,  
124 a dispatcher shall be on duty when there are movements of  
125 track equipment underground, including time when there is  
126 no production of coal. Such traffic shall move only at the  
127 direction of the dispatcher.

128 (3) The dispatcher's only duty shall be to direct traffic:  
129 Provided, That the dispatcher's duties may also include those  
130 of the responsible person required by section forty-two of this  
131 article: *Provided, however,* That the dispatcher may perform  
132 other duties which do not interfere with his or her dispatching  
133 responsibilities and do not require him or her to leave the  
134 dispatcher's station except as approved by the mine safety  
135 and technical review committee.

136 (4) Any dispatcher's station shall be on the surface.

137 (5) All self-propelled track equipment shall be equipped  
138 with two-way communications.

139 (u) Motormen shall inspect locomotives, and report any  
140 mechanical defects found to the proper supervisor before a  
141 locomotive is put in operation.

142 (v) A locomotive following another trip shall maintain a  
143 distance of at least three hundred feet from the rear end of the  
144 trip ahead, unless such locomotive is coupled to the trip  
145 ahead.

146 (w) Positive stop blocks or derails shall be installed on all  
147 tracks near the top and at landings of shafts, slopes and  
148 surface inclines. Positive-acting stop blocks or derails shall  
149 be used where necessary to protect persons from danger of  
150 runaway haulage equipment.

151 (x) Shuttle cars shall not be altered by the addition of  
152 sideboards so as to inhibit the view of the operator: *Provided*,  
153 That the addition of or use of sideboards on shuttle cars shall  
154 be permitted if the shuttle car is equipped with cameras:  
155 *Provided, however*, That shuttle cars with sideboards as  
156 manufactured by an equipment manufacturer shall be  
157 permitted to be used without the use of cameras if permitted  
158 by the director.

159 (y) Mining equipment shall not be parked within fifteen  
160 feet of a check curtain or fly curtain.

161 (z) All self-propelled track haulage equipment shall be  
162 equipped with an emergency stop switch, self centering  
163 valves, or other devices designed to de-energize the traction  
164 motor circuit in the event of an emergency. All track  
165 mounted trolley equipment shall be equipped with trolley  
166 pole swing limiters or other means approved by the mine  
167 safety and technical review committee to restrict movement  
168 of the trolley pole when it is disengaged from the trolley wire.  
169 Battery-powered mobile equipment shall have the operating  
170 controls clearly marked to distinguish the forward and  
171 reverse positions.

**ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.**

**PART I. GENERAL PROVISIONS.**

**§22A-2A-101. Use of diesel-powered equipment authorized.**

1 Diesel-powered equipment for use in underground coal  
2 mines may only be approved, operated and maintained in  
3 accordance with rules, requirements and standards  
4 established pursuant to this article.

**§22A-2A-204a. Director defined.**

1 "Director" means the Director of the Office of Miners'  
2 Health, Safety and Training established in section one, article  
3 one of this chapter.

**§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties and responsibilities; transfer of equipment and records; continuation of prior approvals of diesel equipment for use in underground coal mines; continuation of rules of the commission.**

1 (a) The West Virginia Diesel Equipment Commission is  
2 hereby abolished. All duties and responsibilities heretofore  
3 imposed upon the commission are hereby imposed upon the  
4 Director of the Office of Miners' Health, Safety and  
5 Training.

6 (b) On the effective date of the reenactment of this  
7 section, all equipment and records necessary to effectuate the  
8 purposes of this article shall be transferred to the director.

9 (c) The rules of the commission in effect immediately  
10 prior to the effective date of the reenactment of this section  
11 shall remain in force and effect until promulgation of new or



12 additional rules by the director pursuant to section three  
13 hundred eight of this article. To the extent the director finds  
14 that the commission rules in effect on the effective date of the  
15 reenactment of this section adequately fulfill any of the duties  
16 of the commission that are transferred to the director by the  
17 reenactment of any of the provisions of this article, such rules  
18 are deemed to be actions taken by the director to fulfill such  
19 duties.

20 (d) All approvals of diesel-powered equipment, diesel  
21 power packages or engines and exhaust emissions control and  
22 conditioning systems made by the commission and in effect  
23 prior to the effective date of this article shall remain in full  
24 force and effect.

**§22A-2A-308. Director's authority to promulgate legislative rules;  
continuation of rules adopted by the commission.**

1 (a) The director has the power and authority to propose  
2 legislative rules to carry out and implement the provisions of  
3 this article in accordance with the provisions of article three,  
4 chapter twenty-nine-a of this code. In proposing rules for  
5 legislative approval, the director shall consider the highest  
6 achievable measures of protection for miners' health and  
7 safety through available technology, engineering controls and  
8 performance requirements and shall further consider the cost,  
9 availability, adaptability and suitability of any available  
10 technology, engineering controls and performance  
11 requirements as they relate to the use of diesel equipment in  
12 underground coal mines.

13 (b) All rules promulgated and adopted by the commission  
14 in effect prior to the effective date of this section shall remain  
15 in effect until changed or superseded by legislative rule  
16 enacted pursuant to subsection (a) of this section.

17 (c) The duties imposed upon the director in this article  
18 that were previously required to be performed by the  
19 adoption of rules by the commission and that were satisfied  
20 or fulfilled by rules adopted by the commission are deemed  
21 to be the acts of the director.

**§22A-2A-309. Director's authority to approve site-specific experimental testing prior to initial rules.**

1 The director may approve limited site-specific requests  
2 for experimental and testing use of diesel-powered equipment  
3 in underground coal mines prior to promulgation of initial  
4 rules in accordance with subsections (b), (c), (d), (e), (f) and  
5 (g), section three hundred ten of this article.

**§22A-2A-310. Duties of director.**

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

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

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

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

52           (3) The director may not approve an application made  
53 under this section if, at the conclusion of the investigation,

54 the director determines that the use of the alternative  
55 technology or method will reduce or compromise the level of  
56 health and safety protection of miners.

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

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

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

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

75 (e) Any action taken by the commission, prior to the  
76 effective date of the reenactment of this section, or by the  
77 director to either approve or reject the use of an alternative  
78 technology or method, or establish conditions under  
79 subsection (c) of this section shall be final and binding and  
80 not subject to further review except where a decision by the  
81 commission, prior to the effective date of the reenactment of  
82 this section, or by the director may be deemed to be an abuse  
83 of discretion or contrary to law. If any party affected by a  
84 decision of the commission, prior to the effective date of the

85 reenactment of this section, or by the director believes that  
86 the decision is an abuse of discretion or contrary to law, that  
87 party may file a petition for review with the circuit court of  
88 Kanawha County in accordance with the provisions of the  
89 administrative procedures act relating to judicial review of  
90 governmental determinations. The court, in finding that any  
91 decision made by the commission, prior to the effective date  
92 of the reenactment of this section, or by the director is an  
93 abuse of discretion or contrary to law, shall vacate and, if  
94 appropriate, remand the case.

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

**§22A-2A-402. Approval of diesel power package or diesel engine.**

1 Every diesel power package or diesel engine used in  
2 underground coal mining shall be approved by the director  
3 when it complies with applicable requirements, standards and  
4 procedures established by this article, and be certified or  
5 approved, as applicable, by MSHA and maintained in  
6 accordance with MSHA certification or approval.

**§22A-2A-403. Exhaust emissions control and conditioning systems.**

1 (a) All exhaust emissions control and conditioning  
2 systems and their component devices for diesel-powered  
3 equipment for use in underground coal mines shall be  
4 approved by the director. Such approval requires compliance  
5 with applicable standards and procedures pursuant to this  
6 article for the use of the system or device in reducing or  
7 eliminating diesel particulate matter, carbon monoxide and  
8 oxides of nitrogen.

9 All exhaust emissions control and conditioning systems  
10 must undergo an initial series of laboratory tests, using test  
11 equipment requirements and standard procedures approved  
12 by the director for testing for gaseous and particulate  
13 emissions. The director shall compile a list of acceptable  
14 third-party laboratories where testing is performed  
15 competently and reliable results are produced.

16 (b) Requirements and standards for exhaust emissions  
17 control and conditioning systems include, but are not limited  
18 to, the following:

19 (1) A minimum standard, stated as an average percentage,  
20 for the reduction of diesel particulate matter emissions by a  
21 diesel particulate matter filter or other comparably effective  
22 emissions control device;

23 (2) A minimum standard, stated in parts per million, for  
24 the reduction of emissions of undiluted carbon monoxide,  
25 using an oxidation catalyst or other gaseous emissions control  
26 device;

27 (3) A minimum standard, stated in parts per million, for  
28 the reduction of emissions of oxides of nitrogen, using  
29 advanced control technology such as catalytic control  
30 technology or other comparably effective control methods;  
31 and

32 (4) Any additional requirements established by the rules  
33 of the commission prior to the enactment of this section, as  
34 may be supplemented or amended by legislative rules  
35 promulgated by the director or MSHA regulations relating to  
36 requirements for permissible mobile diesel-powered  
37 transportation equipment set forth in part 36, title thirty of the  
38 code of federal regulations, 30 C. F. R. §36.1, *et seq.*

**§22A-2A-404. Emissions monitoring and control.**

1       The director shall establish procedures for monitoring and  
2 controlling emissions from diesel-powered equipment. The  
3 procedures shall include, but not be limited to, monitoring and  
4 controlling activities to be performed by a qualified person.

**§22A-2A-405. Exhaust gas monitoring and control.**

1       (a) For monitoring and controlling exhaust gases, the  
2 director shall establish the maximum allowable ambient  
3 concentration of exhaust gases in the mine atmosphere.  
4 Standards for exhaust gases, stated in parts per million, shall  
5 be established for carbon monoxide and oxides of nitrogen.  
6 The rules shall establish the location in the mine at which the  
7 concentration of these exhaust gases is to be measured, the  
8 frequency at which measurements are to be made, and  
9 requirements prescribing the sampling instruments to be used  
10 in the measurement of exhaust gases.

11       (b) The director shall establish the concentration of  
12 exhaust gas, stated as a percentage of an exposure limit, that  
13 when present will require changes to be made in the use of  
14 diesel-powered equipment or the methods of mine  
15 ventilation, or will require other modifications in the mining  
16 process.

17       (c) The director shall provide for the remedial action to  
18 be taken if the concentration of any of the gases listed in  
19 subsection (a) of this section exceeds the exposure limit.

20       (d) In addition to the other maintenance requirements  
21 required by this article, the director shall establish  
22 requirements provide for service, maintenance and tests  
23 which are specific to an engine's fuel delivery system, timing  
24 or exhaust emissions control and conditioning system.

**PART 5. VENTILATION.****§22A-2A-501. Ventilation.**

1       (a) The director shall establish values to be maintained  
2 for the minimum quantities of ventilating air where  
3 diesel-powered equipment is operated. The purpose of these  
4 rules is to ensure that necessary minimum ventilating air  
5 quantity is provided where diesel-powered equipment is  
6 operated.

7       (b) The director shall require that each specific model of  
8 diesel-powered equipment shall be approved before it is  
9 taken underground. Each diesel engine shall have an  
10 assigned MSHA approval number securely attached to the  
11 engine with the information required by 30 C. F. R. §§7.90  
12 and 7.105, the approval plate shall also specify the minimum  
13 ventilating air quantity required by the director for the  
14 specific piece of diesel-powered equipment. The minimum  
15 ventilating air quantity shall be determined by the director  
16 based on the amount of air necessary at all times to maintain  
17 the exhaust emissions at levels not exceeding the exposure  
18 limits established pursuant to section four hundred six of this  
19 article.

20       (c) The minimum quantities of air in any split where any  
21 individual unit of diesel-powered equipment is being  
22 operated shall be at least that specified on the approval plate  
23 for that equipment. Air quantity measurements to determine  
24 compliance with this requirement shall be made at the  
25 individual unit of diesel-powered equipment.

26       (d) The director shall establish the minimum quantities of  
27 air required in any split when multiple units are operated. Air  
28 quantity measurements to determine compliance with this  
29 requirement shall be made at the most downwind unit of



30 diesel-powered equipment that is being operated in that air  
31 split.

32 (e) Minimum quantities of air in any split where any  
33 diesel-powered equipment is operated shall not be less than  
34 the minimum air quantities established pursuant to  
35 subsections (a) and (b) of this section and shall be specified  
36 in the mine diesel ventilation plan.

#### PART 6. FUEL.

##### §22A-2A-601. Specifications for fuel.

1 (a) The director shall establish standards for fuel to be  
2 used in diesel-powered equipment in underground coal  
3 mines. A purpose of these standards is to require the use of  
4 low volatile fuels that will lower diesel engine gaseous and  
5 particulate emissions and will reduce equipment maintenance  
6 by limiting the amount of sulfur in the fuel. Another purpose  
7 of the standards for fuel is to reduce the risk of fire in  
8 underground mines by establishing a minimum flash point for  
9 the diesel fuel used.

10 (b) Each coal mine using diesel equipment underground  
11 shall establish a quality control plan for assuring that the  
12 diesel fuel used complies with the standards established  
13 pursuant to this section. The director shall also establish a  
14 procedure under which each mine operator will provide  
15 evidence that the diesel fuel used in diesel-powered  
16 equipment underground meets the standards for fuel  
17 established by the commission.

##### §22A-2A-602. Fuel storage facilities.

1 (a) The director shall establish requirements for the safe  
2 storage of diesel fuel underground so as to minimize the risks

3 associated with fire hazards in areas where diesel fuel is  
4 stored.

5 (b) (1) The director shall either provide:

6 (A) That all stationary underground diesel fuel tanks are  
7 prohibited; or

8 (B) That a stationary underground diesel fuel tank may  
9 only be authorized through a petitioning process that permits  
10 a stationary underground diesel fuel tank to be located in a  
11 permanent underground diesel fuel storage facility, on a  
12 site-specific basis. Stationary underground diesel fuel tanks  
13 may not be located in temporary underground diesel fuel  
14 storage areas.

15 (c) The director shall establish requirements for the  
16 transportation and storage of diesel fuel in diesel fuel tanks  
17 and safety cans.

18 (d) The director shall establish limits on the total amount  
19 of diesel fuel that may be stored in each permanent  
20 underground diesel fuel storage facility and in each  
21 temporary underground diesel fuel storage area.

**§22A-2A-603. Dispensing of diesel fuel.**

1 The director shall establish requirements governing the  
2 refueling of diesel-powered equipment which shall, at a  
3 minimum, comply with the provisions of part 75 of the Code  
4 of Federal Regulations dealing with the dispensing of diesel  
5 fuel, set forth in 30 C. F. R. §75.1905, effective April 25,  
6 1997.

**§22A-2A-604. Location of fueling.**

1           (a) Fueling of diesel-powered equipment is not to be  
2 conducted in the intake escapeways unless the mine design  
3 and entry configuration make it necessary. For those cases  
4 where fueling in the intake escapeways is necessary, the  
5 director shall establish a procedure whereby the mine  
6 operator shall submit a plan for approval, outlining the  
7 special safety precautions that will be taken to insure the  
8 protection of miners. The plan shall specify a fixed location  
9 where fueling will be conducted in the intake escapeway and  
10 all other safety precautions that will be taken, which shall  
11 include an examination of the area for spillage or fire by a  
12 qualified person.

13           (b) At least one person, specially trained in the cleanup  
14 and disposal of diesel fuel spills, shall be on duty at the mine  
15 when diesel-powered equipment or mobile fuel transportation  
16 equipment is being used or when any fueling of  
17 diesel-powered equipment is being conducted.

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

*Mark R. Hayward*  
.....  
Chairman Senate Committee

*John B. McLean*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Mark S. Barnes*  
.....  
Clerk of the Senate

*Steph J. Hammer*  
.....  
Clerk of the House of Delegates

*Will Phillips*  
.....  
President of the Senate

*Paul M. Patton*  
.....  
Speaker of the House of Delegates

2015 MAR 12 P 4: 56  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

FILED

The within *is approved* this the *12<sup>th</sup>*  
Day of *March*, 2015.

*Earl Ray Tomblin*  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

**MAR 06 2015**

Time 5:00 pm