

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

**Do Not Mark In This Box**

2010 JUL 30 AM 10:08

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Office of Miners' Health, Safety and Training TITLE NUMBER: 56

CITE AUTHORITY: West Virginia Code Sections 22A-1-6 and 22A-1-38

AMENDMENT TO AN EXISTING RULE: YES  NO

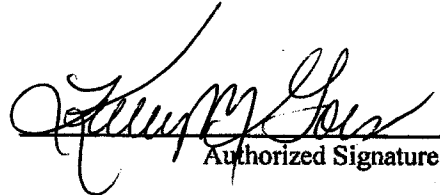
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing the Safety of Those Employed in and  
Around Surface Mines in West Virginia

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: n/a

TITLE OF RULE BEING PROPOSED: n/a

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Office of Miners' Health, Safety and Training

Address: 1615 Washington Street, East  
Charleston, WV 25311

Phone Number: 304-558-1425 Email: Kathy.J.Sloan@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The fiscal impact is unknown at this time and cannot be determined until fully implemented. Any increase in administrative costs will be minimal and will be absorbed without increasing employees or substantial increases in agency expenses.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia

Rule Title: \_\_\_\_\_

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

No increases or decreases in revenue at this time.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

None is anticipated.

Date: July 30, 2010

Signature of Agency Head or Authorized Representative

C.A. Phillips

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: June 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Office of Miners' Health, Safety and Training  
1615 Washington Street, East  
Charleston, WV 25311-2126  
(304) 558-1425

LEGISLATIVE RULE TITLE: ~~Title 56, Series 3: Rules and Regulations Governing the Safety~~  
of Those Employed in and Around Surface Mines in West  
Virginia

1. Authorizing statute(s) citation West Virginia Code Sections 22A-1-6 and 22A-1-38

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
May 26, 2010

b. What other notice, including advertising, did you give of the hearing?  
Posted on West Virginia Office of Miners' Health, Safety and Training website

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Public Comment Period ended June 30, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached     X                          No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 30, 2010

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- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kathy Sloan, Administrative Secretary  
WV Office of Miners' Health, Safety and Training  
1615 Washington Street, East

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Telephone: (304)558-1425/Fax: (304)558-1285  
Email: ksloan@mines.state.wv.us

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Ronald L. Wooten, Director  
WV Office of Miners' Health, Safety and Training  
1615 Washington Street, East  
Charleston, WV 25311-2126  
Telephone: (304)558-1425

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

## **SUMMARY OF RULE AND STATEMENT OF FACTS AND CIRCUMSTANCES**

56 CSR § 3-1 *et seq.* has been in existence since 1991. Since that time many technological advances have occurred in the manner in which surface mining is conducted. This amendment is intended to modernize the Rules and Regulations pertaining to surface mining to account for those changes in technology. Also, many additional safety issues have arisen since 1991, and those safety issues have been addressed in this amendment. Additionally, two new sections of law have been added, one relating to highwall mining and the other relating to operating equipment on extreme slopes.

The Rule, as it currently exists, copies many sections of Chapter 22A of the West Virginia Code verbatim. Over the years, the statutes have changed, but the Rule has not. The Rule is now being amended to update those quotations of the West Virginia Code.

FILED

TITLE 56  
LEGISLATIVE RULES  
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

2010 JUL 30 AM 10:08

SERIES 3  
RULES AND REGULATIONS GOVERNING THE SAFETY OF  
THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§56-3-1. General.**

1.1. Scope. -- These rules govern safety of employees in and around mines.

1.2. Authority. -- W. Va. Code § ~~22-6-4~~ 22A-1-6 and 22A-1-38

1.3. Filing Date. -- May 26, 2010

1.4. Effective Date. -- \_\_\_\_\_

1.5. Applicability. -- These regulations shall extend to all surface mining operations. These regulations shall not apply to any utility or railroad having facilities in the vicinity of surface mining operations unless such utility or railroad is also the operator of such surface mining operations.

1.6. Other law applicable. -- All provisions of the mining law of this state, specifically Chapter 22A, Articles 2 1 and 2 of the West Virginia Code, are applicable to surface mining, except to the extent that these regulations cover the specific requirement, and except to the extent that the context of a specific provision would render its applicability totally inappropriate to surface mining.

**§56-3-2. Effect of Law and Regulations.**

2.1. These regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article 1, Chapter 22A of the West Virginia Code ~~relative to enforcement~~ are applicable to ~~the enforcement of~~ these regulations.

**§56-3-3. Definitions.**

~~3.1. Surface Mine. The term "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, shops and trails; which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code. "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.~~

~~3.2. Department. The term "Department" shall mean the state department of energy~~

~~Office of Miners' Health, Safety and Training provided for in Section 2-1, Article 1 of Chapter 22A of the West Virginia Code.~~

~~3.3. Director of the Department of Energy Office of Miners' Health, Safety and Training. — The term "Director of the Department of Energy Office of Miners' Health, Safety and Training" shall mean the Director of the department of energy Office of Miners' Health, Safety and Training provided for in Chapter 22A, Article 1, Section 3, of the West Virginia Code, and is synonymous with the term "Chief of the Department of Energy".~~

~~3.4. Inspector. — The term "Inspector" shall mean surface mine inspector employed by the Department of Energy Office of Miners' Health, Safety and Training.~~

~~3.5. Mine Inspectors' Examining Board. — The term "Mine Inspectors' Examining Board" shall mean the mine inspectors' examining board provided for in Section 12 Article 9 of Chapter 22A of the West Virginia Code.~~

~~3.6. Board of Appeals. — The term "Board of Appeals" shall mean the Board of Appeals as provided for in Section 31 Article 5 of Chapter 22A of the West Virginia Code.~~

~~3.7. Agent. — The term "Agent" means any person charged with the responsibility for the operations of all or a part of a surface mine or the supervision of the miners on a surface mine.~~

~~3.8. Operator. — The term "Operator" shall mean any firm, corporation, partnership or individual operating any surface coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.~~

~~3.9. Surface Miner. — The term "Surface Miner" shall mean any individual working on or around a surface mine, who is employed by the operator. This definition does not include vendors, visitors, and other invitees of the coal operator who are not performing surface mine duties.~~

~~3.10. Person. — The term "Person" shall mean any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.~~

~~3.11. Superintendent. — The term "Superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one (1) or more mines.~~

~~3.12. Mine Foreman. — The term "Mine Foreman" shall mean the certified person whom the operator or superintendent shall place in charge of the workings of the surface mine and of the persons employed thereon.~~

~~3.13. Assistant Mine Foreman. — The term "Assistant Mine Foreman" shall mean a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.~~

~~3.14. Supervisor. — The term "Supervisor" shall mean a superintendent, mine foreman,~~

~~assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work of employees and who is acting pursuant to such specific designation and instructions.~~

~~3.15. Interested Persons. — The term "Interested Persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and Department of Energy the Office of Miners' Health, Safety and Training.~~

~~3.16. Certified Electrician. — The term "Certified Electrician" shall mean any person who is qualified as a mine electrician and who has passed an examination given by the Department of Energy Office of Miners' Health, Safety and Training, or has at least three (3) years of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a non coal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the Department of Energy Office of Miners' Health, Safety and Training.~~

~~3.17. Certified Person. — The term "Certified Person" when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, shall mean a person who is qualified under the provisions of this law to perform such duty.~~

~~3.18. Accident. — The term "Accident" shall mean any premature ignition, fire or injury, or death other than natural causes of any person.~~

~~3.19. Imminent Danger. — The term "Imminent Danger" means the existence of any condition or practice on a surface mine which could be expected to cause death or serious physical harm before such condition or practice can be abated.~~

~~3.20. Qualified Person. — The term "Qualified Person" shall mean a person who has completed an examination and is considered qualified on record by the Department of Energy Office of Miners' Health, Safety and Training.~~

~~3.21. Approved. — The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.~~

~~3.22. Berm. — The term "Berm" shall mean a pile or mound of material or equivalent capable of restraining a vehicle.~~

~~3.23. Work of Preparing the Coal. — The term "Work of Preparing Coal" shall mean the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, loading, and removing of over burden from the top of the coal for the purpose of extracting coal.~~

~~3.24. Active Underground Mine Working. — The term "Active Underground Mine~~

~~Working" shall mean all places in a mine that are ventilated and inspected regularly.~~

~~3.25. Abandoned Underground Mine Workings. — The term "Abandoned Underground Mine Workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.~~

~~3.26. Working Place. — The term "Working Place" shall mean all areas in or about a surface mine where persons are working.~~

~~3.27. Detonator. — The term "Detonator" shall mean electronic blasting caps, electrical electric blasting caps, and nonelectric delay blasting caps.~~

~~3.28. Nonelectric delay blasting caps. — The term "Nonelectric Delay Blasting Caps" shall mean a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from a miniaturized detonating cord that does not require the use of electric energy to function.~~

~~3.29. Primer. — The term "Primer" shall mean a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive charge.~~

~~3.30. Detonating cord. — The term "Detonating Cord" shall mean a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.~~

~~3.31. Cast primer or booster. — The term "Cast Primer or Booster" shall mean a case or pressed block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate insensitive or noncapsensistive explosives.~~

~~3.32. Safety fuse. — The term "Safety Fuse" shall mean a flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a blasting cap.~~

~~3.33. Detonating cord millisecond delay connectors. — The term "Detonating Cord Millisecond Delay Connectors" shall mean nonelectric shot interval (millisecond) delay devices for use in delaying blasts which are surface initiated by detonating cord.~~

~~3.34. Blasting agent. — Means any material consisting of a mixture of a fuel and oxidizer which: The term "Blasting Agent" shall mean an explosive material which meets prescribed criteria for insensitivity to initiation.~~

~~(a) is used or intended for use in blasting; For storage, Title 27, Code of Federal Regulations, Section 55.11 defines a blasting agent as any material or mixture, consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive: provided, that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap (detonator) when unconfined (ATF Regulation).~~

~~(b) is not classified as an explosive by the Department of Transportation; For transportation, Title 49 CFR, Section 173.50, defines Class 1, Division 1.5 (blasting agent) as a substance which has mass explosion hazard but is so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions in transport.~~

~~(c) passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with CFR49, 173.114a.~~

~~3.35. Blasting area. — The term "Blasting Area" shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury. The blaster in charge shall determine the blasting area.~~

~~3.36. Explosives. — The term "Explosives" shall mean any or all of the following, but is not limited to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, nonelectrical delay blasting caps, electronic computer chip blasting caps, cast primer and boosters, detonating cord, and detonating cord delay connections.~~

~~3.37. Electric blasting caps. — The term "Electric Blasting Caps" shall mean instantaneous electric blasting caps and all types of delay electric blasting caps.~~

~~3.38. Armored cable. — The term "Armored Cable" shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.~~

~~3.39. Branch circuit. — The term "Branch Circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power lines.~~

~~3.40. Cable. — The term "Cable" shall mean a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).~~

~~3.41. Circuit breaker. — The term "Circuit Breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.~~

~~3.42. Delta connected. — The term "Delta Connected" shall mean a power system in which the windings or transformers or S.C. A.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.~~

~~3.43. Effectively grounded. — The term "Effectively Grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.~~

~~3.44. Flame resistant Cable, Portable. — The term "Flame resistant Cable, Portable" shall mean a portable flame resistant cable that has passed the flame test of the Federal Bureau of~~

Mines. Mine Safety and Health Administration.

~~3.45. Ground or grounding conductor (mining).— The term "Ground or Grounding Conductor (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, shall mean a metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring system with a mine track or other effective grounding medium.~~

~~3.46. Grounded (earthed).— The term "Grounded (earthed)" shall mean that the system, circuit, or apparatus referred to is provided with a ground.~~

~~3.47. High voltage.— The term "High Voltage" shall mean voltages of more than one thousand (1,000) volts.~~

~~3.48. Lightning Arrestor.— The term "Lightning Arrestor" shall mean a protective device for limiting surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or follow current to ground and is capable of repeating these functions as specified.~~

~~3.49. Low voltage.— The term "Low Voltage" shall mean up to and including six hundred sixty (660) volts.~~

~~3.50. Medium voltage.— The term "Medium Voltage" shall mean voltages from six hundred sixty one (661) to one thousand (1,000) volts.~~

~~3.51. Mine Power Center or Distribution Center.— The term "Mine Power Center or Distribution Center" shall mean a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low voltage power circuits are taken.~~

~~3.52. Neutral (derived).— The term "Neutral (derived)" shall mean a neutral point or connection established by the addition of a "zigzag" or grounding transformer to a normally underground power system.~~

~~3.53. Neutral Point.— The term "Neutral Point" shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero (0), and is the point generally used for system groundings in wye-connected A.C. power system.~~

~~3.54. Portable (Trailing) Cable.— The term "Portable (Trailing) Cable" shall mean a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external to a source of electrical energy where permanent mine wiring is prohibited or is impracticable.~~

~~3.55. Wye Connected.— The term "Wye Connected" shall mean a power system connection in which one (1) end of each phase windings or transformers or A.C. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.~~

~~3.56. ZigZag Transformer (Grounding Transformer). — The term "Zigzag Transformer (Grounding Transformer)" shall mean a transformer intended primarily to provide a neutral point for grounding purposes.~~

~~3.57. Brake systems:~~

~~(a) Service brake system — the primary brake system used for stopping a vehicle.~~

~~(b) Emergency stopping system — the system used for stopping a vehicle in the event of any single failure in the service brake system.~~

~~(c) Parking system — a system to hold a stopped vehicle in a stationary position.~~

~~3.58. Barricaded. — The term "Barricaded" shall mean to obstruct passage of person, vehicles, or flying materials.~~

~~3.59. Blast Controller. — The term "Blast Controller" shall mean a firing device for electronic detonator circuits which may have functions (such as programming, communication, circuit diagnostics, etc.) in addition to charging and transmission of the firing command.~~

~~3.60. Blast Site. — The term "Blast Site" shall mean the area where explosive material is handled during loading of blast holes, including fifty (50) feet in all directions from the perimeter formed by loaded holes.~~

~~3.61. Blasting Accessories. — The term "Blasting Accessories" shall mean non-explosive devices and materials used in blasting, such as, but not limited to, cap crimpers, tamping bags, blasting machines, blasting galvanometers, and cartridge punches.~~

~~3.62. Case Insert. — The term "Case Insert" shall mean a set of printed, precautionary instructions, including the IME "Instructions and Warnings" which is included in a case of explosive materials.~~

~~3.63. Electrical Storm. — The term "Electrical Storm" shall mean an atmospheric disturbance characterized by intense electrical activity producing lightning strikes and strong electric and magnetic fields. Synonymous with a thunderstorm and a lightning storm.~~

~~3.64. Electronic Detonator. — The term "Electronic Detonator" shall mean a detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.~~

~~3.65. Extraneous Electricity. — The term "Extraneous Electricity" shall mean electrical~~

energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields.

3.66. Firing/Blasting Device. The term "Firing Device" or "Blasting Device" shall mean a device capable of charging and transmitting a fire command to an electronic detonator circuit. Also, a device capable of detonating an electric or nonelectric detonator.

3.67. Misfire. The term "Misfire" shall mean a blast or specific borehole that failed to detonate as planned. Also, the explosive materials that failed to detonate as planned.

3.68. Barrier. The term "Barrier" shall mean any material objects that separate, keep apart or demarcate in a conspicuous manner when used in conjunction with warning signs.

3.69. Borehole. The term "Borehole" shall mean a hole drilled in the material to be blasted, for the purpose of containing an explosive charge, also called Blasthole or Drillhole.

3.70. Downline. The term "Downline" shall mean the line extending down the borehole used to carry energy to the detonating cap.

3.71. Emulsion. The term "Emulsion" shall mean an explosive material containing substantial amounts of oxidizer dissolved in water droplets, surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

3.72. Firing/Lead line. The term "Firing/Lead Line" shall mean the wires connecting electric or electronic blasting circuit(s) to the electrical power source/blast controller. In cases of non electrical initiation systems, the line that connects the blasting circuit(s) to the blasting initiating device.

3.73. Hot Holes. The term "Hot Holes" shall mean boreholes drilled in the overburden overlaying a burning coal seam which increases the temperature of the boreholes.

3.74. Institute of Makers of Explosives (IME). The term "Institute of Makers of Explosives (IME)" shall mean a non profit safety oriented trade association representing producers of commercial explosive materials in the United States and Canada and dedicated to safety in the manufacture, transportation, storage, handling and use of explosive materials.

3.75. Loaded Hole. The term "Loaded Hole" shall mean a borehole containing explosive material(s).

3.76. Loading. The term "Loading" shall mean placing explosive material in a borehole

or against material to be blasted.

3.77. Overburden. — The term “Overburden” shall mean material of any nature lying on top of a deposit of coal which is to be mined.

3.78. Radio Frequency Energy. — The term “Radio Frequency Energy” shall mean the energy radiated as electromagnetic waves in the radio frequency spectrum.

3.79. Radio Frequency Transmitter. — The term “Radio Frequency Transmitter” shall mean an electronic transmitting device which radiates radio frequency waves. The transmitting device may be fixed (stationary) or mobile, and includes car telephones, citizens band radios, AM and FM radio transmitters, television transmitters and radar transmitters.

3.80. Shot or Round. — The term “Shot or Round” shall mean a group of loaded boreholes fired, or intended to be fired in a continuous sequence with the application of initiating energy.

3.81. Shock Tube. — The term “Shock Tube” shall mean a small diameter plastic tube used for initiating detonators. It contains only a limited amount of reactive material so that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.

3.82. Slurry. — The term “Slurry” shall mean an explosive material containing substantial portions of a liquid, oxidizers and fuel, plus a thickener.

3.83. Static Electricity. — The term “Static Electricity” shall mean electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

3.84. Stray Current. — The term “Stray Current” shall mean a flow of electricity outside an insulated conductor system.

— 3.85. Wet Holes. — The term “Wet Holes” shall mean boreholes that contain water.

3.86. Extreme slope. — The term “Extreme Slope” shall mean an extreme slope is any slope greater than a 2:1 slope.

3.87. Competent person. — The term “Competent Person” shall mean a person designated by the mine operator or independent contractor who has a minimum of twenty four (24) months experience at a surface mine and is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

~~3.88. Approved Detector. — The term “Approved Detector” shall mean any detector, approved by MSHA, to test for methane gas, oxygen deficiency, or other harmful gases.~~

~~3.89. Adequate — The term “Adequate” shall mean sufficient for a specific requirement.~~

~~3.90. Temporary Splice. — The term “Temporary Splice” shall mean a splice that is mechanically strong, flexible, provides adequate electrical conductivity, and is effectively insulated and sealed so as to exclude moisture. A temporary splice is not required to be “vulcanized” or fitted with a permanent, approved outer jacket.~~

~~3.91. Tension Crack. — The term “Tension Crack” shall mean a crack resulting from movement of material that may signal failure of the stability of the material.~~

~~3.92. High Pressure. — The term “High Pressure” shall mean pressure of one hundred (100) p.s.i. or more.~~

3.1. Abandoned Underground Mine Workings. -- The term "Abandoned Underground Mine Workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

3.2. Accident. -- The term "Accident" shall mean any premature ignition, fire or injury, or death other than natural causes of any person.

3.3. Active Underground Mine Working. -- The term "Active Underground Mine Working" shall mean all places in a mine that are ventilated and inspected regularly.

~~3.4. Adequate – The term “Adequate” shall mean sufficient for a specific requirement.~~

3.5. Agent. -- The term "Agent" means any person charged with the responsibility for the operations of all or a part of a surface mine or the supervision of the miners on a surface mine.

3.6. Approved. -- The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.

~~3.7. Approved Detector. – The term “Approved Detector” shall mean any detector, approved by MSHA, to test for methane gas, oxygen deficiency, or other harmful gases.~~

3.8. Armored cable. -- The term "Armored Cable" shall mean a cable provided with a

wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

3.9. Assistant Mine Foreman. -- The term "Assistant Mine Foreman" shall mean a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

3.10. Barricaded. -- The term "Barricaded" shall mean to obstruct passage of person, vehicles, or flying materials.

3.11. Barrier. -- The term "Barrier" shall mean any material objects that separate, keep apart or demarcate in a conspicuous manner when used in conjunction with warning signs.

3.12. Berm. -- The term "Berm" shall mean a pile or mound of material or equivalent capable of restraining a vehicle.

3.13. Blast Controller. -- The term "Blast Controller" shall mean a firing device for electronic detonator circuits which may have functions (such as programming, communication, circuit diagnostics, etc.) in addition to charging and transmission of the firing command.

3.14. Blast Site. -- The term "Blast Site" shall mean the area where explosive material is handled during loading of blast holes, including fifty (50) feet in all directions from the perimeter formed by loaded holes.

3.15. Blaster in Charge -- The term "Blaster In Charge" shall mean the certified blaster designated to be in control of loading and firing the shot.

3.16. Blasting Accessories. -- The term "Blasting Accessories" shall mean non-explosive devices and materials used in blasting, such as, but not limited to, cap crimpers, tamping bags, blasting machines, blasting galvanometers, and cartridge punches.

3.17. Blasting agent. -- ~~Means any material consisting of a mixture of a fuel and oxidizer which:~~ The term "Blasting Agent" shall mean an explosive material which meets prescribed criteria for insensitivity to initiation.

~~(a) is used or intended for use in blasting;~~ For storage, Title 27, Code of Federal Regulations, Section 55.11 defines a blasting agent as any material or mixture, consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive: provided, that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap (detonator) when unconfined (ATF Regulation).

~~(b) is not classified as an explosive by the Department of Transportation;~~ For transportation, Title 49 CFR, Section 173.50, defines Class 1, Division 1.5 (blasting agent) as a substance which has mass explosion hazard but is so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions in transport.

~~(c) passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with CFR49, 173.114a.~~

3.18. Blasting area. -- The term "Blasting Area" shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury. The blaster in charge shall determine the blasting area.

3.19. Board of Appeals. -- The term "Board of Appeals" shall mean the Board of Appeals as provided for in Section 31 Article 5 of Chapter 22A of the West Virginia Code.

3.20. Borehole. -- The term "Borehole" shall mean a hole drilled in the material to be blasted, for the purpose of containing an explosive charge, also called Blasthole or Drillhole.

3.21. Brake systems:

(a) Service brake system - the primary brake system used for stopping a vehicle.

(b) Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system.

(c) Parking system - a system to hold a stopped vehicle in a stationary position.

3.22. Branch circuit. -- The term "Branch Circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power lines.

3.23. Cable. -- The term "Cable" shall mean a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

3.24. Case Insert. -- The term "Case Insert" shall mean a set of printed, precautionary instructions, including the IME "Instructions and Warnings" which is included in a case of explosive materials.

3.25. Cast primer or booster. -- The term "Cast Primer or Booster" shall mean a case or pressed block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate insensitive or noncapsensitive explosives.

3.26. Certified Electrician. -- The term "Certified Electrician" shall mean any person who is qualified as a mine electrician and who has passed an examination given by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, or has at least three (3) years of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a non-coal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.27. Certified Person. -- The term "Certified Person" when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, shall mean a person who is qualified under the provisions of this law to perform such duty.

3.28. Circuit breaker. -- The term "Circuit Breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

3.29 Coal handling facility – The term “ Coal Handling Facility” shall mean any facility engaged in the handling or sizing or loading or cleaning of coal.

3.30. Delta connected. -- The term "Delta Connected" shall mean a power system in which the windings or transformers or ~~S-C~~ A.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

3.31. Department. -- The term "Department" shall mean the state ~~department of energy~~ Office of Miners' Health, Safety and Training provided for in Section ~~2~~ 1, Article 1 of Chapter 22A of the West Virginia Code.

3.32. Detonating cord. -- The term "Detonating Cord" shall mean a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.

3.33. Detonating cord millisecond delay connectors. -- The term "Detonating Cord Millisecond Delay Connectors" shall mean nonelectric shot interval (millisecond) delay devices for use in delaying blasts which are surface initiated by detonating cord.

3.34. Detonator. -- The term "Detonator" shall mean electronic blasting caps, ~~electrical~~ electric blasting caps, and nonelectric delay blasting caps.

3.35. Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. -

- The term "Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training" shall mean the Director of the ~~department of energy~~ Office of Miners' Health, Safety and Training provided for in Chapter 22A, Article 1, Section 3, of the West Virginia Code, ~~and is synonymous with the term "Chief of the Department of Energy"~~.

3.36. Downline. -- The term "Downline" shall mean the line extending down the borehole used to carry energy to the detonating cap.

3.37. Effectively grounded. -- The term "Effectively Grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

3.38. Electric blasting caps. -- The term "Electric Blasting Caps" shall mean instantaneous electric blasting caps and all types of delay electric blasting caps.

3.39. Electrical Storm. -- The term "Electrical Storm" shall mean an atmospheric disturbance characterized by intense electrical activity producing lightning strikes and strong electric and magnetic fields. Synonymous with a thunderstorm and/or a lightning storm.

3.40. Electronic Detonator. -- The term "Electronic Detonator" shall mean a detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

3.41. Emulsion. -- The term "Emulsion" shall mean an explosive material containing substantial amounts of oxidizer dissolved in water droplets, surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

3.42. Explosives. -- The term "Explosives" shall mean any or all of the following, but is not limited to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, nonelectrical delay blasting caps, electronic blasting caps, cast primer and boosters, detonating cord, and detonating cord delay connections.

3.43. Extraneous Electricity. -- The term "Extraneous Electricity" shall mean electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields.

3.44. Extreme slope. -- The term "Extreme Slope" shall mean any slope greater than a 2:1 slope during reclamation practices.

3.45. Firing/Blasting Device. – The term “Firing Device” or “Blasting Device” shall mean a device capable of charging and transmitting a fire command to an electronic detonator circuit. Also, a device capable of detonating an electric or nonelectric detonator.

3.46. Firing/Lead line. – The term “Firing/Lead Line” shall mean the wires connecting electric or electronic blasting circuit(s) to the electrical power source/blast controller. In cases of non electrical initiation systems, the line that connects the blasting circuit(s) to the blasting initiating device.

3.47. Flame-resistant Cable, Portable. -- The term "Flame-resistant Cable, Portable" shall mean a portable flame-resistant cable that has passed the flame test of the Federal Bureau of Mines. Mine Safety and Health Administration.

3.48. Ground or grounding conductor (mining). -- The term "Ground or Grounding Conductor (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, shall mean a metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring system with a mine track or other effective grounding medium.

3.49. Grounded (earthed). -- The term "Grounded (earthed)" shall mean that the system, circuit, or apparatus referred to is provided with a ground.

3.50. High Pressure. -- The term “High Pressure” shall mean pressure of one hundred (100) p.s.i. or more.

3.51. High voltage. -- The term "High Voltage" shall mean voltages of more than one thousand (1,000) volts.

3.52. Hot Holes. – The term “Hot Holes” shall mean boreholes drilled in the overburden overlaying a burning coal seam which increases the temperature of the boreholes.

3.53. Imminent Danger. -- The term "Imminent Danger" means the existence of any condition or practice on a surface mine which could be expected to cause death or serious physical harm before such condition or practice can be abated.

3.54. Inspector. -- The term "Inspector" shall mean surface mine inspector employed by the Department of Energy Office of Miners' Health, Safety and Training.

3.55. Institute of Makers of Explosives (IME). – The term “Institute of Makers of Explosives (IME)” shall mean a non-profit safety-oriented trade association representing producers of commercial explosive materials in the United States and Canada and dedicated to safety in the manufacture, transportation, storage, handling and use of explosive materials.

3.56. Interested Persons. -- The term "Interested Persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and ~~Department of Energy~~ the Office of Miners' Health, Safety and Training.

3.57. Lightning Arrestor. -- The term "Lightning Arrestor" shall mean a protective device for limiting surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or follow current to ground and is capable of repeating these functions as specified.

3.58. Loaded Hole. -- The term "Loaded Hole" shall mean a borehole containing explosive material(s).

3.59. Loading. -- The term "Loading" shall mean placing explosive material in a borehole or against material to be blasted.

3.60. Low voltage. -- The term "Low Voltage" shall mean up to and including six hundred sixty (660) volts.

3.61. Medium voltage. -- The term "Medium Voltage" shall mean voltages from six hundred sixty-one (661) to one thousand (1,000) volts.

3.62. Mine Foreman. -- The term "Mine Foreman" shall mean the certified person whom the operator or superintendent shall place in charge of the workings of the surface mine and of the persons employed thereon.

3.63. Mine Inspectors' Examining Board. -- The term "Mine Inspectors' Examining Board" shall mean the mine inspectors' examining board provided for in ~~Section 12~~ Article 9 of Chapter 22A of the West Virginia Code.

3.64. Mine Power Center or Distribution Center. -- The term "Mine Power Center or Distribution Center" shall mean a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low-voltage power circuits are taken.

3.65. Misfire. -- The term "Misfire" shall mean a blast or specific borehole that failed to detonate as planned. Also, the explosive materials that failed to detonate as planned.

3.66. Neutral (derived). -- The term "Neutral (derived)" shall mean a neutral point or connection established by the addition of a "zigzag" or grounding transformer to a normally underground power system.

3.67. Neutral Point. -- The term "Neutral Point" shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero (0), and is the point generally used for system groundings in wye-connected A.C. power system.

3.68. Nonelectric delay blasting caps. -- The term "Nonelectric Delay Blasting Caps" shall mean a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation impulse ~~or signal from a miniaturized detonating cord~~ that does not require the use of electric energy to function.

3.69. Operator. -- The term "Operator" shall mean any firm, corporation, partnership or individual operating any surface coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.70. Overburden. -- The term "Overburden" shall mean material of any nature lying on top of a deposit of coal which is to be mined.

3.71. Person. -- The term "Person" shall mean any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

3.72. Portable (Trailing) Cable. -- The term "Portable (Trailing) Cable" shall mean a flexible cable or cord used for connecting mobile, portable ~~or stationary~~ equipment ~~in mines to a trolley system or other external~~ to a source of electrical energy where permanent mine wiring is prohibited or is impracticable.

3.73. Primer. -- The term "Primer" shall mean a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive charge.

3.74. Qualified Person. -- The term "Qualified Person" shall mean a person who has completed an examination and is considered qualified on record by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.75. Radio Frequency Energy. -- The term "Radio Frequency Energy" shall mean the energy radiated as electromagnetic waves in the radio frequency spectrum.

3.76. Radio Frequency Transmitter. -- The term "Radio Frequency Transmitter" shall mean an electronic transmitting device which radiates radio frequency waves. The transmitting device may be fixed (stationary) or mobile, and includes car/cellular telephones, citizens band radios, AM and FM radio transmitters, television transmitters and radar transmitters.

3.77. Safety fuse. -- The term "Safety Fuse" shall mean a flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a blasting cap.

3.78. Shock Tube. -- The term "Shock Tube" shall mean a small diameter plastic tube used for initiating detonators. It contains only a limited amount of reactive material so that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.

3.79. Shot or Round. -- The term "Shot or Round" shall mean a group of loaded boreholes fired, or intended to be fired in a continuous sequence with the application of initiating energy.

3.80. Slurry. -- The term "Slurry" shall mean an explosive material containing substantial portions of a liquid, oxidizers and fuel, plus a thickener.

3.81. Static Electricity. -- The term "Static Electricity" shall mean electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

3.82. Stray Current. -- The term "Stray Current" shall mean a flow of electricity outside an insulated conductor system.

3.83. Superintendent. -- The term "Superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one (1) or more mines.

3.84. Supervisor. -- The term "Supervisor" shall mean a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work of employees and who is acting pursuant to such specific designation and instructions.

3.85. Surface Mine. -- The term "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, and shops; ~~which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.~~ "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

3.86. Surface Miner. -- The term "Surface Miner" shall mean any individual working on or around a surface mine. ~~who is employed by the operator.~~ This definition does not include preparation and processing plant workers, vendors, visitors, and other invitees of the coal operator who are not performing surface mine duties. Construction workers as defined in Title 36 Series 23 and Clearing Crew Workers as defined in Title 56 Series 2 are exempt from this definition.

3.87. Temporary Splice. -- The term "Temporary Splice" shall mean a splice that is mechanically strong, flexible, provides adequate electrical conductivity, and is effectively

insulated and sealed so as to exclude moisture. A temporary splice is not required to be "vulcanized" or fitted with a permanent, approved outer jacket.

3.88. Tension Crack. – The term "Tension Crack" shall mean a crack resulting from movement of material that may signal failure of the stability of the material.

3.89. Wet Holes. – The term "Wet Holes" shall mean boreholes that contain water.

3.90. Work of Preparing the Coal. -- The term "Work of Preparing Coal" shall mean the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, loading, and removing of over-burden from the top of the coal for the purpose of extracting coal.

3.91. Working Place. -- The term "Working Place" shall mean all areas in or about a surface mine where persons are working.

3.92. Wye-Connected. -- The term "Wye-Connected" shall mean a power system connection in which one (1) end of each phase windings or transformers or A.C. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

3.93. ZigZag Transformer (Grounding Transformer). -- The term "Zigzag Transformer (Grounding Transformer)" shall mean a transformer intended primarily to provide a neutral point for grounding purposes.

**§56-3-4. Applicability and Enforcement of Laws Safeguarding Life and Property; Regulations; Authority of ~~Department of Energy~~ Office of Miners' Health, Safety and Training Regarding Safety Laws.**

4.1. All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The ~~d~~Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall promulgate reasonable regulations in accordance with the provisions of Chapter 29A of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and regulations relating to the safety of those employed in and around surface mines is hereby vested in the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and shall be enforced according to the provisions of Chapter 22A of the West Virginia Code.

**§56-3-5. Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training - Appointment; Term of Office.**

5.1. There shall be a Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, who shall be appointed by the Governor with the advice and consent of the Senate and ~~who shall serve for a term of four (4) years~~, subject to the provisions of Chapter 6 22A, Article 6 1, Section 4(~~6-6-4~~) 3 of the West Virginia Code, as amended. ~~The original term of the director of the Department of Energy appointed under Chapter 22 of the West Virginia Code shall commence as of the effective date of this article (July 1, 1971), and all appointments to~~

~~such office made thereafter shall be made for a full term of four (4) years, except that in case of a vacancy, the appointment shall be made for the unexpired term only.~~

**§56-3-6. Director of the Department of Energy Office of Miners' Health, Safety and Training - Powers and Duties.**

~~6.1 The dDirector of the Department of Energy Office of Miners' Health, Safety and Training shall have full charge of the department Office of Miners' Health, Safety and Training. He shall have the powers and duty duties as set forth in Section 4, Article 1, Chapter 22A of the West Virginia Code.~~

~~6.1. Supervise and direct the execution and enforcement of the provisions of Chapter 20 and 22 of the West Virginia Code.~~

~~6.2. Appoint a deputy director of the Department of Energy, fix his compensation and prescribe his powers and duties.~~

~~6.3. Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out the provisions of this law and fix their compensation, except as otherwise provided in Article 1, Chapter 22 of the West Virginia Code.~~

~~6.4. Employ mine inspectors, and assign them to divisions or districts in accordance with the provisions of Chapter 22, Article 1, Section 7 of the West Virginia Code as may be necessary to fully and effectively carry out the provisions of this law, including the hiring and training of inspectors for the specialized requirements of surface mining, shaft and slope sinking, and surface installations and to supervise and direct such mine inspectors in the performance of their duties.~~

~~6.5. Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty (30) days in any calendar year.~~

~~6.6. Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with Chapter 22 of the West Virginia Code.~~

~~6.7. Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of Article 1, Chapter 22 of the West Virginia Code.~~

~~6.8. Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.~~

~~6.9. Make annually a full and complete written report of the administration of his department to the Governor and the Legislature of the state for the year ending the thirteenth day of June. Such report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (including oil and gas) produced in the state, the number of men employed, number of mines in operation, statistics with regard to health~~

~~and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the department from all sources identifying each source of such funds, the expenditures of the department, the surplus or deficit of the department at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the department, the number of inspections made by each inspector, the number and type of violations found by each inspector: **Provided**, That no inspector shall be identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before the thirty first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.~~

~~6.10. Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records, or other documents relevant or material to the hearing. Any witness so called or subpoenaed shall receive forty dollars (\$40) per diem and shall receive mileage at the rate of fifteen cents (15) for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.~~

~~6.11. Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.~~

~~6.12. Perform all other duties which are expressly imposed upon him by the provisions of Chapter 22 of the West Virginia Code.~~

~~6.13. Make all records of the department open for inspections of interested persons and the public.~~

~~6.14. In conjunction with the director of the Department of Natural Resources, adopt programs, regulations and procedures designed to assist the small coal operator with obtaining permits and meeting the environmental protection performance standards for strip and underground coal mining operations with the State. For the purpose of this subdivision, a small coal operator is one who anticipated to mine less than two hundred thousand (200,000) tons per year, but the department in determining tonnage shall consider wholly owned subsidiaries to be the same operation as the parent corporation.~~

**§56-3-7. Director of the Department of Energy Office of Miners' Health, Safety and Training; Eligibility; Salary.**

~~7.1. The director of the Department of Energy shall be a male citizen of West Virginia, shall be competent person of good repute and temperate habits and shall have had at least fifteen (15) years experience underground in coal mines, at least ten (10) of which shall have been underground in mines in this state. He shall possess a practical knowledge of the different~~

~~systems of working, ventilating and draining of coal mines, and a practical and scientific knowledge of all noxious and dangerous gases found in such mines. A diploma in mining engineering from the West Virginia University school of mines or any similarly accredited engineering school shall be counted as two (2) years working experience. The director shall devote all of his time to the duties of his office and shall not be directly or indirectly interested financially in any mine in this state. The salary of the director of the Department of Energy shall be twenty five thousand dollars (\$25,000) per year and traveling expenses, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the Department of Energy.~~

The Director of the Office of Miners' Health, Safety and Training is responsible for surface and underground safety inspections of coal mines and the administration of the Office of Miners' Health, Safety and Training.

7.2. The Director is the chief executive officer of the office. Subject to provisions of law, he or she shall organize the office into those offices, sections, agencies and other units of activity found by the Director to be desirable for the orderly, efficient and economical administration of the office. The Director may appoint any other employees needed for the operation of the office and may prescribe their powers and duties and fix their compensation within amounts appropriated.

7.3. The Director shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor.

7.4. The Director of the Office of Miners' Health, Safety and Training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' education or training in underground mining safety, and three years' experience in underground mining and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the Director will be responsible upon assumption of the office of the Director. Special reference shall be given to his or her administrative experience and ability. The Director shall devote all of his or her time to the duties of the position of Director and shall not be directly interested financially in any mine in this or any other state nor shall the Director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The Director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as Director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee: *Provided*, That, in the event of a vacancy in the position of Director, the Governor may fill the Director's position on an interim basis by appointing an acting Director to exercise the powers of the Director. The acting Director shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' education, training or experience in underground coal mining safety and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the acting Director will be responsible during his or her interim service in the office of Director. The interim service appointment cannot last for more than one year, after which a permanent Director must be

appointed.

**§56-3-8. Director of the Department of Energy; Oath and Bond.**

~~8.1.—The director of the Department of Energy shall, before entering upon the discharge of his duties, take the oath of office prescribed by Section 5, Article 4 of the constitution, and shall execute a bond in the penalty of two thousand dollars (\$2,000), which security to be approved by the Governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.~~

The Director shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the Director shall take the oath required of public officials prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars. The executed oath and bond shall be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from office funds.

**§56-3-9. Mine Inspectors May Be Appointed to Fill Vacancy in Department; Permanent Tenure Benefits not Affected.**

~~9.1.—Notwithstanding any other provisions of law, if vacancy occurs in any appointive position within the Department of Energy, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position without forfeiting any of the benefits which have accrued to him because of his permanent tenure as a mine inspector.~~

Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the office, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position by the Director.

**§56-3-10. Eligibility for Appointment as Surface Mine Inspector; Qualifications; Salary and Expenses; Removal.**

~~10.1.—In order to qualify for an appointment as a surface mine inspector, an eligible applicant shall have had at least five (5) years practical experience in surface mines, at least one (1) year of which, immediately preceding his original appointment, shall have been in surface mines in this state, and submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a surface mine inspector and may, subject to the approval of the mine inspectors' examining board, be prepared by the director of the West Virginia Department of Energy.~~

~~If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a grade of at least eighty percent (80%), the board shall add such applicant's name and grade to register of qualified eligible candidates and certify its action to the director of the Department of Energy. The director may then appoint one (1) of the candidates from the three (3) having the highest grades.~~

~~All such appointees shall be citizens of West Virginia, in good health, not less than twenty-five (25) years of age, of good character and reputation, and temperate in habits. No person shall be eligible for permanent appointment as a surface mine inspector until he has served in a probationary status for a period of one (1) year to the satisfaction of the director of the department of energy.~~

~~Surface mine inspectors serving as such on the effective date of this section (July 1, 1977) may continue to serve for a probationary period not exceeding one (1) year and if eligible as prescribed by this section, may qualify for appointment during such probationary period in accordance with the provisions of this section.~~

~~However, surface mine inspectors employed on the effective date of this section (July 1, 1977) and who have served to the satisfaction of the Director of the Department of Energy for a period of two (2) years or more may continue to serve on a permanent tenure basis. In the performance of duties devolving upon surface mine inspectors, they shall be responsible to the inspector at large of the Department of Energy of their respective division.~~

~~The salary of the surface mine inspector supervisor shall be not less than seventeen thousand dollars (\$17,000) per year. Salaries of surface mine inspectors shall be not less than twelve thousand nine hundred dollars (\$12,900) per year during the first year of probationary service. After serving for a probationary period of one (1) year, the salary of a surface mine inspector shall be not less than fifteen thousand dollars (\$15,000) per year. In the discharge of their official duties in privately owned vehicles, surface mine inspectors and the surface mine inspector supervisor shall receive mileage at the rate of not less than fifteen cents (15) per mile. A surface mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.~~

(a) The office shall employ as many surface mine inspectors as the Director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a surface mine inspector the applicant shall be: (1) A citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been in surface mines in this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; and (3) a person who has a good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced surface miner prior to actually performing such duties.

(c) (1) In order to qualify for appointment as a surface mine inspector, an eligible applicant shall submit to written, oral and practical examinations administered by the mine inspectors' examining board and furnish evidence of good health, character and other facts establishing

eligibility as the board may require. The examinations shall relate to the duties to be performed by a surface mine inspector and, subject to the approval of the mine inspectors' examining board, may be prepared by the Director.

(2) If the board finds after investigation and examination that an applicant is: (A) Eligible for appointment; and (B) has passed each required examination with a grade of at least seventy-five percent, or an overall combined average score of eighty percent, the board shall add the applicant's name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the Director. The Director shall then appoint one of the candidates from the three having the highest grades.

(d) Surface mine inspectors shall be paid an annual salary of not less than thirty-seven thousand three hundred thirty-two dollars, which shall be fixed by the Director, who shall take into consideration ability, performance of duty, and experience. Surface mine inspectors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to surface mine inspectors.

### **§56-3-11. Mine Inspectors' Examining Board.**

~~11.1. There shall be a mine inspectors' examining board consisting of five (5) members who, except for the public representative of such board, shall be appointed by the Governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same caused and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two (2) members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two (2) members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.~~

~~The Director of the Department of Energy shall be an ex-officio member of the board and shall serve as secretary of the board, without additional compensation; but he shall have no right to vote with respect to any matter before the board.~~

~~The members of the board except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two (2), four (4), six (6) and eight (8) years, respectively. Any member whose term expires may be reappointed by the governor.~~

~~Each member of the board shall receive fifty dollars (\$50) per diem while actually engaged in the performance of the work of the board, and shall receive mileage at the rate of 10 cents (10) for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition~~

~~upon the state auditor, properly certified by such members of the board.~~

~~The public member shall serve as chairman of the board. Members of the board before performing any duty, shall take and subscribe to the oath required by Article 4, Section 5 of the constitution of West Virginia.~~

~~The mine inspectors' examining board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of three (3) members or the Director of the Department of Energy. Notice of each meeting shall be given in writing to each member by the secretary at least five (5) days in advance of the meeting. Three (3) members shall constitute a quorum for the transaction of business.~~

~~In addition to other duties expressly set forth elsewhere in this article, the board shall:~~

~~(1) Establish, and from time to time revise, forms of application for employment as mine inspectors and forms for written examinations to test the qualification of candidates for the position;~~

~~(2) Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearings for removal of inspectors, required to be held under Chapter 22, Article 1. All of such rules and regulations shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;~~

~~(3) Conduct after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board, one (1) or more members of the board or an employee of the Department of Energy may be designated to give a candidate the written portion of the examination.~~

~~(4) Prepare and certify to the Director of the Department of Energy a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidates with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the director of the Department of Energy a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing indicating their continued availability for such appointment, (c) who have passed over for appointment for three (3) years, (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for appointment as mine inspector, or (e) who, in the judgment of at least four (4) members of the board, should be removed from the register for good cause.~~

~~(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine~~

~~inspector for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;~~

~~(6) Issue a letter or written notice of qualifications to each successful eligible candidate;~~

~~(7) Hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of Chapter 22, Article 1;~~

~~(8) Hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of Chapter 22, Article 2, Section 4: **Provided,** That an aggrieved inspector, in order to appeal from any order or suspension, shall file such appeal in writing with the mine inspectors' examining board not later than ten (10) days after receipt of notice of suspension. On such appeal the board shall affirm the act of the director unless it be satisfied from a clear preponderance of the evidence that the director has acted arbitrarily;~~

~~(9) Make an annual report to the governor and the director of the department of mines concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.~~

The mine inspectors' examining board is continued. It consists of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same causes and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.

The Director of the Office of Miners' Health, Safety and Training is an ex-officio member of the board and shall serve as secretary of the board, without additional compensation; but the Director has no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor. Members serving on the effective date of this article may continue to serve until their terms expire.

Each member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any such amounts shall be paid out of the state treasury upon a requisition upon the state auditor.

properly certified by such members of the board.

The public member is chair of the board. Members of the board, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.

The mine inspectors' examining board shall meet at such times and places as shall be designated by the chair. It is the duty of the chair to call a meeting of the board on the written request of three members or the Director of the Office of Miners' Health, Safety and Training. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three members is a quorum for the transaction of business.

In addition to other duties expressly set forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of application for employment as mine inspectors, which shall include the applicant's social security number, and forms for written examinations to test the qualifications of candidates for that position;

(2) Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearing for removal of inspectors, required to be held by section twelve, article one of this chapter. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

(3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board, one or more members of the board or an employee of the office of miners' health, safety and training may be designated to give a candidate the written portion of the examination;

(4) Prepare and certify to the Director of the Office of Miners' Health, Safety and Training a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the Director of the Office of Miners' Health, Safety and Training a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for appointment as mine inspector, or (e) who, in the judgment of at least four members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for such period of time as may be established by the board. Specimens of the examinations

given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of this article;

(8) Hear and determine appeals of mine inspectors from suspension orders made by the Director pursuant to the provisions of section four, article one of this chapter: Provided, That an aggrieved inspector, in order to appeal from any order of suspension, shall file such appeal in writing with the mine inspectors' examining board not later than ten days after receipt of notice of suspension. On such appeal the board shall affirm the act of the Director unless it be satisfied from a clear preponderance of the evidence that the Director has acted arbitrarily;

(9) Make an annual report to the Governor and the Director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

**§56-3-12. Director and Inspectors Authorized to Enter Mines; Duties of Inspectors to Examine Mines; No Advance Notice; Reports After Fatal Accidents.**

~~12.1.—The Director of the Department of Energy shall have authority to visit, enter, and examine any mine, whether underground or surface and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director of the Department of Energy or mine inspector proper facilities for entering such mine and making examination or obtaining information.~~

~~If miners at any mine or one of their authorized representatives have reason to believe that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.~~

~~Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in the respective districts and as often, in addition thereto, as the Director of the Department of Energy may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each surface mine operation for the purpose of determining whether a danger, described in Chapter 22, Article 1, Section 14 of the West Virginia Code exists in any such mine, or whether any provisions of article two of this chapter is being violated or has been violated within the past forty eight (48) hours in any such mine.~~

~~In addition to the other duties imposed by these rules and regulations, it shall be the duty of each inspector to note each violation he finds and issue a finding order or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted~~

~~whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.~~

~~The mine inspector shall visit the scene of each fatal accident occurring in any mine within his district and shall make an examination into the particular facts of such accident; make a report to the Director of the Department of Energy, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.~~

~~At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the director on such inspection.~~

The Director, or his or her authorized representative, has authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the Director or his or her authorized representative proper facilities for entering such mine and making examination or obtaining information.

If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the Director to have an immediate investigation made.

Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the Director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in any such mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in any such mine.

In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

The mine inspector shall visit the scene of each fatal accident occurring in any mine within his or her district and shall make an examination into the particular facts of such accident; make a report to the Director, setting forth the results of such examination, including the condition of

the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.

At the commencement of any inspection of a coal mine by an authorized representative of the Director, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Director on such inspection.

### §56-3-13. Findings Orders and Notices.

#### 13.1.

~~(a) If upon any inspection of a coal mine, an authorized representative of the director finds that an imminent danger exists such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from and to be prohibited from entering such area until an authorized representative of the director determines that such imminent danger no longer exists.~~

~~All employees on the inside and outside of a mine who are idle as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four (4) hours of such shift.~~

~~(b) If, upon any inspection of a coal mine, an authorized representative of the director finds that there has been a violation of law, but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent, fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director of the Department of Energy finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3), (4), subsection (c) of this section, to be withdrawn from, and to be prohibited from entering such area until an authorized representative of the director determines that the violation has been abated.~~

~~(c) The following persons shall not be required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:~~

~~(1) Any person whose presence in such area is necessary, in the judgement of the operator or an authorized representative of the director, to eliminate the condition described in the order;~~

~~(2) Any public official whose official duties require him to enter such area;~~

~~(3) Any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such person and whose presence in such area is necessary for the investigation of the conditions described in the order; and~~

~~(4) Any consultant to any of the foregoing.~~

~~13.2. Notices and orders issued pursuant to these regulations shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health and safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.~~

~~13.3. Each notice or order issued under these regulations shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the director issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative and posted on the bulletin board at the mine.~~

~~13.4. A notice or order issued pursuant to these regulations may be modified or terminated by an authorized representative of the director.~~

a) If upon any inspection of a coal mine an authorized representative of the Director finds that an imminent danger exists, the representative shall determine the area throughout which the danger exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the Director determines that the imminent danger no longer exists.

(b) If upon any inspection of a coal mine an authorized representative of the Director finds that there has been a violation of the law, but the violation has not created an imminent danger, he or she shall issue a notice to the operator or the operator's agent fixing a reasonable time for the abatement of the violation. If upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the Director finds that the violation has not been totally abated, and if the Director also finds that the period of time should not be further extended, the Director shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the Director determines that the violation has been abated.

(c) If upon any inspection of a coal mine an authorized representative of the Director finds that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to subsection (a) of this section, the Director shall review the compliance record of the mine.

(1) A review of the compliance record conducted in accordance with this subsection shall, at a minimum, include a review of the following:

(A) Any closure order issued pursuant to subsection (a) of this section;

(B) Any closure order issued pursuant to subsection (b) of this section;

(C) Any enforcement measures taken pursuant to this chapter, other than those authorized under subsections (a) and (b) of this section;

(D) Any evidence of the operator's lack of good faith in abating violations at the mine;

(E) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine;

(F) The number of employees at the mine, the size, layout and physical features of the mine and the length of time the mine has been in operation; and

(G) Any mitigating circumstances.

(2) If, after review of the mine's compliance record, the Director determines that the mine has a history of repeated significant and substantial violations of a particular standard caused by unwarrantable failure to comply or a history of repeated significant and substantial violations of standards related to the same hazard caused by unwarrantable failure to comply and the history or histories demonstrate the operator's disregard for the health and safety of miners, the Director shall issue a closure order for the entire mine and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine until a thorough inspection of the mine has been conducted by the office and the Director determines that the operator has abated all violations related to the imminent danger and any violations unearthed in the course of the inspection.

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

(e) The following persons are not required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in the area is necessary, in the judgment of the operator or an authorized representative of the Director, to eliminate the condition described in the order;

(2) Any public official whose official duties require him or her to enter the area;

(3) Any representative of the miners in the mine who is, in the judgment of the operator or an authorized representative of the Director, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in the area is necessary for the investigation of the conditions described in the order; and

(4) Any consultant to any of the persons set forth in this subsection.

(f) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(g) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or the operator's agent by an authorized representative of the Director issuing the notice or order and all the notices and orders shall be in writing and shall be signed by the representative and posted on the bulletin board at the mine.

(h) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the Director.

(i) Each finding, order and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making the finding, order or notice.

(j) Definitions. -- For the purposes of this section only, the following terms have the following meanings:

(1) "Unwarrantable failure" means aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of this chapter of the code; and

(2) "Significant and substantial violation" shall have the same meaning as that established in 6 FMSHRC 1 (1984).

#### **§56-3-14. Review of Orders and Notices by the Director.**

~~14.1.—An operator, issued an order pursuant to the provisions of Chapter 22, Article 1, Section 14 of the West Virginia Code, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the director for review of the order within thirty (30) days of receipt thereof or within thirty (30) days of its modification or termination. An operator, issued a notice pursuant to Chapter 22, Article 1, Section 14, subsection (b) of the West Virginia Code or any representative of miners in any mine affected by such notice, may, if he believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty (30) days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of~~

~~such application, the director shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine, present information relating to the issuance and continuance of such order or the modification or termination thereof or the time fixed in such notice. The filing of an application for review under this law shall not operate as a stay of any order or notice.~~

~~The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing.~~

~~Upon receiving the report of such investigation, the director shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate his findings therein.~~

~~In view of the urgent need for prompt decision of matters submitted to the director under this law, all actions which the director takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of issues involved.~~

~~Pending completion of the investigation required by this section, the applicant may file with the director a written request that the director grant temporary relief from any modification or termination of order, or from any order issued under Chapter 22, Article 1, Section 14 of the West Virginia Code, except, an order issued under Chapter 22, Article 1, Section 15 of the West Virginia Code, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he may prescribe, if:~~

- ~~(1) A hearing has been held in which all parties were given an opportunity to be heard;~~
- ~~(2) The applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and~~
- ~~(3) Such relief will not adversely affect the health and safety of miners in the coal mine.~~

~~No temporary relief shall be granted in the case of a notice issued under Chapter 22, Article 1, Section 14 of the West Virginia Code.~~

(a)(1) An operator, issued an order pursuant to the provisions of section fifteen of this article, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the Director for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator, issued a notice pursuant to subsection (b), section fifteen of this article, or any representative of miners in any mine affected by such notice, may, if the operator believes that the period of the time fixed in such notice for the abatement of the violation is unreasonable, apply to the Director for review

of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the Director shall cause such investigation to be made as the Director deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this law does not operate as a stay of any order or notice.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing.

(b) Upon receiving the report of such investigation, the Director shall make findings of fact, and issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate findings therein.

(c) In view of the urgent need for prompt decision of matters submitted to the Director under this law, all actions which the Director takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any modification or termination of any order, or from any order issued under section fifteen of this article, except an order issued under section sixteen of this article, together with a detailed statement giving reasons for granting such relief. The Director may grant such relief, under such conditions as he or she may prescribe, if:

(1) A hearing has been held in which all parties were given an opportunity to be heard;

(2) The applicant shows that there is substantial likelihood that the findings of the Director will be favorable to the applicant; and

(3) Such relief will not adversely affect the health and safety of miners in the coal mine.

No temporary relief shall be granted in the case of a notice issued under section fifteen of this article.

**§56-3-15. Posting of Notices, Orders, and Decisions; Delivery to Agent of Operator; Names and Addresses to be Filed by Operator.**

15.1.

~~(a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some~~

~~conspicuous place near an entrance of the mine, in such manner that notices, orders, and decisions required by this law or regulations to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice, order, or decision required by these regulations to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.~~

~~(b) The director shall cause a copy of any notice, order, or decision required by these regulations to be given to an operator to be mailed immediately to a representative of the miners. Such notice, order, or decision shall be available for public inspection.~~

~~(c) In order to insure prompt compliance with any notice, order, or decision issued under these regulations, the authorized representative of the director may deliver such notice, order, or decision to an agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.~~

~~(d) Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, or decision issued under these regulations affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the director the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under these regulations.~~

(a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices, orders and decisions required by this law or rule to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice, order or decision required by this law to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or the operator's agent.

(b) The Director shall cause a copy of any notice, order or decision required by this law to be given to an operator to be mailed immediately to a representative of the miners. Such notice, order or decision shall be available for public inspection.

(c) In order to ensure prompt compliance with any notice, order or decision issued under this law, the authorized representative of the Director may deliver such notice, order or decision to an agent of the operator and such agent shall immediately take appropriate measures to ensure compliance with such notice, order or decision.

(d) Each operator of a coal mine shall file with the Director the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Director. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order or decision issued under this law affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Director the name and address of such person and the name and address of a principal official of such person who has overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection does not make such official subject to any penalty under this law.

### **§56-3-16. Judicial Review.**

#### 16.1.

~~(a) Any order or decision issued by the director under these regulations except an order or decision under Chapter 22, Article 1, Section 14 of the West Virginia Code shall be subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha County upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under these regulations and files within thirty (30) days from the date of such order or decision.~~

~~(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the Director of the Department of Energy shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.~~

~~(c) In the case of a proceeding to review any order or decision issued by the director under these regulations, except an order or decision pertaining to an order issued under subsection (a), Chapter 22, Article 1, Section 14 of the West Virginia Code or an order or decision pertaining to a notice issued under subsection (b), Chapter 22, Article 1, Section 14 of the West Virginia Code, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if:~~

~~(1) All parties to the proceeding have been notified and give an opportunity to be heard on a request for temporary relief;~~

~~(2) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and~~

~~(3) Such relief will not adversely affect the health and safety of miners in the coal mine.~~

~~(d) The judgement of the court shall be subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty (60) days from the entry of the order and decision of the circuit court upon such appeal from the director.~~

~~(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.~~

~~(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent him in any proceeding instituted under this section.~~

(a) Any order or decision issued by the Director under this law, except an order or decision under section fifteen of this article is subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha County upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside, in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the Director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the Director. The findings of the Director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or decision or may remand the proceedings to the Director for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the Director under this law, except an order or decision pertaining to an order issued under subsection (a), section fifteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fifteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court is subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the Director.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Director.

(f) Subject to the direction and control of the attorney general, attorneys appointed for the Director may appear for and represent the Director in any proceeding instituted under this section.

### **§56-2-17. Injunctions.**

~~17.1. The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located or the circuit court of Kanawha County, whenever the operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under these regulations, or (b) interferes with, hinders, or delays the director or his authorized representative in carrying out the provisions of these regulations, or (c) refuses to admit such representatives to the mine, or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of these regulations, or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of these regulations. Each court shall have the jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under these regulations, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.~~

The Director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located or the circuit court of Kanawha County, whenever the operator or the operator's agent (a) violates or fails or refuses to comply with any order or decision issued under this law, or (b) interferes with, hinders or delays the Director or his or her authorized representative in carrying out the provisions of this law, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Director in furtherance of the provisions of this law, or (f) refuses to permit access to, and copying of, such records as the Director determines necessary in carrying out the provisions of this law. Each court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein,

any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the Director after a public hearing, the findings of the Director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

### §56-3-18. Penalties.

#### 18.1.

##### (a)

~~(1) Any operator of a coal mine in which a violation occurs of any health or safety rule or regulation or who violates any other provision of these regulations, shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars (\$3,000), for each violation. Each such violation shall constitute a separate offense. In determining the amount of the penalty, the director shall consider the operators' history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.~~

~~(2) Any miner who knowingly violates any health or safety provision of these regulations or health or safety rule or regulation promulgated pursuant to these regulations shall be subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars (\$250) for each occurrence of such violation.~~

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

~~(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the director shall file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the director shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the director or it may remand the proceedings to the director for such further action as it may direct. The court shall~~

~~consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under Chapter 22, Article 1, Section 18 of the West Virginia Code, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent him in any action to enforce and order assessing civil penalties under this subdivision.~~

~~(b) Any operator who knowingly violates a health or safety provision of these regulations or health or safety rule or knowingly violates or fails or refuses to comply with any order issued under Chapter 22, Article 1, Section 14 of the West Virginia Code, or any order incorporated in a final decision issued under this section, except an order incorporated in a decision under subsection (a) of this section or subsection (b), Chapter 22, Article 1, Section 21 of the West Virginia Code, shall be assessed a civil penalty by the director under subdivision (3) of subsection (a) of this section, of not more than five thousand dollars (\$5,000), and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars (\$10,000).~~

~~(c) Whenever a corporate operator knowingly violates a health or safety provision of these regulations or health or safety rules, or knowingly violates or fails or refuses to comply with any order issued under these regulations or any order incorporated in a final decision issued under these regulations, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), Chapter 22, Article 1, Section 21 of the West Virginia Code, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.~~

~~(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to these regulations or any order or decision issued under these regulations shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five thousand dollars (\$5,000) or imprisoned in the county jail not more than six (6) months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by him under Chapter 22 of the West Virginia Code which certify him or authorized him to direct other persons in coal mining operation of law and shall bar him from being issued any such license under Chapter 22 of the West Virginia Code except a miners' certification, for a period of not less than one (1) year or for such longer period as may be determined by the director.~~

~~(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in coal mines, including, but not limited to, components and accessories of such equipment, who willfully misrepresents such equipment as complying with the provisions of these regulations, or with any specification or regulations of the director applicable to such equipment, and which does not so comply, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.~~

(a)(1) Any operator of a coal mine in which a violation occurs of any health or safety rule or who violates any other provisions of this chapter shall be assessed a civil penalty by the Director under subdivision (3) of this subsection, which shall be not more than three thousand dollars, for each violation, unless the Director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the Director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. Not later than the first day of June, two thousand two, the Director shall promulgate as a rule the procedure for assessing such civil penalties. This rule will be in effect upon filing, without regard to the provisions of chapter twenty-nine-a of this code.

(2) Any revisions to rules relating to the assessment of civil penalties shall be proposed for promulgation as legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the Director under subdivision (4) of this subsection which shall not be more than two hundred fifty dollars for each occurrence of the violation.

(4) A civil penalty under subdivision (1) or (2) of subsection (a) of this section or subdivision (1) or (2) of subsection (b) of this section shall be assessed by the Director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the Director has determined, by a decision incorporating the Director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

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

for and represent the Director in any action to enforce an order assessing civil penalties under this subdivision.

(b)(1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section fifteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-two of this article, shall be assessed a civil penalty by the Director under subdivision (5), subsection (a) of this section of not more than five thousand dollars and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars, unless the Director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the Director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued under section fifteen of this article;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under section twenty-two of this article.

In situations in which the Director determines that there are factors present which would make it appropriate to impose a special assessment, the Director shall assess a civil penalty of at least five thousand dollars and of not more than ten thousand dollars.

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

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the Director.

(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the Director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.

(f) There is created in the treasury of the state of West Virginia a special health, safety and training fund. All civil penalty assessments collected under this section shall be collected by the Director and deposited with the treasurer of the state of West Virginia to the credit of the special health, safety and training fund. The fund shall be used by the Director who is authorized to expend the moneys in the fund for the administration of this chapter.

### **§56-3-19. Discrimination.**

#### 19.1.

~~(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that he believes or knows that such miner or representative, (1) has notified the director, his authorized representative, or an operator, directly or indirectly, of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted any proceeding under these regulations, (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of these regulations. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done (1), (2), (3), above.~~

~~(b) Any miner or representative of miners who believes that he has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty (30) days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination, or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an~~

~~opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing. Mailing of the notice of hearing to the charged party at last address of record as reflected in the records of the Department of Energy shall be deemed adequate notice to the charged party. Such notice shall be certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty five (45) days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation it shall issue an order denying the application. Such order shall incorporate the board's findings therein. If the proceedings under this section relative to the discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty five (45) days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty five (45) days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.~~

~~(e) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all cost and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.~~

(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that the person believes or knows that such miner or representative (1) has notified the Director, his or her authorized representative, or an operator, directly or indirectly, of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted any proceeding under this law, (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this law. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done (1), (2) or (3) above.

(b) Any miner or a representative of miners who believes that he or she has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least

five days prior to the hearing. Mailing of the notice of hearing to the charged party at the party's last address of record as reflected in the records of the office is adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his or her former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's finding therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.

(c) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

### **§56-3-20. Record and Reports.**

~~20.1.— In addition to such records as are specifically required by these regulations, every operator of a coal mine shall establish and maintain such records, make such reports, and provide such information, as the director may reasonably require from time to time to enable him to perform his functions under these regulations. The director is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by these regulations, all records, information, reports, findings, notices, orders or decisions required or issued pursuant to or under these regulations may be published from time to time, may be released to any interested person, and shall be made available for public inspection.~~

In addition to such records as are specifically required by this law, every operator of a coal mine shall establish and maintain such records, make such reports, and provide such information, as the Director may reasonably require from time to time to enable the Director to perform his or her functions under this law. The Director is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this law, all records, information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this law may be published from time to time, may be released to any interested person and shall be made available for public inspection.

**§56-3-21. Mine Foreman Examiner for Mine Foreman and Assistant Mine Foreman - Salary.**

21.1. The Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall appoint a mine foreman examiner to examine and certify mine foreman and assistant mine foreman and mine examiners. Such mine foreman examiners shall be paid a minimum salary of ~~thirteen thousand five hundred dollars (\$13,500)~~ thirty-one thousand thirty-two dollars (\$31,032.00)-per year.

21.2. The duties of the mine foreman examiner shall be to:

(a) Prepare and conduct examinations of mine foreman, assistant mine foreman,

(b) Prepare and certify to the ~~d~~Director of the ~~department of energy~~ Office of Miners' Health, Safety and Training a register of all persons who successfully completed the examination with a passing grade of eighty percent (80%).

21.3. The Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two (2) weeks notice of time and place where the examinations are to be held shall be given.

The examinations shall be given at any location where there are at least five (5) men to be tested, and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the ~~e~~Capitol ~~e~~Complex in Charleston. All records pertaining to the examinations shall be kept at such office.

21.4. The mine foreman examiner shall, with the approval of the ~~d~~Director, prepare, and from time to time, modify examinations to be administered to applicants for certification as mine foreman.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten (10) days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.

21.5. Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under these regulations.

21.6. The mine foreman examiner shall certify to the ~~d~~Director, on a form furnished by him, every person whose examination shall disclose his fitness for the duties of mine foreman, assistant mine foreman, and as above classified, and the ~~d~~Director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

21.7. The mine foreman examiner shall send to the ~~d~~Director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the department Office of Miners' Health, Safety and Training as public documents.

### §56-3-22. Withdrawal of Certification.

#### 22.1.

~~(a) Charge of breach of duty — A mine inspector or the director may charge a mine foreman, assistant mine foreman, or any other certified person with neglect or failure to perform any duty mandated pursuant to these rules and regulations. The charge shall state the name of the person charged, the duty or duties he is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charges filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file on each charge and of all related documents which shall be open to the public.~~

~~(b) Evaluation of charge by board of appeals. — Or within twenty (20) days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall investigate the charge and report the results of the investigation to the board of appeals within ten (10) days of his receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his duty, the board by the end of the twenty (20) day period shall set a date for hearing which date shall be within eighty (80) days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected, and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.~~

~~(c) Hearing. — The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records, or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place~~

~~designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.~~

~~At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.~~

~~(d) Failure to cooperate. — Any person charged who shall, without just cause refuse or fail to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his certificate or certificates for a period to be determined by the board, not to exceed five (5) years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foreman, assistant mine foreman, or other certified person.~~

~~(e) Penalties. — The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty (30) days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.~~

~~(f) Integrity of penalties imposed. — No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under chapter 20 or 22 of this code, during the period of the suspension imposed herein.~~

~~(g) Any party adversely affected by a final order or decision issued by the board hereunder shall be entitled to judicial review thereof pursuant to section 4, article 5, chapter 29(a) of this code.~~

(a) Charge of breach of duty.--A mine inspector or the Director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the Director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the Director. The Director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) Evaluation of charge by board of appeals.--Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of

appeals is unable to determine the substance of the charge it may request the Director to investigate the charge. Upon request, the Director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the Director's receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the Director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing.--The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the Director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) Failure to cooperate.--Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) Penalties.--The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) Integrity of penalties imposed.--No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under this

chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

**§56-3-23. Certification of Mine Foreman or Assistant Mine Foreman Whose License to Engage in Similar Activities Suspended in Another State.**

~~23.1.—Any person whose license, certificate or similar authority to perform any supervisory duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.~~

Any person whose license, certificate or similar authority to perform any supervisory or fire boss duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

**§56-3-24. Board of Appeals.**

~~24.1.—There is hereby created a board of appeals, Chapter 22, Article 1, Section 31, consisting of three (3) members. Two (2) members of the board shall be appointed by the Governor, one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third (3rd) person, who shall be chairman of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, shall be selected by the two (2) members appointed by the Governor. The term of office of members of the board shall be five (5) years.~~

~~The function and duties of the board shall be to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.~~

~~The chairman of the board shall have the power to administer oaths and subpoena witnesses and require production of any books, papers, records, or other documents, relevant or material to the appeal inquiry.~~

~~Each member of the board shall receive fifty dollars (\$50) per diem while actually engaged in the performance of the work of the board and shall receive mileage at the rate of ten cents (10) for each mile actually traveled going from home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.~~

~~Board members, before performing any duty, shall take and subscribe to the oath required by~~

Article 4, Section 5 of the constitution of West Virginia.

There is hereby continued a board of appeals, consisting of three members. Two members of the board shall be appointed by the governor, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who is chair of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, is selected by the two members appointed by the governor. The term of office of members of the board is five years.

The function and duties of the board is to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

The chair of the board has the power to administer oaths and subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the appeal inquiry.

The chair shall subpoena any witness requested by a party to a hearing to testify or produce books, records or documents. Any witness responding to a subpoena so issued shall receive a daily witness fee to be paid out of the state treasury upon a requisition of the state auditor equivalent to the rate of pay under the wage agreement currently in effect plus all reasonable expenses for meals, lodging and travel at the rate applicable to state employees. Any full payments as hereinbefore specified shall be in full and exclusive payment for meals, lodging, actual travel and similar expenses and shall be made in lieu of any lost wages occasioned by such appearance in connection with any hearing conducted by the board.

Each member of the board shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. No reimbursement for expenses shall be made except upon an itemized account, properly certified by such members of the board. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor.

Board members, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.

24.2.

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

(b) There are hereby transferred to the board of appeals all functions of the Director of the office of miners' health, safety and training relating to the review of penalty assessments as set

forth in subdivision (3), subsection (a), section twenty-one, article one of this chapter.

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

**§56-3-25. Certification of Out-of-state Surface Mine Foreman.**

25.1.

~~(a) In every surface mine where five (5) or more persons are employed in a period of twenty-four (24) hours, the operator shall employ at least one (1) person certified in accordance with the provisions of Article 6(a) of Chapter 20 as a mine foreman. Each applicant for certification as a mine foreman shall, at the time he is issued a certificate of competency: (1) be a resident or employed in a mine in this state; (2) have had at least three (3) years experience in surface mining, which shall include at least eighteen (18) months experience on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had at least two (2) years practical experience in a surface mine, which shall include at least eighteen (18) months experience on or at a working section of a surface mine; and (3) have demonstrated his knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under Article 6(a) of Chapter 20.~~

~~(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one (1) man, one (1) or more assistant mine foreman may be designated. Such person shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of Article 6(a) of Chapter 20. Each applicant for certification as assistant mine foreman shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman: **Provided,** That he shall, at the time he is certified, be required to have at least two (2) years experience in surface mining, which shall include eighteen (18) months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve (12) months practical experience in a surface mine, all of which shall have been on or at a working section.~~

~~(c) The director shall on the first day of July, one thousand nine hundred seventy-eight (1978), promulgate such rules and regulations as may be necessary to carry out the provisions of Chapter 20, Article 6 of the West Virginia Code.~~

Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman examination held by the department Office of Miners' Health, Safety and Training, but not to exceed a maximum of ninety (90) days the next available test within the regional office of the mine site not to exceed a maximum of 30 days.

**§56-3-26. Instruction of Employees and Supervision of Apprentices; Annual Examinations of Persons Using ~~Flame Safety Lamps~~ Approved Detectors; Records of Examination; Maintenance of Methane Detectors, Etc.**

26.1. Instructions. -- ~~It shall be the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person~~ All newly employed persons employed to work ~~in~~ at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his ~~work~~ exposure in such mine, and be furnished a copy of the state surface mining laws rules and regulations of such mine. A record of such instructions shall be kept and made available upon request to all interested persons and an authorized representative of the Director.

26.2. No person shall be qualified for testing for methane and for oxygen deficiency unless each such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training that he is qualified to test for methane with ~~a flame safety lamp or another~~ an approved methane detectors. Records of such examinations shall be kept by the operator and the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to use ~~a flame safety lamp and other~~ approved detectors, that have been qualified by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified mine foreman and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the ~~department of energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance, and before each shift, care shall be taken to insure that such ~~lamp or other device~~ approved detector is in a permissible condition. ~~Flame safety lamps~~ Approved detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the ~~Director of the department of energy~~ Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

26.3. Job assignments to any miner. -- When a job assignment is given to any miner that he has not performed in the ~~recent~~ past 12 months, such inexperienced person, in the particular job assignment shall be instructed in the hazards incident thereto and the law and regulations relevant thereto prior to performing any duties in such new job assignment. When such job assignment includes the operation of equipment, the instruction shall include a supervised dry run. Instructions shall be given by a person(s) competent in the operation of the equipment as well as the hazards associated with surface mining and shall include the proper use, function testing, and maintenance of all safety features of the equipment. When the job assignment related to a plan in effect at the mine, the relevant portions of the plan shall be reviewed. A

record shall be kept of such instruction and made available to a representative of the Director and all interested persons upon request.

**§56-3-27. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.**

27.1. Pre shift examination.

(a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine ~~highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions~~ all active working places at the surface mine.

(b) Upon completion of the examination, the foreman shall record the results in a book prescribed by the ~~d~~Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, at the designated station at the surface mine before persons enter the working area of the mine or he/she shall report by suitable communication system the results of this examination to a certified surface mine foreman designated by mine management to receive and record such report, at a designated station at the surface mine before persons enter the work area of the mine. Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall also, each day, read carefully and countersign with ink or indelible pencil all conditions entered in the record book by the mine foreman or his assistants on the prior shift exclusive of daily equipment examination forms.

(c) The operator shall have weekly safety meetings with all employees which shall provide information/training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept for one (1) year and made available to all interested persons and a representative of the Director upon request.

27.2. On-shift examination.

(a) The mine foreman or assistant mine foreman shall examine all active working places in the pit at the surface mine under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all conditions entered in the record book by the mine foreman or his assistants on the prior shift.

(b) It shall further be the duty of the mine foreman or the assistant mine foreman to carefully examine the active haulage roads in the pit area at the surface mine for slips, cracks, overhanging trees and other dangerous conditions during his pre-shift and on-shift examinations.

27.3. Dangerous conditions. -- Should the mine foreman or his assistants find a place to be

in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.

27.4. Close deep operations. -- When a surface mine operation is known to be close to an active underground mine, the mine foreman or superintendent shall give the official representative of the underground mine at least twelve (12) hours notice in advance of any contemplated blasting that may endanger the safety of persons employed in the underground mine.

27.5. Records of examinations.

(a) All violations or hazardous conditions and the action taken to correct such violations or conditions including the pre-shift and on-shift examinations shall be recorded with ink or indelible pencil in a book prescribed by the Director of the ~~Department of Energy Office of Miners' Health, Safety and Training~~, and kept for such purpose at a place at the surface mine designated by mine management at the mine office for a period of one year. All records of daily and weekly reports as prescribed herein, shall be open for inspection by interested persons as defined by 3.55 above, and the record book shall be kept for a period of one (1) year.

27.6. It shall be the duty of the mine foreman or assistant mine foreman to examine each mine within three (3) hours prior to the beginning of a shift and before any miner on such shift enters the active workings of the mine.

27.7. The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists.

**§56-3-28. Duty of Mine Foreman to Notify Operator When Unable to Comply with Law; Duty of Operator.**

28.1. The mine foreman shall notify, in writing the operator or superintendent of the mine, and the ~~d~~Director of the ~~Department of Energy Office of Miners' Health, Safety and Training~~, of his inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof. Every operator of a mine shall furnish all supplies necessary for the mine foreman to comply with the requirements of this law after being requested to do so in writing by the mine foreman.

**§56-3-29. Death Or Resignation Of Mine Foreman; Successor.**

29.1. In case of death or resignation of mine foreman, the superintendent or manager shall

appoint a certified ~~man~~ person to act as mine foreman.

### §56-3-30. Excavating.

30.1. Loose material removal. -- Loose hazardous material shall be stripped for a safe distance (minimum of fifteen (15) feet), except where vegetation is required to support the slope from the top of pit or highwalls, and the loose unconsolidated material shall be sloped to the angle of repose. ~~or barriers, baffle boards, screen, or other approved devices that afford equivalent protection~~

30.2. Benches. -- When a bench is required to insure safe operations, the width and height of the bench shall be governed by the type of equipment to be used and the operations to be performed, type of material and height of wall.

30.3. Highwall and spoil bank work areas.

(a) The highwall shall be sloped or benched when required by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, to prevent or minimize the danger of slide. All overhanging ledges and loose material shall be scaled from the highwall. When scaling of highwalls is necessary to correct conditions, a safe means shall be provided to perform such work.

(b) When the highwall is cracked and shows evidence of movement, or of weakening, the area shall be made safe or abandoned and dangered off.

(c) Trees endangering workmen along highwalls shall be removed. If trees creating a hazard cannot be removed, the pit area below the hazardous trees shall be barricaded and no workers shall enter the barricaded area. Such work shall be completed during daylight hours.

(d) Spoil banks shall be placed an adequate distance from the pit to prevent any material from rolling back and endangering the workmen. Spoils shall be kept free of bodies of water which would be hazardous in active work areas. Spoil material shall be sloped to the angle of repose or other measures taken to prevent the material from slothing, sliding, or rolling into the pit.

(e) Persons, other than those designated to correct unsafe conditions, shall not work near or under dangerous highwalls or banks.

(f) During bench loading, adequate precautions shall be taken to prevent equipment from going over a highwall.

30.4. Examinations.

(a) Should a slide occur, a certified foreman or assistant shall examine the area of the slope for danger of additional slides. No person shall work in the area until the examination is complete and the area declared safe.

30.5. Repairs in excavation areas. -- Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and within twenty (20) feet of the highwall or spoil bank where such equipment may hinder escape from falls or slides. A competent person shall be designated to observe the highwall or spoil bank. If equipment is mobile and repair work is necessary on such equipment, such equipment will be moved to a location outby the highwall or spoil bank.

30.6. Tree removal. -- When men are in the area, suitable warning shall be given before equipment shoves over or uproots trees, and workmen shall be removed from the immediate vicinity.

30.7. Night work. -- When surface mining is performed at night, the pits, highwalls, and dump areas in the vicinity of the work shall be adequately illuminated.

30.8. Dump areas.

(a) Safety berms shall be provided at the edge of all fill areas to prevent over-travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. Safety berms shall not be damaged by, or used as a stop block, by haulage equipment.

(b) Should the outer slope of the fill become steeper than the safe angle of repose, short-dumping procedures shall be initiated. Equipment operators and truck drivers operating on the fill shall inform their supervisor of the steep slope condition when detected and truck drivers shall be required to dump a minimum of one truck length from the edge of the fill. Material shall be pushed with a dozer until safe angle of repose is established.

(c) In the event tension cracks appear near the outer edge of the fill, short dumping will be initiated. Equipment operators and truck drivers working on the fill shall inform their supervisor of the tension cracks when detected and truck drivers shall be required to dump a minimum of one (1) truck length from the tension cracks.

(d) In the event of tension cracks developing in a fill, the following procedures shall be initiated:

(1) The fill dozer shall begin a cut a safe distance back from tension crack. The cut will extend forward to the edge of the fill.

(2) The dozer operator will take special precautions to prevent over-travel at the edge of the fill. This procedure will be utilized until the tension crack is removed.

(3) Material will be dumped at the back edge of the cut and pushed in place by the fill dozer to reestablish the safe working elevation. Should additional tension cracks occur these procedures will be repeated.

(e) The surface of the fill shall be graded/sloped to prevent water from impounding near the edge of the fill.

### **§56-3-31. Drilling.**

31.1. Inspection. -- ~~Where required by the director, all~~ All drilling equipment shall be provided with restraining devices installed properly to prohibit the free fall of drill steels which may break or become ~~dethreaded~~ unthreaded at the point of the adaptor.

#### 31.2. Horizontal drill.

(a) When horizontal drills are used, the operator shall not leave the controls while the drill stems are in operation.

(b) All persons shall be required to keep in the clear of auger and drill stems while in motion. No person shall be permitted to pass under or step over a moving drill stem or auger.

(c) Prior to horizontal holes being drilled in overburden, a careful inspection of the highwall face shall be made. All loose hazardous material shall be removed before other work is performed.

#### 31.3. Vertical drilling.

(a) When vertical drilling operations are being performed, the drill machine shall be continuously attended.

(b) When churn drills or vertical rotary drills are used, the drill machine operator shall not work under suspended tools. When collaring holes, inspecting, or during any operation where tools are removed from the hole, the tools shall be lowered to the ground or platform.

#### 31.4. General precautions (drilling).

~~(a) When drilling operations are being performed in the area of abandoned mines, special precautions shall be taken to protect against methane.~~

~~(b)~~ a In the event of a power failure, drill machine controls shall be placed in the neutral position.

~~(c)~~ b No person shall be permitted around auger and drill stems that are in motion.

~~(d)~~ c Starter hole drill steels shall be utilized when collaring holes with a hand-held drill.

~~(e)~~ d No person shall be permitted on the drill mast while the drill bit or carriage is in motion. Tools and/or other material shall not be left on the drill mast.

(e) Threads on all drill steels and attached components shall be maintained to provide secure attachment.

### 31.5. Drilling position.

(a) Drill machine operators shall not drill from positions that hinder their access to controls levers, or from insecure footing, or staging, or from atop equipment not designated for this purpose.

(b) Men shall not hand grasp the drill steel while collaring holes or place their hand on the chuck or centralizer while drilling.

(c) Men operating or working near jackhammers or jackleg drills, shall position themselves so they will not be struck or lose their balance if the drill steel breaks.

(d) . Drills shall not be positioned atop the highwall where safe egress from the operator's cab cannot be maintained.

(e) When drilling near the base of a highwall, the drill shall be positioned so the operator's cab is on the side of the drill away from the highwall.

### 31.6. Movement of drills.

(a) Vertical drill holes and blast crevices that remain open after blasting and constitute a hazard shall be protected to prevent persons from falling into them.

(b) While moving a drill machine from one (1) area to another, drill steel tools and other equipment shall be secured and the mast placed in a safe position. This section shall not apply when moving the drill from hole to hole.

(c) The location of the drill machine helper shall be known to the drill machine operator at all times while such drill is being moved.

(d) Hand-held air drills shall be turned off and all air bled from air hoses before such drill is moved from one (1) working area to another and at the end of each shift.

(e) The ~~Director of the Department of Energy~~ Secretary of the West Virginia Department of Environmental Protection shall be responsible for the examinations and certification of persons engaging in or directly responsible for blasting or use of explosives in surface mining operations.

## **§56-3-32. Explosives and Blasting.**

32.1. Transportation vehicles. -- Motor vehicles used to haul explosives shall comply with the following provisions:

(a) Portable fire extinguisher. -- A portable fire extinguisher shall be a multi-purpose dry chemical type, containing a nominal weight of five (5) pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two (2) and one-half (1/2) gallons of foam-producing liquid and enough expellant to supply foam. Only fire extinguishers approved by the Underwriters Laboratories, carrying appropriate labels as to type and purpose, shall be used.

(b) All electric wiring shall be adequately protected and securely fastened. Damaged insulated wiring shall be repaired or replaced immediately.

(c) Chassis, engine, pan and bottom of vehicle body shall be reasonably clean and free of oil and grease. Cargo bins shall be cleaned as often as necessary to prevent the excessive accumulation of ammonium nitrate or emulsion on/atop the bins.

(d) Fuel tanks and lines shall have no leaks.

(e) Safety devices including but not limited to lights, horn, brakes, windshield wipers, and steering apparatus shall be functioning properly.

(f) When explosives are not transported in their original closed containers, or in special closed cases constructed of nonconductive material, the vehicle cargo space shall be lined with wood or approved nonsparking material.

(g) The vehicle shall be plainly marked to indicate the nature of the cargo.

(h) The vehicle shall be equipped with suitable side and tailgates. The explosives shall not be piled higher than the side or end.

(i) Handrails or fall protection devices shall be provided when persons are required to work atop of the cargo bin of the bulk explosives truck.

(j) When in use, an examination shall be performed on the emulsion pump.

### 32.2. Transportation of explosives - precautions.

(a) Explosives and/or detonators shall not be transported in the same vehicle unless separated by a substantially fastened four-inch (4") hardwood partition or equivalent approved material.

(b) Explosives and/or detonators shall be transported promptly ~~without undue delays.~~

(c) Only those persons necessary shall be permitted ~~to ride on or~~ in vehicles containing explosives and/or detonators.

(d) When vehicles containing explosives or detonators are parked on a grade, the parking brakes shall be set and the vehicle blocked securely against rolling.

(e) Vehicles containing explosives and/or detonators shall not be taken to a repair garage or shop.

(f) Vehicles containing explosives and/or detonators shall not be left unattended unless the vehicle and all compartments containing explosives and/or detonators are properly locked to prevent unauthorized access.

(g) Safe roads shall be maintained for access and exit to all blast areas where boreholes are loaded, or being prepared to be loaded.

### 32.3. General requirements - explosives.

(a) After the effective date of the certified blasters rules and regulations, all handling ~~and transporting~~ of explosives shall be under the direct supervision of a certified blaster.

(b) ~~Previously frozen explosives of nitroglycerin base shall not be used. The transportation, storage, handling, and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives, Safety Library Publication No. 4 "Warnings and Instructions."~~

(c) Open fires and flames are prohibited within fifty (50) feet of the area where explosives are being stored, handled or used. Any person who violates this subsection shall be subject to the maximum assessment of two hundred fifty dollars (\$250).

(d) Explosives, ~~blasting caps and electric blasting caps~~ and detonators shall not be carried in pockets of clothing or left lying around unguarded.

(e) The use of explosives and all handling incident thereto, ~~will~~ shall be discontinued ~~during the approach of and during whenever a thunderstorm and/or electrical storms is detected~~ and all personnel shall be withdrawn from the blast area. When drills are being operated on a bench with loaded holes, or holes being loaded, where practicable masts shall be lowered upon the approach of a thunderstorm and/or electrical storm.

(f) All runways, chutes and conveyors used for unloading of explosives shall have no exposed sparking metal parts.

(g) Explosives and detonators shall be ~~kept a safe distance~~ protected from the hazards of highwalls and spoil banks.

(h) ~~The backing of drills over loaded holes shall be prohibited. Mobile equipment and vehicles shall not be trammed or driven over loaded holes, firing lines, detonator wires, explosives, blasting agents, and detonators.~~

(i) Explosives of nitroglycerin base known to be previously frozen shall not be used. Deteriorated or damaged explosives and detonators shall be destroyed by an authorized

representative of the manufacturing company.

(j) Explosives and/or detonators shall not be transported in a bucket or a dragline or like equipment.

(k) Defective or damaged blasting equipment or accessories shall not be used.

#### 32.4. Shooting preparation.

(a) Primers shall not be made up until ready to be inserted in the hole.

(b) Two (2) way radio equipment shall be turned off prior to the handling and use of electric detonators for proposed shot. This rule does not apply to radios operating beyond the distances shown on Table 38-3A 32.4A found at the end of this ~~regulation~~ section. Adequate warning signs shall be located on all travel roads at a distance of not less than one hundred (100) feet from the minimum transmitting distance. When using electronic detonators, the detonators shall be protected from electromagnetic, radio frequency transmissions, or other electrical interference sources in accordance with the manufacturer's recommendations.

(c) Only drills, explosives trucks, mobile equipment suitable for hole stemming, and equipment necessary ~~No equipment except the drill and explosive truck, other than necessary equipment~~ for road repairs to remove the drills or explosive trucks, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. Excavations shall not occur if there is a danger of intersecting a loaded or a misfired hole. Mobile equipment such as small front end loaders and other suitable hole stemming equipment shall be allowed to assist hole stemming procedures where adequate hole diameters are drilled and an adequate distance is provided between holes and rows of holes to ensure the safe operation and movement of equipment. The use and operation of all equipment used to stem holes shall be under the direct supervision of a certified blaster. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized. When the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present within three hundred (300) feet and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

(d) Holes shall not be drilled if there is danger of intersecting a loaded or a misfired hole. When drill(s) are being operated on a bench being loaded, a minimum of one hole around the perimeter of the drill shall remain unprimed and unloaded.

(e) Only wooden or other approved nonsparking implements shall be used to punch holes in an explosive cartridge.

(f) Tamping poles shall be blunt and squared at the end and made of wood or other, nonsparking, approved material.

(g) Tamping shall not be performed directly on a capped primer.

(h) When a surface mine has cut into a known active underground mine, the surface mine inspector of the district and an official representative of the deep mine shall be notified before any blasting is performed. The surface mine inspector, deep mine representative and surface mine representative shall determine and agree during what hours blasting shall be performed.

(i) Misfires shall be handled only by or under the direction of a designated blaster or and certified foreman.

~~(j) Blasting caps shall be crimped to fuses only with implements designed for that specific purpose. In order for the blaster to maintain control of the shot, up to the point of detonation, no type of safety fuse detonators shall be used.~~

~~(k) In no case shall any forty (40) second per foot safety fuse less than thirty six (36) inches long or any thirty (30) second per foot fuse less than forty eight (48) inches long be used.~~

~~(l) Nothing except a safety fuse is to be inserted in the open end of a blasting cap.~~

~~(m)~~ (k) No detonators, detonating cord, igniter cord, ~~safety fuse~~, or any explosives shall be used if they have been water soaked unless designed for that purpose.

~~(n)~~ (l) Electric blasting caps shall be fired with an approved blasting device.

~~(o)~~ (m) Explosives shall be kept separated at least fifteen (15) feet from detonators until loading is started, unless an approved container is utilized.

~~(p)~~ (n) Ample warning shall be given by an approved audible warning device before blasts are fired. All persons shall be removed from the blasting area.

~~(q)~~ (o) Detonating caps taken into a pit prior to being used shall be kept in a wooden box or other approved suitable container.

~~(r)~~ (p) At least a five (5)-foot air gap shall be provided between the blasting circuit and the power circuit when the hole or series of holes are being connected.

(q) When loading beneath highwalls, the highwall shall be carefully inspected by the blaster in charge before beginning the loading process. Persons shall not load boreholes in areas where the highwall is cracked, shows evidence of movement or weakening, or had loose material

falling from the highwall until the highwall deficiency (s) can be corrected.

(r) Persons loading boreholes shall not work within six (6) feet of the outer edge of the highwall unless adequate fall protection is provided.

**TABLE 38-3A 32.4A**

Transmitter Power (Watts) (except FM mobile)	Minimum Distance (Feet)
5 - 25	100
25 - 50	150
50 - 100	220
100 - 250	350
250 - 500	450
500 - 1000	650
1000 - 2500	1000
2500 - 5000	1500
5000 - 10000	2200
10000 - 25000	3500
25000 - 50000	5000
50000 - 100000	7000

Transmitter Power (Watts) (FM mobile)	Minimum Distance (Feet)
1 - 10	5
10 - 30	10
30 - 60	15
60 - 250	30

**32.5. ~~Shooting Cables.~~ Firing/Lead lines.**

(a) Firing/Lead lines ~~Shooting cables~~ shall be well insulated and as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire.

(b) Firing/Lead lines ~~Shooting cables~~ shall be kept away from power wires and all other sources of electric current.

(c) When shooting highwall and overburden, the firing/lead lines ~~shooting cable~~ shall be at least five hundred (500) feet in length. ~~when new and never less than four hundred fifty (450) feet.~~

(d) The firing/lead lines ~~shooting cable~~ for use in popping coal shall be of sufficient

length to assure the safe location of persons participating in the blasting, and in no event less than ~~one~~ five hundred (400 500) feet in length.

(e) When using electric caps the firing/lead line shooting cable shall be kept shunted until connected to the approved blasting device.

(f) Except when being tested with a blasting galvanometer, or other approved device, electric detonators shall be kept shunted until they are connected to the ~~blasting~~ firing/lead line or wired into a blasting round.

(g) A wired round shall be kept shunted until connected to the ~~shooting cable~~ firing/lead line when using electric caps.

(h) The blast area shall be cleared of personnel, vehicles, and equipment prior to connecting the firing/lead line to the firing device or blast controller or in the case of remote-controlled detonation systems, prior to arming the firing device.

(i) Remote control detonation systems shall be used in accordance with manufacturer's instructions. A copy of these instructions shall be posted at the mine. All persons involved with the blasting procedure shall be properly trained and familiar with the manufacturer's instructions. A record of such training shall be kept for one (1) year and made available to all interested persons and a representative of the Director upon request.

(j) When using electric or electronic detonators, adequate precautions shall be provided to prevent accidental electrical shock to the person(s) detonating the blast. Provisions may include, but not be limited to, insulating and guarding the firing/lead line connections to the firing device or blast controller, providing and using insulating mats on which the blaster may stand and also place under the firing device or blast controller, the use of an additional properly-timed detonator placed in the firing/lead line to sever the line and prevent the possibility of electrical feedback to the firing device, blast controller, or remote firing device.

### 32.6. Blasting.

(a) Any area in which ~~loaded holes are prepared to be fired~~ being loaded shall be guarded by a ~~barrier~~ barriade and danger signs located 50 feet beyond/outby the perimeter of loaded holes, or by a person physically present to prevent unauthorized entry.

(b) The blaster shall make sure that all persons are in a safe place before firing a shot. Additional personnel and radio communication, if needed to assure security of the blast area shall be utilized. Radio silence shall be observed by all persons except those involved in the blasting procedure. An approved audible warning device shall give ample warning before blasts are fired. The pre-blast warning signal shall be sounded three (3) minutes prior to the detonation of the blast and this signal shall consist of three short warning signals with five (5) second intervals between these signals. The post-blast signal that the blast area is clear shall consist of a twenty (20) second in duration signal. The warning shall be audible for a distance of at least one-half (1/2) mile.

(c) ~~The blaster performing the blasting shall be the person who makes the detonating cord connections or connects the leg wires of the detonating caps to the shot cable. The blaster shall assure that all components are properly connected to assure proper detonation of the blast.~~

(d) All holes or series of holes containing detonators shall be fired immediately upon completion of loading. The blaster shall notify the supervisor in charge of workers in the area before commencing to connect loaded holes. Once beginning to connect loaded holes, this shall proceed without delay until all holes are connected. All persons within a three hundred (300) foot radius of the blast area shall be removed by the time all holes are connected and work shall not commence again until the holes have been fired. However, after connecting the loaded holes, if for any reason the holes cannot be fired immediately, ~~all work shall cease within a radius of three hundred (300) feet of the blasting area and work shall not commence again until the holes have been fired.~~ not commence again until the holes have been fired or all holes disconnected.

(e) The firing of holes shall be conducted during daylight hours.

(f) ~~After a blast the blaster shall examine the area and pronounce it safe before others enter. Every reasonable effort shall be made to fire loaded holes on the shift they are loaded. However, if loaded holes must be left over night the following safeguards shall be utilized:~~

1. As a practice, connected holes shall not be left overnight unless emergency conditions exist (example: electrical storms) that do not allow the shot to be detonated. No persons shall be permitted within three hundred (300) feet of the blast area where connected loaded holes could not be detonated as planned.

2. The blaster, in conjunction with the certified foreman, shall properly designate the area affected by unfired holes (connected/unconnected). Barriers (cones and flagging) and signs, or a person physically present shall prevent personnel and/or equipment from entering the affected area.

3. The location of the unfired loaded holes shall be documented in the pre-shift / on-shift examination book and all affected personnel shall be notified of the location of unfired holes.

4. All personnel on affected shifts shall know the route in which to travel to a safe location in the event unforeseen circumstances (electrical storms, unstable highwalls, etc.) arise while working in the area of unfired loaded holes.

(g) When loading boreholes containing water, or if loaded holes are to be left for an extended period of time, sufficient slack in downlines shall be provided to prevent stretching and possible damage to downlines due to settling of material in the borehole.

(h) When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of workers shall be submitted for approval to the West Virginia Office of Miners' Health, Safety and

Training and made available to all interested persons for comment at least ten (10) days prior to submission to the Director. Such drilling and blasting shall not commence until approval is granted.

### 32.7. Post firing.

~~(a) Shooting cables shall be disconnected immediately from the blasting unit after each blast and shunted. The firing lines/lead lines shall be disconnected from the electrical power source immediately after each blast when electric or electronic detonators are used.~~

~~(b) No person shall return to the area where blasting has been performed until the dust has settled and the area cleared of smoke. The blaster shall not return to the area where blasting has been performed until the dust, smoke and fumes have cleared.~~

~~(c) After a blast, the blaster shall examine the area and pronounce it safe before others enter the blast area.~~

### 32.8. Misfires.

~~(a) When electric blasting caps have been used the blaster or no other person shall not return to misfired holes for at least fifteen (15) minutes. When a misfire is detected, no persons shall return to the misfired holes for at least fifteen (15) minutes. Misfires shall be handled only by a designated blaster in the presence of the mine/pit foreman.~~

~~(b) When a shot has misfired, extra precaution shall be taken in the handling of the misfires. If a misfire is detected, the blaster and the foreman in charge shall determine the necessary action to be taken to safely correct the situation.~~

~~(c) The blaster shall wait thirty (30) minutes before returning to a misfired shot, when using blasting caps and fuse. When misfired/unfired explosives exist, or are suspected to exist, all persons working in the area shall be notified and given instructions on proper handling of possible undetonated explosives. The location of these holes shall be recorded in the pre-shift/on-shift book.~~

~~(d) After shooting a misfired shot, the blasting cable shall be disconnected from the source of power and the battery end short circuited before electric connections are examined. Immediately after firing a misfired shot, the firing/lead lines shall be disconnected from the firing device or blast controller when electric or electronic detonators are used. When using electric detonators, the ends of the firing/lead lines shall also be shunted.~~

~~(e) If explosives or blasting agents are suspected of burning in a hole, all persons in the blasting area shall move to a safe location and no person shall return to the hole for at least one (1) hour.~~

### 32.9. Storage of explosives.

(a) After loading boreholes all unused explosives shall be returned to the proper explosive storage magazine.

(b) Separate surface magazines shall be provided for storage of explosives, detonators, and blasting heater elements. Surface magazines shall be constructed of incombustible material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth (1/4) inch steel plate lined with a two (2) inch thickness of wood, or the equivalent, provided with adequate and effectively screened ventilation openings near the floor and ceiling, kept locked securely when unattended, posted with suitable danger signs so located that a bullet passing through the face of the sign will not strike the magazine. The location of the magazine shall not be less than two hundred (200) feet from any active work area, occupied buildings, or public roads unless barricaded. If magazines are illuminated electrically the lamps shall be of vapor-proof type, properly installed and wired. Smoking, open flames, open lights or spark-producing devices shall be prohibited in or within fifty (50) feet of a detonator or explosive magazine or facility.

(c) Explosives magazines shall be located at least one hundred (100) feet away from power lines and fuel storage areas.

(d) Cases or boxes containing explosives shall not be stored on their ends or sides in magazines nor stacked more than six (6) feet high.

(e) An area of twenty-five (25) feet around magazines shall be kept clear of dry leaves, grass, undergrowth, trash and debris.

(f) Detonator and explosives storage magazines shall be separated by at least twenty-five (25) feet.

(g) Ground rods shall be properly installed and secured on explosive storage magazines so as to provide sufficient electrical ground.

(h) Semitrailer van(s) used for highway or on-site transportation of blasting agents are satisfactory for storing these materials, provided they are located according to the American Table of Distance with respect to inhabited buildings, passenger railroads and public highways. Trailers will be provided with substantial means for locking, and the trailer doors shall be kept locked except during time of placement and removal of blasting agents.

### **§56-3-33. Underground Workings.**

#### 33.1.

(a) The operator shall refrain from surface mining within five hundred (500) feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: **Provided**, That the ~~d~~Director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing and sequencing of the approximate coincidence of specific surface mine

activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, and (b) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: **Provided**, That any breakthrough which does occur shall be sealed.

(b) The official representative of any known underground mine shall be notified immediately when a surface mine operation may in any way interfere with the safe operation of the active underground mine.

(c) Special precautions shall be taken to protect the employees where excavating is being performed in the vicinity of a known abandoned underground mine which may contain a dangerous accumulation of water and/or gas.

(d) All cut-throughs into underground mine workings shall be closed immediately.

#### **§56-3-34. Haulage.**

34.1. Roads - traffic directions and warning signs.

(a) Traffic directions which differ from standard highway practice shall be posted on signs along the haulage roads at strategic points in letters at least three (3) inches high.

(b) Well marked signs conspicuously placed, shall be properly located to alert drivers to existing danger areas. Such as the approach to a dangerous curve or extreme grade.

(c) Traffic rules, signals, and warning signs shall be standardized at each mine.

(d) Where side or overhead clearances on haulage roads or loading or dumping locations are hazardous to mine workers, such areas shall be conspicuously marked and warning devices shall be installed when necessary to insure the safety of the workers.

(e) Flashers, flares, or other means of signaling shall be used to warn approaching drivers of a hazard created by an obstruction in the roadway.

(f) Regulatory signs shall be used to indicate required method of traffic movement, (Example: "Stop", "Yield", "One Way".)

(g) Posted warning signs shall be used where necessary to indicate potential hazardous conditions. (Example: "Hill", "Curve", "Truck Crossing".)

(h) Object marking shall be used to mark physical obstruction in or near the haulage way that presents possible hazards. (Example: Reflectors and high visibility paint.)

(i) All signs and markings shall be displayed and utilized so as to be effective as possible.

(j) Where side or overhead clearance on any haulage road or at any loading or dumping location at a surface mine is hazardous to any person, such hazard shall be corrected immediately, and all necessary precautions taken while such hazard is being corrected.

#### 34.2. Haulage roads - construction and maintenance.

(a) Haulage roads shall be located an adequate distance from highwalls and spoil banks to minimize the danger of falling material onto personnel and equipment.

(b) When dust created by haulage is thrown into suspension in such quantities that may obscure the vision of the operators of vehicles, and adequate means shall be taken to allay such dust.

(c) Only authorized persons shall be permitted on haulage roads and at loading or dumping locations.

(d) Berms or guards shall be provided ~~where required~~ on the outer bank of ~~elevating~~ elevated roadways.

(e) The width and grade to be utilized in haulage road construction shall be determined for each specific situation based upon terrain configuration, vehicle characteristics, and driver visibility for safe haulage.

(f) Haulage roads shall be constructed of sufficient width to permit the driver to maneuver his vehicle to avoid striking unexpected obstacles on the roadway where reclamation regulations permit.

(g) Provisions shall be made to adequately drain and remove excessive water from the haulage roads.

(h) Haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation. All roads leading to and from work sites on which persons are expected to travel to and from work or to haul coal or supplies, shall be of sufficient width and be maintained in good condition.

(i) Haulage operations shall be stopped when the haulage surface has deteriorated to the extent that it presents a danger to the safety of the haulage operation.

(j) ~~All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplementary emergency braking system.~~ When required by the Director or his authorized representative approved runaway roads or suitable equivalent shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section.

(k) All power lines constructed over haulage roads after the effective date of this section shall be maintained a minimum of twelve (12) feet above all equipment used on haulage roads

including dump trucks in a raised position.

#### 34.3. Haulage equipment - construction and maintenance.

(a) Haulage trucks shall not be operated with dirty windshields, cracked, dirty, or broken rear view mirrors.

(b) Supplies, materials, and tools other than small hand tools shall not be transported with persons in vehicles unless such vehicles are specifically designed to make such transportation safe.

(c) All new haulage vehicles placed into service shall be equipped with an emergency steering and braking system.

(d) Where required by the ~~d~~Director, trucks used for haulage of coal, men or supplies shall be equipped with two (2) way communication instruments.

~~(e) Where required by the director or his authorized representative runaway roads or "J" roads shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section. All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplemental emergency braking system.~~

#### 34.4. Haulage equipment - operation.

(a) Haulage truck operators shall make sure their truck path is unobstructed, especially when starting or moving the trucks forward or backward.

(b) Radio or visual contact shall be made with an operator of a haulage truck to insure that it is safe to approach the truck.

(c) Vehicles shall follow at a safe distance: passing shall be limited to areas of adequate clearance and visibility.

(d) Men shall not work or pass under the buckets or booms of loaders in operation.

(e) Drivers shall drive their trucks according to the condition of the road and the weather. At no time shall truck speeds exceed the safe predetermined speed limit that has been established on that haul road.

(f) Haulage trucks traveling in the same direction shall not pass any vehicle until signals have been exchanged between both drivers and the vehicle to be passed pulls to the ~~right~~ side of the road.

(g) Haulage trucks shall maintain a safe distance between the trucks they are following. Other vehicles shall maintain a minimum of one (1) car length for each ten (10) m.p.h. of travel

in back of the vehicle they are following.

(h) When approaching a state or county road, drivers shall maintain their trucks under control to stop, yield right of way, or obey the signals of a flagman.

(i) When the body of a haulage unit is being raised, no person will be permitted in close proximity where they may be endangered.

(j) Materials or equipment required in the cab of haulage equipment shall be adequately secured.

#### 34.5. Parked vehicles.

(a) Lights, flares, or other approved warning devices shall be adequately located when parked equipment creates a hazard to vehicular traffic.

(b) Mobile equipment shall not be left unattended unless the parking brakes are set, ~~the~~ The wheels shall be turned into a bank or berm, or shall be blocked, when such equipment is parked on a grade.

#### 34.6. Employee parking and mantrips.

(a) On all active surface mines, a designated area shall be provided for parking of employees' vehicles. All employees shall park their personal vehicles at the designated parking area. Adequate illumination shall be provided at all parking areas, and parking areas shall be maintained in good condition.

(b) No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position.

(c) All mantrips shall have ten (10) unit first aid kits, two-way communication, and audible warning devices, and equipped with strobe lights and/or whip antennae with florescent flag or equivalent.

### **§56-3-35. Auger Mining.**

#### 35.1. Proximity to underground workings.

(a) Auger mining should not be done in proximity to active underground workings unless the work is coordinated with the underground plan or workings. Auger holes should not be drilled so as to: (1) disrupt the ventilation systems of active underground mines; (2) create inundation hazards to active underground mines; and (3) cause damage to the roof and ribs of active and underground roadways.

(b) Auger holes should not intersect underground mine workings known to contain or suspected to contain dangerous quantities of impounded water, except to de-water such areas

under controlled conditions and then only after all necessary precautions have been taken to safeguard life and property.

### 35.2. Safeguards - auger areas generally.

(a) Adequate approved means shall be provided to prevent unauthorized persons from entering areas where coal has been removed.

(b) Warning signs shall be posted conspicuously at the entrances to abandoned auger operations.

(c) Completed auger holes shall be blocked with highwall spoil to a minimum height of one (1) foot above the coal bed and to within one thousand (1,000) feet of the active holes.

(d) Adequate precautions shall be taken when any auger hole or holes are not blocked with highwall spoil to insure unauthorized entry.

(e) All haulroads entering auger pits shall be barricaded to insure against unauthorized vehicles when auger holes are left unguarded.

### 35.3. Protection of workers.

(a) No person or persons shall enter an auger hole unless they have prior written approval from the Director. ~~until a qualified employee has determined by recognized means of detection whether the air within the hole is of good quality and does not contain methane or is deficient in oxygen. The examiner shall wear a lifeline that extends to the hands of a person on the surface.~~

(b) Persons entering an auger hole should examine and test its walls for danger from falling materials. Any hazardous conditions found should be corrected before any other work is done or the hole vacated and suitable danger boards placed across its entrance.

(c) Augers which are provided with walkways or platforms, where practicable shall be equipped with safe handrails.

### 35.4. Auger operations.

(a) Haulage trucks awaiting loading shall park a safe distance from the highwall and spoil bank.

(b) No person or persons other than the auger crew shall be allowed on or around the auger when in operation unless in line of duty.

(c) Only the truck being loaded and one (1) other truck shall be in the auger pit.

(d) Open lights and smoking materials are prohibited in auger holes.

(e) "No Smoking" signs shall be posted in close proximity where auger holes are being drilled.

(f) When auger holes first penetrate abandoned or mined out underground workings, and as frequently thereafter as these workings are penetrated a qualified employee should determine, by recognized means of detection, whether or not methane or oxygen deficient air is present or is being emitted in dangerous quantities.

(g) The operator shall not leave the controls while the auger is being operated.

(h) No person or persons shall be allowed to be on the top of the cab of the carriage engine for any reason while it is moving, or when the auger train is in motion.

(i) Partitions of coal between auger holes shall be adequate enough to support highwall when augering operations are being performed.

(j) Partitions of coal between auger holes shall not be recovered by other methods of mining without the approval of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

(k) Adequate illumination shall be provided for work areas after dark.

(l) Persons shall keep clear of the auger train while it is in motion and shall not pass under or over an auger train, except where suitable crossing facilities are provided. Persons shall keep clear of auger sections being swung into position.

(m) Where practicable, no persons shall be in a direct line with the boreholes during mining operations.

#### 35.5. Methane and oxygen.

(a) Auger mining equipment shall not be operated in the vicinity of auger holes emitting dangerous quantities of methane at 1% or more ~~or air~~ until the atmosphere is reduced below 1%.

(b) Internal combustion engines in the vicinity of auger holes shall be stopped while auger holes are being inspected.

(c) Combustible materials, dinner pails, or other supplies shall not be stored in auger holes.

(d) Auger mining machines shall be equipped with a permissible ~~flame safety lamp or other detector approved by the director~~ approved detector.

(e) In each auger mining crew there shall be a person qualified in the care and use of permissible ~~flame safety lamp or other approved~~ approved detectors ~~oxygen detecting measuring device~~.

(f) Tests for oxygen deficiency shall be conducted with a permissible ~~flame safety lamp~~ or other means detector approved by the ~~d~~Director and all tests for methane shall be conducted with an approved ~~methane~~ detector.

(g) When an auger hole penetrates an abandoned or mined out area of an underground mine, tests for methane and oxygen deficiency shall be made at the collar of the hole by a qualified person, using approved devices to determine if dangerous quantities of methane or oxygen deficient air are present or being emitted. If such is found no further work shall be performed until the atmosphere has been made safe.

### 35.6. Inspections.

(a) Auger operators shall inspect their machine before starting and operating to determine such machine is in a safe operating condition and all safety equipment is provided.

(b) No work shall be performed under any overhang. When a crew is engaged in connecting or disconnecting auger sections for maintenance, repair, or other reasons besides regular operations, at least one (1) person shall be assigned to observe the highwall for possible movement.

(c) The face of all highwalls, for a distance of one hundred (100) feet on both sides of each drilling site, shall be inspected by the auger operator and the foreman before any augering operation is performed. All loose hazardous material shall be removed from the highwall before persons are permitted to enter the drilling area.

## § 56-3-36. Highwall Mining

### 36.1 General Precautions

(a) Highwall mining plans shall be formulated to minimize the possibility of the unplanned collapse of partitions between the miner entries. Partitions of coal between miner entries shall be adequate to support the highwall when mining operations are being performed.

(b) Highwalls shall be safely constructed to minimize danger to workers. Techniques such as (1) pre-splitting highwalls, (2) angle drilling, (3) safety benches and (4) scaling of loose/hazardous materials, brows, and overhangs may be implemented to enhance the safety of the highwalls.

(c) Adequate means shall be taken to allay coal dust being thrown into suspension in harmful or explosive quantities.

(d) Dust shall be controlled by the use of permissible dust collectors or other methods.

(e) The face of all highwalls, for a distance of one hundred (100) feet on both sides of the highwall miner, shall be inspected by the foreman before any mining operation shall be performed.

(f) The pit in which the highwall miner is being used shall be of a width to safely operate all equipment used during the mining process.

(g) Only persons authorized by mine management shall be allowed in the area where highwall mining is being conducted. This does not preclude interested persons from entering the area.

(h) Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the highwall miner openings and to within one thousand (1000 feet) of the active workings. Adequate precautions, such as barriers on entry roads to the pit, shall be taken to prevent unauthorized entry to the areas where highwall mine openings are not blocked.

(i) No smoking shall be permitted within one hundred fifty (150) feet of highwall miner openings. No smoking signs shall be conspicuously posted in the pit where the highwall miner is operating or in pits where highwall miner openings are present.

(j) Records and maps shall be kept showing the width, depth, spacing and typical height of all entries mined.

(k) At the close of the highwall mining operation, maps shall be submitted to the Office of Miners' Health, Safety and Training for map archiving purposes showing the records in 56 CSR § 3-36.1(k) in a manner such that the maps can be referenced to the West Virginia State Plane Coordinate System. Mining that has occurred after the effective date of these regulations shall be certified by a West Virginia Registered Professional Engineer. A combination of approximate and surveyed locations is permitted, so long as the certified map clearly denotes such.

(l) All maintenance on the continuous highwall miner shall be performed a safe distance away from the highwall. For continuous highwall miners equipped with canopy protection, the continuous highwall miner shall be pulled back under the canopy for servicing or routine maintenance.

(m) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment.

### 36.2 Proximity To Underground Workings

(a) Highwall mining shall not be performed within five hundred (500) feet of any active or abandoned mines without complying with 56 CSR § 3-33. Highwall mining shall not (a) disrupt the ventilation systems of the underground mines, (b) create inundation hazards to active underground mines, and (c) cause damage to the roof or ribs of active underground entries.

(b) In addition, highwall mining shall be conducted in accordance with 56 CSR § 3-33.1.

### 36.3 Proximity to Wells

(a) Highwall mining within two hundred (200) feet of any well, or into and through any well, shall be in accordance with W. Va. Code § 22A-2-75(b).

### 36.4 Protection Of Workers.

(a) No person(s) shall enter a highwall miner opening or mine entries to retrieve, repair or free any highwall miner machinery for any reason without written approval from the Office of Miners' Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate. The operator must submit all initial plans for approval, and a copy submitted to the authorized representative of the miners for comments at least ten (10) days prior to submission to the Director that includes the following provisions:

(1) Written notification shall be submitted to the Office of Miners' Health, Safety & Training regional office. This notification shall include details of the specific problem and the reason(s) workers will have to enter the highwall miner opening or mine an additional entry to retrieve repair or free any highwall miner machinery.

(2) The operator shall submit a plan and must receive written approval from the Director or the Regional Supervisor of the Office of Miners' Health, Safety & Training, which will detail the precautions necessary to safely perform the duties involved.

(3) In order to safeguard workers, when anyone enters a highwall miner opening or entries mined to retrieve, repair, or free any highwall miner machinery, all persons shall comply with all West Virginia underground mining laws and regulations specified in the approved plan.

(b) All travelways and work areas shall be maintained in good condition. Safe means of access shall be provided to all work areas of the highwall miner system.

(c) Adequate guarding shall be provided on all moving equipment parts where workers could be injured by movement of these parts.

(d) All persons working around a highwall miner shall wear protective clothing including, but not limited to, approved safety helmets hats and safety-toed boots.

(e) Adequate illumination shall be provided when the highwall miner system is operated in darkness or low visibility conditions.

(f) A positive audible or visible warning system shall be installed and operated to warn persons that conveyor equipment is to be started.

(g) Unguarded conveyors with walkways shall be equipped with emergency stop devices approved by the Director.

(h) Good visibility shall be provided for the highwall miner operator to the launch area of the machine.

(i) Two-way communication shall be provided between workers on the launch area and the highwall miner operator.

(j) Partitions of coal (web & barrier pillars) between the highwall miner openings shall not be recovered by other methods of mining without the written approval of the Director of the Office of Miners' Health, Safety & Training.

(k) Trailing cables shall be adequately protected to prevent damage.

(l) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety (90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and an authorized representative of the miners, upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables.

(m) All steps, handrails, walkways and platforms on the highwall miner shall be maintained in a safe condition. Employees shall be instructed and required to use access steps located at the rear of the launch when the highwall miner is in the mining position near the highwall. Handrails shall be provided for all elevated platforms and walkways.

(n) All highwall miners that are equipped with unguarded belt conveyance systems shall have panic lines/pull cords installed and in place directly beside the unguarded conveyor belt (belly belt) at all times when the belt is running and the highwall miner cars are not in position above the belt acting as a guard. When panic line/pull cords are detached to facilitate adding or removing highwall miner cars, workers shall follow a procedure that does not expose them to working above the running unguarded conveyor belt.

### 36.5 Operation Of Highwall Miners.

(a) No person or persons, other than the highwall miner crew, shall be allowed on or around the highwall miner when in operation unless authorized by mine management. This shall not preclude interested persons from entering the area.

(b) The operator shall not leave the controls while the highwall miner is being operated. Before leaving the controls for any reason, the operator shall place controls in the neutral position and de-activate the controls to prevent accidental activation of the controls.

(c) No persons shall work under suspended loads. Where required, suspended loads shall be controlled with the use of tag lines or equivalent systems.

(d) Persons shall not cross over belt conveyance cars or unguarded conveyor belts while in motion. Persons shall keep clear of all conveyance system sections being swung, lowered, loaded or removed.

### 36.6 Methane And Oxygen

(a) Highwall mining shall not be conducted in the vicinity of highwall miner openings or auger holes emitting dangerous quantities of methane at 1% or above or oxygen deficient air less than 19.5% of oxygen, until the atmosphere has been rendered harmless.

(b) Internal combustion engines in the vicinity of highwall miner openings shall be stopped while the highwall miner entries are being inspected.

(c) No material or equipment shall be stored in highwall miner openings.

(d) All highwall mining operations shall have an approved and fully functional detector(s) capable of measuring oxygen deficiencies and methane levels on site. There shall be at least one (1) person qualified in the care and use of the approved detecting/measuring device(s). All tests for oxygen deficiency and methane will be conducted with approved detectors.

(e) If at any time methane levels of one (1) percent or greater are detected, mining shall cease until the methane levels are reduced to levels less than one (1) percent.

(f) When a highwall miner opening penetrates an abandoned mine or mined out area(s) of an underground mine, mining shall cease immediately and tests for methane and oxygen deficiency shall be made at the highwall miner opening by a qualified person using an extendable probe. These tests shall be made using approved devices to determine if dangerous quantities of methane and/or oxygen deficient air are present or being emitted. If such is found, no further work shall be performed until the atmosphere is made safe.

(g) The highwall miner shall be equipped with a monitoring device that will alert the operator when methane levels reach concentrations of 1.0%, and automatically de energize the cutter head. All launch workers, except the person necessary to conduct a methane examination, shall be removed from the immediate area and a methane examination will be conducted at the highwall miner opening. Methane levels will be tested at the highwall miner opening with an extendable probe. When the test at the highwall miner opening cannot detect significant levels of methane and the mining machine monitor indicates that methane accumulation has dispersed, work may resume. In the event the cutter head is de-energized and the methane monitor detects 2.0% methane all underground equipment shall automatically de-energized at the surface

motor control center until the methane levels are lowered to less than 1.0% or is removed by hydraulic cylinders or other means outside the opening. .

(h) All methane examinations will be recorded in the examination book maintained by the supervisor, along with necessary explanations. Methane monitors will be visually inspected prior to the start of each new entry. Methane monitors will be tested weekly, using manufacturers test apparatus.

### 36.7 Highwall Miner Cable Reels

(a) All cable reels shall be guarded or positioned to prevent persons from being injured when the reel is operated.

(b) At no time shall persons position themselves in front of the cable reels on top of the system while the system is in operation except when the following guidelines are followed:

(i) The reels are being controlled from the top level with visual contact with all persons on the top deck.

(ii) If the cable guide malfunctions, efforts shall be made to start repairs as soon as possible.

(iii) All persons that are required to work in this area shall be made aware of the malfunction.

(iv) At no time shall any person hand guide cables onto the cable reels.

### **§56-3-36 37. General Provisions.**

36 37.1. Horseplay - Horseplay, practical jokes, wrestling, fighting or other actions which threaten persons with personal injury, causing them to fear for their personal safety or causing damage resulting in interference with safe operations shall be prohibited.

36 37.2. Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility.

36 37.3. Housekeeping - Paths, walkways, stairways, and roadways shall be kept free of obstructions. Structures and inside work areas shall be kept free of oil, coal spillage, litter, and coal dust accumulations.

36 37.4. Smoking - Smoking or open flames shall not be permitted in the following areas:

Within 50 feet of the area where explosives are being stored, handled, or used storage area;

Within 150 feet of flammable liquid storage areas;

Within 150 feet of liquified and nonliquified gas storage areas;

Within 150 feet of the proximity of auger holes.

~~36~~ 37.5. Compressed air or gases.

(a) Safety chains or suitable locking devices shall be used at connections to machines or high-pressured hose lines. ~~where a connection failure would create a hazard.~~

(b) Compressors and compressed-air receivers shall be equipped with automatic pressure relief valves, pressure gauges, and drain valves.

(c) All hoses exceeding one-half (1/2) inch inside diameter shall have a safety device at the surface of supply at the branch line to reduce pressure in case of hose failure.

~~36~~ 37.6. No working alone - No person shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

~~36~~ 37.7. Stockpiles - Coal shall not be stockpiled at or near exposed or buried gas lines.

~~36~~ 37.8. Reclaiming hazards - No person shall be permitted to walk or stand immediately above a reclaiming area at or near a slurrage or storage pile where the reclaiming operations may expose him to a hazard.

37.9. Toilet facilities - Each operator of a surface mine shall provide at least one sanitary toilet in a location convenient to each surface work site. All sanitary toilets shall be regularly maintained in a clean and sanitary condition.

37.10. Drinking water - An adequate supply of potable water shall be provided by the mine operator for drinking purposes in each surface installation and at each surface worksite of the surface mine. Water transported to all work sites shall be carried, stored and otherwise protected in sanitary containers.

37.11. Persons entering a mine - Only persons authorized by the mine operator shall be permitted to enter a surface mine. The mine operator shall develop a plan to account for those authorized persons while at the surface mine. The plan shall be available to a representative of the Director and all interested persons upon request.

**§56-3-37 38. Electricity.**

~~37~~ 38.1. Performance of electrical work.

(a) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the person who performs such

work, except that in cases where locking out is not possible, such devices shall be open and suitably tagged by such person. They shall be removed only by the person who installed them or if such person is unavailable, by a qualified person authorized by the operator or his agent. Suitably tagged, as used in these sections, means that a sign such as, "Danger, Hands Off, Do Not Close, Men Working On Line", shall be attached to the locked switches. The signs or tags shall bear the name, date, and certification of the workman who installed the tag. Keys used to lock out switches shall be kept only on the person who is performing the work on the equipment and his immediate supervisor. Such locks shall be provided by the operator.

(b) All power circuits and electrical equipment shall be de-energized before work is performed on such circuits and equipment, except when necessary for troubleshooting or testing.

~~37~~ 38.2. Transformers.

(a) All surface transformers, unless of the construction which will eliminate shock hazard, or unless installed at least eight (8) feet above ground, shall be enclosed in a house or surrounded by a fence at least six (6) feet high. If the enclosure is of metal, it shall be grounded effectively, the gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(b) Transformers shall be provided with adequate overload protection.

(c) "Danger - High Voltage" signs with voltage indicated shall be posted conspicuously at all transformer enclosures, high potential switch boards, and other high potential installations.

(d) Ground fields shall be installed and maintained at a resistance not to exceed five (5) ohms.

~~37-38~~ 38.3. Electrical equipment generally.

(a) Capacitors used for power factor connections shall have suitable drain off resistors or other means to protect workmen against electrical shock following removal of power.

(b) Dry insulated platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

(c) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuit in the event of power failure.

(d) All electric conductors shall be sufficient in size and have adequate current carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials. In no case will the requirements be less than set forth in the ~~current~~ National Electric Code in effect at the time of installation.

(e) All electrical connections or splices and conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All electric connections or splices

and insulating wires shall be reinsulated at least to the same degree of protection as the remainder of the wire. Splices made shall provide continuity of all components.

(f) All power wires, except portable trailing cables on mobile equipment, specially designed cables conducting high voltage power shall be supported on well installed insulators and shall not contact different potential passes within eighteen (18) inches of each other, such cables shall be insulated to the potential of the highest voltage wire or cable.

(g) All electrical equipment shall be provided with switches or controls that are safety designed, constructed, and installed. Power cable, trailing cable or conductor couplings or connections cannot be connected or disconnected while under load.

(h) Single phase loads such as transformer primaries shall be connected phase to phase.

37 38.4. Testing maintenance and repair of electrical equipment.

(a) All electrical equipment, except circuit breakers, shall be examined daily, by a competent person to assure safe operating condition. All electrical equipment shall be examined monthly, tested and properly maintained by a certified electrician. When a potentially dangerous condition is found on electrical equipment, such equipment shall be removed from service until the condition is corrected by a certified electrician. A record of such examination and the action taken when the potentially dangerous condition is found shall be kept and made available to an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and to the miners at such mine.

(b) Circuit breakers and their auxiliary devices shall be tested and examined at least once each month by a qualified person and a record of such examination shall be kept and made available to an authorized representative of the ~~d~~Director and to the miners at such mine. Circuit breaker tests shall include:

(1) Breaking continuity of the ground check conductor where ground check monitoring is used.

(2) Actuating all of the auxiliary protective relays, and;

(3) Visual observation of all components of the circuit breaker and its auxiliary devices.

Such repairs or adjustments as are indicated by such tests and examination shall be carried out immediately.

37 38.5. Circuit breakers.

(a) Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electrical equipment and circuits against short circuit and overload. Three (3) phase motors on electrical equipment shall be provided with overload protection that

will de-energize all three (3) phases in the event that any phase is overloaded. As used in this section, adequate current interrupting capacity requires that the fuse or circuit breaker is capable of interrupting the maximum short circuit current that the circuit may conduct without destruction to the device.

(b) Electric equipment shall be provided with devices that will permit the equipment to be de-energized quickly in the event of an emergency.

(c) One (1) circuit breaker may be used to protect two (2) or more branch circuits if the circuit breaker is adjusted to afford over-current protection for the smallest conductor.

(d) When not in use, power circuits shall be de-energized on idle days and idle shifts except that rectifiers and transformers may remain energized.

(e) Power circuits serving three (3) phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacities which are properly tested and maintained as prescribed by the ~~d~~Director. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, and short circuit protection. ~~and over-current.~~

(f) Disconnecting devices shall be installed at the beginning of branch lines in high voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is de-energized when the switches are open.

(g) Circuit breakers and disconnecting switches shall be marked for identification.

### ~~37~~ 38.6. Cables.

(a) Cables shall enter metal frames of motors, splice boxes and electrical compartments only through proper fittings. When insulated wire, other than cables, pass through metal frames, the hole shall be substantially bushed with insulated bushings. Cables and power wires, including, but not limited to, telephone communication and control wires, shall be insulated adequately and fully protected.

(b) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cable will be hung in a manner which will damage the insulation or conductors.

(c) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(d) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device, approved by the ~~d~~Director, of adequate current interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected and shall be labeled to show which unit they control.

(e) Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductor shall be broken last when the coupler is being uncoupled.

(f) When two (2) or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting the trailing cable to the wrong size circuit breaker.

(g) One temporary splice may be made in any portable trailing cable. Such trailing cable may only be used for the next twenty-four (24) hour period. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term splice means a mechanical joining of one (1) or more conductors that have been severed.

(h) When permanent splices in trailing cables are made, they shall be:

- (1) Mechanically strong with adequate electrical conductivity and flexibility;
- (2) Effectively insulated and sealed so as to exclude moisture;
- (3) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket, and;
- (4) Made in accordance with the manufacturers specifications.

(i) Trailing cables for medium voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if insulation is rated two thousand (2,000) volts or more.

### 37 38.7. Grounding.

(a) All metallic shields, armors and conduits enclosing power conductors will be electrically continuous throughout and shall be grounded by method approved by an authorized electrical representative of the ~~d~~Director. Where grounding wires are used to ground metallic shields, armors, conduits, frames, casings and other metallic enclosures, such grounding wire will be approved if:

(1) Where the power conductor used is #6 A.W.G. or larger, the cross sectional area of the grounding wire is at least one-half (1/2) the cross sectional area of the power conductor.

(2) Where the power conductor used is less than #6 A.W.G., the cross sectional area of the grounding wire is equal to the cross sectional area of the power conductor.

(b) The attachment of grounding wires to other grounded power conductors will be

approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.

(c) Metallic frame, casing, and other enclosures of electrical equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and shall have a ground monitoring system, to monitor continuously the grounding circuit, to assure continuity, such ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the ~~Director~~ Director or his authorized electrical representative, to assure such continuity, except a temporary waiver may be permitted by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, on a mine to mine basis if he determines that such equipment is not available.

(d) In instances where single phase one hundred ten (110)-two hundred twenty (220) volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings or other enclosures of such equipment to a separate grounding conductor which established a continuous connection to a grounded center tap of the transformer.

(e) Where batteries are being charged without removing them from mobile equipment, or are sitting on wooden blocks, the frames of the machine or battery case shall be grounded to the grounded frame of the charger to prevent the machine from becoming alive through failure of insulation in the charger. All ground conductor connections shall be clamped or bolted connections.

(f) All buildings and structures shall be earth grounded if they are constructed of metal. Also, any building or structures which could become alive with electrical energy shall be effectively grounded.

(g) Guy wires from poles supporting high voltage power lines shall be securely connected to the system grounding medium or shall be provided with insulators rated at the highest voltage installed near the pole end as required below phase conductors of the high voltage power line.

(h) At preparation plants, shop areas, surface mines, and all other surface areas, 120/240 volt AC circuits used to power electrical devices in wet locations shall be protected with ground fault circuit interrupting devices.

### 37 38.8. Energized lines generally.

(a) All guy wires shall be marked or flagged when equipment is working in the area.

(b) Energized power lines crossing an access road or work area shall be identified by warning signs visible from each direction. Warning signs shall include height if lines for clearance and made of reflective material. In no event shall any high voltage power line be installed less than fifteen (15) feet above ground, walkways, or working areas.

(c) All equipment near energized power lines with the following voltages shall maintain

the following clearances: one hundred (100) to sixty-nine thousand (69,000) - ten (10) feet; sixty-nine thousand (69,000) to one hundred fourteen thousand (114,000) - twelve (12) feet; one hundred fifteen thousand (115,000) to two hundred twenty-nine thousand (229,000) - fifteen (15) feet; two hundred thirty thousand (230,000) to three hundred forty-four thousand (344,000) - twenty (20) feet; three hundred forty-five thousand (345,000) to four hundred ninety-nine thousand (499,000) - twenty-five (25) feet; five hundred thousand (500,000) or more - thirty-five (35) feet.

(d) All personnel, except those directly involved in the operation, shall stay clear of the equipment working near energized lines.

(e) If equipment comes in contact with an energized line, the operator shall stay in the equipment until notified by a certified electrician or foreman that the line is de-energized.

(f) All electrical wiring and equipment ~~installed~~ shall meet the requirements of the ~~current~~ National Electrical Code in effect at the time of installation.

### 37 38.9. High voltage.

(a) High voltage lines on the surface shall be de-energized, locked out, tagged out, and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high voltage lines, if such repairs are made by a qualified person in accordance with the procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide tests, and maintain protective devices in making such repairs. No work shall be performed on any high voltage line on the surface which is supported by any pole or structure which also supports other high voltage lines until all lines supported on that pole are de-energized and grounded.

(b) No high voltage lines shall be regarded as de-energized for the purpose of performing work on it until it has been determined by a qualified person that such high voltage line has been de-energized and grounded. Such qualified person shall, by visual observation, determine that the connecting devices on the high voltage circuit are in open position and insure that each ungrounded conductor of the high voltage circuit upon which work is to be done is properly connected to the system grounding medium.

(c) An energized high voltage line may be repaired only when the operator has determined that such repairs cannot be scheduled during periods when the power circuit could be properly de-energized and grounded. Such repairs will be performed on power circuits with a phase to phase nominal voltage no greater than fifteen thousand (15,000) volts. The weather conditions shall be noted so that it would not interfere with such repairs or expose those persons assigned to such work to an imminent danger. The operator shall designate a person qualified to perform such work as the person responsible for carrying out such repairs. In order to insure protection for himself and other interested persons assigned to perform such repairs from the hazards of said repairs, he must prepare and file with the operator; (1) a general description of the nature and location of the damage or defect to be repaired; (2) the general plan to be followed in making of such repairs; (3) a statement that a briefing of all qualified persons assigned to

make such repairs was conducted informing them of the general plan, their individual assignments, and the dangers inherent in such assignments; (4) a list of proper protective equipment and clothing that will be provided and such other information as the person designated by the operator feels necessary to describe properly the means or methods to be employed in such repairs. All statements obtained by the operator shall be recorded and contain a notation of the time, date, location and general nature of the repairs.

(d) When two (2) or more persons are working on an energized high voltage surface line simultaneously and anyone of them is within reach of another, such persons shall not be allowed to work on different phases or equipment with different potentials.

(e) All persons performing work on energized surface high voltage lines shall wear protective rubber lineman's gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves. Protective devices worn by a person assigned to perform work on high voltage surface lines shall be worn continuously from the time he leaves the ground until he returns to the ground and if such devices are employed for extended periods, such persons shall visually inspect the equipment assigned him for defects before each use and in no case, less than twice each day.

(f) All rubber protective equipment used for work on energized high voltage surface lines shall be electrically tested by the operator in accordance with ASTM Standards, part 28 published February, 1968.

(g) Disconnecting or cutout switches on energized high voltage surface lines shall be operated only with insulated sticks, fuse tongs or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

(h) No new additional circuits may be tied to a high voltage surface line when such line is energized.

(i) Solely for purposes of grounding ungrounded high voltage power systems, grounded messenger wires used to suspend the cable of such system may be used as a grounding medium.

(j) All high voltage circuits supplying portable, mobile or stationary equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformer and a grounding circuit originating at the grounded side of the grounding resistor shall extend along the power conductors and serve as a grounding conductor for the frames which receives power from that circuit. The grounding resistor shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred (100) volts under fault conditions, the grounding resistor shall be rated for maximum volt current continuously and insulated from ground for a voltage equal to the phase to phase voltage of the system.

(k) High voltage resistant grounded system serving portable or mobile equipment shall

include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken or other no less effective device approved by the ~~d~~Director or his authorized representatives to assure such continuity.

(l) High voltage cables used in ~~resistant~~ resistance grounded systems shall be equipped with metallic shields around each power conductor with one (1) or more ground conductors having a total cross sectional area of not less than one-half (1/2) the power conductor and with an insulated internal or external conductor not smaller than #10 A.W.G. for the ground continuity check circuit if required.

### 37 38.10. Movement of electrical equipment.

(a) Power centers, portable transformers, cable couplings and enclosures shall be de-energized before they are moved from one (1) location to another. Except that when equipment powered by source other than such centers or transformers is not available the ~~d~~Director may permit such centers or transformers to be moved while energized if he determines that such equivalent or greater hazard may otherwise be created and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the ~~d~~Director and otherwise protected from hazard to the miner. A record shall be kept of such examination.

(b) High voltage cables other than portable trailing cables shall not be moved or handled at any time while energized as permitted under this section. Non-conductive cable slings or other approved devices shall be used when moving energized portable trailing cables.

~~(c) Energized high voltage trailing cables may be moved only by a qualified person and the operator of such mines shall require that such person wear approved and tested insulated workmen's gloves. Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety ( 90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and interested persons upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables. If straps or hooks are used those straps and hooks shall be non-conductive and designed for that purpose.~~

### 37 38.11. Other electrical apparatus or areas.

(a) Ladders for electrical work shall be of nonmetal type.

(b) No electrical machinery or apparatus shall have unguarded exposed energized parts.

(c) Lighting plants shall be located so as not to obstruct or be a safety or health hazard to any part of the mining operation or miners.

(d) Employees performing work that requires them to come in contact with electrical equipment involving shock hazards shall be provided with suitable insulating gloves. Suitable insulation shall be of approved type that will protect such person from voltage to which he is exposed. All such protective equipment shall be furnished by the operator.

(e) Rooms in which circuit breakers or controls are installed shall have two (2) separate and distinct travelable passageways, designated as escapeways.

(f) Open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(g) All lights with less than eight (8) feet overhead clearance shall be guarded and the lamps be installed in weatherproof sockets. Lamps installed in a hazardous area must be of substantial construction and fitted with a glass enclosure.

(h) A ten (10) pound fire extinguisher shall be provided for each permanent electrical installation.

**§56-3-38 ~~39~~. Hand-Held Electric Drills and Rotating Tools; ~~Trailing Cables~~.**

~~38~~ ~~39~~.1. Electric drills and other electrically operated rotating tools intended to be held in the hand shall have the electric switch constructed so as to break the circuit when the hand releases the switch or shall be equipped with friction or safety clutches.

**§56-3-~~39~~ 40. Installation of Lighting.**

~~39~~ 40.1. Electric lights or other approved methods of lighting shall be installed so that they do not come in contact with combustible materials, and the wires shall be supported by suitable insulators and fastened securely to the power conductors.

**§56-3-~~40~~ 41. Compressed Gases and Welding.**

~~40~~ 41.1. Handling and use of welding or cutting equipment generally.

(a) The clothing of any person using any welding or cutting equipment in or about a surface mine shall be reasonably free of petroleum products. When handling oxygen cylinders or apparatus the use of oily hands or gloves is prohibited.

(b) Compressed gases shall not be used under direct pressure from tanks or cylinders but must be used under reduced pressures not exceeding that recommended by the manufacturers.

(c) At no time shall compressed air be directed toward a person when in use.

(d) A suitable wrench designed for compressed tanks shall be in the possession of the person authorized to use the equipment.

(e) Oxygen and gas cylinders and their contents shall be used solely for their intended purposes.

(f) Only an approved type spark-lighter shall be used for lighting torches.

(g) All welding and cutting equipment shall be continuously maintained in a safe condition.

40 41.2. Storage of compressed gas cylinders.

(a) Cylinders shall be securely stored in an upright position with valve protection caps hand tight. The storage area shall be well ventilated, protected and at least twenty (20) feet from highly combustible materials such as oil or other flammables.

(b) Signs at storage areas of cylinders shall be conspicuously posted, "Danger No Smoking, Matches or Open Flame".

(c) When storing oxygen cylinders and acetylene or other fuel gas cylinders inside buildings, a minimum distance of twenty (20) feet or a noncombustible barrier at least five (5) feet high having a fire resistance rating of at least one-half (1/2) hour shall be maintained between the oxygen cylinders and other fuel gas cylinders.

40 41.3. Transportation of compressed gas cylinders.

~~(a) When tanks and cylinders are not used and they are being transported, valve protection caps shall be placed on all tanks or cylinders. Oxygen tanks, gas tanks, or cylinders shall not be transported with the hoses or gauges attached.~~

~~(b)~~ (a) When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced except in conformance with the provisions of 36 CSR 27-11.1(a) through (h).

~~(e)~~ (b) Gas cylinders shall not be transported on vehicles used to transport employees unless separate approved compartments are provided.

40 41.4. Welding preparations.

(a) Person or persons assigned to use and work with welding and cutting tools shall be properly instructed of their uses and fully understand the danger of their misuse.

(b) All persons welding, cutting, heating, brazing or soldering shall be provided with goggles or shields, gloves, safe type spark-lighter and proper torch tip cleaner.

(c) Prior to welding, cutting, heating, brazing or soldering in areas likely to contain methane, an examination shall be made by a qualified person with an approved device. Examinations for methane shall be made immediately before and periodically during welding, cutting, heating, brazing or soldering and such work shall not commence or continue in air which contains one percent (1%) or more methane.

(d) Welding operations shall be shielded when necessary and the area shall be well ventilated.

(e) Fire watchers shall be used whenever welding, cutting, heating, brazing or soldering is performed at locations where a fire hazard exists.

(f) Adequate fire protection shall be provided at the location where welding, cutting, heating, brazing and soldering is performed.

#### 40 41.5. Acetylene welding.

(a) Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, back flow check valves and gas cylinders shall be used.

(b) Back flow check valves shall be attached to the exhaust side of a regulator before using.

(c) Repairs involving the pressure system of compressors, receivers, or compressed-air-powered equipment shall be prohibited until the pressure has been relieved from the part of the system to be repaired.

(d) Gas cylinders shall be protected from contacting sparks, hot slag or flame during welding, cutting, heating, brazing or soldering.

(e) Regulators shall be adequately attached to the cylinders before using their contents.

(f) The cylinder valve shall be opened partially for an instant, then closed before connecting a regulator. Such person performing said act shall stand to one (1) side (not in front) of the outlet when opening the cylinder valve.

(g) When removing a regulator from a cylinder bottle valve, such valve shall be closed and the gas released from the regulator.

(h) Empty cylinders shall be marked as such and removed from the work area immediately.

(i) Oxygen and acetylene tanks or cylinders or compressed gases shall be protected from power lines or energized electrical machinery or equipment. These tanks or cylinders shall be kept away from the place where the cutting is being done in order to prevent damage or accident and to prevent heat from affecting such tanks or cylinders.

40 41.6. Electrical welding.

(a) All connections at the welding machine shall be checked before starting such operations.

(b) The ground lead shall be adequately attached to the work.

(c) Magnetic work clamps shall be free of adherent metal particles or spattex on contact surfaces.

(d) Coiled welding cable shall be adequately separated to avoid serious overheating and damage to cable insulation.

(e) The welding machine frame shall be adequately grounded.

(f) The welding machine shall be free of leaks, cooling water, shielding gas and engine fuel.

(g) Proper switches shall be provided for de-energizing the welding machine.

(h) Electrode holders shall be located so they do not make electrical contact with persons, conducting objects, fuel or compressed gas cylinders. Energized electrode holders may be laid down or placed only in approved nonconductive trays or holders.

(i) There shall be splice-free cables within ten (10) feet of the electrode holder.

(j) The welding cable shall not coil or loop around parts of the welder's body.

(k) When welding has ceased for any substantial period of time, all electrodes shall be removed from holders. Holders shall be located so that accidental contact cannot occur.

(l) Where work permits, arc welders shall be enclosed by individual booths or non-combustible screens painted with a finish of low reflectivity such as zinc oxide or lamp black.

40 41.7. Safety Hazards.

(a) Welding, cutting, and burning shall be prohibited in dusty areas.

(b) After welding operations, the area where metal particles could come into contact with other workers, shall be posted with signs to provide warning.

(c) Welders shall report any equipment defect or safety hazard to their supervisor and discontinue welding until safety has been assured.

(d) When welding machines are used to provide an external power source, the welding

machine's 120/240 volts AC receptacles shall be provided with ground fault circuit interrupting protection.

40 41.8. Maintenance and repairs.

(a) Cylinders, valves, couplings, regulators, hoses and apparatus shall be kept free from oil, dirt, greasy substances, and maintained in good condition.

(b) Test for leaks on hoses, valves, or gauges shall be made with a soft brush and soapy water or soap suds.

(c) Welding machines, electrodes, and cables shall be examined weekly for wear and/or damage.

**§56-3-41 42. When Respiratory Equipment to be Worn; Control of Dust.**

44 42.1. Men exposed for short periods to gas, dust, fume, and mist inhalation hazards shall wear ~~permissible~~ approved respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

**§56-3-42 43 Nontitled.**

42 43.1.

(a) Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects. All equipment operators shall have the right to examine the equipment they are required to operate before such equipment is put into operation. The person performing such examination shall record his/her findings in ink or indelible pencil on a form approved by the ~~d~~Director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report form and the foreman receiving such form, shall initial upon receipt. ~~A record of all above~~ copy of all such examinations shall be maintained for thirty (30) days and made available to an authorized representative of the dDirector and to the miners at the mine to all interested persons.

(b) Immediately prior to the beginning of each working shift, equipment operated by independent contractors ~~in the removal of coal and overburden~~ on a surface mine shall be examined by the equipment operator for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the Director; such form shall be signed by the person performing the examination and such form shall remain with the vehicle for thirty (30) days and upon request be made available to an authorized representative of the Director.

(c) Imminent danger equipment defects shall be reported immediately to the mine

foreman, tagged out, and corrected before the equipment is put into operation.

(d) All mobile equipment shall be operated and maintained according to the manufacturer's instructions.

42 43.2. Operation of shovel, draglines, tractors, backhoes, loaders, etc.

(a) No person(s) shall enter the work area of any mobile equipment during operation until first making positive contact, either audible or visual, with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

(b) At startup or anytime mobile equipment is stopped, other than during the normal work cycle, Operators of shovels, draglines, and backhoes shall sound a signal distinguishable from the surrounding noise level such as a whistle, bell, horn or other approved device, before moving forward or backward, and all persons not in the clear shall respond immediately. Provided, passenger vehicles and light trucks are excluded from this requirement.

(c) Equipment operators shall not leave their cabs without lowering all raised equipment to the ground unless equipment failure is experienced.

(d) When the equipment operator is present, men shall notify him before getting on or off his equipment.

(e) Persons shall not be permitted in the immediate vicinity of shovels, draglines, and backhoes unless in the line of duty.

(f) Walkways and platforms on shovels, draglines and backhoes shall be maintained in a safe condition and shall be equipped with safe handrails, toe boards, walkways and platforms.

(g) Equipment that revolves in a horizontal arc on a turntable shall have a minimum clearance of four (4) feet from the highwall or other obstructions.

(h) The operator of shovels, draglines, and backhoes shall have a general knowledge of the location of his oiler at all times.

(i) Operators of shovels and draglines shall not leave their cabs to wet the digging brake or dog, unless the master clutch is in the "off" position. Operators of shovels and draglines shall have visual contact, when possible, with the person assigned to setting the digging brake or dog.

(j) Operators shall not leave the cab of the shovel, dragline or crane without placing the controls into the "Off" position. If the power should fail, the controls shall be placed in the "Off" position.

(k) All ropes shall be securely attached to the drum and the dipper by at least four (4) suitable wire rope clips or properly wedged. Drums shall have at least three (3) wraps of cable

on at all times.

(1) Riding a dipper or bucket shall be prohibited.

42: 43.3. Maintenance and repairs.

(a) All safety equipment on all machinery shall be maintained in a safe working condition.

(b) Mobile and stationary equipment shall be maintained in safe operating condition. ~~and~~ Equipment in unsafe condition shall be removed from service immediately.

(c) Good housekeeping shall be practiced on all equipment. All heavy duty equipment shall be cleaned as necessary to maintain the equipment reasonably free of combustible substances.

(d) Men shall not work on or from a piece of mobile equipment in a raised position until it has been securely blocked in place.

(e) No work shall be performed under machinery or equipment that has been raised until such machinery or equipment has been securely blocked in place.

(f) While greasing or doing repair work on a boom of a shovel, dragline, or backhoe, the boom shall be lowered to a position whereby the work can be done from the ground or the workmen shall use safety belts. This does not apply on shovels, draglines, or backhoes that are equipped with safe handrails or ladders.

(g) Dippers of buckets or shovels, draglines and backhoes shall be lowered for repairs.

(h) Repairs or maintenance shall not be performed on equipment until the power is off and the equipment is blocked against motion, except where the movement of the machine or parts is necessary to make adjustment.

42: 43.4. Warning devices, lights, brakes.

(a) ~~Dump trucks used to haul coal or other material~~ All mobile equipment used for loading, hauling, drilling or excavation shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.

(b) Equipment such as fork lifts, front-end loaders, tractors, dozers, and graders shall be provided with an approved audible warning device.

(c) Lights shall be provided on both ends of equipment when equipment is being worked other than during daylight hours. Also lights on both ends of equipment shall be provided during other existing conditions such as fog, etc.

(d) ~~Power driven~~ All self propelled mobile equipment shall be equipped with adequate brakes and adequate parking brakes.

42 43.5. Dump trucks and dumping.

(a) Dump bodies of trucks shall be properly blocked when raised for any purpose except dumping of load.

(b) No person shall be permitted in or on the cargo space of dump trucks while being loaded with coal or other materials.

(c) No person shall be allowed in the cab or a dump truck while the truck is being loaded with power shovel, front-end loader, or backhoe unless the cab is shielded.

(d) Truck cabs where rear vision is impaired shall be equipped with adequate rear view mirrors on both sides.

(e) The dipper of a loading shovel shall be swung over the body of the truck and not the cab.

42 43.6. Dippers.

(a) Riding on a dipper or bucket shall be prohibited.

(b) Workmen shall keep out from under suspended dippers at all times.

(c) Energized trailing cables on shovels shall not be moved with the shovel dipper unless non conductive cable slings or sleds or other approved devices are used.

(d) Operators shall not swing a dipper or bucket over passing haulage equipment.

42 43.7. Equipment generally.

(a) No equipment or machinery shall be altered or modified in a manner that reduces the level of safety.

(b) Road maintenance equipment such as graders or other equipment normally used shall be equipped with roof mounted approved flashing lights.

(c) All equipment, when equipped with a safety bar for automatic transmission, shall be set in locked position before the operator leaves the cab. Operators of dozers that are equipped with standard transmission, shall lock the park brake, place the transmission in a neutral position, and lock the clutch in before leaving the cab.

(d) All steps, ~~and handrails~~, walkways and platforms on surface mining equipment shall be maintained in a safe condition.

(e) Electrically powered mobile equipment shall not be left unattended unless the master switch is in the "Off" position. All operating controls shall be placed in neutral position, and the brakes set or other equivalent precautions taken against rolling.

(f) A tow bar or other approved device shall be used for towing equipment. A safety chain shall be used in conjunction with a tow bar.

(g) All exhaust tail pieces shall be positioned and properly maintained to prevent carbon monoxide and other toxic fumes from entering an operator's compartment.

(h) The operator of a grader shall face in the direction of travel except during grading operations in a local area.

(j) Emergency stop switches shall be provided and maintained to quickly de-energize electrically powered mobile equipment engines in the event of an emergency. The switches shall be located in the operator's cab and also at a location accessible from ground level.

(k) Electrical compartments in use on electrically powered mobile equipment shall be maintained free of dust, water, and oil accumulations. Electrical compartment panel doors shall be secured in a manner that prohibits access. Only certified electricians or a trained manufacturer's representative who is supervised by a certified electrician shall access the panels.

(l) Wheel covers (hubcaps) shall be provided for electric wheel motors, shall be maintained in good condition, and shall be adequately secured so as to prevent movement during travel.

42 ~~43~~.8. Glass, ~~and~~ doors and mirrors.

(a) Cab windows of glass on equipment shall be safety glass or equivalent material with good visibility, in good condition, not broken or cracked to such extent that it can be felt, and kept clean.

(b) When required by the ~~d~~Director, all mobile equipment shall be provided with windshield wipers and such wipers shall be maintained in good operating condition.

(c) All doors on mobile equipment shall be maintained in good operating condition.

(d) Adequate mirrors shall be maintained on all mobile equipment.

42 ~~43~~.9. Guards.

(a) Fan blades, shafts, gears, flywheels, coupling, and similar exposed moving machine parts which may be contacted by persons shall be adequately guarded.

(b) Guards installed on equipment to prevent accidental contact with moving parts shall:

- (1) Be of substantial construction;
- (2) Not have openings large enough to admit a person's hand;
- (3) Be firmly bolted or otherwise installed in stationary position; and
- (4) Be of sufficient dimension to exclude the possibility of bodily contact while in motion.

42 43.10. Operation of mobile equipment.

(a) Mobile equipment operators shall have full control of the equipment while in motion and shall operate such mobile equipment safely.

(b) The type of equipment and posted operating speeds shall be prudent and consistent with conditions of roadways, grades, clearance, visibility and traffic.

(c) All mobile equipment shall be completely stopped before a person gets on or off.

(d) No person other than the operator shall be permitted to ride in or on equipment unless in line of duty, and only then when adequate safe seating facilities are provided.

(e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated. Enclosed cabs of mobile equipment manufactured after the effective date of this Rule shall be adequately ventilated by heaters, defrosters, and air conditioners.

(f) When necessary to protect the operator of the equipment, all rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors that are used on surface coal mines shall be provided with substantial falling object protective structures.

(g) Equipment shall be operated only by persons trained in the use of and authorized to operate such equipment.

(h) Operators of all equipment shall keep a reasonable safe distance from the edge of all vertical or abrupt excavations or fills.

42 43.11. Loads.

(a) Equipment which is to be hauled shall be secured.

(b) Any load extending more than four (4) feet beyond the rear of the vehicle body shall be marked clearly with a red flag.

(c) Dump trucks shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

42 43.12. Track type dozers - track type dozers shall meet the following standards:

- (a) Adequate fan blade guards.
- (b) Track brakes shall be working properly.
- (c) Steering clutches shall be in operating condition.
- (d) Portable fire extinguisher of at least five (5) pounds.
- (e) All floor boards shall be kept secured in place.
- (f) Safety bar lever for automatic transmission shall be in working condition.
- (g) Approved warning device which the operator can operate manually.
- (h) Cab protection when the dozer is being operated near the highwall or where there is a hazard from falling material.

42 43.13. Front-end loaders - rubber tire front-end loaders shall meet the following standards.

- (a) Portable fire extinguishers, of at least five (5) pounds.
- (b) Fan blade guards.
- (c) Adequate lights.
- (d) Approved warning devices.
- (e) If loader is provided with a windshield type cab, the windshield shall be of safety type glass, or the equivalent with good visibility and shall be equipped with windshield wipers.
- (f) Steering apparatus shall be functioning properly.
- (g) Adequate foot brakes - each individual wheel brake shall be working properly.
- (h) The parking brake shall have capability equivalent to hold the vehicles stationary on ~~the a~~ a twelve percent (12%) ~~dry swept concrete~~ grade under all conditions.
- (i) The service braking system using stored energy shall be equipped with a warning device that activates when the system energy drops below fifty percent (50%) of the manufacturer's specified minimum operating energy level.

42 43.14. Machinery.

(a) All overhead belts shall be adequately guarded if the whipping action from a broken belt could be hazardous to a person below, or if within seven (7) feet of a person's work area or where persons may pass.

(b) Belt conveyors in locations where fire would create a hazard to personnel shall be provided with switches to stop the drive pulley automatically in the event of excessive slippage.

(c) Unguarded conveyor belt walkways, less than five (5) feet in width, shall be equipped with emergency stop switches or pull cord along their entire length.

~~42~~ 43.15. Hand-held tools, power tools and safety devices.

(a) Conditions of tools - all tools, power tools and similar equipment shall be maintained in a safe condition.

(b) Hand-held power tools shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety device.

(c) Employers shall not issue or permit the use of unsafe hand tools.

(d) Adjustable, pipe, end and socket wrenches shall not be used when jaws are sprung to the point that slippage occurs.

(e) Impact tools such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

(f) The wooden handles of tools shall be kept tight and free of splinters or cracks and shall be kept tight in the tool.

(g) Electric power operated tools shall be approved double-insulated or grounded type.

(h) Only proper hoisting equipment shall be used for hoisting or lowering tools. The use of hoses or electric cords for such purpose is prohibited.

(i) Pneumatic power tools shall be secured to the hose by some positive means to prevent the tools from becoming accidentally disconnected.

(j) Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools.

(k) The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

(l) All fuel powered tool engines shall cease operations while being refueled, serviced, or

maintained.

(m) When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment shall apply.

(n) Only approved fuel containers shall be used, and such containers shall be safely stored.

(o) All hand-held tools, power tools and safety devices shall be used safely and maintained in safe operating condition. This does not preclude the requirements for control locking devices as stated in 56 CSR 3-26.43(b).

#### 42 43.16. Jacks.

(a) The manufacturer's rated capacity shall be legibly marked on all lifting jacks and shall not be exceeded. All jacks shall be maintained and used in safe operating condition.

(b) All lifting jacks shall have a positive stop to prevent over-travel.

(c) Blocking - When it is necessary to provide a firm foundation, the base of the lifting jack shall be blocked or cribbed. Where there is a possibility of slippage of the metal cup or the jack, a wood block shall be placed between the cap and the load. Work shall not be performed under any machinery until the proper blocking is in place and, with the exception of a jack, tight.

#### 42 43.17. Stationary grinding machines, protective devices.

(a) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods and approved eye shields. Safety glasses, goggles, or approved face shields shall be provided by the operator and located at the grinding location and shall be worn by persons when using the machine.

(b) Adjustable tool rests shall be set as close as required to manufacturer's specifications.

(c) Grinding wheels shall be operated according to the specification of the manufacturer.

#### 42 43.18. Stationary grinding machines.

(a) Grinding wheels shall be equipped with (1) safety washers of adequate size; (2) substantial retaining hoods with maximum angular exposure of the grinding wheel periphery and sides of not more than ninety (90) degrees except that when work requires contact with the wheel below the horizontal plane of the spindle, an angular exposure shall begin not more than forty-five (45) degrees above the horizontal plane of spindle, which safety guards shall be strong enough to withstand the effect of a bursting wheel, (3) face shields or goggles, in good condition, to be worn by all operators, (4) work rests on floor and bench mounted grinders which are rigidly supported, readily available, and which shall be kept at a distance not to exceed one-eighth (1/8) from the surface of the wheel; (5) all other applicable requirements of the American National

Standards Institute Safety Code for the use, care, and protection of abrasive wheels; and (6) dust collectors or exhaust ventilation systems vented to the outside of the building. Safety hoods, (guards or flanges) shall be mounted so as to maintain proper alignment with the wheel, and shall be of sufficient strength to retain fragments of the wheel in the case of accidental breakage. All abrasive wheels shall be ring-tested before mounting to insure they are free from cracks or defects, and shall fit freely on the spindle and not be forced on.

~~(b) All grinding wheels shall be operated in accordance with the manufacturer's specifications.~~

42 43.19. Protective structures fall object and roll over protective structures - All rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors, manufactured after January 1, 1969 shall be provided with roll over protective structures.

42 43.20. Tires and repairs.

(a) A safety tire rack, cage, or equivalent protection shall be provided when inflating tires installed on split or rims equipped with locking rings or similar devices. Tires shall be deflated before repairs on them are started and means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.

(b) Heat shall not be applied to lug bolts, rims or wheels while tires are inflated.

(c) When work is being performed on models that are equipped with dual wheels both tires must be deflated for heating lugs before repair work begins. Safe means shall be provided for removing rocks or other hazardous material caught between the dual tires.

(d) No person shall be permitted in front of a tire being inflated either on or off equipment ~~and persons engaged in inflating or deflating tires shall perform such work in an area isolated from other persons.~~

(e) When fork lift trucks are used in mounting or transporting of tires, adequate means shall be taken to assure that tires are secured properly. No person shall be permitted to stand between the hub of a vehicle and fork lift truck when used to change a tire.

(f) A clip-on-air chuck shall be provided at all tire airing stations. At least six (6) feet of air hose shall be provided between the valve stem and inflation gauge.

(g) All tires shall be maintained in a safe condition according to manufacturer's specifications. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately.

43.21 Operating equipment on extreme slopes during reclamation activities.

(a) Prior to any equipment operating on an extreme slope, a meeting shall be conducted with a mine foreman and all persons involved in working on the extreme slope. A record of the meeting shall be recorded in the preshift/onshift book.

(b) No person shall work below the extreme slope equipment operator or in other areas where they could be exposed to hazards .

(c) When variables dictate some safeguard must be utilized. The following safeguards are considered acceptable: cable winching; drilling and shooting the slope to lessen the degree of the slope; benching to lessen the degree of the slope; and adding additional materials to lessen the degree of the slope. Other forms of safeguard can be utilized if they provide a equal or greater level of safety.

(d) When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow the manufacturer's specifications and limitations of the mobile equipment, wire ropes, and all attachments.

(e) When cable winching the following requirements must be met:

(1) The equipment being used to assist a dozer, or other equipment working on slopes shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.

(2) The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all equipment.

(3) Winch cables used by equipment working on slopes shall be of proper size according to manufacturer's specifications.

(4) Winch cables shall be secured to the winch assembly drum according to the manufacturer's specifications.

(5) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

(6) The live-end connection device used to secure the two pieces of equipment together shall be of a design that minimizes the possibility of accidental disconnection. The connection device shall be of the proper strength for the duties performed and maintained in safe condition according to manufacturer's specifications.

(7) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged according to the manufacturer's specifications.

(8) All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.

(f) Communications, either audible or visual, shall be maintained between equipment operators while working on extreme slopes. Under no circumstances shall an apprentice miner operate equipment on an extreme slope.

**§56-3-43-44. Ramps, Tipples, Cleaning Plants Coal Handling Facilities, and other Surface Areas.**

43 44.1. Surface installations generally.

(a) Surface installations, generally all mine structures, enclosures, and other facilities (including custom coal preparation) shall be maintained in good condition.

(b) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures.

(c) Opening in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices.

(d) Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas.

(e) Materials shall be stored and/or stacked in a manner to prevent stumbling or falling.

(f) Compressed and liquid gas cylinders shall be secured in a safe manner.

43 44.2. Machinery guards.

(a) Gears, sprockets; chains, drive, head, tail and take-up pulleys; flywheels; couplings; shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, shall be guarded adequately.

(b) Except when testing is necessary, machinery guards shall be secured in place while being operated.

(c) Belt rollers shall not be cleaned while belts are in motion.

43 44.3. Ramps and dumping.

(a) Both sides of any tippie or cleaning plant dumping ramp shall be provided with securely anchored rubbing boards of ample dimensions.

(b) An adequate dumping block at least eight (8) inches high shall be installed at all dumping points, excluding stockpiles.

(c) Adequate protection shall be provided at dumping locations where persons may be endangered by falling material.

(d) Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.

(e) After the effective date of these regulations, all power lines in dumping areas shall, be maintained at least a minimum of six (6) feet above the largest piece of equipment used at such facility, including a dump truck in a raised position.

(f) All dumping ramps shall be of sufficient width to insure safe operation of vehicles used thereon.

(g) At no time shall any person be permitted to enter onto any coal bin, coal crusher, or any other coal dumping facility for means of breaking or removing coal or other materials that is of such a size that it will not drop through the grizzly, or screening device of said dumping facility, unless the equipment has been tagged out, de-energized, and locked out with a key or other approved adequate safeguards approved by the ~~d~~Director.

(h) Ramps and dumps shall be of solid construction and have ample width, clearance and head room and be kept reasonably free of accumulations of material and spillage.

(i) Truck spotters shall be used when required by an authorized representative of the ~~d~~Director.

(j) When car couplers are to be aligned in such rotary dump areas, a hook or other device shall be used. A suitable lifting jack and handle shall be provided at any rotary dump.

#### 43 44.4. Fire protection.

(a) Where cutting or welding is performed at any location, means of prompt extinguishment of any fire accidentally started shall be provided.

(b) Adequate fire-fighting facilities, required by the ~~Department of Energy Office of Miners' Health, Safety and Training~~, shall be provided on all floors. At least two (2) exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of these regulations.

(c) Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exist.

(d) Smoking or open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(e) In structures where compressed gases are piped through permanently installed fixtures, such fixtures shall be examined daily for leaks and damage. If leaks or damage to the

fixtures are discovered, repairs shall be made immediately.

43 44.5. Repairs of machinery.

(a) Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the persons lubricating or repairing it has given a clear signal.

(b) Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

(c) Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary.

(d) Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

43 44.6. Stairs, platforms, etc.

(a) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements.

(b) Where required, elevated platforms and stairways shall be provided with toeboards. They shall be kept clear of refuse and ice and maintained in good condition.

43 44.7. Belts, etc.

(a) Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters.

(b) Belt dressing shall not be applied while in motion.

(c) Belt, chains and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums with the hand except equipment especially designed for hand feeding.

43 44.8. Conveyors and crossovers.

(a) When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started.

(b) Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction with rails and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points.

(c) A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tipple equipment is to be started.

(d) Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation.

(e) Guards, nets, or other suitable protection shall be provided where tramways or conveyor belts pass over roadways, walkways or buildings.

(f) Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

43-44.9. Tipple or cleaning operations.

(a) At least two (2) persons shall be continuously employed in the operation of a tipple or cleaning plant.

(b) Good housekeeping shall be practiced in and around tipples and cleaning plants. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails and broken glass.

(c) Adequate ventilation shall be provided in tipples and preparation plants.

(d) Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.

43 44.10. Travelways.

(a) Safe means of access shall be provided and maintained to all working places.

(b) Travelways, platforms and other access to areas where persons are required to travel or work, shall be kept free of all extraneous material and other stumbling or slipping hazards.

(c) Inclined travelways shall be constructed of nonskid material or equipped with cleats.

(d) Regularly used travelways shall be salted, sanded or cleared of snow and ice as soon as practicable.

43 44.11. Ladders.

(a) All ladders shall be securely fastened. Permanent ladders more than ten (10) feet in height shall be provided with backguards.

(b) Ladders shall be of substantial construction and maintained in good condition.

- (c) Wooden ladders shall not be painted.
- (d) Fixed ladders shall not incline backward at any point unless equipped with backguards.
- (e) Fixed ladders shall be anchored securely and installed with at least three (3) inches of toe clearance.
- (f) Side rails of fixed ladders shall project at least three (3) feet above landings, or substantial handholds shall be provided above the landing.
- (g) No person shall be permitted to work off of the top step of any ladders.
- (h) Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor.
- (i) The maximum length of a step ladder shall be twenty (20) feet and an extension ladder sixty (60) feet.

43 44.12. Hoisting.

- (a) Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted.
- (b) Persons shall stay clear of hoisted loads.
- (c) Tag lines shall be attached to hoisted materials that require steadying or guidance.
- (d) A hoist shall not lift loads greater than the rated capacity of the hoist being used.

43 44.13. Drawoff tunnels.

- (a) When it is necessary for a tunnel to be closed at one (1) end, an escapeway not less than thirty (30) inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) shall be installed which extends from the closed end of the tunnel to a safe location on the surface; and if the escapeway is inclined for more than thirty (30) degrees from the horizontal, it shall be equipped with a ladder which runs the full length of the inclined portion of the escapeway. All escapeways shall be adequately illuminated.
- (b) Tunnels located below stockpiles, and coal storage silos, shall be adequately ventilated to maintain concentrations of methane below one percent (1%) per centum.
- (c) Communications shall be provided near the entrance to the escapeways in drawoff tunnels.
- (d). A minimum of two self contained self rescuers (MSHA approved for at least twenty

(20) minutes) shall be provided at all single opening draw off tunnels (a minimum of 200 feet in length) with and escapeway at the end of the tunnel. Self contained self rescuers shall be stored near the entrance to the escapeway.

43 44.14. Ventilation and methane.

(a) Tests for methane in structures, enclosures, or other facilities where coal is stored shall be conducted by a qualified person with an approved methane detector at least once during each operating shift.

(b) Methane content in surface structures -If, at any time, the air in any enclosure contains 1.0 percent or more of methane, changes or adjustments in the ventilation of such installation shall be made at once so that the air shall contain less than one (1.0) percent methane.

(c) Dust accumulation in surface installations - Coal dust on surface structures, enclosures, or other facilities shall not be permitted to exist or accumulate in dangerous quantities.

43 44.15. Railroad equipment.

(a) Railroad cars shall be maintained under control at all times. Cars shall be dropped at a safe rate of speed and in such a manner that will insure that the car dropper maintains a safe position while working and traveling around the cars. The car dropper shall control the trip from one (1) location and not drop more cars than can be controlled from such location. A car dropper shall not drop more than three (3) cars at one (1) time with one (1) brake.

(b) Railroad cars shall not be coupled or uncoupled manually from the inside of curves unless the railroad and cars are so designed to eliminate any hazard from coupling or uncoupling cars from inside curves.

(c) No person shall ride the drawhead or coupler of a railroad car. No person other than the car dropper shall ride cars. No car dropper shall ride the end of a car about to be coupled with another car if other brakes are available.

(d) Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. A car dropper shall only in case of an emergency, get on or off a moving car.

(e) Rail cars shall not be left on side tracks unless ample clearance is provided for traffic on adjacent tracks. Parked rail cars, unless held effectively by brakes, shall be blocked securely.

(f) Railroad cars shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

(g) A minimum of thirty (30) inches continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one (1) side of the tracks; all places

where it is not possible to provide thirty (30) inch clearance shall be marked conspicuously.

(h) Roadbeds, rails, joints, switches, frogs, and other elements on railroads shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

(i) Positive - acting stopblocks, derail devices, track skates, or other adequate means shall be installed where ever necessary to protect persons from runaway railroad equipment.

(j) Switch throws shall be installed so as to provide adequate clearance for switchmen.

(k) Where necessary, bumper blocks or the equivalent shall be provided at all track dead ends.

(l) Cars shall be inspected for broken steps, platforms and brake wheels and for defective brakes before dropping.

(m) Equipment operating speeds shall be consistent with conditions of roadways, grades, clearance, visibility, traffic and the type of equipment used.

(n) Safety belts shall be worn and properly attached by all car droppers handling railroad cars. All such belts shall be of a design to allow maximum safety to provide for immediate uncoupling.

#### 43 ~~44~~.16. Railroad track construction and maintenance.

(a) All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained. Rails shall be secured at all points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

(b) All points shall be installed and maintained so as to prevent bad connections. Varying weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the trucks of the track mounted equipment.

(d) Severely worn or damaged rails and ties shall be replaced immediately.

(e) When mining operations are performed within any twenty-four (24) hour period, operations shall be inspected at least every twenty-four (24) hours to assure safe operation and compliance with the law and regulations. The results of which inspection shall be recorded.

(f) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten (10) feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten (10) feet shall be provided with back guards. Walkways around thickness that are less than four (4) feet above the walkway shall be adequately guarded. Employees required to work over thickener shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

**§56-3-44 45. Coal Storage Bins; Recovery Tunnels; Coal Storage Piles.**

44 45.1.

(a) Coal storage bins hereafter constructed with vertical sides fifty (50) feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

(b) Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.

(c) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty (30) inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(d) Extreme caution shall be exercised by all employees required to work at or near coal storage piles during coal recovery operations to avoid injury by coal slides or by being in or drawn into a chute.

**§56-3-45 46. Fire Protection.**

45 46.1. Fire extinguishers.

(a) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment. This requirement is also applicable to mobile equipment equipped with fire suppression systems.

(b) All portable fire extinguishers on equipment shall be properly secured.

45 46.2. Flammable liquids.

(a) Flammable liquids, such as oils, greases, gasoline and such other like materials shall be stored in buildings, compartments or closed containers used for this purpose only.

(b) The storage of surplus gasoline, oil, or other fuels, other than that which is in the fuel tank, shall be prohibited on any piece of equipment except for diesel equipment using gasoline starting engines, in this instance one (1) extra gallon of gasoline in an approved safety can (flash arresting screen with self-closing lid) may be stored on the equipment securely fastened in a location on the equipment out of the way of moving objects.

(c) Flammable liquids shall not be used to clean machinery.

(d) Combustible materials, grease, lubricants, paints, flammable liquids, shall not be permitted to accumulate where fire hazards exist.

~~45~~ 46.3. Fueling and storage.

(a) Internal combustion engines, except diesels, shall be shut off and stopped before being fueled.

(b) Areas surrounding flammable liquid storage tanks, electric substations and transformers shall be kept free from grass, (dry) weeds, underbrush, and other combustible materials, for at least twenty-five (25) feet in all directions.

(c) Fuel lines on fuel storage tanks shall be equipped with valves to cut off fuel at the source and shall be located and maintained to minimize fire hazard.

(d) Smoking and use of open lights are prohibited in all places in which flammable materials are stored and in other places where there is a fire hazard.

~~45~~ 46.4. Maintenance of fire fighting equipment.

(a) Fire fighting equipment shall be continuously maintained in a usable and operative condition. Fire extinguishers shall be examined at least once every six (6) months. The date of such examination shall be recorded on a permanent tag attached to the extinguisher.

~~45~~ 46.5. Warnings - Warning signs prohibiting smoking and open flames shall be posted where they can be readily observed in areas or locations where fire or explosion hazards exist.

~~45~~ 46.6. Drills - Fire drills and demonstrations with various types of available fire-fighting equipment shall be held for employees at least once annually. A record of such demonstration shall be recorded.

**~~§56-3-46~~ 47. Duties of Persons Subject to Article; Rules and Regulations of Operators.**

~~46~~ 47.1.

(a) It shall be the duty of the operators, mine foremen, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provision of these rules and regulations.

(b) It shall be the duty of all employees to comply with these rules and regulations and to cooperate with management and the ~~Department of Energy~~ Office of Miners' Health, Safety and Training in carrying out the provisions hereof.

(c) Reasonable rules and regulations of an operator for the protection of employees and preservation of property that are in harmony with the provisions of these rules and regulations shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous place about the mine or mines, and given to each employee upon request.

**§56-3-47 48. Protective Equipment and Clothing.**

47 48.1. Eye protection.

(a) Welders and helpers shall use adequate shields or goggles to protect their eyes.

(b) All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

47 48.2. Clothing.

(a) Employees engaged in haulage operations and all other persons employed around moving equipment shall wear snug-fitting clothing.

(b) Protective gloves shall be worn when material which may injure hands is handled. Gloves with gauntleted cuffs shall not be worn around moving equipment.

47 48.3. Safety hats and safety toed shoes.

a) Safety hats and safety toed shoes shall be worn by all persons while in or around a surface mine, tipples or cleaning plants coal handling facilities, and other surface areas. ~~Safety toed shoes shall be worn by all persons while in or around a surface mine, tippie or cleaning plant.~~

(b) ~~All surface mine employees shall be required to wear safety helmets when working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns: **Provided,** That such employees shall not be required to wear such safety helmet hats while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National Standards Institute, Safety Requirements for Industrial Head protection, Standard Z89.1, unless the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training finds that the dangers set forth herein may be present: **Provided, however,** That such employees shall be required to wear safety helmets hats while not operating such equipment including periods of travel to and from such equipment. The safety helmets hats required hereunder shall meet the specifications for such helmets hats as prescribed by the mine health and safety administration. **Provided, however, Requirement for hard hats and boots shall**~~

not apply to persons working in mine offices.

47 ~~48~~.4. Life jackets and belts.

(a) Persons shall wear safety ~~belts~~ harnesses and lifelines where there is a danger of falling. A person shall continuously tend the lifeline when bins, tanks, auger holes, or other dangerous areas are entered.

(b) Life jackets or ~~belts~~ safety harnesses shall be worn where there is a danger from falling into water.

**§56-3-48 ~~49~~. First Aid Equipment.**

48 ~~49~~.1. First aid stations and equipment - Each operator of a surface coal mine, tipple, and preparation plant shall maintain a supply of first aid equipment. First aid equipment shall be located within one thousand (1,000) feet of the working pit, unless a ten (10) unit first aid kit is provided in the pit. When ten (10) unit kits are provided in the pit, such first aid equipment may be maintained within two thousand (2,000) feet of the pit area.

First aid equipment shall contain the following:

- (1) One stretcher.
- (2) One broken-back board, or approved combination stretcher.
- (3) Twenty-four triangular bandages.
- (4) Eight four-inch bandage compresses.
- (5) Sixteen two-inch bandage compresses.
- (6) Twelve one-inch adhesive compresses.
- (7) One foille.
- (8) Two approved blankets.
- (9) One rubber blanket.
- (10) Two tourniquets.
- (11) One one-ounce bottle of aromatic spirits of ammonia.
- (12) Two inflatable plastic leg splints.
- (13) Two inflatable plastic arm splints.

(14) Six small splints, metal or wooden.

(15) Two cold packs.

48 49.2. Proper storage of first aid supplies. All first aid supplies required to be maintained shall be stored in suitable sanitary, dust-tight, moisture proof containers. First aid supplies shall be accessible to the miners.

48 49.3. Emergency arrangements.

(a) Each operator of a mine shall make arrangements with a licensed physician, medical service, medical clinic, or hospital to provide emergency medical assistance while any person is on duty at a mine.

(b) Each operator of a mine shall make arrangements with an approved ambulance service or otherwise provide for an approved emergency transportation while any person is on duty at a mine.

(c) Each operator shall have arrangements made with an ambulance service, or other emergency transportation facilities for injured persons to be transported from the work site to a licensed physician, medical service, medical clinic, or hospital provided pursuant to subsection (b) above, while people are actually employed at the operation.

(d) Each operator of a surface coal mine shall immediately after making arrangements required under this section, or immediately after any change of such agreement, post at the appropriate places at the mine, the names, titles, addresses, and telephone numbers of all persons and/or services currently available under such arrangements to provide medical assistance and transportation of injured persons at the mine.

48 49.4. Emergency communications.

(a) Each operator of a surface mine shall provide two (2)-way communication at all times miners are present between all work sites at the mine and an emergency communication center which may be at the mine office or elsewhere at the mine.

(b) Each operator of a surface coal mine shall establish and maintain a direct two-way (2) communication system from such emergency communication center at the mine to the nearest point of medical assistance for use in an emergency. Except as hereinafter provided, such emergency communication system shall be by telephone. If telephone communication from the emergency communication center to the nearest point of medical assistance is not possible at any one (1) mine, the Director may allow by permit such communication by radio transmission to any emergency assistance facility (e.g. state police, sheriff, local hospital) which has available the means of communication with the person or persons providing the requisite emergency medical assistance or transportation.

**§56-3-49 50. Thermal Coal Dryers and Plants.**

49 50.1. Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with the following provisions.

- (a) Good housekeeping shall be practiced in and around thermal dryer plants.
- (b) Adequate fire-fighting facilities shall be provided on all floors.
- (c) When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate fire-fighting apparatus shall be readily available during the operation.
- (d) Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.
- (e) Dryer control panels shall be provided with audible and visible alarm devices; such devices should be adjusted to function at somewhat less than maximum dryer temperature.
- (f) A bypass or relief stack equipped with an automatically operated damper shall be provided for by passing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.
- (g) Thermal coal dryers hereafter installed shall not be enclosed except that roof may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fire proof structure.
- (h) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.
- (i) Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.
- (j) Dryers shall be equipped with quick-response heat control devices which in the event of super elevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.
- (k) All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.
- (l) Dryers shall be examined thoroughly after normal and emergency shutdown for fires

and coal dust accumulations.

(m) Dryer controls, valves, and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

(n) The gauges of temperature control instruments shall be of the recording type.

(o) Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

(p) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

(q) Adequate illumination shall be provided.

(r) Dryers shall not be operated beyond their rated evaporation capacity.

(s) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

(t) After shutdown, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding start-ups.

(u) Thermal coal dryers previously installed in a tippie of cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

(v) When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer bins or any other dusty area, permissible cap lamps shall be used for illumination.

**§56-3-50 51. Explosion or Accident; Notice: Investigation by Department of Energy Office of Miners' Health, Safety and Training.**

50 51.1. Whenever, by reason or any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and in his absence, the mine foreman in charge of the mine, to give immediate notice to the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go the scene of such accident and make such recommendations and render such assistance as he may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he shall preserve with the other records of his office, the cost of such records to be paid by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, and a copy shall be furnished to the operator and other interested parties. To enable him to make such investigation, he shall have the power to compel the attendance of witnesses and to

administer oaths or affirmations. The Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall have the right to appear and testify and to offer any testimony that may be relevant to the question and to cross-examine witnesses.

**§56-3-~~51~~ 52. Preservation of Evidence Following Accident or Disaster.**

~~51~~ 52.1. Following a mine accident resulting in the death of one (1) or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training has been completed.

**§56-3-~~52~~ 53 Monthly Report by Operator.**

~~52~~ 53.1. The operator of every surface mine shall, on or before the end of each calendar month, file with the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training a report covering the preceding calendar month on forms furnished by the ~~d~~Director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined, on each permit issued by the Department of ~~Natural Resources~~ Environmental Protection.

**§56-3-~~53~~ 54. Emergency Medical Personnel.**

~~53~~ 54.1. Emergency personnel in coal mines.—~~e~~Emergency medical personnel shall be employed in every mine in the state. On or before the first day of July, one thousand nine hundred seventy-eight (1978), at least one (1) emergency medical attendant as defined in section 2(16-4C-2), article 4C, chapter 16 of this Code, paramedic as defined in section 2 (30-3b-2), article 3B, chapter 30 of this code, or physician assistant as defined in section 1 (30-3a-1), article 3A, chapter 30 of this code, shall be employed at a mine for every seventy (70) employees or any part thereof who are engaged at one (1) time, in the extraction, production or preparation of coal: **Provided**, That the provision of this section shall not apply to mines employing no more than ten (10) employees.

Said emergency medical attendants shall be employed at their regular duties at a central location convenient for quick response to emergencies, and further shall have available to them at all times such equipment as shall be prescribed by the ~~d~~Director, in consultation with the Secretary of the Department of Health and Human Resources.

**§56-3-~~54~~ 55. First Aid Training of Coal Mine Employees.**

~~54~~ 55.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his employment with the opportunity for first aid training as prescribed by the ~~d~~Director unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first aid training of not less than five (5) hours within each twenty-four (24) months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training.

**§56-3-55 56. Certificate of Competency and Qualification or Permit of Apprenticeship Required of on all Surface and Underground Mines.**

~~55~~ 56.1. Except as hereinafter provided, no person shall work or be employed as a surface miner for the purpose of performing normal duties as at a surface or underground miner in any mine in this State unless he holds at the time he performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of Chapter 22A, Article 2 of the West Virginia Code.

**§56-3-56 57. Permit of Apprenticeship - Surface Miner.**

~~56~~ 57.1. A permit of apprenticeship - surface miner, shall be issued by the ~~d~~Director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tippie safety, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: **Provided**, That each applicant for said permit shall complete a program of education and training of at least forty (40) hours, which program shall be determined by the board of miner training, education and certification and provided for and implemented by the ~~d~~Director of the ~~Department of Energy Office of Miners' Health, Safety and Training~~: **Provided, however**, That if a sufficient number of qualified applicants having successfully completed the state training provided by the state ~~Department of Energy Office of Miners' Health, Safety and Training~~ are not available, the operator may request approval from the ~~d~~Director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided by the state.

**§56-3-57 58. Supervision of Apprentices.**

~~57~~ 58.1. Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one (1) person working with him, and under his supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or assistant mine foreman may have three (3) persons working with him under his supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: **Provided**, That a mine foreman, assistant mine foreman supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five (5) apprentices under his supervision and direction, as apprentices for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the board of miner training, education and certification.

~~57~~ 58.2. Every apprentice working at a surface mine shall be at all times under the supervision, ~~and control,~~ and in communication with ~~of~~ at least one (1) person who holds a certificate of competency and qualification.

In all cases, it shall be the duty of every miner operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such person in safe mining practices. Each apprentice shall wear a red hat which identifies him as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

**§56-3-~~58~~ 59. Certificate of Competency and Qualification - ~~Underground or Surface Miner.~~**

~~58~~ 59.1. A certificate of competency and qualification as an underground miner or as surface miner shall be issued by the ~~d~~Director to any person who has at least six (6) months total experience as an apprentice and demonstrated his competence as a miner by successful completion of an examination given by the ~~d~~Director or his representative in a manner and place to be determined by the board of miner training, education and certification: **Provided**, That all examinations shall be conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees: **Provided, however**, That notice of the time and place of such examination shall be given to management at the mine, to the local union there if there is a local union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

**§56-3-~~59~~ 60. Refusal to Issue Certificate; Appeal.**

60.1. If the ~~d~~Director or his representative finds that an applicant is not qualified and competent, he shall so notify the applicant not more than ten (10) days after the date of examination.

Any applicant aggrieved by an action of the ~~d~~Director in failing or refusing to issue a certificate or qualification and competency may, within ten (10) days of notice of the action complained of, appeal to the ~~d~~Director who shall promptly give the applicant a hearing and either affirm the action or take such action as should have been taken.

**§56-3-~~60~~ 61. Limitations of Article.**

61.1. All persons possessing certificates of qualification issued by the Office of Miners' Health, Safety and Training of this State, entitling them to act as mine foreman fire bosses; or assistant mine foreman fire bosses; shall be eligible to engage at any time as miners in the mines of this State. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, shall not be required to possess a miner's certificate.

Notwithstanding the provisions of Chapter 22A, ~~Article 3~~, every person working as a surface

miner in this State on or before the first day of July, one thousand nine hundred and seventy-four (1974) shall, upon application to the ~~d~~Director, be issued a certificate of competency and qualification.

**§56-3-~~61~~ 62. Violations; Penalties.**

~~61~~ 62.1. Any person who knowingly works in or at a mine without a certificate issued under the provisions of this article, any person who knowingly employs an uncertified miner to work in or at a coal mine in this State, or, any operator who fails to insure the supervision of miners holding a certificate of apprenticeship as provided for in section five (22-6-5) of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).

**§56-3-~~62~~ 63. Operators Filing of Plans - Oil and Gas Wells.**

~~62~~ 63.1. Before a coal operator conducts surface or strip mining operations as ~~defined in article 6, chapter 20 of this code,~~ within two hundred (200) feet of any well, including the removal of coal and other material, the operator shall file with the Department of Energy Office of Miners' Health, Safety and Training and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred (200) feet of the well, together with a notice, or a form furnished by the Department of Energy Office of Miners' Health, Safety and Training, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum insurance coverage required by article ~~6-3,~~ chapter ~~20~~ 22 of this code, and the rules and regulations promulgated thereto and thereunder.

Once these mining maps and plans are filed with the Department of Energy Office of Miners' Health, Safety and Training, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.

**§56-3-~~63~~ 64. Annual Examination of Persons Using Flame Safety Lamps Approved Detectors; Record of Examination; Maintenance of Methane Detectors, Etc.**

~~63~~ 64.1. No person shall be qualified for testing for methane and for oxygen deficiency unless such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the Department of Energy Office of Miners' Health, Safety and Training that he is qualified to test for methane with an flame safety lamp or other approved methane detector. Records of such examinations shall be kept by the operator and the Director of the Department of Energy Office of Miners' Health, Safety and Training.

Persons whose duties require them to use an flame safety lamp and other approved detector;

that have been qualified by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified surface mine foreman, and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance and care of the permissible ~~flame safety lamp or any other~~ approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and before each shift, care shall be taken to insure that such ~~lamp or other~~ device is in a permissible condition.

~~Flame safety lamps~~ Approved detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the ~~Director of the Department of Energy~~ Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

**From:** Barry Koerber  
**To:** Elaine Skorich; ronald.l.wooten@wv.gov  
**Date:** 6/30/2010 3:33:43 PM  
**Subject:** Fwd: Comments to Title 56, Series 3 Proposed Rules

Barry L. Koerber  
Assistant Attorney General  
1615 Washington Street, East  
Charleston, WV 25311  
Ph: (304) 558-1425  
Fax: (304)558 -1282  
Fax: (304) 558-0140

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>>> "Chris R Hamilton" <chamilton@wvcoal.com> 6/30/2010 3:31 PM >>>  
June 30, 2010

Director Ron Wooten

WV Office of Miners' Health, Safety and Training

1615 Washington Street East

Charleston, WV 25311

RE: Comments to Title 56, Series 3 Proposed Rules Governing the Safety of Those Employed In and Around Surface Mines in West Virginia

Dear Director Wooten:

Please accept the following comments on behalf of the West Virginia Coal Association to the above set of proposed administrative rules and regulations.

We appreciate the opportunity to work with you and your staff over the past several months to generally update and revise the general provisions of the state's surface safety rules.

As a general comment, it appears that some progress has been made in the draft rules as compared with the earlier version that was advanced for review and comment in 2009. However, given the voluminous and complex

nature of many of the proposed changes along with the new provisions, we feel it is necessary to allow additional time to prepare specific comments on the entire rule proposal.

We would also recommend that the work group comprised of state, labor and industry representatives that was assigned the task of developing recommendations for your consideration be reconvened to complete this task.

We also raise the following points for your consideration:

1. We frankly question the underlying need or desirability of many of the proposed rule changes and new provisions of law within this proposal. We would observe for the record that these changes were not advanced to the State Board of Coal Mine Health & Safety or the Legislature for their consideration which brings into question whether valid safety concerns are prevalent with existing law.
2. We also question whether adequate authority exist for the Agency to unilaterally propose and promulgate new safety standards, new miner certifications and training requirements. It would appear that this rule making is in conflict with the role and statutory authority of the WV Board of Coal Mine Health and Safety and the WV Board of Miner Training, Education & Certification. It would appear that some discussion between these entities should occur to assure that the promulgation of this rule is legally supported and not in conflict with other rulemaking activities.
3. lastly, we note for the record that the agency neglected to analyze and present a "fiscal impact" of these proposed requirements on the regulated industry, a basic requirement under the State's Administrative Procedures Act. We submit for your consideration, that the fiscal impact will be significant in both the outlay of new capital and in dedicating additional resources towards compliance demands necessitated by this rule-making.

Sincerely,

Chris Hamilton



## *State of West Virginia*

**Joe Manchin III, Governor**

**WV Office of Miners' Health, Safety & Training**

**Ronald L. Wooten, Director**

1615 Washington Street East • Charleston, West Virginia • 25311-2126

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[www.wvminesafety.org](http://www.wvminesafety.org)

### **Responses to Comments from Chris Hamilton dated June 30, 2010**

**Comment:** As a general comment, it appears that some progress has been made in the draft rules as compared with the earlier version that was advanced for review and comment in 2009. However, given the voluminous and complex nature of many of the proposed changes along with the new provisions, we feel it is necessary to allow additional time to prepare specific comments on the entire rule proposal.

**Response:** OMHST submitted proposed surface regulations in 2009 which were voluntarily rescinded in response to the industry's request for additional time for comment and for time to work together on the rules. A committee of OMSHT personnel, industry representatives, and union members worked from January 2010 through May 2010 on the new rules. In addition, more than 30 days was given for public comments (from May 26, 2010 through June 30, 2010.) Therefore, OMHST feels that the coal industry was given approximately six months to participate in and review the proposed regulations.

**Comment:** We would also recommend that the work group comprised of state, labor and industry representatives that was assigned the task of developing recommendations for your consideration be reconvened to complete this task.

**Response:** The work group comprised of state, labor, and industry representatives completed its task in May of 2010 by mutual agreement; therefore, reconvening is not warranted.

**Comment 1:** We frankly question the underlying need or desirability of many of the proposed rule changes and new provisions of law within this proposal. We would observe for the record that these changes were not advanced to the State Board of Coal Mine Health & Safety or the Legislature for their consideration which brings into question whether valid safety concerns are prevalent with existing law.

**Response 1:** The current surface regulations have not been updated since 1983. There have been significant changes in the mining industry and technology which are not reflected in the current regulations and which need to be addressed. Regarding OMHST's authority to promulgate said rules, see W. Va. Code § 22A-1-38. Moreover, pursuant to Brian Skinner of the Legislative Rule Making Committee in 2009, OMHST indeed has authority to promulgate surface mine regulations.

**Comment 2:** We also question whether adequate authority exist for the Agency to unilaterally propose and promulgate new safety standards, new miner certifications and training requirements. It would appear that this rule making is in conflict with the role and statutory authority of the WV Board of Coal Mine Health and Safety and the WV Board of Miner Training, Education & Certification. It would appear that some discussion between these entities should occur to assure that the promulgation of this rule is legally supported and not in conflict with other rulemaking activities.

**Response 2:** See W. Va. Code § 22A-1-38.

**Comment 3:** lastly, we note for the record that the agency neglected to analyze and present a "fiscal impact" of these proposed requirements on the regulated industry, a basic requirement under the State's Administrative Procedures Act. We submit for your consideration, that the fiscal impact will be significant in both the outlay of new capital and in dedicating additional resources towards compliance demands necessitated by this rule-making.

**Response 3:** W. Va. Code § 29A-3-4(b) states, "All proposed rules filed under subsection (a) of this section shall have a fiscal note attached itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rules and regulations. Such fiscal note shall include all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents. The objectives of the rules shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules. **No procedural or interpretive rule shall be void or voidable by virtue of noncompliance with this subsection.**" [Emphasis added.] OMHST included a fiscal note with its filing of the proposed rule; however, the economic impact persons affected by the rules and regulations cannot be determined until such rules are implemented. Moreover, the proposed regulations are not void or voidable without the inclusion of a specific dollar amount.



## Alpha Natural Resources

June 25, 2010

To: West Virginia Office of Miners' Health, Safety, and Training

1615 Washington Street, East

Charleston, WV 25311

Subject: Comments on Proposed Title 56 Series 3 West Virginia Surface Mine Regulations dated May 26, 2010

To Whom It May Concern:

Please accept our following comments concerning the above proposed regulations. This is an extensive re-write of current enforcement schemes that will substantially increase the likelihood of numerous citations to be issued due to ambiguous and un-defined terms that will leave arbitrary judgment calls to be made in the field. At a time in our industry where it seems that everyone wants to eliminate coal production, this new enforcement scheme is being offered as a means to "simply" update the current regulations which is not the case.


Let us begin by saying this is not the time to completely rewrite Title 56-3 of the West Virginia Surface Mine Regulations. The surface mine industry in West Virginia is fighting for survival. These proposed new regulations as currently written will not provide for additional safety of mining personnel. The surface mine industry in West Virginia has shown great achievements in safety and thus does not warrant such drastic proposed changes.

Collectively, as surface miners, with over 50 years of experience we agree that some changes need to be made, but not such a complete and drastic rewrite. In times past, the Coal Mine Safety Board has been the entity in the State to develop and implement new rules and regulations that are written to improve the safety and health of the miner. In this particular case, the Coal Mine Safety Board has not been involved in the development of these rules and the injury performance of the surface mine industry in this State has been exemplary in the recent past which does not warrant such a drastic overhaul of existing law.

We have identified several vague and technical defects in the proposed rule and have included them on the attached pages. When considering these comments that will help mitigate the in-adequacy of the proposed rule, it is our belief you will agree with our comments. Many of the proposed rules will require thousands of dollars of investment made that will be perpetual going forward such as providing gloves for workers to prevent injuries that have yet to occur in a particular type of mining. This is but one example! There are others as well. Finally let us say also that there is an old adage that also is applicable to this proposed rule, and that is "if it ain't broke, don't fix it!" We truly believe this is the logic that should be used and this entire proposal should be scrapped and started over with an

atmosphere that we want to actually improve mine safety not increase enforcement revenue. The two proposed changes that form the basis of the rewrite which are High Wall Mining and Extreme Slope Work in the summary of the rule and statements of facts and circumstances are not the only changes proposed. To only consider these changes in and of themselves would be one matter but there are hundreds of other changes that are not identified as being the necessary methodology warranted for this massive re-write of the current regulations that are working fine and creating a safe workplace for thousands of surface miners in our state. We strongly urge that our comments and suggested changes not only be heard and considered but implemented if this rule continues to be advanced to the Legislature for approval.

Thank You,



Ken Perdue

Director of Operations Safety, Alpha Natural Resources



Brian Keaton

Director of Industrial Hygiene, Alpha Natural Resources



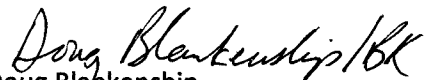
Michael Vaught

Safety Director, Northern WV Operations




Terry Keen

Safety Director, Simmons Fork Mining Company, LLC



Doug Blankenship

Safety Director, Callaway Mining Company, LLC.



Donald C. Presley

Safety Director, Southern WV Operations

3.4. Adequate – The term “Adequate” shall mean sufficient for a specific requirement. (The term needs removed, too vague, why add this definition as it has no value to the regulations.)

3.6. Approved. -- The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject. (remove in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject. This is too broad and not specific to MSHA and/ or the State of WV.)

3.10. Barricaded. -- The term "Barricaded" shall mean to obstruct passage of person, vehicles, or flying materials. (how can flying materials be barricaded??) Suggest “Barricaded” shall mean to obstruct passage of person or vehicles to an area which is practical and what it should mean.

3.12. Berm. -- The term “Berm” shall mean a pile or mound of material or equivalent capable of restraining a vehicle. (Berms are not intended to prevent restraining of a vehicle, they are a warning device. Suggest we use MSHA explanation in MSHA program policy manual: "Berm," as used in this Section, means a pile or mound of material at least axle high to the largest piece of equipment using such roadway and as wide at the base as the normal angle of repose provides. Where guardrails are used in lieu of berms, they shall be of substantial construction.

3.21. Brake systems:

(a) Service brake system - the primary brake system used for stopping a vehicle.

(b) Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system. Emergency stopping system is an undefined term and not provided on any vehicle of any type in the industry and should be removed from the regulation. Furthermore we are not aware of any manufacturer offering or having designed such system.

3.24. Case Insert. – The term “Case Insert” shall mean a set of printed, precautionary instructions, including the IME “Instructions and Warnings” which is included in a case of explosive materials. This should be removed from regulation due to being too broad and vague and provides no value to the user.

3.43. Extraneous Electricity. – The term “Extraneous Electricity” shall mean electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields. How should this be tested, when should it be tested and what tools are available to the industry for testing.

**Suggested changes in wording of the following regulations to read as listed:**

3.56. Interested Persons. -- The term "Interested Persons" shall include the operator, members of any mine safety committee and/ or other duly authorized representative of the mine workers at the mine affected and ~~Department of Energy~~ the Office of Miners' Health, Safety and Training.

3.65. Misfire. – The term “Misfire” shall mean a blast or specific borehole that failed to detonate as planned. One cannot determine if all material detonated in a drill hole until the excavation process has begun.

3.85. Surface Mine. -- The term "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, and shops ~~which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.~~ "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

3.88. Tension Crack. – The term “Tension Crack” shall mean a crack resulting from movement of material in a fill or outer bank of a roadway that indicates failure of the stability of the material. (This definition would be consistent with the proposed regulation 56-3-30.8.)

**§56-3-13. Findings Orders and Notices. This section should be removed from Title 56, Senate Bill 68 passed in 2007 addresses all issues with findings, orders and notices under 22a-1-15 and makes it un-necessary to repeat it again.**

**§56-3-23. Certification of Mine Foreman or Assistant Mine Foreman Whose License to Engage in Similar Activities Suspended in Another State.**

~~23.1. Any person whose license, certificate or similar authority to perform any supervisory duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.~~

Any person whose license, certificate or similar authority to perform any examination duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.  
Suggested wording.

27.1. Pre shift examination.

(a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine ~~highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions~~ all active working places at the surface mine. (active working places includes where persons are required to work or travel)

(c) The operator shall have weekly safety meetings with all employees which shall provide information/training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept for 30 days (same as equipment pre-shift, this will be 4 safety meetings) and made available to all interested persons and a representative of the Director upon request.

27.2. On-shift examination.

(a) The mine foreman or assistant mine foreman shall examine all active working places ~~in the pit at the surface mine~~ (active working places includes where persons are required to work or travel) under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all conditions entered in the record book by the mine foreman or his assistants on the prior shift.

### 30.8. Dump areas.

- (a) Safety berms shall be provided at the edge of all fill areas to prevent over-travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. What is the definition of safe angle of repose or steep slope? Instrumentation must be used to determine not by eye sight.

e) During or after a significant rain event special precautions shall be taken prior to dumping to prevent water from impounding near the edge of the fill

### 32.2. Transportation of explosives - precautions.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ (Safe roads are not defined this should removed from proposed regulation.)

### 32.3. General requirements - explosives.

~~b) Previously frozen explosives of nitroglycerin base shall not be used. The transportation, storage, handling, and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives, Safety Library Publication No. 4 "Warnings and Instructions." ( The safe transportation of explosives is defined in 32.2 of this existing code and therefore is not needed again)~~

e) The use of explosives and ~~all~~ handling incident thereto, ~~will~~ shall be discontinued ~~during the approach of and during whenever a thunderstorm and/or electrical storms is detected~~ and all personnel shall be withdrawn from the blast area.. (Drills are grounded, if area is withdrawn why take the time to lower mast and place someone in harm's way.)

(g) Explosives and detonators shall be kept a safe distance ~~kept a safe distance~~ from the ~~of highwalls and spoil banks.~~ (Original code is better.)

~~(h) The backing of drills over loaded holes shall be prohibited.~~ Mobile equipment and vehicles shall not be trammed or driven over loaded holes, firing lines, detonator wires, explosives, blasting agents, and detonators.

#### 32.4. Shooting preparation.

(c) Only drills, explosives trucks, mobile equipment suitable for hole stemming, and equipment necessary ~~No equipment except the drill and explosive truck, other than necessary equipment~~ for road repairs to remove the drills or explosive trucks, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. Excavations shall not occur if there is a danger of intersecting a known loaded or a misfired hole. Mobile equipment such as small front end loaders and other suitable hole stemming equipment shall be allowed to assist hole stemming procedures where adequate hole diameters are drilled and an adequate distance is provided between holes and rows of holes to ensure the safe operation and movement of equipment. The use and operation of all equipment used to stem holes shall be under the direct supervision of a certified blaster. ~~Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized.~~ When the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present within three hundred (300) feet and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

(d) Holes shall not be drilled if there is danger of intersecting a **known** loaded or a misfired hole. When drill(s) are being operated on a bench being loaded, a minimum of one hole around the perimeter of the drill shall remain unprimed and unloaded.

(q) When loading beneath highwalls, the highwall shall be carefully inspected by the blaster in charge and the supervisor before beginning the loading process. If it cannot be determined that the highwall is safe then holes will not be loaded in that area until the highwall deficiency can be corrected.

32.5. ~~Shooting Cables. Firing/Lead lines.~~

(i) All persons involved with the blasting procedure of remote control detonation systems shall be properly trained and familiar with the manufacturer's instructions. A record of such training shall be kept for one (1) year and made available to all interested persons and a representative of the Director upon request

32.6. Blasting.

3. The location of the unfired loaded holes shall be documented in the pre-shift/on-shift examination book and all affected personnel shall be notified of the location unfired holes

~~4. All personnel on affected shifts shall know the route in which to travel to a safe location in the event unforeseen circumstances (electrical storms, unstable highwalls, etc.) arise while working in the area of unfired loaded holes. Entire section should be removed~~

(h) When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of workers. This plan will be made available to the authorized representative of the director.

34.2. Haulage roads - construction and maintenance.

(h) Haulage roads, intended for coal or overburden haulage shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

~~(j) All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplementary emergency braking system. When required by the Director or his authorized representative approved runaway roads or suitable equivalent shall be provided on all haulage roads that have grades that are in excess of 10% and where a hazard is present due to the grade of the road, on which coal is first hauled from such surface mine after the effective date of this section~~

34.3. Haulage equipment - construction and maintenance.

(b) All new off road haulage vehicles placed into service shall be equipped with an emergency steering There are no emergency braking systems for large haul trucks!

(e) ~~Where required by the director or his authorized representative runaway roads or "J" roads shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section. All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplemental emergency braking system. There are no supplemental emergency braking systems available to any type of haulage trucks currently!~~

#### 34.5. Parked vehicles.

(b) No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position. (overcrowding shall mean persons would not be afforded a proper seat for their own person.)

#### 35.5. Methane and oxygen.

- (a) Auger mining equipment shall not be operated in the vicinity of auger holes emitting ~~dangerous~~ quantities of methane at 1% or more ~~or air~~ until the atmosphere is reduced below 1%.
- (b) (d) Auger mining machines shall be equipped with a permissible ~~flame safety lamp or other detector approved by the director~~ approved methane and oxygen detector.

**§ 56-3-36. Highwall Mining IT IS SUGGESTED THIS ENTIRE PROVISION BE REMOVED FROM THIS RULE AS IT IS ALMOST EXCLUSIVELY DIRECTED AT ONE TECHNIQUE OR STYLE OF HIGHWALL MINING WHILE NOT REGULATING THE OTHER STYLE HARDLY AT ALL. ALL OF THESE PROVISIONS CAN BE INCORPORATED IN A MINE SPECIFIC COAL MINE COMPREHENSIVE SAFETY PROGRAM THAT IS ALREADY REQUIRED.**

#### 36.1 General Precautions

(a) Highwall mining systems shall utilize water sprays and/or dust collectors to control dust as much as practical. Suggested wording.

(b) ~~Dust shall be controlled by the use of permissible dust collectors or other methods.~~  
Now listed in (a) above.

(f) The pit in which the highwall miner is being used shall be of a width to safely operate all equipment used during the mining process. This does/should not apply to pre-law benches.

(h) Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the highwall miner openings and to within one thousand (1000 feet) of the

active workings, unless DEP permits require otherwise due to water quality Adequate precautions shall be taken to insure against unauthorized entry when any highwall miner

~~openings are not blocked~~—This needs to be stricken from the rule as it is not lawful to enter the opening.

(k) ~~At the close of the highwall mining operation, maps shall be submitted to the Office of Miners' Health, Safety and Training for map archiving purposes showing the records in 56 CSR § 3-36.1(k) in a manner such that the maps can be referenced to the West Virginia State Plane Coordinate System. Mining that has occurred after the effective date of these regulations shall be certified by a West Virginia Registered Professional Engineer~~. This needs removed as one can't certify these accurately. A combination of approximate and surveyed locations is permitted, so long as the certified map clearly denotes such. These distances will always be approximate and therefore an engineer should not be required to certify such maps.

(m) ~~A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment~~ Existing regulations already require this and it is in conflict with MSHA regulations.

### 36.2 Proximity To Underground Workings

(a) No person(s) shall enter a highwall miner opening for any reason without written approval from the Office of Miners' Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate, unless they are technical persons trained and deemed qualified by the operator. The operator must submit all initial plans for approval, and a copy submitted to the authorized representative of the miners for comments at least ten (10) days prior to submission to the Director that includes the following provisions:

(2) The operator shall submit a plan that includes applicable safety precautions to follow while working in a high wall miner opening (should be included) and must receive written approval from the Director or the Regional Supervisor of the Office of Miners' Health, Safety & Training, which will detail the precautions necessary to safely perform the duties involved.

(3) ~~In order to safeguard workers, when anyone enters the highwall miner opening(s), all West Virginia underground mining laws and regulations shall apply.~~ Needs stricken because it can't be accomplished in a highwall miner opening.

(e) Adequate illumination shall be provided when the highwall miner system is operated in darkness or low visibility conditions. Adequate is an undefined term and therefore will lead to subjective determinations that are only opinions

(h) Good Visibility shall be provided for the highwall miner operator to the launch area of the machine.

(i) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective

equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety (90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and an authorized representative of the miners, upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables. Persons working underground do not have to wear tested and insulated gloves and persons outside should not as well. Additionally the handling of these cables causes excessive wear on the approved insulated type gloves as they are designed for testing and trouble shooting and not work, therefore this entire section should be stricken

### 36.6 Methane And Oxygen

(h) All methane examinations will be recorded in the examination book maintained by the supervisor, along with necessary explanations. Methane monitors will be visually inspected prior to the start of each new entry. Methane monitors will be tested bi-monthly, using manufacturers test apparatus.

### **§56-3-36 37. General Provisions.**

36 37.2. Alcohol and drugs - Persons under the influence of alcohol ~~or drugs~~ shall not be permitted on a surface mine or attendant facility. The State of West Virginia does not have a drug enforcement regulation and it is impossible to know if one is under the influence of a controlled substance without examination and testing by trained medical professionals.

37.9. Toilet facilities - Each operator of a surface mine shall provide at least one sanitary toilet in a location convenient to each surface mine. All sanitary toilets shall be regularly maintained in a clean and sanitary condition.

37 38.10. Movement of electrical equipment.

(c) Energized high voltage trailing cables may be moved only by a qualified person and the operator of such mines shall require that such person wear approved and tested insulated workmen's gloves. Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety (90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and interested persons

upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables. If straps or hooks are used those straps and hooks shall be non-conductive and

designed for that purpose. Not achievable by any practical means now and this provision should be stricken from the regulations.

40 41.3. Transportation of compressed gas cylinders.

(a) —When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced except in conformance with the provisions of 36 CSR 27-11.1(a) through (h). This code cite should be the regulation and nothing more

**§56-3-42 43 Nontitled.**

42 43.1.

All mobile equipment shall be operated and maintained according to the manufacturer's instructions. Already in the law 43.3b

42 43.4. Warning devices, lights, brakes.

(a) Dump trucks used to haul coal or other material All mobile loading, hauling, drilling, or excavation equipment shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.

(f) A tow bar or other approved device shall be used for towing equipment. A safety chain shall be used in conjunction with a tow bar. Towing equipment shall mean equipment being moved for mechanical failure from Point A to Point B. This is an adequate definition of towing.

42 43.10. Operation of mobile equipment

(a) Mobile equipment operators shall operate mobile equipment safely while in motion. Suggested wording only.

(e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated. Enclosed cabs of mobile equipment manufactured after the effective date of this Rule shall be adequately ventilated by heaters, defrosters, fans, and/or air conditioners.

42 43.12. Track type dozers - track type dozers shall meet the following standards:

(d) Portable fire extinguisher of at least five (5) pounds. Conflicts MSHA regulation.

42 43.13. Front-end loaders - rubber tire front-end loaders shall meet the following standards.

(a) Portable fire extinguishers, of at least five (5) pounds. Conflicts MSHA regulation.

42 43.14. Machinery.

(b) Employees shall not use unsafe hand tools (suggested wording)

42 43.20. Tires and repairs.

(g) All tires shall be maintained in a safe condition. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately.  
(Suggested Wording)

43.21 Operating equipment on extreme slopes during reclamation activities.

(a) Prior to any equipment operating on an extreme slope, a meeting shall be conducted with a mine foreman and all persons involved in working on the extreme slope (Suggested Changes)

(d) When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow safety precautions developed at the mine. (Suggested Changes)

~~(e) When cable winching the following requirements must be met: Should be eliminated it is in (d)~~

(1) The equipment being used to assist a dozer, or other equipment working on slopes shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.

(2) The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all equipment.

(3) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

(4) The live-end connection device used to secure the two pieces of equipment together shall be of a design that minimizes the possibility of accidental disconnection. The

connection device shall be of the proper strength for the duties performed and maintained in safe condition.

(5) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged.

(6) All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.

(f) Communications, either audible or visual, shall be maintained between equipment operators while working on extreme slopes.

(g) Under no circumstances shall an apprentice miner operate equipment on an extreme slope.

Suggested changes in the wording of sections d through g above.

45 ~~46~~.4. Maintenance of fire fighting equipment.

~~45-46~~.6. Drills - Instruction on the usage of various types of available fire-fighting equipment shall be held for employees at least once annually. A record of such demonstration shall be recorded. (Suggested Changes)

47 ~~48~~.3. Safety hats and safety toed shoes

a) Safety hats and safety toed shoes shall be worn by all persons while in or around a surface mine, tipples or cleaning plants coal handling facilities, and other surface areas where there is a danger of falling or flying objects, or from electrical shock and burns .

47 ~~48~~.4. Life jackets and belts.

(b) Life jackets ~~belts~~ shall be worn where there is a danger from falling into water.

#### **§56-3-48 ~~49~~. First Aid Equipment**

(3) Twenty-four triangular bandages. Needs revised due to new backboard stretchers

~~(7) One foille.~~ Not acceptable practice by medical professionals anymore to use this

~~(11) One one ounce bottle of aromatic spirits of ammonia.~~ Not an acceptable practice.

#### **§56-3-54 ~~55~~. First Aid Training of Coal Mine Employees.**

~~54 55~~.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his employment with the opportunity for first aid training as prescribed by the ~~Director~~ unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first aid training of not less than five (5) hours within each twenty four (24) months of employment. ~~The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training.~~ This regulation due to EMT requirements is no longer valid and employees receive annual first aid training therefore it needs to be deleted entirely.

**ALPHA NATURAL RESOURCES  
COMMENTS ON PROPOSED TITLE 56 SERIES 3  
WEST VIRGINIA SURFACE MINE REGULATIONS**

**ANR Comment:** “3.4. Adequate – The term “Adequate” shall mean sufficient for a specific requirement.” The term needs removed, too vague, why add this definition as it has no value to the regulations.

**OMHST Response:** DENIED. A definition for “adequate” was added in response to a request / comment from mine representatives at a meeting held earlier in the year. The definition came from *Webster’s Dictionary*.

**ANR Comment:** “3.6. Approved – The term “Approved” shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.” (remove in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject. This is too broad and not specific to MSHA and/or the State of WV.)

**OMHST Response:** DENIED. The term “approved” is a term long-used in existing regulations (i.e.: MSHA, National Electric Code, ASTM Standards, etc.)

**ANR Comment:** “3.10. Barricaded. The term “Barricaded” shall mean to obstruct passage of person, vehicles, or flying materials.” (How can flying materials be barricaded?) Suggest “barricaded” shall mean to obstruct passage of person or vehicles to an area which is practical and what it should mean.

**OMHST Response:** DENIED. The definition of “barricaded” has existed in Surface Mine Regulations for over 25 years, and the reference to “flying materials” was directed to the storage of explosives. But also, it was felt incorrectly, used in section 15.6(a) referring to guarding a loaded shot. “Barricade” was deleted from this section and replaced by the term “barrier.” (3.11 – Any material objects that separate, keep apart or demarcate in a conspicuous manner when used in conjunction with warning signs) as a more practicable description of guarding loaded holes.

**ANR Comment:** “3.12. Berm. The term “Berm” shall mean a pile or mound of material or equivalent capable of restraining a vehicle.” (Berms are not intended to prevent restraining of a vehicle, they are a warning device. Suggest we use MSHA explanation in MSHA program policy manual: “Berm,” as used in this section, means a pile or mound of material at least axle high to the largest piece of equipment using such roadway and as wide at the base as the normal angle of repose provides. Where guardrails are used in lieu of berms, they shall be of substantial construction.

**OMHST Response:** DENIED. The definition of “berm” has existed in Surface Mine Regulations for over 25 years. A berm is not intended to prevent passage of a vehicle over or through the berm, but an adequate berm should help restrain the vehicle in cases of loss of control or misjudging of distance on an elevated roadway or dump area. See also section 13.82 for berm requirements on dump areas that state berms shall not be used as stop blocks.

**ANR Comment:** “3.21(b) Emergency stopping system. The system used for stopping a vehicle in the event of any single failure in the service brake system.” Emergency stopping system is an undefined term and not provided on any vehicle of any type in the industry and should be removed from the regulation. Furthermore we are not aware of any manufacturer offering or having designed such system.

**OMHST Response:** DENIED. The definition for “brake systems” has been in Surface Mine Regulations for over 25 years. The emergency braking systems are referred to in the haulage section under 17.3(c) and 17.3(e); both these sections existed verbatim for over 25 years (formerly 34.2(j) and 34.3(c). Maxi-type air canisters are considered as emergency braking systems, and similar systems are used on large equipment.

**ANR Comment:** “3.24. Case Insert. The term “Case Insert” shall mean a set of printed, precautionary instructions, including the IME “Instructions and Warnings,” which is included in a case of explosive materials. This should be removed from regulation due to being too broad and vague and provides no value to the user.

**OMHST Response:** DENIED. The definition for “case insert” is included in the definitions as these are printed, precautionary instructions from the manufacturer outlining safety precautions when using their explosive materials. The IME (Institute of Makers of Explosives) is the world-wide recognized expert in the safe handling of explosives. The explosive manufacturers and the recognized explosive safety institute are referenced to keep West Virginia Surface Mine Regulations current with the ever-changing new developments in the explosive / blasting industry.

**ANR Comment:** “3.43. Extraneous Electricity. The term “Extraneous Electricity” shall mean electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields.” How should this be tested; when should it be tested, and what tools are available to the industry for testing.

**OMHST Response:** DENIED. The definition of “extraneous electricity” comes from the Institute of Makers of Explosives’ Glossary of Commercial Explosives Industry Terms – Safety Library Publication No. 12. A test for stray current has been required by existing law for 25+ years where equipment powered by external electrical sources and power cables are used and electrical detonators are being used; Tests to be made prior to commencing the loading of holes. (§56-3-32.4(c)) An instrument for testing for stray current is available and has been used in West Virginia for over 25 years. The language of the proposed regulation is not limited to equipment being powered by external electrical sources (it states when a potential source of extraneous electricity is present within 300 ft. and electrical detonators are used) and requires a stray current test be made prior to commencing loading holes; if current is detected, the sources of the extraneous electricity shall be neutralized before loading may begin.

**ANR Comment:** “3.56. Interested Persons. The term “Interested Persons” shall include the operator, members of any mine safety committee and/or other duly authorized representative of the mine workers at the mine affected and ~~Department of Energy~~ the Office of Miners’ Health, Safety and Training.”

**OMHST Response:** DENIED. The definition of “interested person” was openly discussed and formulated by persons representing management and labor at meetings conducted at the Charleston office of the WV Office of Miners’ Health, Safety and Training. This definition allows fair participation to all parties when dealing with West Virginia Surface Mine Regulation requirements.

**ANR Comment:** “3.65. Misfire. The term “Misfire” shall mean a blast or specific borehole that failed to detonate as planned. One cannot determine if all material detonated in a drill hole until the excavation process has begun.”

**OMHST Response:** DENIED. The definition of “misfire” comes from the Institute of Makers of Explosives Glossary of Commercial Explosives Industry Terms – Safety Library Publication No. 12. It is agreed that some misfires cannot be detected until excavation has begun, but the term and definition for a misfire is still applicable.

**ANR Comment:** “3.85. Surface Mine. The term “Surface Mine” shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, and shops ~~which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.~~ “Surface Mine” for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

**OMHST Response:** AGREED. The only deletion from the proposed regulations is the word “trails.” “Trails” was a carry-over from the original 25+ year regulation and can be deleted with no decrease in safety or detriment to the definition.

**ANR Comment:** “3.88. Tension Crack. The term “Tension Crack” shall mean a crack resulting from movement of material in a fill or outer bank of a roadway that indicates failure of the stability of the material. (This definition would be consistent with the proposed regulation 56-3-30.8.)

**OMHST Response:** DENIED. Both the proposed definition of “tension crack” and the proposed change to the definition say essentially the same thing.

**ANR Comment:** “§56-3-13. Findings Orders and Notices. This section should be removed from Title 56, Senate Bill 68 passed in 2007 addresses all issues with findings, orders and notices under 22A01015 and makes it unnecessary to repeat it again.”

**OMHST Response:** DENIED. Although OMHST recognizes that 56-3-13 is a verbatim rewrite of WV Code Section 22A-1-15, so are several other sections of this rule. During the work group sessions held earlier this year, and consisting of representatives of OMHST, the industry, and the UMWA, it was decided that all verbatim rewrites of the West Virginia Code would be left in the rule.

**ANR Comment:** “23.1. Any person whose license, certificate or similar authority to perform any supervisory duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

Any person whose license, certificate or similar authority to perform any examination duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of suspension or revocation in the other state. (Suggested wording).

**OMHST Response:** DENIED. The proposed regulation prohibits persons whose license, certificate or similar authority has been suspended or revoked in another state from being certified as a mine foreman or assistant mine foreman in West Virginia during the period of suspension or revocation in the other state. The change suggested would limit such person's ability to perform examinations only. All supervisory duties should be denied during this time of suspension or revocation in another state as it is possible inadequate supervision of workers, unsafe direction of workers, inability to identify hazards, dereliction of duty, drug or alcohol abuse or even felony arrest could have been the reason for the suspension or revocation.

**ANR Comment:** "27.1 Pre-shift examination. (a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine ~~highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions~~ all active working places at the surface mine (active working places includes where persons are required to work or travel.)

**OMHST Response:** DENIED. The mine foreman or assistant mine foreman are the best trained and qualified persons at the surface mine to examine all active working places. Hazards could possibly exist at any active working place that persons are working and these potential hazards could be identified and corrected by an examination by the mine foreman or assistant mine foreman.

**ANR Comment:** "(c) The operator shall have weekly safety meetings with all employees which shall provide information/training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept for 30 days (same as equipment pre-shift, this will be 4 safety meetings) and made available to all interested persons and a representative of the Director upon request.

**OMHST Response:** DENIED. The requirement for keeping a record of safety meeting topics for 30 days was agreed upon by representatives from management and labor at meetings held at the Charleston office of Miners' Health, Safety & Training during the first 5 months of 2010. Management representatives voiced opposition to record keeping of safety meeting topics for longer than 30 days. This time requirement can be extended voluntarily by mine operators should they desire to keep records longer than 30 days. **NOTE:** Some mine operators are voluntarily requiring an attendance sheet be signed by all persons attending the weekly safety meeting.

**ANR Comment:** "27.2. On-shift examination. (a) the mine foreman or assistant mine foreman shall examine all active working places in the pit at the surface mine (active working places includes where persons are required to work or travel) under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and

countersign with ink or indelible pencil all conditions entered in the record book by the mine foreman or his assistants on the prior shift.

**OMHST Response:** DENIED. The mine foreman or assistant mine foreman are the best trained and qualified persons at the surface mine to examine all active working places. Hazards could possibly exist at any active working place that persons are working and these potential hazards could be identified and corrected by an examination by the mine foreman or assistant mine foreman. Comment refers to identical proposed language.

**ANR Comment:** “30.8. Dump areas. (b) Safety berms shall be provided at the edge of all fill areas to prevent over-travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. What is the definition of safe angle of repose or steep slope? Instrumentation must be used to determine not by eye sight.”

**OMHST Response:** DENIED. An incorrect section of the proposed surface mine regulation is cited prior to the comment (30.8(a)). The comment is apparently in reference to 30.8(b) “Safe angle of repose” is the vertical angle of dumped spoil material and cannot be designated as a particular numerical degree or ratio as there are several variable conditions that could determine the safe vertical angle such as type of material being dumped (rock, dirt, a combination of both), the weather conditions (wet, dry, freezing or frozen), the height of the dump, whether the toe of the fill material is resting on the opposite side of a hill, etc.; Therefore, a “safe angle of repose” would be a variable numerical designation but always determined by the stability of the dumped material. “Steep slope” is also influenced by these same variables. This section states equipment operators and truck drivers operating on the fill shall inform their supervisor of the steep slope condition when detected...It is impractical to suggest instrumentation be used to determine a “steep slope” or a “safe angle of repose.” Observation (eye sight is used in almost all examinations and evaluations conducted by all persons working at surface mines.

**ANR Comment:** “(e) During or after a significant rain event, special precautions shall be taken prior to dumping to prevent water from impounding near the edge of the fill.”

**OMHST Response:** DENIED. The proposed regulation requires the fill to be graded / sloped to prevent water from impounding near the edge of the fill. The proposed regulation is intended to insure stability of the outer edge of the fill, not only for persons working above the outer slope, but also for people and property below the fill area. Grading the outer edge during or after a significant rain event does not prevent saturation of the material and, depending on the amount of water impounded atop the fill, could create more hazards for persons attempting to drain the impounded water.

**ANR Comment:** “32.2. Transportation of explosives – precautions. (g) ~~Safe roads shall be maintained for access and exit to all blast areas where boreholes are loaded or being prepared to be loaded.~~ (Safe roads are not defined; this should be removed from proposed regulation.)

**OMHST Response:** DENIED. “Safe roads” does not warrant a definition. Some surface mines have been cited repeatedly for not providing safe roads to access the blast areas and some “unsafe” roads have resulted in explosive trucks being overturned and damaged when dozers are used to pull the trucks up and lower trucks down roads that are “unsafely” designed and maintained.

**ANR Comment:** “32.3. General requirements – explosives. (b) ~~Previously frozen explosives of nitroglycerin base shall not be used.~~ The transportation, storage, handling, and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives, Safety Library Publication No. 4 “Warnings and Instructions.”” (The safe transportation of explosives is defined in 32.2 of this existing code and therefore is not needed again.)

**OMHST Response:** DENIED. The Institute of Makers of Explosives, Safety Publication No. 4 “Warnings and Instructions provides up-to-date procedures for safe usage of explosives including transportation.

**ANR Comment:** “(e) The use of explosives and ~~all~~ handling incident thereto, ~~will~~ shall be discontinued ~~during the approach of and during~~ whenever a thunderstorm and/or electrical storms ~~is detected and all personnel shall be withdrawn from the blast area.~~ (Drills are grounded, if area is withdrawn why take the time to lower mast and place someone in harm’s way.)

**OMHST Response:** DENIED. “Where practicable” was added to this section because it could be sometimes a hazard to take the time to lower the drill mast. Lowering the drill mast reduces the possibility of “attracting” a lightning strike to the area containing loaded blast holes as a lightning strike to a drill mast would not necessarily be limited to the drill mast and could possibly detonate nearby holes loaded with explosives.

**ANR Comment:** “(g) Explosives and detonators shall be ~~kept a safe distance~~ kept a safe distance from the of highwalls and spoil banks. (Original code is better.)

**OMHST Response:** DENIED. This was discussed by management and labor representatives and it was determined “safety distance” was a matter of opinion and since all highwalls and spoil banks could represent differing degrees of potential hazard, it was better to afford the explosives and detonators being used protection from the hazards.

**ANR Comment:** “(h) ~~The backing of drills over loaded holes shall be prohibited.~~ Mobile equipment and vehicles shall not be trammed or driven over loaded holes, firing lines, detonator wires, explosives, blasting agents, and detonators.

**OMHST Response:** AGREED. This comment reduces two sentences to one sentence while keeping all safeguards in tact, except the prohibition of dragging boxes over blasting components. Modern packaging of explosives and loading practices have made “dragging boxes” a minimal concern.

**ANR Comment:** “32.4. Shooting preparation. (c) Only drills, explosives trucks, mobile equipment suitable for hole stemming, and equipment necessary ~~No equipment except the drill and explosive truck, other than necessary equipment~~ for road repairs to remove the drills or explosive trucks, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. Excavations shall not occur if there is a danger of intersecting a known loaded or a misfired hole. Mobile equipment such as small front end loaders and other suitable hole stemming equipment shall be allowed to assist hole stemming procedures where adequate hole diameters are drilled and an adequate distance is provided between holes and rows of holes to ensure the safe operation and movement of equipment. The use and operation of all equipment

used to stem holes shall be under the direct supervision of a certified blaster. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized. When the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present within three hundred (300) feet and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

**OMHST Response:** DENIED. The location of all loaded holes is known and should be communicated to persons operating excavation equipment; however, the location of every single misfired hole is sometimes not known; therefore, inserting the word “known” immediately preceding “misfired hole” would be acceptable.

**ANR Comment:** “(d) Holes shall not be drilled if there is a danger of intersecting a known loaded or misfired hole. When drill(s) are being operated on a bench being loaded, a minimum of one hole around the perimeter of the drill shall remain unprimed and unloaded.

**OMHST Response:** DENIED. For the same reason stated in noted for a “misfired hole.” The location of all loaded holes is known and should be communicated to persons operating excavation equipment; however, the location of every single misfired hole is sometimes not known; therefore, inserting the word “known” immediately preceding “misfired hole” would be acceptable.

**ANR Comment:** “(q) When loading beneath highwalls, the highwall shall be carefully inspected by the blaster in charge and the supervisor before beginning the loading process. If it cannot be determined that the highwall is safe then holes will not be loaded in that area until the highwall deficiency can be corrected.

**OMHST Response:** Partially AGREED. The second sentence shall be changed to read “Persons shall not load boreholes in areas where the highwall is cracked, shows evidence of movement or weakening, or had loose material falling from the highwall until the highwall deficiency (s) can be corrected.”

**ANR Comment:** “32.5. Shooting Cables. Firing / Lead lines. (i) All persons involved with the blasting procedure of remote control detonation systems shall be properly trained and familiar with the manufacturer’s instructions. A record of such training shall be kept for one (1) year and made available to all interested persons and a representative of the Director upon request.

**OMHST Response:** DENIED. The proposed regulation requires any remote control detonation system be used in accordance with the manufacturer’s instructions and a copy of these

instructions be posted at the mine; the comment wishes to delete this language and weaken the requirements for using this type detonation system.

**ANR Comment:** “32.6. Blasting. (3) The location of the unfired loaded holes shall be documented in the pre-shift / on-shift examination book and all affected personnel shall be notified of the location of unfired holes.

**OMHST Response:** AGREED as stated.

~~**ANR Comment:** “(4) All personnel on affected shifts shall know the route in which to travel to a safe location in the event unforeseen circumstances (electrical storms, unstable highwalls, etc.) arise while working in the area of unfired loaded holes. Entire section should be removed.”~~

**OMHST Response:** DENIED. All persons working in the area of unfired loaded holes need to know the route to a safe location in the event of unforeseen circumstances as the boundaries of the blast area are unmarked and removing persons from the blast area as quickly as possible is the intent of this section.

**ANR Comment:** “(h) When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of workers. This plan will be made available to the authorized representative of the director.”

**OMHST Response:** DENIED. The potential hazards that exist when using explosives in areas where underlying coal seams are burning, or suspected of burning justifies the requirement for the plan outlining safeguards be submitted to, and be approved by the WV Office of Miners’ Health, Safety and Training prior to beginning drilling and blasting.

**ANR Comment:** “34.2 Haulage roads – construction and maintenance. (h) Haulage roads, intended for coal or overburden haulage shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.”

**OMHST Response:** DENIED. This comment proposes to delete the second sentence of this section which has existed for over 25 years. The second sentence states, “All roads leading to and from work sites on which persons are expected to travel to and from work or to haul coal or supplies, shall be of sufficient width and be maintained in good condition.” Deleting this sentence would do away with the requirement for maintaining these roads in good condition for the workers.

~~**ANR Comment:** “(j) All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplementary emergency braking system. When required by the Director or his authorized representative approved runaway roads or suitable equivalent shall be provide on all haulage roads that have grades that are in excess of 10% and where a hazard is present due to the grade of the road, on which coal is first hauled from such surface mine after the effective date of this section.”~~

**OMHST Response:** DENIED. The comment proposed limits the requirement for runaway roads or suitable equivalent to roads with grades in excess of 10%. Several factors including sharp curves, switch-back curves, cross roads or entrances to other traveled roadways, including

public highways, could present hazards to persons in the event of a runaway haulage truck. All factors are considered when considering the requirement of runaway roads or equivalent.

**ANR Comment:** “34.3 Haulage equipment – construction and maintenance. (c) All new off road haulage vehicles placed into service shall be equipped with an emergency steering. There are no emergency braking systems for large haul trucks!”

**OMHST Response:** DENIED. The term “emergency braking system” refers to manufacturer’s designed systems to allow function of the service brakes in the case of emergency, such as the accumulator and maxi-brake systems.

**ANR Comment:** ~~“(e) Where required by the director or his authorized representative runaway roads or “J” roads shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section. All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplemental emergency braking system. There are no supplemental emergency braking systems available to any type of haulage trucks currently.”~~

**OMHST Response:** DENIED. The term “emergency braking system” refers to manufacturer’s designed systems to allow function of the service brakes in the case of emergency, such as the accumulator and maxi-brake systems.

**ANR Comment:** “34.6. Parked vehicles. (b) No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position. (overcrowding shall mean persons would not be afforded a proper seat for their own person.)”

**OMHST Response:** DENIED. The language used in the regulation has been the same for over 25 years and there have been no known violations issued, or dispute of, the meaning or intent of the section which is the same as stated in the comment.

**ANR Comment:** “35.5. Methane and oxygen. (a) Auger mining equipment shall not be operated in the vicinity of auger holes emitting ~~dangerous~~ quantities of methane at 1% or more ~~or air~~ until the atmosphere is reduced below 1%.

**OMHST Response:** AGREED. The 1% methane designation is acceptable as this level is acceptable in underground mining; the deletion of “or air” should also be changed to “or air containing less than 19.5% oxygen...until the atmosphere is reduced below 1% methane and 19.5% or more oxygen levels.”

**ANR Comment:** “(d) Auger mining machines shall be equipped with permissible ~~flame safety lamp or other detector approved by the director~~ approved methane and oxygen detector.

**OMHST Response:** DENIED. A permissible approved detector as required would have the capability to test for methane and oxygen levels which are the only two tests required in this rule.

**ANR Comment:** “§56-3-36 Highwall Mining. It is suggested this entire provision be removed from this rule as it is almost exclusively directed at one technique or style of highwall mining

while not regulating the other style hardly at all. All of these provisions can be incorporated in a mine specific coal mine comprehensive safety program that is already required.”

**OMHST Response:** DENIED. Highwall mining is a commonly used method of mining and needs to be addressed in the regulations. The style of highwall mining stated as regulated “hardly at all” was indeed discussed by representatives of mine operators using the “Superior / Bucyrus” style machines, as well as the manufacturer of these machines. After discussions with these representatives, changes and additions were made to the proposed regulations to the satisfaction of all parties. The comprehensive mine safety program is intended to address “mine specific” safety programs, not to take the place of general mine safety regulations.

**ANR Comment:** “36.1. General Precautions. ~~(a)~~ (d) Highwall mining systems shall utilize water sprays and/or dust collectors to control dust as much as practical. Suggested wording.”

**OMHST Response:** DENIED. This comment deletes the proposed sections (a) & (b), which address the basic highwall miner methods required to minimize the collapse of partitions between openings which are essential in safely supporting the highwall. This is fundamental for safe highwall mining. The wording suggested in this comment are better suited and answered in the following question.

**ANR Comment:** “~~(d) Dust shall be controlled by the use of permissible dust collectors or other methods.~~ (Now listed in (a) above.)”

**OMHST Response:** DENIED. Dust created by highwall mining is addressed clearly in sections (c) and (d). The comment(s) lessen the requirements for dust control.

**ANR Comment:** “~~(f) The pit in which the highwall miner is being used shall be of a width to safely operate all equipment used during the mining process.~~ This does/should not apply to pre-law benches.”

**OMHST Response:** DENIED. All pits should be wide enough to safely operate equipment. There are no exceptions to safe equipment operation.

**ANR Comment:** “~~(h) Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the highwall miner openings and to within one thousand (1,000) feet of the active workings, unless DEP permits require otherwise due to water quality.~~”

**OMHST Response:** DENIED. The existing language already allows the distance allowed (1,000 feet) to be lessened.

**ANR Comment:** “~~(h) (Cont'd) Adequate precautions shall be taken to insure against unauthorized entry when any highwall miner openings are not blocked.~~ This needs to be stricken from the rule as it is not lawful to enter the opening.”

**OMHST Response:** AGREED. The proposed section is not clearly stated. Section (g) restricts persons to the area where highwall mining is being conducted, and section (h) was intended to place the same restrictions on areas (up to 1,000 ft.) where highwall miner openings are not blocked with highwall spoil. The second sentence is changed to: “Adequate precautions, such

as barriers on entry roads to the pit, shall be taken to prevent unauthorized entry to the areas where highwall mine openings are not blocked.”

**ANR Comment:** “(k) At the close of the highwall mining operation, maps shall be submitted to the Office of Miners’ Health, Safety and Training for map archiving purposes showing the records in 56 CSR §3-36.1(k) in a manner such that the maps can be referenced to the West Virginia State Plan Coordinate system. Mining that has occurred after the effective date of these regulations shall be certified by a West Virginia Registered Professional Engineer. This needs removed as one can’t certify these accurately. A combination of approximate and surveyed locations is permitted, so long as the certified map clearly denotes such. These distances will always be approximate and therefore an engineer should not be required to certify such maps.

**OMHST Response:** DENIED. The requirement for maps, certified by a West Virginia Registered Professional Engineer, is essential for map archives kept by the WV Office of Miners’ Health, Safety & Training for safety in future mining operations. The existing regulation recognizes some facets of the highwall mining process are approximate, though all should be fairly accurate, and this is stated in the regulation.

**ANR Comment:** “(m) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment. Existing regulations already require this and it is in conflict with MSHA regulations.

**OMHST Response:** DENIED. The minimum 5 lb. weight of the fire extinguisher has been in existence for 25+ years. This requirement is not in conflict with any current MSHA regulations.

**ANR Comment:** “36.2. Proximity to Underground Workings. (a) No person(s) shall enter a highwall miner opening for any reason without written approval from the Office of Miners’ Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate, unless they are technical persons trained and deemed qualified by the operator. The operator must submit all initial plans for approval, and a copy submitted to the authorized representative of the miners for comments at least ten (10) days prior to submission to the Director that includes the following provisions:”

**OMHST Response:** NOTE: ANR referenced 36.2, but the heading of “Proximity to Underground Workers” is under 36.4. DENIED. The language objected to in the last sentence of this section was previously discussed and deleted and is not included in the proposed regulation as filed.

**ANR Comment:** “(2) The operator shall submit a plan that includes applicable safety precautions to follow while working in a highwall miner opening (should be included) and must receive written approval from the Director or the Regional Supervisor of the Office of Miners’ Health, Safety & Training, which will detail the precautions necessary to safely perform the duties involved.

**OMHST Response:** DENIED. The comments limit the plan to “applicable safety precautions to follow while working in a highwall miner opening.” Many times a separate entry (not an existing highwall miner opening must be mined using conventional underground mining machinery to correct the problem encountered or retrieve highwall miner machinery. This

comment may also reflect the concerns and next comment regarding subsection 3 of 19.4(a) 36.4(a).

**ANR Comment:** ~~“(3) In order to safeguard workers, when anyone enters the highwall miner opening(s), all West Virginia underground mining laws and regulations shall apply. Needs stricken because it can’t be accomplished in a highwall miner opening.”~~

**OMHST Response:** AGREED. Change subsection to read: “In order to safeguard workers, when anyone enters a highwall miner opening or entries mined to retrieve, repair, or free any highwall miner machinery, all persons shall comply with all West Virginia underground mining laws and regulations specified in the approved plan.”

**NOTE:** After consideration of the three comments above, Section ~~19.4(a)~~ 36.4(a) needs the additional phrase “or mine entries to retrieve, repair or free any highwall miner machinery” added to the first sentence immediately following “No person(s) shall enter a highwall miner opening.” In addition, subsection (1) needs the additional phrase “or mine an additional entry to retrieve repair or free any highwall miner machinery” immediately following “... highwall miner opening” in the last sentence. Subsection (3) was changed in deference to the comment above, and includes the additional language to include “entries mined to retrieve, repair, or free highwall miner machinery.”

**ANR Comment:** “(e) Adequate illumination shall be provided when the highwall miner system is operated in darkness or low visibility conditions. Adequate is an undefined term and therefore will lead to subjective determinations that are only opinions.”

**OMHST Response:** DENIED. “Adequate” is defined in the definition section as per *Webster’s Dictionary*.

**ANR Comment:** “(h) Good Visibility shall be provided for the highwall miner operator to the launch area of the machine.”

**OMHST Response:** DENIED. “Good” visibility is required to safely operate the highwall miner. Requiring only “visibility” to be provided would allow “fair” or “poor” to be acceptable.

**ANR Comment:** ~~“(i) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen’s gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety (90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and an authorized representative of the miners, upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables. Persons working underground do not have to wear tested and insulated gloves and persons outside should not as well. Additionally the handling of these cables causes excessive wear on the approved insulated type gloves as they are designed for testing and trouble shooting and not work, therefore this entire section should be stricken.”~~

**OMHST Response:** DENIED. The requirement for persons underground to wear tested and insulated gloves is indeed required by MSHA Title 30 CFR 77.606 and Title 30 CFR 77.606.1. The comment about insulated gloves being used only for testing and trouble shooting only is false as tested and insulated gloves are used to move energized trailing cables on draglines and shovels (work).

**ANR Comment:** “36.6. Methane and Oxygen. (h) All methane examinations will be recorded in the examination book maintained by the supervisor, along with necessary explanations. Methane monitors will be visually inspected prior to the start of each new entry. Methane monitors will be tested bi-monthly, using manufacturers test apparatus.”

**OMHST Response:** DENIED. The requirements for maintaining, testing and calibration were mirrored from requirements listed in Title 36, Series 21, Section 4.1 from the Board of Coal Mine Health and Safety.

**ANR Comment:** “§56-3-36 37. General Provisions. 36 37.2. Alcohol and drugs. Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility. The State of West Virginia does not have a drug enforcement regulation and it is impossible to know if one is under the influence of a controlled substance without examination and testing by trained medical professionals.”

**OMHST Response:** DENIED. This section of regulation has existed for over 25 years and the Board of Coal Mine Health and Safety established rules and regulations relating to alcohol and drugs on January 15, 1984. Refer to Title 36, Series 22, Sections 4.1 through 4.5.

**ANR Comment:** “37.9. Toilet facilities. Each operator of a surface mine shall provide at least one sanitary toilet in a location convenient to each surface mine. All sanitary toilets shall be regularly maintained in a clean and sanitary condition.”

**OMHST Response:** DENIED. To require “at least one sanitary toilet in a location convenient to each surface mine” rather than “each surface work site” is impractical with large surface mines employing over 200 workers and many with an equal number of independent contractors. Many women also work at these surface mines.

**ANR Comment:** “37 38.10. Movement of electrical equipment. (c) ~~Energized high voltage trailing cables may be moved only by a qualified person and the operator of such mines shall require that such person wear approved and tested insulated workmen’s gloves. Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen’s gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety (90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and interested persons upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables. If straps or hooks are used, those straps and hooks shall be non-conductive and designed for that purpose. Not achievable by any practical means now and this provision should be stricken from the regulations.~~”

**OMHST Response:** DENIED. The requirement for persons underground to wear tested and insulated gloves is indeed required by MSHA Title 30 CFR 77.606 and Title 30 CFR 77.606.1. The comment about insulated gloves being used only for testing and trouble shooting only is false as tested and insulated gloves are used to move energized trailing cables on draglines and shovels (work). The wet conditions often present at surface mines make this regulation necessary.

**ANR Comment:** “~~40 41.3. Transportation of compressed gas cylinders. (a) When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced except in conformance with the provisions of 36 CSR 27-11.1(a) through (h). This code cite should be the regulation and nothing more.~~

**OMHST Response:** DENIED. The provisions noted were from the Board of Coal Mine Health and Safety cited in Title 36, Series 27, Sections (a) through (h).

**ANR Comment:** “~~(d) All mobile equipment shall be operated and maintained according to the manufacturer’s instructions. Already in the law (43.3(b)).~~

**OMHST Response:** DENIED. The section listed in the comment, 43.3(b), contains no reference to the manufacturer’s instructions on operating and maintaining mobile equipment. The manufacturer is the acknowledged expert when it comes to operating and maintaining the mobile equipment they designed and produced.

**ANR Comment:** “~~42 43.4. Warning devices, lights, brakes. (a) Dump trucks used to haul coal or other material~~ All mobile loading, hauling, drilling, or excavation equipment shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.”

**OMHST Response:** AGREED. By replacing “all mobile equipment” with “All mobile equipment used for loading, hauling, drilling or excavation” as the comment recommends, would negate requiring back-up alarms on mobile equipment such as pumps, portable generators, light plants, etc., which were not intended to be included by this regulation, but inadvertently could have been by the use of “all mobile equipment.”

**ANR Comment:** “(f) A tow bar or other approved device shall be used for towing equipment. A safety chain shall be used in conjunction with a tow bar. Towing equipment shall mean equipment being moved for mechanical failure from Point A to Point B. This is an adequate definition of towing.

**OMHST Response:** NOTE: OMSHT believes that ANR is referencing 43.7(f) here. DENIED. The towing of equipment, for whatever reason, should be done safely. The comment limits the requirements for a tow bar or other approved device and safety chains only to equipment being moved for mechanical failure.

**ANR Comment:** “~~42 43.10. Operation of mobile equipment. (a) Mobile equipment operators shall operate mobile equipment safely while in motion.~~ Suggested wording only.

**OMHST Response:** DENIED. The wording suggested in the comment is not as clear as the proposed regulation.

**ANR Comment:** “(e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated. Enclosed cabs of mobile equipment manufactured after the effective date of this rule shall be adequately ventilated by heaters, defrosters, fans, and/or air conditioners.”

**OMHST Response:** DENIED. The comment reduces the level of health and safety proposed by the regulation by inserting “fans and/or” preceding air conditioners. Today’s enclosed cabs are designed to be equipped with air conditions to ventilate the cab and prevent equipment operators from opening doors and windows in an attempt to cool the cab which allows harmful dust and fumes to enter the cab.

**ANR Comment:** “42.12. Track type dozers. Track type dozers shall meet the following standards: (d) Portable fire extinguisher of at least five (5) pounds. Conflicts MSHA regulation.

**OMHST Response:** NOTE: ANR referred to 42.12 in its comments, but 43.12 references Track type dozers. DENIED. The minimum 5 lb. weight of the fire extinguisher has been in existence for 25+ years. This requirement is not in conflict with any current MSHA regulations.

**ANR Comment:** “~~42~~ 43.13. Front-end loaders. Rubber tire front-end loaders shall meet the following standards. (a) Portable fire extinguishers, of at least five (5) pounds. Conflicts with MSHA regulation.”

**OMHST Response:** DENIED. The minimum 5 lb. weight of the fire extinguisher has been in existence for 25+ years. This requirement is not in conflict with any current MSHA regulations.

**ANR Comment:** “~~42~~ 43.14. Machinery. (b) Employees shall not use unsafe hand tools. Suggested wording.”

**OMHST Response:** NOTE: OMHST believes that ANR is referencing 43.15 here. DENIED. The section of regulation referred to in the comment has nothing to do with hand tools. The requirements for hand tools are included in the Chapter titled “Hand-held tools, power tools and safety devices.” Sections (a) through (o) detail use and maintenance of hand tools in detail that would preclude employee’s use of unsafe hand tools.

**ANR Comment:** “~~42~~ 43.20. Tires and repairs. (g) All tires shall be maintained in a safe condition. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately. Suggested wording.”

**OMHST Response:** DENIED. The comment seeks to delete “according to manufacturer’s specifications.” This deletion would lessen the degree of safety provided as the manufacturer must be considered the ultimate expert in specifying safety for their product.

**ANR Comment:** “43.21 Operating equipment on extreme slopes during reclamation activities. (a) Prior to any equipment operating on an extreme slope, a meeting shall be conducted with a mine foreman and all persons involved in working on the extreme slope. Suggested changes.”

**OMHST Response:** DENIED. This comment is just a quote of the existing language in the proposed regulation.

**ANR Comment:** “(d) When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow safe precautions developed at the mine. Suggested changes.

~~“(e) When cable winching the following requirements must be met: Should be eliminated – it is in (d).”~~

**OMHST Response:** DENIED. The section of proposed regulation noted in the comment addresses acceptable safeguards in addition to cable winching. Cable winching is addressed in detail in sections (d) and (e), 1 through 80, which precautions that should be followed at all surface mines rather than safety precautions developed at each mine.

**ANR Comment:** “(1) The equipment being used to assist a dozer, or other equipment working on slopes shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.”

**OMHST Response:** DENIED. This comment is just a quote of the existing language in the proposed regulation which was mirrored from the language contained in 56-2-14.2(m) of the rule governing safety provisions for clearing crews. The clearing crew rules have been in effect since May 8, 2006 and have greatly reduced the number of accidents for these workers. Having provided increased safety for clearing crews, it is the intent of the proposed regulation to extend this increased safety to all surface miners performing similar duties.

**ANR Comment:** “(2) The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all equipment.

**OMHST Response:** DENIED. This comment is just a quote of the existing language in the proposed regulation which was mirrored from the language contained in §56-2-14.2(m) of the rule governing safety provisions for clearing crews. The clearing crew rules have been in effect since May 8, 2006 and have greatly reduced the number of accidents for these workers. Having provided increased safety for clearing crews, it is the intent of the proposed regulation to extend this increased safety to all surface miners performing similar duties. Identical response as the above comment with the only change being in the clearing crew rule referenced changed to §56-2-14.2(m)(2).

**ANR Comment:** “(3) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.”

**OMHST Response:** DENIED. This comment is just a quote of the existing language in the proposed regulation which was mirrored from the language contained in §56-2-14.2(m) of the rule governing safety provisions for clearing crews. The clearing crew rules have been in effect since May 8, 2006 and have greatly reduced the number of accidents for these workers. Having provided increased safety for clearing crews, it is the intent of the proposed regulation to extend this increased safety to all surface miners performing similar duties. Identical response as the above comment with the only change being in the clearing crew rule referenced changed to §56-2-14.2(m)(2)(c).

**ANR Comment:** “(4) The live-end connection device used to secure the two pieces of equipment together shall be of a design that minimizes the possibility of accidental

disconnection. The connection device shall be of the proper strength for the duties performed and maintained in safe condition.”

**OMHST Response:** DENIED. The comment deletes “according to the manufacturer’s specifications” from the end of the second sentence. This deletion lessens the degree of safety provided by allowing the manufacturer’s specifications for strength and maintenance of the connection device to be ignored.

**ANR Comment:** “(5) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged.”

**OMHST Response:** DENIED. The comment deletes “according to the manufacturer’s specifications” from the end of the second sentence. This deletion lessens the degree of safety provided by allowing the manufacturer’s specifications for strength and maintenance of the connection device to be ignored. Identical response to question above; by deleting “according to the manufacturer’s specifications.”

**ANR Comment:** “(6) All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.”

**OMHST Response:** This comment is just a quote of the existing language in the proposed regulation which was mirrored from the language contained in §56-2-14.2(m) of the rule governing safety provisions for clearing crews. The clearing crew rules have been in effect since May 8, 2006 and have greatly reduced the number of accidents for these workers. Having provided increased safety for clearing crews, it is the intent of the proposed regulation to extend this increased safety to all surface miners performing similar duties. Identical response to the above comment with the only change being in the clearing crew rule referenced changed to §56-2-14.2(m)(1)(f).

**ANR Comment:** “(f) Communications, either audible or visual, shall be maintained between equipment operators while working on extreme slopes.”

**OMHST Response:** DENIED. The comment is a quote of the existing proposed regulation, which mirrors §56-2-14.2(m)(2)(f).

**ANR Comment:** “(g) Under no circumstances shall an apprentice miner operate equipment on an extreme slope.”

**OMHST Response:** DENIED. The comment offers an additional section to the proposed regulation to prevent apprentice miners from operating equipment on extreme slopes. This type of language was in fact included when the proposed regulations were originally formulated. During the meetings conducted from January to June, 2010 with representatives from management and labor, management representatives objected to limiting the persons allowed to work on steep slopes based on type of certification (this was originally included as “competency of equipment operators” as competent equipment operators, whose experience was gained in industries other than the coal industry would be excluded from working on steep slopes. The discussion concluded that mine operators consider equipment operator’s competency when assigning and/all duties performed at a surface mine. It was also agreed that an equipment

operator's competency is best determined by supervisors at the mine who are familiar with the skills of their workers, rather than through additional restrictive regulation.

**ANR Comment:** "45 46.6. Drills. Instruction on the usage of various types of available fire-fighting equipment shall be held for employees at least once annually. A record of such demonstration shall be recorded. Suggested changes."

**OMHST Response:** DENIED. The comment reduces the level of safety and training that have existed in regulations for over 25 years by deleting the words "fire drills and demonstrations" and replacing these with "instructions." Fire drills familiarize workers with safe action to be taken in the event of a fire, while demonstrations show the workers, and may afford hands-on experience, the use and function of available fire-fighting equipment.

**ANR Comment:** "47 48.3. Safety hats and safety toed shoes. (a) Safety hats and safety toed shoes shall be worn by all persons while in or around a surface mine, tipples or cleaning plants coal handling facilities, and other surface areas where there is a danger of falling or flying objects, or from electrical shock and burns."

**OMHST Response:** DENIED. The comment does not include the language of the proposed regulation in its entirety and suggests that safety hats would offer protection from falling or flying objects or electrical shocks and burns only. Impacts are the major source of head injuries when safety hats are not worn. The comment also falsely assumes all workers can determine where and when dangers are present that would require wearing a safety hat to prevent injury.

**ANR Comment:** "47 48.4. Life jackets and belts. (b) Life jackets ~~belts~~ shall be worn where there is a danger from falling into water."

**OMHST Response:** DENIED. The comment deletes the word "belts" from the section which was previously deleted and replaced with "safety harness" to increase the level of safety provided to workers.

**ANR Comment:** "§56-3-48 49. First Aid Equipment. (3) Twenty-four triangular bandages. Needs revised due to new backboard stretchers."

**OMHST Response:** DENIED. The comment states that section needs revised due to use of "new backboard stretchers." The requirement for all mines to use "new backboard stretchers" has not been addressed in existing or proposed regulations. In addition, 15 triangular bandages are required to secure a patient to the "old style" stretchers found in many first aid kits being used in the industry if the patient is suspected of suffering a neck or back injury. The triangular bandages are also used to cover bandaged wounds and be used as slings.

**ANR Comment:** "(7) ~~One foille~~. Not acceptable practiced by medial professionals anymore to use this."

**OMHST Response:** DENIED. The comment states foille (ointment) is not acceptable practice by medical professionals any more. Mr. Rick Rice, training supervisor for RESA was contacted about this comment, and he stated there is currently not a written policy that disallows the use of foille ointment and in some instances it would be an acceptable and effective treatment for some burns.

**ANR Comment:** “(11) ~~One (1) ounce bottle of aromatic spirits of ammonia.~~ Not an acceptable practice.”

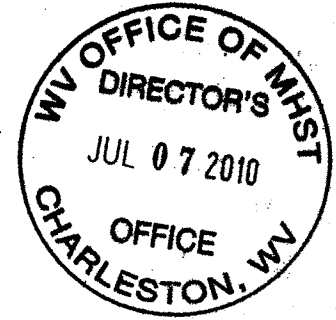
**OMHST Response:** DENIED. The comment states aromatic spirits of ammonia are “not an acceptable practice.” Again, Mr. Rick Rice of RESA was contacted and stated there were no written policies banning the use of aromatic spirits of ammonia and that it could be used as an acceptable and effective stimulant in some instances.

**ANR Comment:** “§56-3-54 55. First Aid Training of Coal Mine Employees. ~~54 55.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his employment with the opportunity for first aid training as prescribed by the Director, unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first aid training of not less than five (5) hours within each twenty four (24) months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training. This regulation due to EMT requirements is no longer valid and employees receive annual first aid training. Therefore it needs to be deleted entirely.~~”

**OMHST Response:** DENIED. The comment decreases the level of first-aid training required by the WV OMHST by deleting all first-aid training requirements due to EMT requirements. EMT's are required only at surface mines employing more than ten (10) employees and at miens where more than ten (10) employees are employed, one EMT is responsible for up to seventy (70) employees. Every employee should be provided the first-aid training required, which has been in effect for over 25 years.



**Alpha Natural Resources**



To: Ronald Wooten  
Director of The Office of Miners Health Safety and Training  
1516 Washington Street, East  
Charleston, WV 25301

Subject: Comments on proposed Title 56 Series 3 proposed West Virginia Surface Mine Regulations dated May 26, 2010.

To Whom It May Concern:

Please accept our following comments concerning the above proposed regulations. This is an extensive re-write of current enforcement schemes that will substantially increase the likelihood of numerous citations to be issued due to ambiguous and un-defined terms that will leave arbitrary judgment calls to be made in the field by sometimes less than seasoned inspectorate personnel. At a time in our industry where it seems that everyone wants to eliminate coal production, this new enforcement scheme is being offered as a means to "simply" update the current regulations which is not the case.

Let us begin by saying this is not the time to completely rewrite Title 56-3 of the West Virginia Surface Mine Regulations. The surface mine industry in West Virginia is fighting for survival. These proposed new regulations as currently written will not provide for additional safety of mining personnel, but rather will be a source of revenue for the Office of Miner's Health Safety and Training. The surface mine industry in West Virginia has shown great achievements in safety and thus does not warrant such drastic proposed changes.

Collectively, as surface miners, with over 50 years of experience we agree that some changes need to be made, but not such a complete and drastic rewrite. In times past, the Coal Mine Safety Board has been the entity in the State to develop and implement new rules and regulations that are written to improve the safety and health of the miner. In this particular case, the Coal Mine Safety Board has not been involved in the development of these rules and the injury performance of the Surface Mine Industry in this State has been exemplary in the recent past which does not warrant such a drastic overhaul of existing law.

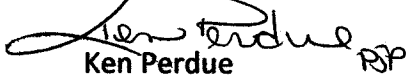
We have identified several vague and technical defects in the proposed rule and have included them on the attached pages. When considering these comments that will help mitigate the inadequacy of the proposed rule, it is our belief you will agree with our comments. Many of the proposed rules will require thousands of dollars of investment made that will be perpetual going forward such as providing gloves for workers to prevent injuries that have yet to occur in a particular type of mining. This is but one example! There are others as well.



## Alpha Natural Resources

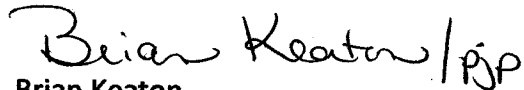
Finally let us say also that there is an old adage that also is applicable to this proposed rule, and that is "if it ain't broke, don't fix it!" We truly believe this is the logic that should be used and this entire proposal should be scrapped and started over with an atmosphere that we want to actually improve mine safety not increase enforcement revenue. The two proposed changes that form the basis of the rewrite which are High Wall Mining and Extreme Slope Work in the summary of the rule and statements of facts and circumstances are not the only changes proposed. To only consider these changes in and of themselves would be one matter but there are hundreds of other changes that are not identified as being the necessary methodology warranted for this massive re-write of the current regulations that are working fine and creating a safe workplace for thousands of surface miners in our state. We strongly urge that our comments and suggested changes not only be heard and considered but implemented if this rule continues to be advanced to the Legislature for approval.

Thank You,



Ken Perdue

Director of Operations Safety, Alpha Natural Resources



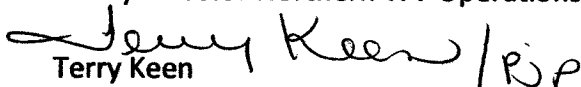
Brian Keaton

Director of Industrial Hygiene, Alpha Natural Resources



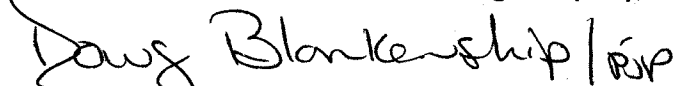
Michael Vaught

Safety Director Northern WV Operations, Alpha Natural Resources



Terry Keen

Safety Director, Simmons Fork Mining Company, LLC



Doug Blankenship

Safety Director, Callaway Mining Company, LLC.



Donald C. Presley

Safety Director, Southern WV Operations, Alpha Natural Resources

June 18, 2010



3.4. Adequate – The term “Adequate” shall mean sufficient for a specific requirement. (The term needs removed, too vague, why add this definition as it has no value to the regulations.)

3.6. Approved. -- The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject. (remove in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject. This is too broad and not specific to MSHA and/ or the State of WV.)

3.10. Barricaded. -- The term "Barricaded" shall mean to obstruct passage of person, vehicles, or flying materials. (how can flying materials be barricaded??) Suggest “Barricaded” shall mean to obstruct passage of person or vehicles to an area which is practical and what it should mean.

3.12. Berm. -- The term “Berm” shall mean a pile or mound of material or equivalent capable of restraining a vehicle. (Berms are not intended to prevent restraining of a vehicle, they are a warning device. Suggest we use MSHA explanation in MSHA program policy manual; "Berm," as used in this Section, means a pile or mound of material at least axle high to the largest piece of equipment using such roadway and as wide at the base as the normal angle of repose provides. Where guardrails are used in lieu of berms, they shall be of substantial construction.

3.21. Brake systems:

(a) Service brake system - the primary brake system used for stopping a vehicle.

(b) Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system. Emergency stopping system is an undefined term and not provided on any vehicle of any type in the industry and should be removed from the regulation. Furthermore we are not aware of any manufacturer offering or having designed such system.

3.24. Case Insert. – The term “Case Insert” shall mean a set of printed, precautionary instructions, including the IME “Instructions and Warnings” which is included in a case of explosive materials. This should be removed from regulation due to being too broad and vague and provides no value to the user.

3.43. Extraneous Electricity. – The term “Extraneous Electricity” shall mean electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields. How should this be tested, when should it be tested and what tools are available to the industry for testing.



**Suggested changes in wording of the following regulations to read as listed:**

3.56. Interested Persons. -- The term "Interested Persons" shall include the operator, members of any mine safety committee and/ or other duly authorized representative of the mine workers at the mine affected and ~~Department of Energy~~ the Office of Miners' Health, Safety and Training.

3.65. Misfire. -- The term "Misfire" shall mean a blast or specific borehole that failed to detonate as planned. One cannot determine if all material detonated in a drill hole until the excavation process has begun.

3.85. Surface Mine. -- The term "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, and shops ~~which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.~~ "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

3.88. Tension Crack. -- The term "Tension Crack" shall mean a crack resulting from movement of material in a fill or outer bank of a roadway that indicates failure of the stability of the material. (This definition would be consistent with the proposed regulation 56-3-30.8.)

**§56-3-13. Findings Orders and Notices. This section should be removed from Title 56, Senate Bill 68 passed in 2007 addresses all issues with findings, orders and notices under 22a-1-15 and makes it un-necessary to repeat it again.**

**§56-3-23. Certification of Mine Foreman or Assistant Mine Foreman Whose License to Engage in Similar Activities Suspended in Another State.**

~~23.1. Any person whose license, certificate or similar authority to perform any supervisory duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.~~

Any person whose license, certificate or similar authority to perform any examination duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.  
Suggested wording.

27.1. Pre shift examination.

(a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine ~~highwalls in the working area and spoil piles for cracks, loose~~



materials, overhanging ledges, and other dangerous conditions all active working places at the surface mine. (active working places includes where persons are required to work or travel)

(c) The operator shall have weekly safety meetings with all employees which shall provide information/training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept for 30 days (same as equipment pre-shift, this will be 4 safety meetings) and made available to all interested persons and a representative of the Director upon request.

27.2. On-shift examination.

(a) The mine foreman or assistant mine foreman shall examine all active working places in the pit at the surface mine (active working places includes where persons are required to work or travel) under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all conditions entered in the record book by the mine foreman or his assistants on the prior shift.

30.8. Dump areas.

(a) Safety berms shall be provided at the edge of all fill areas to prevent over-travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. What is the definition of safe angle of repose or steep slope? Instrumentation must be used to determine not by eye sight.

e) During or after a significant rain event special precautions shall be taken prior to dumping to prevent water from impounding near the edge of the fill

32.2. Transportation of explosives - precautions.

[REDACTED]  
[REDACTED] (Safe roads are not defined this should removed from proposed regulation.)

32.3. General requirements - explosives.



b) ~~Previously frozen explosives of nitroglycerin base shall not be used. The transportation, storage, handling, and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives, Safety Library Publication No. 4 "Warnings and Instructions." ( The safe transportation of explosives is defined in 32.2 of this existing code and therefore is not needed again)~~

e) The use of explosives and ~~all~~ handling incident thereto, ~~will~~ shall be discontinued ~~during the approach of and during whenever a thunderstorm and/or electrical storms is detected and all personnel shall be withdrawn from the blast area. (Drills are grounded, if area is withdrawn why take the time to lower mast and place someone in harm's way.)~~

(g) Explosives and detonators shall be kept a safe distance ~~kept a safe distance~~ from the of highwalls and spoil banks. (Original code is better.)

(h) ~~The backing of drills over loaded holes shall be prohibited. Mobile equipment and vehicles shall not be trammed or driven over loaded holes, firing lines, detonator wires, explosives, blasting agents, and detonators.~~

#### 32.4. Shooting preparation.

(c) Only drills, explosives trucks, mobile equipment suitable for hole stemming, and equipment necessary ~~No equipment except the drill and explosive truck, other than necessary equipment~~ for road repairs to remove the drills or explosive trucks, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. Excavations shall not occur if there is a danger of intersecting a known loaded or a misfired hole. Mobile equipment such as small front end loaders and other suitable hole stemming equipment shall be allowed to assist hole stemming procedures where adequate hole diameters are drilled and an adequate distance is provided between holes and rows of holes to ensure the safe operation and movement of equipment. The use and operation of all equipment used to stem holes shall be under the direct supervision of a certified blaster. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized. When the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of



extraneous electricity is present within three hundred (300) feet and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

(d) Holes shall not be drilled if there is danger of intersecting a **known** loaded or a misfired hole. When drill(s) are being operated on a bench being loaded, a minimum of one hole around the perimeter of the drill shall remain unprimed and unloaded.

(g) When loading beneath highwalls, the highwall shall be carefully inspected by the blaster in charge and the supervisor before beginning the loading process. If it cannot be determined that the highwall is safe then holes will not be loaded in that area until the highwall deficiency can be corrected.

#### 32.5. ~~Shooting Cables.~~ Firing/Lead lines.

(i) All persons involved with the blasting procedure of remote control detonation systems shall be properly trained and familiar with the manufacturer's instructions. A record of such training shall be kept for one (1) year and made available to all interested persons and a representative of the Director upon request

#### 32.6. Blasting.

3. The location of the unfired loaded holes shall be documented in the pre-shift/on-shift examination book and all affected personnel shall be notified of the location unfired holes

~~4. All personnel on affected shifts shall know the route in which to travel to a safe location in the event unforeseen circumstances (electrical storms, unstable highwalls, etc.) arise while working in the area of unfired loaded holes.~~ Entire section should be removed

(h) When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of workers. This plan will be made available to the authorized representative of the director.

#### 34.2. Haulage roads - construction and maintenance.

(h) Haulage roads, intended for coal or overburden haulage shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

(j) ~~All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplementary emergency braking system.~~



When required by the Director or his authorized representative approved runaway roads or suitable equivalent shall be provided on all haulage roads that have grades that are in excess of 10% and where a hazard is present due to the grade of the road, on which coal is first hauled from such surface mine after the effective date of this section

34.3. Haulage equipment - construction and maintenance.

(b) All new off road haulage vehicles placed into service shall be equipped with an emergency steering. There are no emergency braking systems for large haul trucks!

~~(e) ) Where required by the director or his authorized representative runaway roads or "J" roads shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section. All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplemental emergency braking system. There are no supplemental emergency braking systems available to any type of haulage trucks currently!~~

34.5. Parked vehicles.

(b) No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position. (overcrowding shall mean persons would not be afforded a proper seat for their own person.)

35.5. Methane and oxygen.

(a) Auger mining equipment shall not be operated in the vicinity of auger holes emitting ~~dangerous~~ quantities of methane at 1% or more ~~or air~~ until the atmosphere is reduced below 1%.

(b) (d) Auger mining machines shall be equipped with a permissible ~~flame safety lamp or other detector approved by the director~~ approved methane and oxygen detector.

**§ 56-3-36. Highwall Mining. IT IS SUGGESTED THIS ENTIRE PROVISION BE REMOVED FROM THIS RULE AS IT IS ALMOST EXCLUSIVELY DIRECTED AT ONE TECHNIQUE OR STYEL OF HIGH WALL MINING WHILE NOT REGULATING THE OTHER STYLE HARDLY AT ALL. ALL OF THESE PROVISIONS CAN BE INCORPORATED IN A MINE SPECIFIC COAL MINE COMPREHENSIVE SAFETY PROGRAM THAT IS ALREADY REQUIRED.**



### 36.1 General Precautions

(a) Highwall mining systems shall utilize water sprays and/or dust collectors to control dust as much as practical. Suggested wording.

(b) ~~Dust shall be controlled by the use of permissible dust collectors or other methods.~~  
Now listed in (a) above.

(f) The pit in which the highwall miner is being used shall be of a width to safely operate all equipment used during the mining process. This does/should not apply to pre-law benches.

(h) Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the highwall miner openings and to within one thousand (1000 feet) of the

active workings, unless DEP permits require otherwise due to water quality. Adequate precautions shall be taken to insure against unauthorized entry when any highwall miner openings are not blocked. This needs to be stricken from the rule as it is not lawful to enter the opening.

(k) At the close of the highwall mining operation, maps shall be submitted to the Office of Miners' Health, Safety and Training for map archiving purposes showing the records in 56 CSR § 3-36.1(k) in a manner such that the maps can be referenced to the West Virginia State Plane Coordinate System. Mining that has occurred after the effective date of these regulations shall be certified by a West Virginia Registered Professional Engineer. This needs removed as one can't certify these accurately. A combination of approximate and surveyed locations is permitted, so long as the certified map clearly denotes such. These distances will always be approximate and therefore and engineer should not be required to certify such maps.

(m) ~~A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment.~~ Existing regulations all ready require this and it is conflict with MSHA regulations.

### 36.2 Proximity To Underground Workings

(a) No person(s) shall enter a highwall miner opening for any reason without written approval from the Office of Miners' Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate, unless they are technical persons trained and deemed qualified by the operator. The operator must submit all initial plans for approval, and a copy submitted to the authorized representative of the miners for comments at least ten (10) days prior to submission to the Director that includes the following provisions:



## Alpha Natural Resources

(2) The operator shall submit a plan that includes applicable safety precautions to follow while working in a high wall miner opening (should be included) and must receive written approval from the Director or the Regional Supervisor of the Office of Miners' Health, Safety & Training, which will detail the precautions necessary to safely perform the duties involved.

~~(3) In order to safeguard workers, when anyone enters the highwall miner opening(s), all West Virginia underground mining laws and regulations shall apply. Needs stricken because it can't be accomplished in a highwall miner opening.~~

(e) Adequate illumination shall be provided when the highwall miner system is operated in darkness or low visibility conditions. Adequate is an undefined term and therefore will lead to subjective determinations that are only opinions

(h) Good Visibility shall be provided for the highwall miner operator to the launch area of the machine.

(i) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety (90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and an authorized representative of the miners, upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables. Persons working underground do not have to wear tested and insulated gloves and persons outside should not as well. Additionally the handling of these cables causes excessive wear on the approved insulated type gloves as they are designed for testing and trouble shooting and not work, therefore this entire section should be stricken

### 36.6 Methane And Oxygen

(h) All methane examinations will be recorded in the examination book maintained by the supervisor, along with necessary explanations. Methane monitors will be visually inspected prior to the start of each new entry. Methane monitors will be tested bi-monthly, using manufacturers test apparatus.

### §56-3-36 37. General Provisions.

36 37.2. Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility. The State of West Virginia does not have a



drug enforcement regulation and it is impossible to know if one is under the influence of a controlled substance without examination and testing by trained medical professionals.

37.9. Toilet facilities - Each operator of a surface mine shall provide at least one sanitary toilet in a location convenient to each surface mine. All sanitary toilets shall be regularly maintained in a clean and sanitary condition.

37 38.10. Movement of electrical equipment.

~~(c) Energized high voltage trailing cables may be moved only by a qualified person and the operator of such mines shall require that such person wear approved and tested insulated workmen's gloves. Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every ninety (90) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and interested persons~~

~~upon request. Rated rubber gloves shall be inspected for defects before use on each shift and at least once during the shift when the rated gloves are used for extended periods. All rated gloves which contain defects shall be discarded and replaced prior to handling energized portable trailing cables. If straps or hooks are used these straps and hooks shall be non-conductive and designed for that purpose. Not achievable by any practical means now and this provision should be stricken from the regulations.~~

40 41.3. Transportation of compressed gas cylinders.

~~(a) When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced except in conformance with the provisions of 36 CSR 27-11.1(a) through (h). This code cite should be the regulation and nothing more~~

§56-3-42 43 Nontitled.

42 43.1.

~~All mobile equipment shall be operated and maintained according to the manufacturer's instructions. Already in the law 43.3b~~

42 43.4. Warning devices, lights, brakes.



(a) ~~Dump trucks used to haul coal or other material~~ All mobile loading, hauling, drilling, or excavation equipment shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.

(f) A tow bar or other approved device shall be used for towing equipment. A safety chain shall be used in conjunction with a tow bar. Towing equipment shall mean equipment being moved for mechanical failure from Point A to Point B. This is an adequate definition of towing.

42 43.10. Operation of mobile equipment

(a) Mobile equipment operators shall operate mobile equipment safely while in motion. Suggested wording only.

(e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated. Enclosed cabs of mobile equipment manufactured after the effective date of this Rule shall be adequately ventilated by heaters, defrosters, fans, and/or air conditioners.

42 43.12. Track type dozers - track type dozers shall meet the following standards:

(d) Portable fire extinguisher of at least five (5) pounds. Conflicts MSHA regulation.

42 43.13. Front-end loaders - rubber tire front-end loaders shall meet the following standards.

(a) Portable fire extinguishers, of at least five (5) pounds. Conflicts MSHA regulation.

42 43.14. Machinery.

(b) Employees shall not use unsafe hand tools (suggested wording)

42 43.20. Tires and repairs.

(g) All tires shall be maintained in a safe condition. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately. (Suggested Wording)

43.21 Operating equipment on extreme slopes during reclamation activities.

(a) Prior to any equipment operating on an extreme slope, a meeting shall be conducted with a mine foreman and all persons involved in working on the extreme slope (Suggested Changes)

(d) When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow safety precautions developed at the mine. (Suggested Changes)



## Alpha Natural Resources

~~(e) When cable winching the following requirements must be met:~~ Should be eliminated it is in (d)

(1) The equipment being used to assist a dozer, or other equipment working on slopes shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.

(2) The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all equipment.

(3) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

(4) The live-end connection device used to secure the two pieces of equipment together shall be of a design that minimizes the possibility of accidental disconnection. The

connection device shall be of the proper strength for the duties performed and maintained in safe condition.

(5) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged.

(6) All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.

(f) Communications, either audible or visual, shall be maintained between equipment operators while working on extreme slopes.

(g) Under no circumstances shall an apprentice miner operate equipment on an extreme slope.

Suggested changes in the wording of sections d through g above.

45 ~~46~~.4. Maintenance of fire fighting equipment.

~~45-46~~.6. Drills - Instruction on the usage of various types of available fire-fighting equipment shall be held for employees at least once annually. A record of such demonstration shall be recorded. (Suggested Changes)

47 ~~48~~.3. Safety hats and safety toed shoes

a) Safety hats and safety toed shoes shall be worn by all persons while in or around a surface mine, tipples or cleaning plants coal handling facilities, and other surface areas where there is a danger of falling or flying objects, or from electrical shock and burns -



47 48.4. Life jackets and belts.

(b) Life jackets belts shall be worn where there is a danger from falling into water.

**§56-3-48 49. First Aid Equipment**

(3) Twenty-four triangular bandages. Needs revised due to new backboard stretchers

(7) ~~One foille.~~ Not acceptable practice by medical professionals anymore to use this

(11) ~~One one ounce bottle of aromatic spirits of ammonia.~~ Not an acceptable practice.

**§56-3-54 55. First Aid Training of Coal Mine Employees.**

~~54 55.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his employment with the opportunity for first aid training as prescribed by the Director unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first aid training of not less than five (5) hours within each twenty four (24) months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training. This regulation due to EMT requirements is no longer valid and employees receive annual first aid training therefore it needs to be deleted entirely.~~



*State of West Virginia*  
**Joe Manchin III, Governor**

**WV Office of Miners' Health, Safety & Training**  
**Ronald L. Wooten, Director**  
1615 Washington Street East • Charleston, West Virginia • 25311-2126  
Telephone 304-558-1425 • Fax 304-558-1282  
[www.wvminesafety.org](http://www.wvminesafety.org)

**Response to comments received from Alpha Natural Resources on July 7, 2010**

The comment period in which to respond to Title 56 Series 3: Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia ended at 5:00 p.m. on June 30, 2010. The attached comments dated June 18, 2010, were postmarked on July 6, 2010 and received on July 7, 2010, well outside the comment period. The Office of Miners' Health, Safety and Training is precluded by law from responding to said comments. However, the Office of Miners' Health, Safety and Training will address the comments from Alpha Natural Resources dated June 25, 2010 and received on June 29, 2010 under separate cover.

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• Region One • 14 Commerce Dr., Suite 1 - Westover, West Virginia 26501 • Telephone 304-285-3268 • Fax 304-285-3275  
• Region Two • 891 Stewart St. - Welch, West Virginia 24801-2311 • Telephone 304-436-8421 • Fax 304-436-2100  
• Region Three • 137 Peach Court, Suite 2 - Danville, West Virginia 25053 • Telephone 304-369-7823 • Fax 304-369-7826  
• Region Four • 550 Industrial Dr. - Oak Hill, West Virginia 25901-9714 • Telephone 304-469-8100 • Fax 304-469-4059

# ORIGINAL

WEST VIRGINIA OFFICE OF  
MINERS' HEALTH, SAFETY AND TRAINING  
1615 Washington Street East  
Charleston, West Virginia 25311

IN RE: Public Hearing on Rules and Regulations  
Governing the Safety of Those Employed In and Around  
Surface Mines in West Virginia

The Public Hearing on Rules and Regulations  
Governing the Safety of Those Employed in and Around  
Surface Mines in West Virginia was held on the 30th day  
of June, 2010, commencing at 9:02 a.m. and concluding at  
1:01 p.m., at the West Virginia Office of Miners' Health,  
Safety and Training, located at 1615 Washington Street  
East, Charleston, Kanawha County, West Virginia, before  
Kristi D. Johnson, Certified Court Reporter and Notary  
Public.

DeMuth Court Reporting, L.L.C.  
Kristi D. Johnson, CCR  
Certified Court Reporters  
Post Office Box 701  
Dunbar, West Virginia 25064  
(304) 766-8708

A P P E A R A N C E S

On behalf of the Office of Miners' Health, Safety and  
Training:

ELAINE SKORICH, ESQUIRE  
Assistant Attorney General

C.A. PHILLIPS  
Deputy Director

H. MIKE ARMENTROUT  
Surface Inspector

T A B L E   O F   C O N T E N T S

<u>Speaker</u>	<u>Page</u>
C.A. Phillips (Introduction)	4
C.A. Phillips (Closing)	5

<u>Exhibit</u>	<u>Marked</u>
Exhibit No. 1 (Sign-in Sheet)	5

1 June 30, 2010

2 P R O C E E D I N G S

3 MR. PHILLIPS: For the record, this  
4 public hearing on proposed amendments concerning  
5 regulations and rules and in Title 56 Series 3 of the  
6 code and state rules is open for comments.

7 There was notification sent out  
8 pertaining to anyone who wanted to make reservations.  
9 Kathy did not receive any reservations, so we will have  
10 to work off of that list. We have a sheet in the back,  
11 which Randall is in charge of, for anyone who comes and  
12 chooses to speak as it pertains to these rules.

13 At this time, I would ask anyone in the  
14 audience, would you like to speak today? Anybody?

15 (No response)

16 MR. PHILLIPS: I'm not seeing any hands.  
17 We will wait for a few minutes and see who shows up.

18 (WHEREUPON, a recess was taken,  
19 after which the following  
20 proceedings were had.)

21 (WHEREUPON, at twelve o'clock, the  
22 noon recess was taken, after which  
23 the following proceedings were had.)

1 MR. PHILLIPS: We're back on the record  
2 here at the public hearing. I'll ask, are there any  
3 speakers as it pertains to the proposed regulations?

4 (No response)

5 MR. PHILLIPS: Again, I will ask, are  
6 there any speakers as it pertains to the proposed  
7 regulations?

8 (No response)

9 MR. PHILLIPS: And one more time, I will  
10 ask, are there any speakers as it pertains to the  
11 proposed regulations?

12 (No response)

13 MR. PHILLIPS: Not hearing any, and not  
14 having any speakers present, we will convene the  
15 meeting.

16 (WHEREUPON, the sign-in sheet was  
17 duly marked for identification as  
18 Exhibit No. 1 and attached hereto.)

19 (WHEREUPON, the meeting was  
20 adjourned at 1:01 p.m.)  
21  
22  
23

## REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, Kristi D. Johnson, Certified Court Reporter and Notary Public within and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the foregoing **public hearing on rules and regulations governing the safety of those employed in and around surface mines in West Virginia** was duly taken by me and before me at the time and place, and for the purpose specified in the caption hereof.

I do further certify that the said meeting was correctly taken by me in the Stenomask procedure and that the same was accurately transcribed by me.

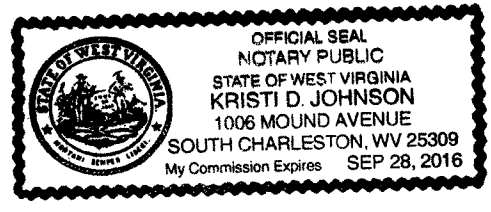
I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this meeting was held, and further that I am not a relative or employee of any attorney or counsel employed by the parties or financially interested in the action.

Given under my hand this 30th day of June,  
2010.

My commission expires September 28, 2016.

*Kristi D. Johnson*

Certified Court Reporter &  
Notary Public





West Virginia Office of Miners' Health, Safety and Training  
Public Hearing  
June 30, 2010

<p style="text-align: center;"><b>1</b></p> <p>1 3:6 5:18 1:01 1:12 5:20 1615 1:3,13</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p>2010 1:11 4:1 7:2 2016 7:3 25064 1:21 25311 1:4 28 7:3</p> <hr/> <p style="text-align: center;"><b>3</b></p> <p>3 4:5 30 4:1 304 1:22 30th 1:10 7:1</p> <hr/> <p style="text-align: center;"><b>4</b></p> <p>4 3:3</p> <hr/> <p style="text-align: center;"><b>5</b></p> <p>5 3:4,6 56 4:5</p> <hr/> <p style="text-align: center;"><b>6</b></p> <p>6-7 3:7</p> <hr/> <p style="text-align: center;"><b>7</b></p> <p>701 1:20 766-8708 1:22</p> <hr/> <p style="text-align: center;"><b>9</b></p> <p>9:02 1:11</p> <hr/> <p style="text-align: center;"><b>A</b></p> <p>a.m 1:11 accurately 6:14 action 6:17,20 adjourned 5:20 aforesaid 6:6 amendments 4:4 Anybody 4:14 ARMENTROUT 2:8 Around 1:6,9 6:9 Assistant 2:5 attached 5:18 Attorney 2:5 6:15,19 audience 4:14</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p>back 4:10 6:1 behalf 2:2 Box 1:20</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p>C.A 2:6 3:3,4 caption 6:11 CCR 1:18 Certificate 3:7 6:1 Certified 1:15,19 6:4 7:4</p>	<p>certify 6:7,12,15 charge 4:11 Charleston 1:4,14 chooses 4:12 Closing 3:4 code 4:6 comes 4:11 commencing 1:11 comments 4:6 commission 7:3 commissioned 6:6 concerning 4:4 concluding 1:11 convene 5:14 correctly 6:13 counsel 6:16,19 County 1:14 6:3,5 Court 1:15,17,19 6:4 7:4</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p>day 1:10 7:1 DeMuth 1:17 Deputy 2:7 Director 2:7 duly 5:17 6:6,9 Dunbar 1:21</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p>East 1:3,14 ELAINE 2:4 Employed 1:6,9 6:8,16, 19 employee 6:18 ESQUIRE 2:4 Exhibit 3:5,6 6:18 expires 7:3</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p>few 4:17 financially 6:20 following 4:19,23 foregoing 6:7 further 6:12,15,18</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p>General 2:5 Given 7:1 Governing 1:6,9 6:8</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p>hand 7:1 hands 4:16 HEALTH 1:2,12 2:2 Hearing 1:5,8 4:4 5:2,13 6:7 held 1:10 6:17 hereby 6:6 hereof 6:11 hereto 5:18</p>	<p style="text-align: center;"><b>I</b></p> <p>identification 5:17 Inspector 2:9 interested 6:20 Introduction 3:3</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p>Johnson 1:15,18 6:4 June 1:11 4:1 7:1</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p>Kanawha 1:14 6:3 Kathy 4:9 Kristi 1:15,18 6:4</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p>L.L.C 1:17 list 4:10 located 1:13</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p>Marked 3:5 5:17 meeting 5:15,19 6:12,17 MIKE 2:8 MINERS' 1:2,12 2:2 Mines 1:7,10 6:9 minutes 4:17</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p>neither 6:15 noon 4:22 nor 6:15,16 Notary 1:15 6:5 7:5 notification 4:7</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p>o'clock 4:21 OFFICE 1:1,12,20 2:2 one 5:9 open 4:6 out 4:7</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p>p.m 1:12 5:20 Page 3:2 Pages 3:7 parties 6:17,19 pertaining 4:8 pertains 4:12 5:3,6,10 PHILLIPS 2:6 3:3,4 4:3, 16 5:1,5,9,13 place 6:10 Post 1:20 present 5:14 procedure 6:13 proceedings 4:20,23 proposed 4:4 5:3,6,11 Public 1:5,8,16 4:4 5:2 6: 5,7 7:5 purpose 6:11</p>	<p style="text-align: center;"><b>Q</b></p> <p>qualified 6:6</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p>Randall 4:11 RE 1:5 receive 4:9 recess 4:18,22 record 4:3 5:1 Regulations 1:5,8 4:5 5: 3,7,11 6:8 related 6:16 relative 6:18 Reporter 1:15 6:4 7:4 Reporter's 3:7 6:1 Reporters 1:19 Reporting 1:17 reservations 4:8,9 response 4:15 5:4,8,12 Rules 1:5,8 4:5,6,12 6:7</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p>SAFETY 1:2,6,9,13 2:2 6: 8 same 6:14 see 4:17 seeing 4:16 sent 4:7 September 7:3 Series 4:5 Sheet 3:6 4:10 5:16 shows 4:17 Sign-in 3:6 5:16 SKORICH 2:4 Speaker 3:2 speakers 5:3,6,10,14 specified 6:11 state 4:6 6:2,5 Stenomask 6:13 Street 1:3,13 Surface 1:7,10 2:9 6:9</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p>Title 4:5 to-wit 6:3 today 4:14 TRAINING 1:2,13 2:3 transcribed 6:14 twelve 4:21</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p>under 7:1 up 4:17</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p>VIRGINIA 1:1,4,7,10,12, 14,21 6:2,9</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p>wait 4:17</p>	<p>wanted 4:8 Washington 1:3,13 WEST 1:1,4,7,10,12,14,21 6:2,9 WHEREUPON 4:18,21 5: 16,19 will 4:9,17 5:5,9,14 within 6:5 work 4:10</p>
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**PUBLIC HEARING**  
**OR**  
**RULES AND REGULATIONS GOVERNING THE SAFETY OF THOSE EMPLOYED IN AND AROUND**  
**SURFACE MINES IN WEST VIRGINIA**

**JUNE 30, 2010**

	NAME	AFFILIATION	MAILING ADDRESS	WISH TO SPEAK?
1.	<i>Todd Moore</i>	<i>Consol</i>	<i>1000 Consol Energy Drive Cannonsburg PA</i>	<i>No</i>
2.				
3.				
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