

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

Form #7

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2009 JAN 28 PM 1:17

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

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

CITE AUTHORITY: West Virginia Code Section 22A-1-6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

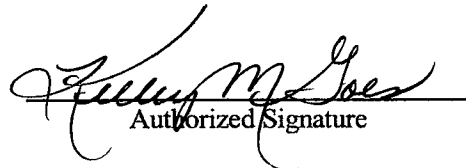
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Title 56 - Rules and Regulations Governing the Marking of Gas Lines on Mine Property in West Virginia

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary

  
Authorized Signature

**To:** The Honorable Natalie E. Tennant  
West Virginia Secretary of State

**From:** Kelley Goes, Cabinet Secretary  
WV Department of Commerce

**Subject:** Proposed Emergency Rule

**Date:** January 28, 2009

**Effective Date:** January 28, 2009

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2009 JAN 28 PM 1:17

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

### INTRODUCTION

This rule is promulgated consistent with the powers and duties of the Director of the Office of Miners' Health, Safety and Training with regard to mine safety.

This Rule is promulgated by the Director in response to a Rule promulgated by the Board of Coal Mine Health and Safety ("Board") on the same topic which has been enjoined by an order of the Circuit Court of Kanawha County and a portion of said rule is under challenge in U.S. District Court for the Southern District of W. Va.

### FACTS

1. A fatal accident resulting from a dozer cutting into an active gas line occurred on Wednesday, February 1, 2006, at the Elk Run Coal Company, Inc., Black Castle No. 4 mine in Boone County, West Virginia.
2. Mr. Paul K. Moss, a fifty eight year old master dozer operator, suffered fatal burn injuries at approximately 2:10 p.m. on February 1, 2006.
3. The bulldozer was positioned parallel to the 16 inch unmarked gas gathering line and facing slightly downhill toward the bench of the Clarion coal seam level at the time of the accident.
4. The lower left corner bit on the bulldozer blade was the direct cause of the rupture in the 16 inch low-pressure, high volume, actively charged gas gathering line.
5. Mining maps and inspection of the accident site revealed that the 16 inch gas gathering line was unmarked for a distance of approximately 2,000 feet in both directions from where the accident occurred.
6. There are hundreds, if not thousands, of miles of unmarked gas pipelines crossing property being actively mined for coal throughout West Virginia.

7. In many instances, coal companies or operators are not aware of the location of these unmarked gas pipelines.

8. Unmarked gas pipelines located on property being actively mined for coal pose a significant danger to the health and safety of coal miners working in close proximity to the unmarked gas lines.

9. The promulgation W. Va. Code R. § 56-5-1, *et seq.* by the Director will assist in preventing the recurrence of the specific type of fatality that occurred 2006.

10. In order to fulfill his obligations under W. Va. Code § 22A-1-1, *et seq.*, and to prevent the reoccurrence of a fatality similar to Fatal 16-2006, the Board of Coal Mine Health and Safety adopted W. Va. Code R. § 36-27-14, which has been enjoined by an order of the Circuit Court of Kanawha County.

11. The currently enjoined rule raises questions as to the Director's enforcement authority which are resolved in the proposed emergency rule and the related rule being propounded by the Department of Environmental Protection which has jurisdiction over oil and gas wells and pipelines.

12. The Board has promulgated an amended version of § 36-27-14 that went into effect on January 1, 2009. The Circuit Court of Kanawha County stayed the enforcement of those rules effective January 27, 2009.

13. Absent the filing and approval of this emergency rule and the related Division of Environmental Protection rule there will be no enforceable rule in place to protect coal miner health and safety.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Rules and Regulations Governing the Marking of Gas Lines on Mine Property in West Virginia

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Office of Miners' Health, Safety and Training

Address: 1615 Washington Street, East  
Charleston, West Virginia 25311

Phone Number: (304) 558-1425 Email: \_\_\_\_\_

**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 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)
1. Estimated Total Cost	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
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Rules and Regulations Governing the Marking of Gas Lines on Mine Property in West Virginia

Rule Title:

Rules and Regulations Governing the Marking of Gas Lines on  
Mine Property in West Virginia

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.

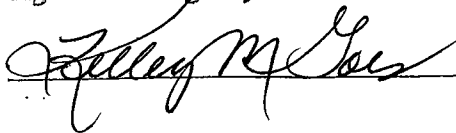
### MEMORANDUM

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 are anticipated.

Date: January 28, 2009

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_



**EMERGENCY RULE QUESTIONNAIRE**

DATE: January 28, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Office of Miners' Health, Safety and Training  
1615 Washington Street, East  
Charleston, West Virginia 25311

EMERGENCY RULE TITLE: Title 56 - Rules and Regulations Governing the Marking of Gas Lines on Mine Property in West Virginia

1. Date of filing January 28, 2009

2. Statutory authority for promulgating emergency rule:  
West Virginia Code Section 22A-1-6

3. Date of filing of proposed legislative rule: January 28, 2009

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Adopts new language

5. Has the same or similar emergency rule previously been filed and expired?  
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

The Board of Coal Mine Health and Safety promulgated a similar Rule (36 C.S.R. 27-14) in response to a 2006 coal mine fatal accident. This rule was enjoined by the Kanawha County Circuit Court on November 14, 2008. This Rule is filed as an emergency to prevent future mine accidents involving gas lines on mine property.

Substituted corrected as to questions 1 and 3.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

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N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

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The lack of a rule requiring the marking of gas lines exposes miners to life threatening conditions.

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**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: January 28, 2009

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, West Virginia 25311 Phone - (304) 558-1425

LEGISLATIVE RULE TITLE: 56 CSR 5-1 et seq. - Rules and Regulations Governing the  
Marking of Gas Lines on Mine Property in West Virginia

1. Authorizing statute(s) citation West Virginia Code Section 22A-1-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
January 28, 2009

b. What other notice, including advertising, did you give of the hearing?  
Notice of Public Comment Period put on agency website per agency practice.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
February 27, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached N/A No comments received \_\_\_\_\_

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

No

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

WV Office of Miners' Health, Safety and Training

1615 Washington Street, East

Charleston, West Virginia 25311

Phone - (304) 558-1425

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, West Virginia 25311

Phone - (304) 558-1425

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

b. Date of hearing or comment period:

Commencing January 29, 2009 thru February 27, 2009

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

January 28, 2009

d. Attach findings and determinations and reasons:

Attached

**West Virginia Office of Miners' Health, Safety and Training  
1615 Washington Street, East  
Charleston, West Virginia 25311**

**56 CSR 5-1 - Rules and Regulations Governing the Marking of Gas Lines on Mine  
Property in West Virginia**

**STATEMENT OF CIRCUMSTANCE**

In February 2006 a bulldozer operator was fatally injured when the bulldozer he was operating on mine property struck an unmarked gas line causing an explosion and fire. In May 2008, the Board of Coal Mine Health and Safety promulgated a rule regarding the marking of gas lines on mine property. Following legal action in both state and federal court, the Board of Coal Mine Health and Safety retracted those rules and promulgated a new rule addressing the marking of gas lines on mine property. That rule went into effect on January 1, 2009. The January 1, 2009 Board of Coal Mine Health and Safety rule was stayed by the Circuit Court of Kanawha County effective January 27, 2009. Thus, as of that date, there were no rules in effect pertaining to the marking of gas lines on mine property and there was an urgent need to file the rule referenced in this Memorandum on January 29, 2009.

**SUMMARY OF RULE**

OMHST's rule must be read together with a rule filed on the same day by the Department of Environmental Protection, Office of Oil and Gas. The Office of Oil and Gas rule should be available on the West Virginia Secretary of State's website in the very near future. Comments regarding the Office of Oil and Gas rule must be forwarded to the Office of Oil and Gas.

In summary, OMHST's rule requires that a Coal Permit holder, prior to conducting Excavation Work, perform a public records search for the presence of oil and gas wells and lines in the Designated Mining Area and notify any oil and gas operator which has known wells or natural gas pipelines located therein. After the oil and gas operator has identified the location of all pressure bearing and non-pressure bearing pipelines, the Coal Permit holder shall mark those lines utilizing the criteria set forth in the OMHST rule at 56 CSR § 5-3.4.1 through 3.4.7. OMHST's rule also prohibits mining within fifty (50) feet of any active oil and gas line or well without the prior approval of the regional office of OMHST. The OMHST rule requires that when oil and gas company or pipeline operator personnel enter the Notice of Designated Mining area, the coal mine operator must inform the oil and gas company or pipeline personnel of blasting schedules and times, where operations are occurring and any new known safety hazards. Additionally, the OMHST rule provides for awareness training to be conducted with all personnel and resident contractors who are assigned to work in close proximity to oil and gas lines and wells.

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

SERIES 5

**RULES AND REGULATIONS GOVERNING OIL AND GAS LINES AND WELLS ON  
MINE PROPERTY IN WEST VIRGINIA**

1.1. Scope. -- These rules govern the safety of mine employees working around oil and gas lines and wells located on mine property.

1.2. Authority -- W. Va. Code § 22A-1-6

1.3. Filing Date.

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 operators of such surface mining operations.

1.6. Other law applicable. -- All provisions of the mining laws of this state, specifically Chapter 22A, Articles 1 and 2 of the 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.

**§56-5-2. 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.

2.2. Coal Permit holders, operating at the time of the effective date of this rule, shall have a reasonable time, not to exceed thirty (30) days, to perform the public record search and notify any oil and gas operator which has known wells or natural gas pipelines located in the Designated Mining Area as required by section 3.2 of this rule.

**§56-5-3. Working Near Oil and Gas Wells and Lines.**

3.1. In some instances, coal and oil and gas well or natural gas pipeline operators must share the same properties during the course of coal production, oil and gas production and maintenance of natural gas pipelines. These regulations are adopted in light of such joint use of property, and the need for safety and shall apply to Designated Mining Areas as defined herein.

3.1.1. A “Coal Permit holder” is the party that is approved by the West Virginia Office of Miners’ Health, Safety and Training as the operator of that permit and may also be known as the coal mine operator.

3.1.2. A “Designated Mining Area” is an area of real property that is (i) subject to an active surface coal mining permit or the surface area of an active deep coal mine permit issued by the West Virginia Department of Environmental Protection (a “Coal Permit”) and (ii) where Excavation Work will be conducted within the following twelve (12) month period.

3.1.3. “Excavation Work” shall mean work where vegetation, timber, topsoil or overburden will be moved, removed or placed by surface mining operations and such surface impacts incident to underground coal mine operations.

3.2. Prior to conducting Excavation Work, a Coal Permit holder shall perform a public records search, including but not limited to a public records search of the records on file at the appropriate county clerk’s office and a public records search of the records on file at the West Virginia Office of Oil and Gas, of all Designated Mining Areas for the presence of oil and gas wells and lines, and provide by certified mail, return receipt requested, a Notice of Designated Mining Area to any oil and gas operator which has known wells or natural gas pipelines located in the Designated Mining Area. A Notice of Designated Mining Area shall contain the following information:

3.2.1. A copy of the mine plan permit maps previously submitted to the West Virginia Department of Environmental Protection in connection with the permit [currently pursuant to W.Va. Code § 22-3-9(12) and CSR 38-2-4] with a discernable boundary identifying the Designated Mining Area where Excavation Work will be conducted within the following twelve (12) month period; and

3.2.2. The general location of all oil and gas wells and pipelines known to the coal mining permit holder or operator, or identified in the coal permitting process, together with any GPS or other survey information in the possession of the Coal Permit holder that identifies the location of any natural gas pipelines in the Designated Mining Area; and

3.2.3. The office telephone number and mailing address for the mine where the work will occur, and identification of the location of any staffed guard gate or entrance.

3.3. Gas line locations shall be plotted on a certified map which shall be kept in the mine office. All gas lines installed on or after the first day of January 2009 shall be plotted on a GPS map.

3.4. Any gas line shall be considered as being active unless the line has been cut, purged and capped on each end. Any gas well will be considered active, unless the well has been plugged in accordance with W. Va. Code §22-6-24 below the elevation of the intended work area. The coal permit holder shall mark all known active gas lines in the Designated Mining Area in the following manner.

3.4.1. The markers shall be no less than 36 inches in height above the ground level.

3.4.2. Markers will be identified with a distinct, consistent, reflective marking at the top of the marker.

3.4.3. The markers will be placed perpendicular (upright) to the location of the gas line.

3.4.4. The markers will be placed immediately over the gas line at each marker location.

3.4.5. The markers will be spaced at distances that assure a guaranteed line of sight between those markers.

3.4.6. Markers will be made of weather resistant durable material.

3.4.7. Markers will be visible to persons on foot or in equipment from outside the defined zone. The defined zone is the area on both sides of and within 50 feet of the gas line.

3.5. In areas where tree cutting and/or clearing operations are to be performed the markers will be inspected after the operation is completed and any markers found to be missing or damaged will be replaced as needed.

3.6. When there is a curve in a gas line, additional markers will be installed 5 feet from each side of the gas line and directly across from each other, at any location where any part of a gas line is located more than 5 feet from a straight line extending along the gas line, between the center of the gas line at one marker location and the center of the gas line at the next adjacent marked location.

3.7. A Coal Permit holder shall replace all natural gas pipeline markers disturbed, damaged or destroyed. The replacement marker must be at least three feet in height, placed and maintained as close as reasonably practical over each line at the location of the marker disturbed, damaged or destroyed, and the following must be written legibly on a background of sharply contrasting color on each line marker:

3.7.1. The word "Warning," "Caution," or "Danger" followed by the words "Gas Pipeline" all of which, must be in letters at least 1 inch (25 millimeters) high with 1/4 inch (6.4 millimeters) stroke.

3.7.2. The name and the telephone number (including area code) that was on the marker disturbed, damaged or destroyed.

3.8. In the event that a Notice of Designated Mining Area is inaccurate or if there is a change in the area designated for mining or Excavation Work in the following twelve (12) months the permit holder shall provide a corrected or revised Notice of Designated Mining Area to all oil, gas and natural gas pipeline operators with lines in the area designated.

3.9. The Coal Permit holder shall provide written notice to all oil, gas or natural gas pipeline operators with pipelines in the area designated for mining or Excavation Work of any change in contact information or mine access points.

3.10. Neither mining nor Excavation Work shall occur within fifty (50) feet of any known active oil and gas line or well unless adequate safeguards are provided for the protection of the oil and gas line or well and the safety of miners. The permit holder shall notify the regional office of the Office of Miners' Health, Safety and Training and obtain prior approval before beginning mining or excavation work within fifty (50) feet of any known active oil and gas line or well. This shall not apply to mining and Excavation Work occurring within fifty (50) feet of any known active oil and gas well that is on file with the Director, in accordance with W. Va. Code § 22A-2-75, prior to the effective date of this rule.

3.11. When an oil and gas company or pipeline operator notifies the designated mine office or staffed guard gate of entry onto an area identified by a Notice of Designated Mining Area, the coal mine operator shall inform them of any blasting schedules and times, where operations are occurring, and any new known safety hazards.

3.12. When Excavation Work is completed in the area designated in a Notice of Designated Mining Area, the Coal Permit holder will so notify all known oil and gas well and natural gas pipeline operators who have natural gas pipelines in the identified area.

3.13 Oil and gas line and well awareness training shall be conducted with all personnel and resident contractors who are assigned to work in close proximity to oil and gas lines and wells. This training shall be incorporated during the following sessions:

3.13.1 Newly employed experienced miner,

3.13.2 Annual retraining,

3.13.3 Hazard training,

3.13.4 Contractor training,

3.13.5 Additionally, immediately after oil and gas lines and wells have been located, a special safety talk will be conducted with all persons on the property concerning oil and gas line and well locations,

3.13.6 Oil and gas lines and wells locations will be discussed in safety talks, at least on a quarterly basis,

3.13.7 Safety discussions will be held on oil and gas line and well locations prior to moving into a new work area.

3.14. Nothing herein shall provide or alter any contract or statutory or regulatory or common law right or obligation.