

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

FILED

JUL 1 11 51 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Legislative; CITE AUTHORITY 22A-1-21, 22A-4-2, 22A-4-3

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 56 CSR 14

TITLE OF RULE BEING PROPOSED: Rules Governing Assessing Health and Safety Violation Penalties to Open-Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines.

DATE OF PUBLIC HEARING: August 4, 1994 TIME: 2:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Miners' Health, Safety & Training
1615 Washington Street, East
Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Director, MHS&T
1615 Washington St., E.
Charleston, WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Stephen F. Webber

Authorized Signature

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STATE OF WEST VIRGINIA
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311-2126 • TELEPHONE: (304) 558-1425

GASTON CAPERTON
GOVERNOR

STEPHEN F. WEBBER
DIRECTOR

July 1, 1994

Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157-K
Charleston, West Virginia 25305

RE: Rule Filing: 56 CSR 14

Dear Mr. Hechler:

Please be advised that the attached rule, 56 CSR 14, Rules Governing Assessing Health and Safety Violation Penalties to Open-Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines, has my approval for filing as a proposed rule. If you have any questions, please call me or Chris Quasebarth, Director of Legal Services, at the above number.

Sincerely,

Stephen F. Webber,
Director

SFW:CQ:tm

Enclosures

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CIRCUMSTANCES REQUIRING THIS RULE

The attached rule, 56 CSR 14, Rules Governing Assessing Health and Safety Violation Penalties to Open-Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines, is required to establish civil monetary assessments for violations of health and safety laws, pursuant to W. Va. Code §§ 22A-1-21, 22A-4-2 and 22A-4-3.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing Assessing Health and Safety Violation Penalties to Open-Pit Mines, Cement Manufacturing Plants and Underground Limestone
Type of Rule: X **Legislative** **Interpretive** **Procedural**
Agency Office of Miners' Health, Safety and Training
Address 1615 Washington Street East
 Charleston, West Virginia 25311

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

This rule formalized the civil assessment procedure now in place for open-pit mines, cement manufacturing plants and underground limestone and sandstone mines.

3. Objectives of these rules:

To establish rules governing the assessment of civil monetary assessment for violations of health and safety laws at open-pit mines, cement manufacturing plants and underground limestone and sandstone mines.

Rule Title: Rules Governing Assessing Health and Safety Violation Penalties To Open-Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 7/1/94

Signature of Agency Head or Authorized Representative

Stephen F. Webster

SUMMARY OF PROPOSED RULE

The attached rule, 56 CSR 14, Rules Governing Assessing Health and Safety Violation Penalties to Open-Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines, is a new rule establishing the civil monetary assessment procedure for violations of health and safety laws at open-pit mines, cement manufacturing plants and underground limestone and sandstone mines, pursuant to W. Va. Code §§ 22A-1-21, 22A-4-2 and 22A-4-3.

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JUL 1 11 50 AM '94

TITLE 56
LEGISLATIVE RULES
OFFICE OF MINER'S HEALTH, SAFETY AND TRAINING OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 14
RULES GOVERNING ASSESSING HEALTH AND SAFETY VIOLATION PENALTIES
TO OPEN-PIT MINES, CEMENT MANUFACTURING
PLANTS AND UNDERGROUND LIMESTONE AND SANDSTONE MINES

§56-14-1. General.

1.1. Scope. -- These rules establish the procedure whereby the Office of Miners' Health, Safety and Training assesses civil monetary penalties, pursuant to section 19, article 1A, Chapter 22A of the Code of West Virginia, to those having violated the state's mine health and safety laws.

1.2. Authority. -- W. Va. Code §§ 22A-1-21, 22A-4-2, and 22A-4-3.

1.3. Filing Date. --

1.4. Effective Date. --

§56-14-2. Definitions.

2.1. Unless herein defined, all terms used in this rule shall have the same meaning as they are defined in W. Va. Code § 22A-1-2.

2.2. "Director" means the director of the State of West Virginia Office of Miners' Health, Safety and Training.

2.3. "Knowing violation" means a violation occurring when:

(a) An operator (or miner, for an individual violation) causes a violative condition or practice by exercising reckless, deliberate and willful disregard of mandatory health and safety standards, or recklessly, deliberately and willfully failed to correct an unsafe condition or practice which was known to exist; or

(b) An operator refuses to comply with any order issued under W. Va. Code § 22A-1-14 or 15; or

(c) An operator refuses to comply with any order issued in a final decision under Chapter 22A, article 1, of the W. Va. Code, except for an order incorporated in a decision under §§ 22A-1-21(a)

or 22(b).

2.4. "Good faith" means that, in the judgment of the inspector, the operator has demonstrated extraordinary effort above and beyond that which would normally be expected to abate the violation.

2.5. "Mine health and safety laws" means the provisions of chapter twenty-two-a of this code, and any rule promulgated thereunder, relating to health and safety standards.

2.6. "Independent contractor" has the same meaning as that term is defined at 36 CSR 20.

2.7. "Annual tonnage" means tonnage produced in the previous calendar year, or, in the case of a mine opened or owned less than one full calendar year, the tonnage thus far produced multiplied to an annual amount based on months of operation.

§56-14-3. Assessment Procedure For Operators.

3.1. Civil monetary penalty assessments are mandatory.

3.2. The amount of a civil monetary penalty assessments will be determined based upon consideration of the following four criteria:

- (a) Gravity of the violation;
- (b) History of previous violations;
- (c) Size of the business charged with a violation; and
- (d) Demonstrated good faith in achieving compliance after notification of the violation.

3.3. Gravity of the violation will be evaluated by the inspector or representative of the director, and points allocated accordingly.

(a) Points will be allocated in the following three categories:

(i) Likelihood of an occurrence of an event which the health and safety laws are intended to prevent;

(ii) The severity of the injury which might be expected to result from such an occurrence; and

(iii) The number of persons potentially affected by such an occurrence.

(b) Points will be allocated in the following manner:

(i) Likelihood of occurrence
Unlikely 0 points
Reasonably likely ... 15 points
Occurred 30 points

(ii) Severity of injury expected
None.....0 points
No lost work days..... 6 points
Lost/restricted work days....11 points
Permanently disabling.....25 points
Fatal..... .30 points

(iii) Number of persons potentially affected
0.....0 points
1..... 1 points
2..... 2 points
3..... 4 points
4 to 5..... 6 points
6 to 9 8 points
More than 9...10 points

3.4. The operator's history of violations over the previous 24 months will be evaluated by the inspector or representative of the director and points allocated accordingly.

(a) For mine operators, points will be calculated based upon the average number of violations per inspection day over the previous 24 months.

(b) For independent contractors, points will be calculated based upon the total number of violations during the previous 24 months.

(c) Points will be allocated in the following manner:

(i) Mine operators:

Average number violations/
inspection day
0 0 points
Over 0 to 0.32 points
Over 0.3 to 0.5 .. 5 points
Over 0.5 to 0.7 .. 8 points
Over 0.7 to 0.9 . 11 points
Over 0.9 to 1.1 . 14 points
Over 1.1 to 1.3.. 17 points
Over 1.3 to 1.5 . 20 points
Over 1.5 to 1.7.. 22 points
Over 1.7 to 1.9 . 23 points
Over 1.9 to 2.1 . 24 points

Over 2.1..... 25 points

(ii) Independent contractors:

<u>Total number of violations</u>	
1 to 5	2 points
6 to 10	5 points
11 to 15	8 points
16 to 20	11 points
21 to 25.....	14 points
26 to 30.....	17 points
31 to 35.....	20 points
36 to 40.....	22 points
41 to 45.....	23 points
46 to 50	24 points
More than 50 ...	25 points

3.5. Size of the business charged with a violation will be evaluated by the inspector or representative of the director, and points allocated accordingly. Size of the mine will be calculated by considering the annual tonnage of the mine. Mines which have not submitted tonnage reports by the dates required by W.Va. Code § 22A-2-77 will be assessed the maximum amount of five (5) points.

<u>Size of Business (annual tonnage)</u>	
0 - 100,000 tons	1 point
100,001 - 500,000 tons	2 points
500,001 - 1,000,000 tons	3 points
1,000,001 - 2,000,000 tons.....	4 points
Over 2,000,000 tons	5 points

3.6. The points allocated in the manner set forth in §§ 3.3, 3.4 and 3.5, above, will be totalled, and the total number converted to a dollar amount, as per Table 1, infra.

3.7. Demonstrated good faith by the operator in achieving compliance after notification of the violation will be evaluated by the inspector or representative of the director, and the total dollar amount of the penalty may be modified accordingly.

(a) If the operator fails to abate the violation within the time prescribed, and there are, in the opinion of the inspector or representative of the director, extenuating circumstances beyond the operator's control which prevent the abatement of the violation within such time, the amount of the assessment will not be affected.

(b) If the operator fails to abate the violation within the prescribed time, and an order is issued pursuant to W. Va. Code § 22A-1A-13(b), the total dollar amount of the assessment will be increased by 15%.

(c) If the operator was already working to correct the violation when discovered, or, in the judgment of the inspector, the operator has demonstrated extraordinary effort above and beyond that which would normally be expected to abate the violation, the total dollar amount of the assessment will be decreased by 15%, if the original assessment is greater than \$30.00.

§56-14-4 Assessment Procedure For Knowing Violations.

4.1. In addition to any monetary assessment determined under section 3 of these rules, any operator issued a knowing violation shall be assessed one (1) knowing point for every twenty (20) civil penalty points accrued. Knowing points are converted to a monetary amount, as per the following table:

Knowing Civil Penalty Conversion Table

<u>Civil Penalty Points</u>	<u>Knowing Points</u>	<u>Penalty</u>
0-20	1	\$600.
21-40	2	\$1,200.
41-60	3	\$1,800.
61-80	4	\$2,400.
81-100	5	\$3,000.

4.2. In addition to any assessment determined under section 3 of these rules, a subsequent knowing violation, issued to the same operator at the same operation during the same inspection within the same quarter, shall result in the assessment of two (2) knowing points for every twenty (20) civil penalty points accrued. Subsequent knowing points are converted to a monetary amount as per the following table:

Subsequent Knowing Civil Penalty Conversion Table

<u>Civil penalty points</u>	<u>Knowing Points</u>	<u>Penalty</u>
0-20	2	\$2,000.
21-40	4	\$4,000.
41-60	6	\$6,000.
61-80	8	\$8,000.
81-100	10	\$10,000.

§56-14-5. Assessment Procedure For Individuals.

5.1. Any miner who knowingly violates the mine health and safety laws shall be assessed a civil penalty not to exceed two hundred fifty dollars (\$250) for each such occurrence.

5.2. The amount of civil monetary penalty assessments will be determined based upon consideration of two criteria:

- (a) Gravity of the violation; and
- (b) History of prior violations.

5.3. Gravity of the violation will be evaluated by the inspector or representative of the director, and points allocated accordingly.

(a) Points will be allocated in the following three categories:

(i) Likelihood of an occurrence of an event which the health and safety laws are intended to prevent;

(ii) The severity of the injury which might be expected to result from such an occurrence; and

(iii) The number of persons potentially affected by such an occurrence.

(b) Points will be allocated in the following manner:

(i) Likelihood of occurrence

Unlikely..... 0 points
Reasonably likely ... 10 points
Occurred 20 points

(ii) Severity of injury expected

None.....0 points
No lost work days..... 5 points
Lost/restricted work days...10 points
Permanently disabling.....15 points
Fatal..... 20 points

(iii) Number of persons potentially affected

0.....0 points
1 5 points
2.....10 points
3.....15 points
4 to 5.....20 points
6 to 925 points
More than 9.....30 points

5.4. The miner's history of prior violations over the previous thirty-six (36) months will be evaluated by the inspector or representative of the director, and points allocated accordingly. Points will be allocated in the following manner:

1 violation 15 points
2 or more violations .. 30 points

5.5. The points allocated in the manner set forth in §§ 5.3 and 5.4, above, will be totalled, and the total number converted to a dollar amount by using the following table:

Civil Penalty Point Conversion
Table For Individuals

<u>Points</u>	<u>Penalty</u>
1 to 10	\$ 25.00
11 to 20	50.00
21 to 30	75.00
31 to 40	100.00
41 to 50	125.00
51 to 60	150.00
61 to 70	175.00
71 to 80	200.00
81 to 100	250.00

Table 1

Civil Penalty Point Conversion Table For Operators

<u>Points</u>	<u>Penalty (\$)</u>	<u>Points</u>	<u>Penalty (\$)</u>
0-15	18.00	66	151.00
16-31	29.00	67	158.00
32	30.00	68	166.00
33	31.00	69	173.00
34	32.00	70	180.00
35	34.00	71	189.00
36	36.00	72	198.00
37	38.00	73	207.00
38	40.00	74	240.00
39	41.00	75	300.00
40	43.00	76	360.00
41	46.00	77	420.00
42	48.00	78	480.00
43	50.00	79	540.00
44	53.00	80	600.00
45	55.00	81	660.00
46	58.00	82	720.00
47	61.00	83	780.00
48	64.00	84	840.00
49	67.00	85	900.00
50	70.00	86	960.00
51	74.00	87	1020.00
52	77.00	88	1080.00
53	80.00	89	1140.00
54	83.00	90	1200.00
55	86.00	91	1260.00
56	90.00	92	1320.00
57	95.00	93	1380.00
58	101.00	94	1440.00
59	106.00	95	1500.00
60	112.00	96	1560.00
61	118.00	97	1620.00
62	124.00	98	1680.00
63	130.00	99	1740.00
64	137.00	100	1800.00
65	144.00		