

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

Form #5

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2015 JUL -8 P 2:27

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

CITE AUTHORITY: 22A-6-4

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE x

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

22A-6-4

AMENDMENT TO AN EXISTING RULE: YES _____ NO x

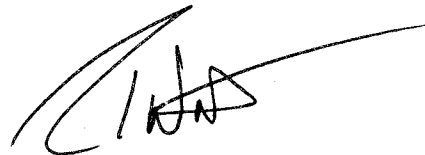
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 58

TITLE OF RULE BEING PROPOSED: Rules Governing Impoundment Safety Procedures

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS _____



Authorized Signature



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

1900 Kanawha Blvd Bldg 6 Ste 652 Charleston WV 25311 304.957.2306

NOTICE: PROMULGATION OF LEGISLATIVE EXEMPT RULE

To: All persons interested in Rules and Regulations developed and promulgated by the Board of Coal Mine Health and Safety

From: Joel L. Watts, Administrator – BCMH&S

Subject: 36.58 – **RULES GOVERNING IMPOUNDMENT SAFETY PROCEDURES**

Authority: §22A-6-4

The Board of Coal Mine Health and Safety is created pursuant to WV Code §22A-6-1

This new rule is in direct response to a fatality occurring 30 November 2012 when Mr. Markel J. Koon, a dozer operator, drowned as a result of the ground giving way during operation of the dozer.

The board considered numerous testimonies and solicited several secondary reports, including reports from MSHA, WV DEP, and the Office of Miner's Health, Safety, and Training. Upon careful consideration, the Board requested the Director of the Office of Miner's Health, Safety, and Training recommend rules, given that regulation of impoundment construction falls under a different agency, that could be enforced.

Once delivered and deliberated upon, the Board sent out the proposed rules for public comment, with the comment period ending 30 April 2015.

On 7 July 2015 the Board of Coal Mine Health and Safety unanimous voted to promulgate a proposed rule governing impoundment safety procedures. It is attached.

**TITLE 36
LEGISLATIVE EXEMPT RULE
BOARD OF COAL MINE HEALTH AND SAFETY**

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**SERIES 58
RULES GOVERNING IMPOUNDMENT SAFETY PROCEDURES**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

36.58.1. General.

1.1. Scope. -- This rule establishes procedures governing impoundment safety procedures

1.2. Authority. -- W. Va. Code 22-6-4.

1.3. Filing Date. -- July 8, 2015

1.4. Effective Date. -- August 17, 2015

1.5 These rules and 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 1A, Chapter 22A of the Code relative to enforcement are applicable to the enforcement of the rules and regulations.

36.58.2. Definitions.

2.1. All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in W. Va. Code 22A.1.1.

2.2. Life-saving skiff shall be defined as a shallow, flat-bottomed open boat with sharp bow and square stern

36.58.3. General Safety Procedures.

3.1. Dumping areas or material fill areas shall be constructed, installed and maintained in a manner to ensure safe operation and stability.

3.2. All persons whose job assignments require exposure to the hazards involved with dumping areas or fill areas shall be trained in the procedures and potential hazards that exist in these areas. A record shall be kept of such instructions.

3.3. Additional safeguards related to slurry impoundments, but not limited to the following:

3.3.a. Employees working over or near water, where the danger of drowning exists, shall be provided with United State Coast Guard approved life jackets or buoyant work vests.

3.3.b. Prior to and after each use, the buoyant work vests or life preservers shall be inspected for defects that would alter their strength or buoyancy. Defective units shall not be used.

3.3.c. Ring buoys with at least ninety (90) feet of line shall be provided and readily available for emergency rescue operations.

3.3.d. At least one (1) life-saving skiff shall be immediately available at locations where employees are working over or adjacent to water.