



State of West Virginia

Department of Mines

Charleston 25305

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 5/14/82 WALTER N. MILLER
Director

JOHN D. ROCKEFELLER, IV.
Governor

NOTICE OF INTERIM EMERGENCY INTERPRETATIVE RULES AND STATEMENT OF FACTS
AND CIRCUMSTANCES

FROM: Walter N. Miller, Director

RE: Interpretative rules and regulations governing mandatory
respirable dust standards for underground coal mines, the
surface areas of underground coal mines and surface mines
in the State of West Virginia

TYPE OF RULE: Interpretative

ACTION: Interim Emergency Rules

EFFECTIVE DATE: May 14, 1982

On March 30, 1982, the West Virginia Supreme Court of Appeals issued a formal Writ of Mandamus ordering the Director of the Department of Mines to establish, forthwith, a program for the control of respirable dust in the coal mines of this state. (See United Mine Workers of America, et al. v. Miller, et al., No. 15493 West Virginia Supreme Court of Appeals, March 30, 1982). In compliance with such order, interim emergency interpretative rules are today filed in the state register in accordance with West Virginia Code § 29A-3-15.

The Board of Coal Mine Health and Safety has been authorized to promulgate rules and regulations dealing with coal mine health and safety which have the force and effect of law pursuant to Code § 22-2A-4. On April 30, 1982, the Director, as Chairman of such Board, proposed rules and regulations for control of respirable dust which will effectuate the provisions of Code § 22-2-70d. Until such time as legislative rules become effective, this interpretative rule shall constitute an interim program of enforcement for Code § 22-2-70d.

The Director has determined that an emergency exists as defined in Code § 29A-3-15 (e), requiring the promulgation of this interim interpretative rule in compliance with the Writ of Mandamus of the Supreme Court of Appeals. The enforcement of Code § 22-2-70d, entitled "Control of respirable dust," requires an immediate guideline for the public so that the occupational health of persons employed in and around coal mines in West Virginia may be protected. The time limitation set out for rule-making before the Board of Coal Mine Health and safety in Code § 22-2A-4 requires the promulgation of a legislative rule within

sixty days of a public hearing. Additionally, Enrolled Senate Bill 404, passed by the legislature on March 13, 1982 and effective July 1, 1982, will require the reorganization of the Board.

Public comment on the proposed rules for control of respirable dust filed with the Board of Coal Mine Health and Safety will be analyzed by the Director to determine the necessity of amending the interim respirable dust control program.

SUMMARY OF EMERGENCY RULES:

These rules and regulations are patterned of the program for control of respirable dust now presently enforced in West Virginia by the United States Department of Labor - Mine Safety and Health Administration. Section 2 of these regulations set out definitions which are substantially similar to the provisions of 30 Code of Federal Regulations, Parts 70 and 71. Section 3.01 requires each operator of a coal mine to take accurate samples of the amount of respirable dust in the mine atmosphere in accordance with the provisions of federal regulations. The results of these samples shall be made available to the Director by each coal mine operator, unless the Director gives notice that such sample results have been obtained by the Department of Mines directly from the Mine Safety and Health Administration. Notices of violation and civil penalties for violations of Code § 22-2-70d shall be issued pursuant to Section 4 of these rules to operators of surface mine operations which exceed the applicable limit on the concentration of respirable dust which is set out in Sections 3.02, and 3.03.

The Director's regulations for the participation of miners or their authorized representatives in monitoring the respirable dust control program is outlined in Section 5. Federal regulations on mandatory health standards for coal mines are incorporated by reference in Section 6.

WNM/le