

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: Sections 22A-6-4 and 22A-6-5

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____ _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

Section 22A-6-4

AMENDMENT TO AN EXISTING RULE: YES NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: RULES AND REGULATIONS GOVERNING SURFACE AREAS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 1, 2009



Authorized Signature



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

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STATEMENT OF CIRCUMSTANCES AND SUMMARY OF RULE

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

From: Joel L. Watts, Administrator - Board of Coal Mine Health and Safety

Subject: Requirements for Oil and Gas Operators Conducting Operations on Mine Property

Date: November 13, 2008

Effective Date: January 1, 2009

Action: Amendment of Title 36, Series 27, Section 2; Title 36, Series 27, Section 14

Authority: W.Va. Code §22A-6-4

Statement of Circumstances

The West Virginia Board of Coal Mine Health and Safety (hereinafter, the "Board") is required by state statute and by order of the West Virginia Supreme Court to promulgate rules in response to mining fatalities. West Virginia CSR §36-27-2 and CSR §36-27-14 have been amended by the Board to ensure that future fatalities similar to the mining fatality that occurred on February 1, 2006 at the Black Castle No. 4 mine, which was operated by Elk Run Coal Company, Inc., do not occur.

Summary of Rule

The amendment to West Virginia CSR §36-27-2 and CSR §36-27-14 requires all oil and gas operators to provide notice prior to entering upon mine property. The oil and gas operators must check in at the mine office or security gate and provide a summary of the work to be performed before entering upon mine property.

The oil and gas operators are also required to identify all oil and gas facilities located on mine property by providing a survey map or GPS coordinates with a three meter degree of accuracy. The rule also requires oil and gas operators to mark all pipelines located on mine property, except for those pipelines regulated by the United States Department of Transportation.

INTRODUCTION

The West Virginia Board of Coal Mine Health and Safety (hereinafter, the "Board") is required by state statute and by order of the West Virginia Supreme Court to promulgate rules in response to mining fatalities. West Virginia CSR §36-27-14 has been promulgated by the Board in response to a mining fatality that occurred on February 1, 2006 at the Black Castle No. 4 mine, which was operated by Elk Run Coal Company, Inc. This amendment of CSR §36-27-14 adopts the previous findings of fact and conclusions of law previously adopted by the Board and is based upon the following additional findings of fact and conclusions of law:

FINDINGS OF FACT

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. Mr. Moss was operating a Caterpillar D10-R bulldozer when the accident occurred.
4. 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.
5. 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.
6. 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.
7. On May 18-19, 2006, Mr. Lonnie Gore presented the Board with Fatal Report 16-2006 (Black Castle No. 4).
8. There are hundreds, if not thousands, of miles of unmarked gas pipelines crossing property being actively mined for coal throughout West Virginia.
9. In many instances, coal companies or operators are not aware of the location of these unmarked gas pipelines.
10. The oil and gas companies are better equipped to map and identify the location of the gas pipelines located on property being actively mined for coal than are the coal owners or operators.
11. 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.

12. It will increase coal miner safety if oil and gas employees are required to provide advance notice to the coal company before engaging in oil and gas operations on mine property.
13. During the July 19, 2006 meeting of the Board, a motion was made that the Board develop additional rules as a result of the Fatal 16-2006. That motion carried.
14. During the month of July, 2006, Mr. James Dean, the then Acting Director for the West Virginia Office of Miner's Health Safety and Training tendered proposed rules to Mr. Fred Tucker, the then Acting Administrator of the Board.
15. In August of 2006, the Board invited representatives from the oil and gas industry to attend the Board's next meeting to discuss the proposed rules.
16. During the October, 2006 Board meeting, Mr. James Martin, Chief of the West Virginia Office of Oil and Gas, Mr. Mike Mace, with Chesapeake Natural Gas, and Mr. Marty Byrd came before the Board to provide the perspective of the oil and gas industry to the proposed rules.
17. During the December 5, 2006 Board meeting, the Administrator gave a report to the Board regarding the proposed rules. This meeting was open to the public.
18. The Board passed new rules related to Fatal 16-2006 in January of 2007. Representatives from the oil and gas industry contacted the Board and requested that the new rules not be enforced until the oil and gas industry could discuss the rules with the Board at greater length. The Board agreed with the oil and gas industry's request, and held the newly passed rules in abeyance.
19. During the March 2006 meeting, the Board agreed that new draft rules should be presented to the Board during its April, 2006 meeting.
20. The Board promulgated new rules and presented them for public comment in October, 2007. Public Comments were received from Patriot Mining Company, Inc., the United Mine Workers of America, Brooks Run Mining Company, as well as the West Virginia Oil and Natural Gas Association.
21. During its January, 2008 meeting, the Board addressed the public comments it received and voted to amend portions of the proposed rules. The Board voted unanimously to accept the rules as amended.
22. On May 12, 2008 the Board published Title 36, Series 27, Section 14. The new rules became effective on June 16, 2008.
23. Members of the Board and its counsel have met with representatives of the oil and gas industry to discuss the newly effective rules. Based upon significant comments presented to the Board by the oil and gas industry, the Board determined that it was in the best interests of miner safety to amend the rule. The rules were amended during the November 12, 2008 Board meeting after the Board voted to dispense with the public notice and comment period

set forth in W.Va. Code §22A-6-4, and any other procedural rule or regulation requiring the amendments to CSR §36-27-14 to be submitted to public comment. The Board dispensed with the posting and public comment period upon a finding that any additional delay in the promulgation or amendment of CSR §36-27-14 may result in additional coal mining fatalities.


24. The promulgation and amendment of CSR §36-27-14 by the Board will assist in preventing the recurrence of the specific type of fatality that occurred in Fatal 16-2006.
25. The Board considered the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes in the promulgation of CSR §36-27-14.
26. Coal mining is highly specialized, technical and complex and it requires frequent review, refinement and improvement of standards to protect the health and safety of miners.

CONCLUSIONS OF LAW

1. The Board is compelled by state statute to review such standard rules and, when deemed appropriate to improve or enhance coal mine health and safety, to revise the same or develop and promulgate new rules dealing with coal mine health and safety.
2. Pursuant to W.Va. Code §22A-6-4, the Board shall devote its time toward promulgating rules in those areas specifically directed by Chapter 22A-1-1, et seq., and those necessary to prevent fatal accidents and injuries. In fact, the primary function of the Board is to promulgate rules for the purpose of avoiding future fatalities.
3. The West Virginia Legislature granted the Board the authority to expand the protections set forth in W.Va. Code §22A-1-1, et seq., and to regulate areas not covered by W.Va. Code §22A-1-1, et seq., so long as the regulations protect the health and safety of miners.
4. The Board may regulate oil and gas operators only to the extent that said regulation provides increased protections to the health and safety of coal miners.
5. The Board may promulgate rules setting forth requirements for the safe and efficient mapping and identification of all pipelines located on mine property where practical and reasonable except that such rules shall not apply to those pipelines subject to the Natural Gas Act (15 U.S.C. §§717-717z) and the Pipeline Safety Act (49 U.S.C. §§60101-60128).
6. In order to fulfill its 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 has adopted CSR §36-27-14 in its amended form as attached hereto.

Adopted by the unanimous vote of the West Virginia Board of Mine Health and Safety this 12th day of November, 2008.

Acknowledged by: _____

A handwritten signature in black ink, consisting of a large, sweeping initial 'J' followed by a smaller 'W' and a horizontal line extending to the right.

Joel Watts, Administrator

FILED

TITLE 36

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LEGISLATIVE RULE

BOARD OF COAL MINE HEALTH AND SAFETY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 27

**RULES AND REGULATIONS GOVERNING SURFACE AREAS AND OIL AND GAS OPERATORS OPERATING
ON MINE PROPERTY**

§36-27-1. General.

- 1.1. Scope. -- Rules and Regulations Governing Surface Areas.
- 1.2. Authority. -- W. Va. Code §22A-6-4.
- 1.3. Filing Date. -- November 13, 2008
- 1.4. Effective Date. -- January 1, 2009

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

§36-27-2. Definitions.

2.1. "Coal Permit Holder" means the holder of an active coal mining permit issued by the West Virginia Department of Environmental Protection.

2.2. "Coal Property" means any area of real property that is 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.

2.3. "Gas Facilities" means all pipelines and production facilities, including, but not limited to, wells and compressor stations.

2.4. "Gathering Line" shall have the meaning set forth in 49 CFR §192.3.

2.5. "High voltage powerline" means any uninsulated suspended power conductor carrying high voltage.

2.6. "Interstate Pipeline" means a transmission pipeline subject to regulation by the Department of Transportation pursuant to 15 U.S.C. §717 et seq.

2.7. "Lanyard" means a rope, suitable for supporting one person. One end is fastened to a safety belt or harness and the other end is secured to a substantial object or a safety line.

2.8. "Lifeline" means a rope, suitable for supporting one person, to which a lanyard or safety belt (or harness) is attached.

2.9. "Oil and Gas Operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any oil or gas well or engaged in the operation of pipeline facilities or the transportation of oil or gas.

2.10. "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

2.11. "Regulated Onshore Gathering Line" shall have the meaning set forth in 49 CFR §192.8(b).

2.12. "Safety belt" means a device, usually worn around the waist, which, by reason of its attachment to a lanyard and lifeline for a structure, will prevent a worker from falling.

2.13. "Transmission Line" shall have the meaning set forth in 49 CFR §192.3.

2.14. "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

2.15. All other terms used in these rules and regulations, not defined herein, shall have the means set forth in W. Va. Code 22A-1-24.

§36-27-3. Operating Equipment With Suspended Material.

3.1. All persons remain a safe distance from any supplies or materials while being raised, lowered or in transit, by a forklift, crane, or other equipment: Provided, that whenever it is necessary to have persons

other than the equipment operator in the immediate vicinity of any such supplies, the loads shall be securely fastened by a chain or other device to the equipment handling the load in order to prevent the load from slipping or falling off the equipment.

§36-27-4. Protection From Falls From Elevated Areas.

4.1. Safety protection such as safety belts, lifelines, or lanyards to prevent a person from falling shall be provided at all times where the potential fall distance exceeds fifteen (15) feet, except that safety belts shall not be used where they are impractical or would pose a greater hazard.

4.2. Safety nets shall be provided when work places are more than twenty-five (25) feet above the ground where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts are impractical.

§36-27-5. Safety Precautions on Coal Stockpiles.

5.1. The following requirements shall apply to all surface coal stockpiles with draw-off tunnel feeders underneath the coal storage area of the stockpile which discharge onto a conveyor belt:

(a) No person shall travel on foot or operate equipment on a coal stockpile or coal storage area directly over areas where underlying coal feeders are in place without a plan approving such activity by the Director, or his authorized representative. The Plan shall be submitted by the operator or the independent contractor performing the work, and shall be reviewed with all persons prior to work being done, and a record kept of such review.

(b) The Plan shall outline procedures to protect the health and safety of those who may have to travel on foot or operate equipment on a coal stockpile or coal storage area directly over areas where underlying coal feeders are in place. The minimum criteria for approval of the plan shall include:

(1) The equipment shall be equipped with an enclosed cab and doors and windows shall be closed and secured at all times the equipment is in operation. Beginning January 1, 2001 all mobile equipment manually operated on coal stockpiles, where there is a potential of the equipment falling into a cavity, shall be equipped with an enclosed cab fitted with chemically tempered glass and a window support system; provided however, that glass certified to withstand 40 psi may be installed without a window support system, provided that such glass is installed in a substantial frame. The Director of the Office of Miners Health, Safety and Training will approve all enclosed cabs pursuant to this section. The Director of the Office of Miners Health, Safety and Training may approve other types of glass and window frames or support system provided that an equal or greater amount of protection is afforded.

(2) The equipment shall have two-way communications and a back up communication system supplied on an independent power source.

(3) The equipment operator shall be provided with two self-contained self-rescuers.

(4) A remote control device capable of stopping the flow of coal from the feeder and stop the coal coming onto the stockpile. Such device shall be tested weekly.

(5) A means of providing emergency lighting to the mobile equipment operator.

(6) Warning signs shall be posted at the entrances to all coal stockpiles with underlying coal feeders.

(7) No person shall travel on foot, except on an emergency basis, and only under direct supervision; they shall be secured by an overhead lifeline; and feeders shall be locked and tagged out.

(c) The operator shall establish rules for the safe procedures for breaking through cavities and for marking the feeder areas on the surface. A copy of the rules shall be submitted to the Director, Office of Miners Health, Safety and Training for approval. A copy of the approved rules shall be posted at the mine site, and all persons to perform such work shall be instructed in these procedures.

(d) Telephone or equivalent two-way communications shall be established between equipment operators working on stockpiles and those persons who are operating conveyors, feeders, and hoppers at storage piles (where more than one person performs these duties), in order to keep such equipment operators advised of the possibility of bridged material over a cavity in the stockpile.

§36-27-6. Working Around High-Voltage Powerlines.

6.1. Location of high-voltage powerlines. High-voltage powerlines located above surface work areas, driveways, haulageways, and railroad tracks shall be installed no less than fifteen (15) feet above ground.

6.2. Operation of equipment, minimum distance from high voltage lines.

(1) Equipment or machinery operated on the surface of any coal mine shall not be operated within ten (10) feet of an overhead powerline unless the line is deenergized and visibly grounded at the point of work, or unless insulating barriers not part of or an attachment to, the equipment have been erected to prevent physical contact with the lines. Where the voltage of overhead powerlines is sixty-nine thousand (69,000) volts or more, the minimum clearance between the lines and part of the equipment or load shall be: (Please see Table 36-27a).

(2) A person shall be designated to observe clearance of the equipment and give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by visual means.

6.3. Movement of equipment; minimum distance for high voltage lines. When any part of any equipment operated on the surface of any coal mine is required to pass under or by any energized high-voltage powerline and the clearance between such equipment and powerline is less than that specified above, such powerlines shall be deenergized or other precautions shall be taken to prevent contact with the powerlines.

6.4. Deenergization of powerlines. Any overhead wire shall be considered to be an energized line unless and until the person owning such line or electrical utility authorities verifies that it is not an energized line and it has been visibly grounded.

§36-27-7. Tires and Repairs.

7.1. A safety tire rack, cage or equivalent protection shall be provided when inflating tires during installation on split rings 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. Different types and sizes of wheel rims in the same location shall be stored separate from each other.

§36-27-8. Crushers, Feeders, and Rotary Breakers.

8.1. No person shall be permitted to perform any work within the confines of the cargo space of a crusher, feeder, or rotary breaker unless such equipment has been deenergized and locked out.

§36-27-9. Machines with Movable Parts.

9.1. Ninety (90) days after the effective date of this section, machines with movable parts used at surface mines or surface areas of underground mines, which are capable of coming into contact with its operating controls or is capable of pinning the operator between the movable part and its controls, shall be equipped with a panic bar or suitable mechanical means to prevent such contact, or pinning of the operator.

§36-27-10. Seat Belts.

10.1. Each employee working in a surface coal mine or in the surface areas of an underground coal mine shall be required to wear seat belts in a vehicle where there is a danger of overturning and where roll protection is provided.

10.2. Seat belts shall be worn by all drivers of trucks, 5-ton or greater, while operating their trucks on surface mines and surface areas of underground mines.

§36-27-11. Transporting Compressed Gas Cylinders.

11.1. When tanks and cylinders are not used and they are being transported, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced, except in conformance with the following requirements:

(a) Cylinders shall remain in a substantially constructed compartment while the gauges are attached and shall be secured against movement.

(b) The substantially constructed compartment shall be designed specifically for the mine maintenance vehicles carrying it; the cylinders shall be secured against movement and be placed at no greater than a 45 degree angle.

(c) The cylinder regulators, if not in enclosed compartments, shall be adequately covered to provide protection when regulators are left attached to cylinders.

(d) The substantially constructed compartments shall be secured to the mine maintenance vehicle in such a manner to prevent the entire compartment from overturning at any time.

(e) If the cylinders are being transported in closed compartments, the compartments shall be adequately ventilated, and all doors on the substantially constructed compartments shall be closed and secured when not in use.

(f) Cylinders, gauges, hoses, connectors, valve stems, and torches shall be checked for damage and proper fit by a qualified person immediately following transportation and prior to use.

(g) The cylinder valves shall be in a shut-off position, and the hoses relieved of pressure when not in use and when being transported.

(h) All substantially constructed compartments shall be approved by the Director or his authorized representative prior to initial use.

§36-27-12. Mirrors on Surface Operated Equipment.

12.1. When required by an authorized representative of the Director to enhance safe operation, adequate mirror(s) will be provided on surface mine equipment that operates at surface mines, surface areas of underground mines, preparation plants and loadouts.

Mirror(s) provided on equipment by manufacturers of said equipment shall be deemed adequate and in compliance with the regulations.

§36-27-13. Safety Devices on Surface Haulage Equipment.

13.1. Sixty (60) days after the effective date of this section all surface mines, surface areas of underground mines, which utilize or operate vehicles capable of carrying 100-tons or greater, which operate in close proximity of smaller vehicles, as identified in Section 13.1(a), shall implement the following enhancements in order to maximize the visibility of operators and coordination of equipment.

(a) All maintenance, service, foreman or other utility vehicles shall be equipped with strobe lights and/or whip antennas, or other suitable devices as approved by the Director, or to be escorted by a vehicle equipped with such devices. This requirement excludes employee vehicles that are traveling on designated access road(s) to and from work.

(b) Equipment operators of haulage vehicles capable of carrying 100-tons or greater shall conduct a complete walk around of the equipment before it is placed in operation at the beginning of the shift and anytime the operator dismounts the machine.

(c) Equipment operators of haulage vehicles capable of carrying 100-tons or greater shall sound an audible warning device three times before the machine is placed in operation, and after the machine has set idle while in operation for periods that exceed normal cycle times.

(d) Reflective numbers or other clearly distinguishable identification markers, at a minimum of at least five (5) inches in height or as approved by the Director or his authorized representative, shall be installed, in conspicuous places, on all four sides of all vehicles capable of carrying 100-tons or greater.

(e) All vehicles capable of carrying 100-tons or greater shall be equipped with two-way communications.

(f) At no time shall a smaller vehicle travel into a blind spot of a vehicle over 100-ton capacity without communicating with the operator of the larger vehicle and receiving positive confirmation from that operator that it is safe to approach.

All employees of the mine shall receive a briefing of these procedures within thirty (30) days of the effective date of this rule and these procedures shall be included in the employees annual retraining, newly hired miner training, and hazard training.

13.2. Within One Hundred and Eighty (180) days after the effective date of this section all trucks with a 230-ton capacity or greater on or around a surface mine or surface area of an underground mine will be equipped with a camera, approved by the Director or other devices approved by the Director and

the Technical Review Committee, at the rear of the truck to reduce blind spot hazards.

13.3. Within One Year after the effective date of this section the West Virginia Board of Coal Mine Health and Safety will review the effectiveness of the cameras on the rear of the 230-ton capacity or greater off road haulage vehicles.

§36-27-14 Requirements for Oil and Gas Companies Conducting Operations on Mine Property and limitations on Mining Adjacent to Gas Facilities.

14.1 Notice. Oil and Gas Operators shall provide advance notice to the Coal Permit Holder prior to entering Mine Property. Said advance notice shall include a description of the work to be conducted by the Oil and Gas Operator, an estimate of the period of time and location on the property where the said Oil and Gas Operator will be performing the work, the date the work will be performed, and the number of individuals performing the work on behalf of the Oil and Gas Operator. The advance notice shall be given to the Coal Permit Holder in the following manner:

14.1.a. Personal notice given to the mine office or guard gate located on Mine Property, or in the event there is no mine office or guard gate located on Mine Property, then by written notice delivered by certified mail to the Coal Permit Holder at least five (5) business days prior to entry upon Mine Property or by facsimile or electronic mail at least two (2) business days prior to entry upon Mine Property.

14.1.b. After work is completed the coal operator shall be notified by the Oil and Gas Operator that all equipment and employees are accounted for.

14.2. Identification of Gas Facilities. Within sixty (60) days of receipt by the Oil and Gas Operator of a written request by the Director or the Coal Permit Holder, the Oil and Gas Operator shall provide a survey map or GPS identification with a three meter degree of accuracy, for all Gas Facilities located upon Mine Property.

14.3. Pipeline Markings. All existing Pipelines currently located on Mine Property shall be marked by the Oil and Gas Operator. Thereafter, the Oil and Gas operator shall mark all future Pipelines placed on Mine Property as they are installed. For existing Pipelines located in areas not subject to a coal mining permit, the Oil and Gas operator shall mark those Pipelines within ninety (90) days of receipt by the Oil and Gas Operator of a written notice from the Director or the Coal Permit Holder that the area has become subject to a valid coal mining permit issued by the West Virginia Department of Environmental Protection. The Pipelines shall be marked in the following manner:

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

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

14.3.c.-The markers will be placed perpendicular (upright) to the location of the Pipeline.

14.3.d.-The markers will be placed immediately over the Pipeline at each marker location

14.3.e. The markers will be spaced at a maximum of 300 foot intervals along the Pipeline. There will be a guaranteed line of sight between those markers

14.3.f. Markers will be made of weather resistant durable material.

14.3.g. 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; provided however that existing markers where words substantially similar to the words "Warning" "Caution" or "Danger" already appear need not be replaced.

14.3.h. The markers shall contain the name of the Oil and Gas Operator and the telephone number (including area code) where the Oil and Gas Operator may be reached.

14.3.i. 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 Pipeline.

14.3.j. All possible access roads shall be clearly marked on both sides of the road and gated if traffic is unwarranted.

14.3.k. When there is a curve in a Pipeline, 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 Pipeline, between the center of the Pipeline at one marker location and the center of the Pipeline at the next adjacent marked location.

14.3.l. The Pipeline marking requirements set forth in this provision shall not apply to Interstate Pipelines or Regulated Onshore Gathering Lines.

14.3.m. In the event that an Oil and Gas Operator is unable to mark its Pipelines within the time periods set forth herein the Oil and Gas Operator may petition the Director to extend the time period in which the Oil and Gas Operator is to mark said Pipelines. Upon a showing of good cause, the Director may extend the time period in which the Oil and Gas Operator is to mark the Pipelines. However, in no event shall an extension, or series of extensions, exceed a cumulative total of ninety (90) days.

14.4 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.

14.5 When tree removal activities must be conducted within 50 feet of the Pipeline, a grapple type excavator will be used to pick the fallen trees from the marked area. This work cannot be conducted unless the Pipeline is buried more than 2 feet below the surface and at no time will the ground be disturbed below the surface.

14.6 Unless a shorter distance is permitted by the mine operator's comprehensive mine safety plan, no mining, excavation or equipment/vehicle operation shall occur within 50 feet of a Pipeline or well, except that, equipment/vehicles will be allowed to cross a Pipelines at designated crossings. Markers will be established around gas wells to identify this 50 foot zone. An exception to this will be in areas where pre-existing haul roads have been established along side known (surveyed) areas of the

Pipeline, where the depth have been verified at a minimum of 3 feet. In these areas the road will be no closer than 5 feet to the Pipeline and additional material will be placed within this 5 foot area to prevent travel in this area. Additionally in these areas, markers will be placed every 50 feet which shows the location of these existing haul roads.

14.7. Any Pipeline shall be considered 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 adequately plugged below the elevation of the intended work area. Documentation will be provided to show that the condition of the gas lines and/or wells is as described above.

14.8. Pipeline awareness training shall be conducted with all personnel and resident contractors who are assigned to work in close proximity to Gas Facilities. This training shall be incorporated during the following sessions:

(a) Newly employed experienced miner.

(b) Annual retraining.

(c) Hazard training.

(d) Contractor training.

(e) Additionally, immediately after Pipelines have been located, a special safety talk will be conducted with all persons on the property concerning Pipeline and gas well locations.

(f) Pipeline locations will be discussed in safety talks, at least on a quarterly basis.

(g) Safety discussions will be held on Pipeline and gas well locations prior to moving into a new work area.

TITLE 36

LEGISLATIVE RULE

BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 27

**RULES AND REGULATIONS GOVERNING SURFACE AREAS AND OIL AND GAS OPERATORS
OPERATING ON MINE PROPERTY**

§36-27-1. General.

1.1. Scope. -- Rules and Regulations Governing Surface Areas.

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

1.3. Filing Date. -- November 13, 2008

1.4. Effective Date. -- January 1, 2009

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

§36-27-2. Definitions.

2.1. "Coal Permit Holder" means the holder of an active coal mining permit issued by the West Virginia Department of Environmental Protection.

2.2. "Coal Property" means any area of real property that is 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.

2.3. "Gas Facilities" means all pipelines and production facilities, including, but not limited to, wells and compressor stations.

2.4. "Gathering Line" shall have the meaning set forth in 49 CFR §192.3.

2.5. "High voltage powerline" means any uninsulated suspended power conductor carrying high voltage.

2.6. "Interstate Pipeline" means a transmission pipeline subject to regulation by the Department of Transportation pursuant to 15 U.S.C. §717 et seq.

2.7. "Lanyard" means a rope, suitable for supporting one person. One end is fastened to a safety belt or harness and the other end is secured to a substantial object or a safety line.

2.83. "Lifeline" means a rope, suitable for supporting one person, to which a lanyard or safety belt (or harness) is attached.

2.9. "Oil and Gas Operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any oil or gas well or engaged in the operation of pipeline facilities or the transportation of oil or gas.

2.10. "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

2.11. "Regulated Onshore Gathering Line" shall have the meaning set forth in 49 CFR §192.8(b).

2.124. "Safety belt" means a device, usually worn around the waist, which, by reason of its attachment to a lanyard and lifeline for a structure, will prevent a worker from falling.

2.13. "Transmission Line" shall have the meaning set forth in 49 CFR §192.3.

2.14. "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

2.15. All other terms used in these rules and regulations, not defined herein, shall have the means set forth in W. Va. Code 22A-1-~~21~~.

§36-27-3. Operating Equipment With Suspended Material.

3.1. All persons remain a safe distance from any supplies or materials while being raised, lowered or in transit, by a forklift, crane, or other equipment: Provided, that whenever it is necessary to have persons

other than the equipment operator in the immediate vicinity of any such supplies, the loads shall be securely fastened by a chain or other device to the equipment handling the load in order to prevent the load from slipping or falling off the equipment.

§36-27-4. Protection From Falls From Elevated Areas.

4.1. Safety protection such as safety belts, lifelines, or lanyards to prevent a person from falling shall be provided at all times where the potential fall distance exceeds fifteen (15) feet, except that safety belts shall not be used where they are impractical or would pose a greater hazard.

4.2. Safety nets shall be provided when work places are more than twenty-five (25) feet above the ground where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts are impractical.

§36-27-5. Safety Precautions on Coal Stockpiles.

5.1. The following requirements shall apply to all surface coal stockpiles with draw-off tunnel feeders underneath the coal storage area of the stockpile which discharge onto a conveyor belt:

(a) No person shall travel on foot or operate equipment on a coal stockpile or coal storage area directly over areas where underlying coal feeders are in place without a plan approving such activity by the Director, or his authorized representative. The Plan shall be submitted by the operator or the independent contractor performing the work, and shall be reviewed with all persons prior to work being done, and a record kept of such review.

(b) The Plan shall outline procedures to protect the health and safety of those who may have to travel on foot or operate equipment on a coal stockpile or coal storage area directly over areas where underlying coal feeders are in place. The minimum criteria for approval of the plan shall include:

(1) The equipment shall be equipped with an enclosed cab and doors and windows shall be closed and secured at all times the equipment is in operation. Beginning January 1, 2001 all mobile equipment manually operated on coal stockpiles, where there is a potential of the equipment falling into a cavity, shall be equipped with an enclosed cab fitted with chemically tempered glass and a window support system; provided however, that glass certified to withstand 40 psi may be installed without a window support system, provided that such glass is installed in a substantial frame. The Director of the Office of Miners Health, Safety and Training will approve all enclosed cabs pursuant to this section. The Director of the Office of Miners Health, Safety and Training may approve other types of glass and window frames or support system provided that an equal or greater amount of protection is afforded.

(2) The equipment shall have two-way communications and a back up communication system supplied on an independent power source.

(3) The equipment operator shall be provided with two self-contained self-rescuers.

(4) A remote control device capable of stopping the flow of coal from the feeder and stop the coal coming onto the stockpile. Such device shall be tested weekly.

(5) A means of providing emergency lighting to the mobile equipment operator.

(6) Warning signs shall be posted at the entrances to all coal stockpiles with underlying coal feeders.

(7) No person shall travel on foot, except on an emergency basis, and only under direct supervision; they shall be secured by an overhead lifeline; and feeders shall be locked and tagged out.

(c) The operator shall establish rules for the safe procedures for breaking through cavities and for marking the feeder areas on the surface. A copy of the rules shall be submitted to the Director, Office of Miners Health, Safety and Training for approval. A copy of the approved rules shall be posted at the mine site, and all persons to perform such work shall be instructed in these procedures.

(d) Telephone or equivalent two-way communications shall be established between equipment operators working on stockpiles and those persons who are operating conveyors, feeders, and hoppers at storage piles (where more than one person performs these duties), in order to keep such equipment operators advised of the possibility of bridged material over a cavity in the stockpile.

§36-27-6. Working Around High-Voltage Powerlines.

6.1. Location of high-voltage powerlines. High-voltage powerlines located above surface work areas, driveways, haulageways, and railroad tracks shall be installed no less than fifteen (15) feet above ground.

6.2. Operation of equipment, minimum distance from high voltage lines.

(1) Equipment or machinery operated on the surface of any coal mine shall not be operated within ten (10) feet of an overhead powerline unless the line is deenergized and visibly grounded at the point of work, or unless insulating barriers not part of or an attachment to, the equipment have been erected to prevent physical contact with the lines. Where the voltage of overhead powerlines is sixty-nine thousand (69,000) volts or more, the minimum clearance between the lines and part of the equipment or load shall be: (Please see Table 36-27a).

(2) A person shall be designated to observe clearance of the equipment and give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by visual means.

6.3. Movement of equipment; minimum distance for high voltage lines. When any part of any equipment operated on the surface of any coal mine is required to pass under or by any energized high-voltage powerline and the clearance between such equipment and powerline is less than that specified above, such powerlines shall be deenergized or other precautions shall be taken to prevent contact with the powerlines.

6.4. Deenergization of powerlines. Any overhead wire shall be considered to be an energized line unless and until the person owning such line or electrical utility authorities verifies that it is not an energized line and it has been visibly grounded.

§36-27-7. Tires and Repairs.

7.1. A safety tire rack, cage or equivalent protection shall be provided when inflating tires during installation on split rings 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. Different types and sizes of wheel rims in the same location shall be stored separate from each other.

§36-27-8. Crushers, Feeders, and Rotary Breakers.

8.1. No person shall be permitted to perform any work within the confines of the cargo space of a crusher, feeder, or rotary breaker unless such equipment has been deenergized and locked out.

§36-27-9. Machines with Movable Parts.

9.1. Ninety (90) days after the effective date of this section, machines with movable parts used at surface mines or surface areas of underground mines, which are capable of coming into contact with its operating controls or is capable of pinning the operator between the movable part and its controls, shall be equipped with a panic bar or suitable mechanical means to prevent such contact, or pinning of the operator.

§36-27-10. Seat Belts.

10.1. Each employee working in a surface coal mine or in the surface areas of an underground coal mine shall be required to wear seat belts in a vehicle where there is a danger of overturning and where roll protection is provided.

10.2. Seat belts shall be worn by all drivers of trucks, 5-ton or greater, while operating their trucks on surface mines and surface areas of underground mines.

§36-27-11. Transporting Compressed Gas Cylinders.

11.1. When tanks and cylinders are not used and they are being transported, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced, except in conformance with the following requirements:

(a) Cylinders shall remain in a substantially constructed compartment while the gauges are attached and shall be secured against movement.

(b) The substantially constructed compartment shall be designed specifically for the mine maintenance vehicles carrying it; the cylinders shall be secured against movement and be placed at no greater than a 45 degree angle.

(c) The cylinder regulators, if not in enclosed compartments, shall be adequately covered to provide protection when regulators are left attached to cylinders.

(d) The substantially constructed compartments shall be secured to the mine maintenance vehicle in such a manner to prevent the entire compartment from overturning at any time.

(e) If the cylinders are being transported in closed compartments, the compartments shall be adequately ventilated, and all doors on the substantially constructed compartments shall be closed and secured when not in use.

(f) Cylinders, gauges, hoses, connectors, valve stems, and torches shall be checked for damage and proper fit by a qualified person immediately following transportation and prior to use.

(g) The cylinder valves shall be in a shut-off position, and the hoses relieved of pressure when not in use and when being transported.

(h) All substantially constructed compartments shall be approved by the Director or his authorized representative prior to initial use.

§36-27-12. Mirrors on Surface Operated Equipment.

12.1. When required by an authorized representative of the Director to enhance safe operation, adequate mirror(s) will be provided on surface mine equipment that operates at surface mines, surface areas of underground mines, preparation plants and loadouts.

Mirror(s) provided on equipment by manufacturers of said equipment shall be deemed adequate and in compliance with the regulations.

§36-27-13. Safety Devices on Surface Haulage Equipment.

13.1. Sixty (60) days after the effective date of this section all surface mines, surface areas of underground mines, which utilize or operate vehicles capable of carrying 100-tons or greater, which operate in close proximity of smaller vehicles, as identified in Section 13.1(a), shall implement the following enhancements in order to maximize the visibility of operators and coordination of equipment.

(a) All maintenance, service, foreman or other utility vehicles shall be equipped with strobe lights and/or whip antennas, or other suitable devices as approved by the Director, or to be escorted by a vehicle equipped with such devices. This requirement excludes employee vehicles that are traveling on designated access road(s) to and from work.

(b) Equipment operators of haulage vehicles capable of carrying 100-tons or greater shall conduct a complete walk around of the equipment before it is placed in operation at the beginning of the shift and anytime the operator dismounts the machine.

(c) Equipment operators of haulage vehicles capable of carrying 100-tons or greater shall sound an audible warning device three times before the machine is placed in operation, and after the machine has set idle while in operation for periods that exceed normal cycle times.

(d) Reflective numbers or other clearly distinguishable identification markers, at a minimum of at least five (5) inches in height or as approved by the Director or his authorized representative, shall be installed, in conspicuous places, on all four sides of all vehicles capable of carrying 100-tons or greater.

(e) All vehicles capable of carrying 100-tons or greater shall be equipped with two-way communications.

(f) At no time shall a smaller vehicle travel into a blind spot of a vehicle over 100-ton capacity without communicating with the operator of the larger vehicle and receiving positive confirmation from that operator that it is safe to approach.

All employees of the mine shall receive a briefing of these procedures within thirty (30) days of the effective date of this rule and these procedures shall be included in the employees annual retraining, newly hired miner training, and hazard training.

13.2. Within One Hundred and Eighty (180) days after the effective date of this section all trucks with a 230-ton capacity or greater on or around a surface mine or surface area of an underground mine will be equipped with a camera, approved by the Director or other devices approved by the Director and

the Technical Review Committee, at the rear of the truck to reduce blind spot hazards.

13.3. Within One Year after the effective date of this section the West Virginia Board of Coal Mine Health and Safety will review the effectiveness of the cameras on the rear of the 230-ton capacity or greater off road haulage vehicles.

§36-27-14 Requirements for Oil and Gas Companies Conducting Operations on Mine Property and limitations on Mining Adjacent to Gas Facilities Notification by Utility Companies.

14.1 Notice. Oil and Gas Operators shall provide advance notice to the Coal Permit Holder prior to entering Mine Property. Said advance notice shall include a description of the work to be conducted by the Oil and Gas Operator, an estimate of the period of time and location on the property where the said Oil and Gas Operator will be performing the work, the date the work will be performed, and the number of individuals performing the work on behalf of the Oil and Gas Operator. The advance notice shall be given to the Coal Permit Holder in the following manner:

14.1.a. Personal notice given to the mine office or guard gate located on Mine Property, or in the event there is no mine office or guard gate located on Mine Property, then by written notice delivered by certified mail to the Coal Permit Holder at least five (5) business days prior to entry upon Mine Property or by facsimile or electronic mail at least two (2) business days prior to entry upon Mine Property. Recognizing that coal and utility companies must share the same properties during the course of coal production and maintenance of utility projects, reasonable notice should be given by oil, gas and utility companies to the owner of the record or the occupant of the coal property or both when they are required to travel on said property.

14.1.b.(d) After work is completed the coal operator shall be notified by the utility company-Oil and Gas Operator that all equipment and employees are accounted for.

~~— (a) Work should routinely be scheduled one week in advance or as soon as practical in the case of an emergency. Notice should be given by personal delivery or certified mail by the oil, gas or utility company involved to the occupant of the coal property with an estimate of the period of time and location on the property where the said utility company will be performing work.~~

~~— (c) Within 90 days of the effective day of these rules, the gas company or other entity owning the lines or wells, shall locate and mark the lines and/or wells according to the provisions of 14.2.~~

14.2. Identification of Gas Facilities. Within sixty (60) days of receipt by the Oil and Gas Operator of a written request by the Director or the Coal Permit Holder, the Oil and Gas Operator shall provide a survey map or GPS identification with a three meter degree of accuracy, for all Gas Facilities located upon Mine Property.

14.32. Pipeline Markings. All existing Pipelines currently located on Mine Property shall be marked by the Oil and Gas Operator. Thereafter, the Oil and Gas operator shall mark all future Pipelines placed on Mine Property as they are installed. For existing Pipelines located in areas not subject to a coal mining permit, the Oil and Gas operator shall mark those Pipelines within ninety (90) days of receipt by the Oil and Gas Operator of a written notice from the Director or the Coal Permit Holder that the area has become subject to a valid coal mining permit issued by the West Virginia Department of Environmental Protection. The Pipelines shall be marked in the following manner: All gas lines shall be located and identified by markers on the surface and plotted on a certified map. A copy of such map shall be

~~provided to the mine operator and kept at the mining office. All gas lines installed on or after the first day of June 2008 shall be identified by GPS.~~

~~14.3.a.(a)~~ The markers shall be no less than 36 inches in height above the ground level.

~~14.3.b.(b)~~ Markers will be identified with a distinct, consistent, reflective marking at the top of the marker.

~~14.3.c.(c)~~ The markers will be placed perpendicular (upright) to the location of the Pipeline.

~~14.3.d.(d)~~ The markers will be placed immediately over the Pipeline at each marker location 5 feet from the location of the gas line.

~~(e) The markers will be placed on both sides of the gas line at each marker location.~~

~~14.3.e.(e)~~ The markers will be spaced at a maximum of 30075 foot intervals along the Pipeline. There will be a guaranteed line of sight between those markers

~~14.3.f.(f)~~ Markers will be made of weather resistant durable material.

14.3.g. 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; provided however that existing markers where words substantially similar to the words "Warning" "Caution" or "Danger" already appear need not be replaced.

14.3.h. The markers shall contain the name of the Oil and Gas Operator and the telephone number (including area code) where the Oil and Gas Operator may be reached.

~~14.3.i.(i)~~ 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 Pipeline.

~~14.3.j.(j)~~ All possible access roads shall be clearly marked on both sides of the road and gated if traffic is unwarranted.

~~14.63.k.~~ When there is a curve in a gas Pipeline, 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 Pipeline, between the center of the Pipeline at one marker location and the center of the Pipeline at the next adjacent marked location.

14.3.l. The Pipeline marking requirements set forth in this provision shall not apply to Interstate Pipelines or Regulated Onshore Gathering Lines.

14.3.m. In the event that an Oil and Gas Operator is unable to mark its Pipelines within the time periods set forth herein the Oil and Gas Operator may petition the Director to extend the time period in which the Oil and Gas Operator is to mark said Pipelines. Upon a showing of good cause, the Director may extend the time period in which the Oil and Gas Operator is to mark the Pipelines. However, in no event shall an extension, or series of extensions, exceed a cumulative total of ninety (90) days.

14.43. 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.

14.54. When tree removal activities must be conducted within 50 feet of the gas Pipeline, a grapple type excavator will be used to pick the fallen trees from the marked area. This work cannot be conducted unless the gas Pipeline is buried more than 2 feet below the surface and at no time will the ground be disturbed below the surface.

14.65. Unless a shorter distance is permitted by the mine operator's comprehensive mine safety plan. At no time will mining, excavation or equipment/vehicle operation shall occur within 50 feet of a gas Pipeline or well, except that, equipment/vehicles will be allowed to cross a gas Pipelines at designated crossings. Markers will be established around gas wells to identify this 50 foot zone. An exception to this will be in areas where pre-existing haul roads have been established along side known (surveyed) areas of the gas Pipeline, where the depth have been verified at a minimum of 3 feet. In these areas the road will be no closer than 5 feet to the gas Pipeline and additional material will be placed within this 5 foot area to prevent travel in this area. Additionally in these areas, markers will be placed every 50 feet which shows the location of these existing haul roads.

14.7.(b) Any gas Pipeline shall be considered 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 adequately plugged below the elevation of the intended work area. Documentation will be provided to show that the condition of the gas lines and/or wells is as described above.

14.87. Gas Pipeline awareness training shall be conducted with all personnel and resident contractors who are assigned to work in close proximity to Gas Facilities. This training shall be incorporated during the following sessions:

- (a) Newly employed experienced miner.
- (b) Annual retraining.
- (c) Hazard training.
- (d) Contractor training.
- (e) Additionally, immediately after gas Pipelines have been located, a special safety talk will be conducted with all persons on the property concerning gas Pipeline and gas well locations.
- (f) Gas Pipeline locations will be discussed in safety talks, at least on a quarterly basis.
- (g) Safety discussions will be held on gas Pipeline and gas well locations prior to moving into a new work area.

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: November 13, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Coal Mine Health and Safety

1615 Washington Street, East, Charleston, WV 25311

304-957-2306

LEGISLATIVE RULE TITLE: ~~Section 36-27-1 RULES AND REGULATIONS GOVERNING~~
SURFACE AREAS AND OIL AND GAS OPERATORS
OPERATING ON MINE PROPERTY

1. Authorizing statute(s) citation Section 22A-6-4, Section 22A-6-5

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

None

b. What other notice, including advertising, did you give of the hearing?

The Board's rulemaking procedure is exempted from the West Virginia Administrative Procedure Act pursuant to Section 22A-6-4(a). Pursuant to 22A-6-5(b), the Board voted unanimously to dispense with the Notice of Hearing or Public Comment Period.

c. Date of Public Hearing(s) or Public Comment Period ended:

Not applicable

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

Attached _____ No comments received X

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

Not applicable

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

Mr. Joel Watts, Administrator

1615 Washington Street, East, Charleston, WV 25311

Phone - 304-957-2306 Facsimile - 304-558-6091

- 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)
-
-
-
-

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.

The Board is not subject to the APA. However the Board is required to adopt Findings of Fact and Conclusions of Law. The Board approved the requisite Findings of Fact and Conclusions of Law on November 12, 2008.

b. Date of hearing or comment period:

Not applicable

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

Not applicable

d. Attach findings and determinations and reasons:

Attached Please see Findings of Fact and Conclusions of Law Attached hereto.