

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

Form #2

Do Not Mark In This Box

FILED

2009 JUN 30 PM 3: 56

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Energy/Office of Coalfield Community Development TITLE NUMBER: 207
~~206~~

RULE TYPE: Legislative CITE AUTHORITY: §5B-2A-12

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

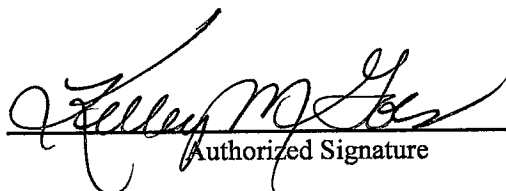
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Community Development Assessment and Real Property Valuation Procedures for
Office of Coalfield Community Development

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31st, 2009 AT 11:59 AM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Capitol Complex
Building 6 Suite B-650
Charleston WV 25305-0311
(304) 558-0362 (Fax)
Attn: Jeff Wood

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY OF PROPOSED CHANGES

These changes are necessary due to legislative revisions following the passage of Senate Bill 1011.

The purpose of these changes is to ensure the post-mine development of reclaimed surface mine property; defining certain terms; requiring certain counties to develop master land use plans for post-mine development; clarifying procedures relating to master land use plans and community impact statements; enhancing certain powers and responsibilities of the Office of Coalfield Community Development and the Department of Environmental Protection with respect to master land use plans; requiring surface mine reclamation plans to comport with approved master land use plans; and authorizing surface mine reclamation plans to contain alternative, non-comporting post-mining land uses under certain circumstances.

Please address all questions to Mr. Jeff Herholdt, Director, West Virginia Division of Energy, at (304) 957-2027.

FISCAL NOTE FOR PROPOSED RULES

145

Rule Title: _____

Type of Rule:

☐ Legislative ☐ Interpretive ☒ Procedural

Agency:

Department of Commerce, Division of Energy, Office of Coalfield Community Development

Address:

Capitol Complex, Building 6, Suite 650, Charleston, WV 25305-0311

Phone Number:

(304) 558-2234

Email: jherholdt@energywv.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no new fiscal impact to the state due to new legislation in either cost or revenue. All new functions and responsibilities of the Office of Coalfield Community Development will be undertaken within the current revenue set aside for the Office.

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			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

145

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

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.

Date: 6/29/2009

Signature of Agency Head or Authorized Representative



FILED

**TITLE 207
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF ENERGY**

2009 JUN 30 PM 3: 56

**SERIES 1
COMMUNITY DEVELOPMENT ASSESSMENT AND
REAL PROPERTY VALUATION PROCEDURES
FOR OFFICE OF COALFIELD COMMUNITY DEVELOPMENT**

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§207-8-1. General.**

1.1. Scope. -- This rule establishes the procedure for the creation of community impact statements by operators, the process to develop coalfield community development procedures which include asset development goals and infrastructure needs, the criteria for the development of a master land use plan by local, county regional development or redevelopment authorities, and the procedure for establishing the value of property to assist property owners who desire to voluntarily sell their property to an operator.

1.2. Authority. -- W. Va. Code §5B-2A-12.

1.3. Filing Date. -- June 30, 2009.

1.4. Effective Date. -- August 1st, 2009.

§ 207-8-2. Definitions.

As used in this rule, unless used in a context that clearly requires a different meaning, the term

2.1. Director -- shall mean the director of the office of Coalfield Development.

2.2. Code -- shall mean the code of the State of West Virginia of 1931, as amended.

2.3. Community Development Procedures - shall mean that the Office of Coalfield Community Development will incorporate and transfer community impact statement data with county governments and or economic development authorities as outlined by Section 5 of this rule.

2.4. Community Impact Statement -- shall mean the written statement containing all of the information required by section 4 of this rule that is filed by the operator with the office.

2.5. Department -- shall mean the West Virginia Department of Environmental Protection established in W. Va. Code §22-1-1 et seq.

2.6. Development Authority -- shall mean the appropriate state, local, county or regional development or redevelopment authority as determined by the county commission.

2.7. Development Office -- shall mean the West Virginia Development Office established in W. Va. Code §5B-2-1 et seq.

2.8. Infrastructure Component Standards -- shall mean those standards developed by a development authority which are to be applied to the infrastructure needs as determined by the development authority and as included in a master land use plan to ensure proper implementation of the plan. The standards shall be specific to each plan.

2.9. Office -- shall mean the Office of Coalfield Community Development established in W. Va. Code §5B-2A-1 et seq.

2.10. Operator -- shall mean any individual, partnership, firm, society, association, trust, corporation or other business entity which applies for, which is granted or which obtains a permit to engage in surface mining and reclamation operations.

2.11. Master Land Use Plan -- shall mean

a plan which addresses current and prospective uses for land which in whole or in part is or has been covered by a surface mining permit for the purpose of satisfying postmine land uses which requires a variance from approximate original contour and which contains all the information required by section 6 of this rule.

2.12. Permit -- shall mean a permit to conduct surface mining operations issued pursuant to W. Va. Code §22-3-8.

2.13. Plan -- shall mean a master land use plan as defined in subsection 2.11 of this rule.

2.14. Reclamation Plan -- shall mean the reclamation plan established in W. Va. Code § 22-3-10.

2.15. Surface Mining Operations -- shall mean activities conducted on the surface of lands for the removal of coal where such activities disturb the natural land surface. Surface mining operations do not include any of the following:

2.15.a. Coal extraction authorized pursuant to a government-financed reclamation contract;

2.15.b. Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

2.15.c. The reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

2.16. Renewable and Alternative energy -- shall mean energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitations, solar energy, wind power, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by coal gasification or liquefaction facility, synthetic gas, waste coal, tire derived fuel, pumped storage hydroelectricity power or similar energy sources.

§207-8-3. Exempted Operations.

3.1. The provisions of this rule shall apply to all surface mining operations, except:

3.1.a. Surface operations and surface impacts incident to an underground coal mine; and

3.1.b. Surface mining operations of operators that: (1) establish that their probable total annual coal production from all locations during any consecutive twelve-month period, either during the term of the permit or during the first five years after issuance of the permit, whichever period is shorter, will not exceed 300,000 tons, as determined pursuant to rules promulgated by the department, and (2) otherwise meet all criteria for the small operator assistance program authorized under the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq., as amended.

3.2. The provisions of this rule shall not apply to: (1) underground coal mining operators or (2) the extraction of minerals by underground mining methods or the surface impacts thereof.

3.3. Any operator claiming an exemption from the requirements of this rule shall file a statement with the office setting forth the name and address of the operator, the amount and location of the land to be mined or used in the surface mining operations, the expected duration of the surface mining operations, and the basis for the exemption claimed. The statement shall be executed by an acknowledged signature of an officer, member, partner or other duly authorized agent of the operator.

§207-8-4. Community Impact Statement.

4.1. An operator shall develop and file a community impact statement, as described in subsection 4.3 of this rule, with the office no more than 60 days after filing an application for a permit with the department.

4.2. For permits granted after June 11, 1999, a community impact statement shall also be filed by the operator within 90 days after the permit application is deemed by the department to be administratively complete, and within 90

days after the first five year incremental renewal date for all permits issued prior to June 11, 1999.

4.3. A community impact statement, where practicable, shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:

4.3.a. The amount and location of land to be mined or used in the actual surface mining operations, the permit numbers for all mining, surface, national pollutant discharge elimination system or other permits relating to such surface mining operations, the latitude and longitude coordinates of the approximate center of the proposed area to be permitted, and the magisterial districts and other related information requested by the office.

4.3.b. The expected duration of the surface mining operations in each area of the community.

4.3.c. The extent of anticipated mining-related property acquisitions by the operator and any other property owners, including the names and addresses of the owners of all surface, mineral and other interests in property to be acquired related to the surface mining operations for which the permit application was filed, to the extent that such property acquisitions are known or capable of being known.

4.3.d. The names and addresses of the owners of all surface, mineral and other interests in property to be mined pursuant to the permit and located within 1,000 feet of the permitted area or areas for surface mining operations.

4.3.e. The intentions of property owners, other than the operator, relative to the surface, mineral and other property intended to be acquired for the anticipated surface mining operations, to the extent that such intentions are known or capable of being known.

4.3.f. A statement of the postmining land use and approximate postmining contour for all land within the permit boundary.

4.3.g. The intended blasting plan for the surface mining operations anticipated under the permit and the expected time and duration that

the anticipated blasting shall affect each community.

4.3.h. Information concerning the extent and nature of valley fills anticipated to be located within the surface mining operations and the watersheds to be affected by these valley fills.

4.3.i. Economic information about the anticipated surface mining operations, including, without limitation, the estimated number of jobs created, the estimated proportion of mine employees who will be residents of West Virginia, the estimated annual mine payroll, the estimated annual coal production, the anticipated mine life, and such other economic information as may be requested by the office.

4.3.j. An acknowledgement of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgement of the infrastructure component needed to accomplish the designated post-mine land use required by the plan

4.3.k. The location of and distance from the mine site to the nearest existing gas, electric, water, sewer and other utilities, the location of and distance from the mine site to the closest paved public roadway, and the gas, electric, water, sewer and other utility infrastructure anticipated to be extended to the mine site.

4.3.l. The identification of public bridges, parks and recreation areas, roads, schools, utility lines, water supplies or other public facilities that may be acquired, relocated or removed by the anticipated surface mining operations. The operator shall identify the public roads over which coal mined from the proposed surface mining operation shall be transported after leaving the permitted area, the estimated number of truckloads of coal or refuse materials to be transported daily on these roads, the estimated truck schedule of this transportation activity, and any rerouting of traffic anticipated to be caused by this transportation activity.

4.3.m. Maps of the area within 1,000 feet from the permit or proposed permit area

prepared from United States Geological Survey topographic maps, or maps determined to be as accurate by the office, on 7.5 minute quadrangle depicting permit boundaries, property boundaries, property ownership interests, structures, roads, and other information required to be filed with the community impact statement. Such maps shall have a preferred scale of 500 feet to one inch and shall be submitted on print paper 30 inches by 42 inches or less. If supplementary maps or plans are attached, match lines shall be used.

4.4. Simultaneously with its filing in the office, the operator shall also provide copies of the community impact statement to the department's division of mining and reclamation and office of explosives and blasting, the county commissions, the office of the clerk of the county commissions, the regional planning and development councils, the county economic development authorities, and public libraries in those areas to be affected by the surface mining operations.

4.5. Where the operator makes any significant revision to the permit application under 38 CSR § 2-3.28, which revision substantially affects any of the information provided in the community impact statement previously filed with the office, the operator shall revise those portions of the community impact statement affected and shall submit these revisions to the office and each of the entities identified in subsection 4.4 of this rule within 60 days after filing the request for significant revision with the department.

4.6. Within thirty days upon receipt of a community impact statement the local, county regional development or redevelopment authorities of the areas to be affected which has been directed to prepare the county's master land use plan shall provide a written acknowledgement of the receipt of this community impact statement or revised community impact statement to the department's Division of Mining Reclamation, to the county commission or county commissions and to the office.

4.7. The failure to file a community impact statement with the office shall be a violation

under W. Va. Code §22-3-17.

§207-8-5. Coalfield Community Development Procedures.

5.1. The office shall coordinate and share information outlined in the community impact statement with the county development authority when an operator applies for any permit with the department.

5.2. Within 30 days after the community impact statement from the operator applying for the permit is filed with the office, the operator shall distribute notice that property is intended to be mined by the operator applying for the permit to the following:

5.2.a. State and local government agencies such as county commissions, city or town governments in affected communities, regional planning and development councils, and county economic development authorities having jurisdiction over the affected communities, all by certified mail.

5.3. Within 30 days after the community impact statement from the operator applying for the permit is filed with the office, the operator shall notify individuals and business owners and operators in affected communities of the proposed mining activity.

5.3.a. This notification from the operator shall be by a class I legal advertisement as provided in W. Va. Code §59-3-2, which shall contain a map identifying the location of the proposed surface mining operations.

5.3.b. After this notification has been published, the operator shall file the publication certification for the class I legal advertisement with the office.

5.4. A notice provided by the operator to affected persons and entities about coalfield community development shall contain the following information:

5.4.a. The name of the permit applicant and the location of the intended surface mining operations;

5.4.b. The locations in the affected communities where the community impact statement has been filed by the operator for inspection;

5.4.c. The expected duration of the surface mining operations in each area of the community;

5.4.d. The notice shall inform its recipients that the office invites persons and entities in areas affected by the anticipated surface mining operations to submit written comments and other documentation to the chief within 30 days after the date of the notice about how their communities are anticipated to be affected by the planned surface mining operations and the intended postmining land use; and

5.4.e. The notice shall inform its recipients that the community impact statements for the planned surface mining operations were filed within 180 days from the date of the notice, and that persons and entities in the affected communities shall have 30 days after the date to submit written comments to the director.

5.5. After the close of the public comment period, the office will deliver public comments to the development authority and assist in the incorporating of the community impact statement into the land use master plan.

5.6. The office shall coordinate and transfer information, findings and recommendations to development authorities in the county affected.

5.6.a. An evaluation of the future of the affected communities once mining operations are completed.

5.6.b. The identification of community assets that may be developed by the affected community, county or region to foster its viability when surface mining operations are completed which may include the following:

5.6.b.1. Water and wastewater services;

5.6.b.2. Developable land for housing, commercial development or other

community purposes;

5.6.b.3. Recreation facilities and opportunities; and

5.6.b.4. Education facilities and opportunities.

5.6.c. In determining the nature and extent of the needed community assets, the office shall consider at least the following:

5.6.c.1. An evaluation of the future of the community once surface mining operations are completed as required to be determined in the coalfield community development statement;

5.6.c.2. The prospects for the long-term viability of any asset developed under this subsection 5.6.c;

5.6.c.3. The desirability of foregoing some or all of the asset development required by this subsection 5.6.c in lieu of the requirements of subsection 5.6.e of this rule;

5.6.c.4. The determinations made during the development of the coalfield community development procedures of the impacts of the mining operations on the community; and

5.6.c.5. The extent to which the community, local, state or federal government may participate in the development of assets the community needs to assure its viability.

5.6.d. As part of the coalfield community development procedures, the office shall recommend the land and infrastructure needs in the county or counties in which the surface mining operations are being conducted, or any adjacent county.

5.6.e. In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall consider at least the following:

5.6.e.1. The availability of developable land in the general area;

5.6.e.2. The needs of the general area for developable land;

5.6.e.3. The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service and other utilities;

5.6.e.4. The amount of land to be mined and the amount of valley to be filled by the surface mining operation;

5.6.e.5. The amount, nature and cost to develop and maintain the community assets identified in subsection 5.6.b of this rule; and

5.6.e.6. The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

5.6.f. In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multi-lane highways.

5.7. When the office receives community impact statements that affect communities that are included within existing community development statements, the office shall determine whether the surface mining activities anticipated by the additional community impact statements require modification. In the event that the office determines no modification is required, the office and operator shall issue a notice pursuant to subsections 5.2 and 5.3 containing the information required by subsections 5.3.a - c and disclose the intention of the office not to further amend or modify the existing community impact statement. When the office concludes that the anticipated surface mining operations require an amendment to or modification of an existing community development statement, then the office and operator shall use the notice and public comment provisions contained in subsections 5.4.a - e and 5.5 of this rule

5.8. The office shall prepare an annual status update of this action report which shall

describe accomplishments and prospects for continued economic development.

§207-8-6. Master Land Use Plans.

6.1. A master land use plan shall be prepared by a development authority. If requested by a development authority, the office shall assist in the preparation of a master land use plan.

6.2. A development authority must determine land and infrastructure needs within its jurisdiction as necessary in conjunction with its preparation of a master land use plan.

6.2.a. In making a determination of the land and infrastructure needs in its jurisdiction, the development authority shall evaluate at least the considerations set forth in subsection 5.6.e. of this rule. A development authority may satisfy this requirement by incorporating all or part of the determination of land and infrastructure needs of an area reflected in a community impact statement prepared in accordance with section 5 of this rule.

6.3. For any infrastructure needs identified by the development authority, consistent with the current and prospective uses described in the master land use plan, infrastructure component standards shall also be developed.

6.3.a. The infrastructure component standards developed by a development authority shall be approved by the appropriate county commission or commissions before such standards can be included in a master land use plan.

6.3.b. Before approving the infrastructure component standards, the county commission or commissions shall give notice to the public and provide a 30-day comment period.

6.4. Once a master land use plan has been prepared, the office and the department shall review the plan. This review shall include an evaluation of the plan's impact on the development of economic and community assets and conformance with this rule.

6.5. A master land use plan shall be sufficiently complete to indicate its relationship to definite objectives of the development authority as to appropriate land uses and shall include at least the following:

6.5.a. The boundary of the area encompassed by the plan with a map showing the existing uses and conditions of the real property and any infrastructure components therein;

6.5.b. A land use plan showing the proposed uses of the area; these uses shall be identified under categories approved by legislation such as industrial, commercial, agricultural, public facility and recreational facility, highway use, residential uses or renewable and alternative energy uses.

6.5.c. A statement of the proposed changes, if any, in zoning ordinances or maps, street and highway layouts, building codes and ordinances;

6.5.d. A site plan of the area;

6.5.e. A statement as to the kinds and number of additional public facilities or utilities which will be required to support the new land uses in the area after development;

6.5.f. A statement of the land and infrastructure needs as determined pursuant to subsection 6.2 of this rule which shall include a statement of infrastructure component standards; and

6.5.g. Any community impact statements and/or community development statements which may have been prepared and which effect any property within the boundaries of the master land use plan.

6.6. An operator shall include, in a surface mining permit application, a master land use plan which addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code §22-3-10. An operator may amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan.

6.6.a. Any modifications in the postmining land use during mining must be made in accordance with 38 CSR §§ 2-7.3.a. and 3.28.

6.7 The Office shall review the master land use plan to determine if it can be approved. If it is not approved, the county or designated development authority shall submit a supplemental master land use plan to the office for approval.

6.8. The master land use plan shall be approved by the department as part of the operator's reclamation plan before the master land use plan may be implemented.

§207-8-7. Land Acquisitions.

7.1. After a community impact statement is filed by an operator as provided in section 3 of these rules, the office shall give notice to the property owner at the address identified by the community impact statement that the owner's property has been identified for purchase by the operator and the name and address of the proposed purchaser, but the office shall provide no other assistance unless requested by the potential property seller.

7.2. The office shall assist property owners so notified and other property owners who desire to sell their property voluntarily to an operator which has applied for a permit or any person, firm or corporation directly or indirectly affiliated with such operator, provided that all of the following conditions are met:

7.2.a. The operator or any person, firm or corporation directly or indirectly affiliated with the operator makes an offer, in writing, to purchase the property stating all the terms and conditions of the proposed purchase;

7.2.b. The property to be purchased is located within 1,000 feet of property which actually is or will be mined by the operator;

7.2.c. The structures are actually being used for commercial purposes or are occupied residences situate on the property to be purchased; and

7.2.d. The potential seller or group of sellers requesting assistance from the office own all of the property proposed to be purchased, and no undivided interests in the property exist that are opposed to the valuation procedure.

7.3. If requested by a potential seller qualifying under subsection 7.2 of this rule, the office shall only provide assistance if it determines that the value of the property is diminished by the proposed surface mining operations and that the offer made by the operator is less than the value the property would have had prior to any diminution of value.

7.4. If the office determines that the value of the property is diminished and that the offer made by the operator or its affiliate is less than the value the property would have had prior to any diminution of value, then the office shall cause the value of the property prior to any diminution to be established by a qualified and disinterested appraiser and shall certify this value to the potential property seller and the operator.

7.5. Either party shall have 30 days after their receipt of the certification of value by the office to request a reconsideration of this valuation based upon written documentation submitted to the office within such 30-day period.

7.6. Within 30 days after its receipt of a request for reconsideration, the office shall review all documentation provided, and if the office determines that good cause has been shown for an adjustment to the previously certified value of the property, then the office shall provide the parties with certification of the adjusted value which shall be a final determination and not subject to further challenge by the parties.