



WEST VIRGINIA RIVERS

July 8, 2019

WV Department of Environmental Protection

Division of Mining & Reclamation

601 57th Street

Charleston, WV 25304

Hand-delivered at public hearing on July 8, 2019

RE: Comments on proposed changes to agency rules

38CSR2 - West Virginia Surface Mining Reclamation Rule

We have general concerns that the proposed change in 38CSR2-16.2.c.2 will limit claims for recovery only under SMCRA. We are aware there are some common law property rights, such as the right to lateral support, that are often part of subsidence claims. However, the effect of the proposed provision may prevent claimants (property owners) from being able to go after the full repair amount using such common law claims.

Under SMCRA, the choice is to be paid diminution in value of the property *or* to force the company to perform repairs. The change seems to be aimed at preventing a lawsuit where the property owner can compel the company to pay for repairs. The WVDEP should explain if it agrees that this is the intention of this change, and why it is taking this approach to limit surface owner rights to compensation for material damages.

38CSR2F - Groundwater Protection Rules Coal Mining Operations

The proposed change to 38CSR2F-3.1 essentially appears to incorporate all of the requirements of the Aboveground Storage Act (ASTA) into the Surface Mining Act – thus placing DMR in a role in ASTA oversight. This move could have benefits for better protecting the environment and human health if implemented well. It seems to set out that authority for overseeing compliance with ASTA would be shared between DMR

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and DWWM, potentially providing for additional capacity and efficiencies for oversight and enforcement – but it will require deliberate and thoughtful coordination and accountability.

In order for this change to work effectively, at least these initial key elements need to be in place:

1. A full training program for DMR inspectors on ASTA requirement and procedures.
2. Effective and timely communication systems between DMR, DWWM and the AST program.
3. Clear procedures for how violations are documented and addressed when detected by DMR staff for the AST program.
4. Adequate oversight of DMR inspectors from the AST program.
5. Regular evaluation among DMR and DWWM of the all of the points listed above.

We also noted a technical error on the notice of filing of this rule to the Secretary of State; it stated SB 635 amended 22-30-14, but SB 635 actually amended 22-30-24.

Thank you for your consideration of these comments, we look forward to your response.

Sincerely,

Angie Rosser
Executive Director