

## Tucker, William A

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**From:** Hough, Brian <BrianHough@coalsource.com>  
**Sent:** Friday, September 29, 2017 3:10 PM  
**To:** Tucker, William A  
**Cc:** chamilton@wvcoal.com  
**Subject:** SB 619 Comments on Title 37, 48, and 56  
**Attachments:** Murray Energy-Title 37, 48, 56 Comments.pdf

Please see the attached comments provided from Murray Energy.

*Brian D. Hough*

**Corporate Safety Manager- OHCC & MONCC**

**Murray American Energy Inc.**

**Cell # 304-406-8412**

**OHCC Office #304-238-0938**

**MONCC Office #724-451-3213**

**Email: [BrianHough@Coalsource.com](mailto:BrianHough@Coalsource.com)**



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**MURRAY AMERICAN ENERGY**

**phone:** O-304-238-0938  
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**BRIAN HOUGH**  
Corporate Safety Manager

September 29, 2017

WVOMHST  
William Tucker  
7 Players Club Dr. Suite 2  
Charleston, WV 25311

Dear Mr. Tucker,

Please see the attached comments on rules under Title 37, 48, and 56 submitted by Murray American Energy Corporation.

Should you have any questions please contact me at 304-406-8412.

Sincerely,

*Brian Hough*  
Corporate Safety Manager

## **Murray Energy Corporation – Title 37, 48, 56 Comments**

**Title 37 Series 1** – Procedures and practice before the board of appeals – No Comment

**Title 37 Series 2** – Temporary suspension of certificates – No Comment

**Title 48 Series 1** – Standards for certification of underground belt examiners for underground coal mines - No Comment

**Title 48 Series 2** – Safety training program for prospective underground coal miners –48-2-2 The apprentice training should be reduced from 80 hours to 40 hours. The MSHA required 40 hours is adequate for apprentice miners.

48-2-6 - If an individual is an MSHA qualified training instructor then they would be capable of teaching any state training course, certification, or re certification.

**Title 48 Series 3** – Safety training program for prospective surface coal miners – No Comment

**Title 48 Series 4** – Initial training program for prospective mine rescue team members and additional mine rescue requirements – The state needs to adopt the mine rescue regulations currently enforced by MSHA.

**Title 48 Series 6** - Certification of surface mine foreman – No Comment

**Title 48 Series 7** – Standards for certification of coal mine electricians - If an individual has logged their time prior to the 12 month period they should be able to take the exam to become certified.

**Title 48 Series 8** – Criteria and standards for alternative training programs for apprentice coal mine electricians - If an individual has logged their time prior to the 12 month period they should be able to take the exam to become certified.

**Title 56 Series 1** – Procedures and practice before the department of energy – No Comment

**Title 56 Series 2** – Safety provisions for clearing crews – This series needs removed from the regulations. MSHA has no regulation to address clearing crews.

**Title 56 Series 3** – Safety of those employed in and around surface mines – No Comment

**Title 56 Series 4** – Protective clothing and equipment – All state regulations under this series should be modified to MSHA regulation requirements.

**Title 56 Series 6** – Open pit mines, exclusive of surface mines – No comment

**Title 56 Series 7** – Open pit limestone and sandstone mines and underground limestone and sandstone mines - No Comment

**Title 56 Series 8** – Submission and approval of a comprehensive mine safety program for coal mining operations - All state regulations under this series should be modified or removed to MSHA regulation requirements.

**Title 56 Series 9** – Requests for information (Freedom of information act) - Needs modified to 20 days to respond same as MSHA

**Title 56 Series 10** – Reporting requirements for independent contractors – No Comment

**Title 56 Series 11** – First-Aid training of shaft and slope employees - No Comment

**Title 56 Series 12** – Assessing health and safety violations - No Comment

**Title 56 Series 13** – Drug testing of mine inspectors and mine safety instructors – No Comment

**Title 56 Series 14** – Application process for the West Virginia innovative mine safety and technology tax credit act - No Comment

**Title 56 Series 17** – Organization and implementation procedures for control of coal dust, rock dust standards – This series needs removed due to MSHA rock dust standards and sampling.

**Title 56 Series 18** – Program for the sharing of information between employers – No Comment

**Title 56 Series 19** - Substance abuse screening, standards and procedures – No Comment

**Title 56 Series 20** – Safety of those employed in and around quarries in West Virginia – No Comment

**Title 56 Series 21** – Self-contained self-rescue device immediate reach interpretive rule – Series should be removed and follow MSHA regulation of 25 feet.

**Title 56 Series 22** – Certification, recertification and training of EMT-Miners and the certification of EMT-M instructors – No Comment

**Title 56 Series 23** – Operating diesel equipment in underground mines in West Virginia – Regulation needs removed that requires gas detection of NO for mine examinations same as MSHA regulation.

## Tucker, William A

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**From:** Chris Hamilton <CHamilton@wvcoal.com>  
**Sent:** Friday, September 29, 2017 3:57 PM  
**To:** Tucker, William A  
**Cc:** Watts, Joel L; Norman, Greg J; Chris Hamilton  
**Subject:** Comments to Agency Request  
**Attachments:** 2017-02-17 Revised version WV Code 22A - 2, 22A - 2A.DOC; Final Comments submitted by the West Virginia Coal Association to the Emergency Rule Governing the Operation of Diesel Equipment in Underground Mine1.docx

Bill Tucker,

In response to your letter requesting comments on rules under Title 36, 37, 48, and 56, we fully embrace and echo the comments previously filled by Murray American Energy Corporation and, in addition, are (re)filing comments previously filed with the agency concerning the use of diesel mining equipment in underground mines. We do not believe these comments were considered by the agency. Additionally, we are filing a draft of statutory provisions under your jurisdiction which are found to be more strenuous than corresponding federal mining law along with proposed revisions to be considered.

Thank you,

Chris Hamilton

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**From:** Chris Hamilton  
**Sent:** Friday, September 29, 2017 2:55 PM  
**To:** Chris Hamilton  
**Subject:** FW: 2017-02-17 Revised version WV Code 22A - 2, 22A - 2A.DOC [STB-WORKSITE.FID603755]

**Comments submitted by the West Virginia Coal Association to the Emergency Rule Governing the Operation of Diesel Equipment in Underground Mines (56-23) filed with the Secretary of State's Office on June 22, 2017 by the WV Office of Miners' Health, Safety & Training, Submitted on July 24, 2017**

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The West Virginia Coal Association (WVCA) is a trade association representing coal producing companies that mine approximately 95% of the state's surface and underground coal production. WVCA also represents mine equipment and land companies, mine reclamation contractors and mine vendors.

WVCA appreciates the opportunity to comment on the proposed Emergency Rules Governing the Operation of Diesel Powered Equipment in Underground Coal Mines (56-23).

As a general comment, we would recommend the "Rule" proposed by West Virginia Office of Miners' Health, Safety & Training serve as an interim rule until a more complete, comprehensive review and assessment of the requirements contained therein can occur and a subsequent rule proposed for public comment.

The proposed rule was initially promulgated by the WV Diesel Commission in 2004 which was abolished in 2015. The rules have not been updated nor have they undergone a serious review or evaluation.

The proposed changes contained in the emergency rule were mandated by the Legislature through passage of SB 687 which was enacted during the 2017 Regular Legislative session. SB 687 directed WVOMHST to promulgate Emergency Rules to implement several changes which were specified in the legislation.

These include the following provisions that appear to be incorporated into the proposed rule.

(1) to reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners' Health, Safety and Training;

(2) to reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems;

(3) to permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the underground mine to the surface no less than once in a twenty-four hour period;

(4) to require that records of emissions tests, 200-hour maintenance tests and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled maintenance and an independent analysis of engine oil occur at two hundred hours of engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

(5) to remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab;

(6) to modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds;

(7) to modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and

(8) to remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

WVCA observes that most of these legislative changes are beneficial, however, we would recommend a few additional amendments to these provisions.

Concerning # 2 above and 7.5.a of the proposed rule, we question whether mine mechanics who work on diesel units must be "ASE Certified". Diesel mechanics working within the industry have amassed many years of hands on experience, are extremely competent and qualified and should be permitted to work on diesel units within the mine. The ASE Certified requirement is excessive and unnecessary.

Concerning # 6 above and 20.2.l of the proposed rule, we recommend revising every thirty seconds for ninety seconds to every minute for two minutes.

It's important to note, that a more complete assessment of the rule is due while the rule is opened for comment so other technical or operational changes can be incorporated into this rulemaking to ensure the rules are more workable, appropriate and up-to-date.

Importantly, the initial rules were the product of an ill-conceived rule-making process which basically required a unanimous consensus of all commissioners serving on the WV Diesel Equipment Commission at the time. Several Commissioners had reservations about diesels being used in underground applications and wanted to ensure the safety and health protections for working miners. The industry shared this goal but maintains that many of the added protections were unnecessary and excessive and served to severely impede equipment efficiencies and overall benefit.

The Legislature attempted to address several onerous provisions which led to potential to equipment damage and the discard of machine oil and lubricants in relatively good condition but the need for a more thorough review and update remains. We recommend the WV Office of Miners' Health Safety & Training accept this responsibility and opportunity.

For instance, a policy statement was issued by the former diesel commission and enforced by WVOMHST to address a situation where equipment traveling into a track spur on track entries or passing through airlock doors. The policy, which in essence, modifies the application and enforcement actions of certain provisions within the rule, should be incorporated into these rules.

The state rules are silent on the use of diesel compressors which are allowed in other states and under the federal diesel standards. WVOMST should adopt the federal standard for diesel compressors and be guided by federal requirements in other areas where the state rule is silent. Comprehensive National Diesel Standards are enforced by the Mine Safety & Health Administration under the US Department of Labor.

We offer the following recommendations to be considered by WVOMHST for inclusion in the current rulemaking:

#### Section 10.14

Transportation of fuel should not be excluded to emergency usage only. Transportation of fuel should be allowed so long as the fuel is transported in an approved container. Mobile fuel containers would be filled, delivered to their destination, emptied and promptly returned to the appropriate storage area.

#### Section 10.3

We recommend the following revision: No more than two safety cans (an increase of one), conspicuously marked, shall be transported on a vehicle at any time.

#### Section 17.2

In some cases, it is not practical for the person doing the inspection to promptly enter the data in the book. We recommend the following: a person underground is to communicate the required information to a supervisor outside. The supervisor is to enter the aforementioned information into a record book. The person who originally communicated the record is required to countersign the records by the end of the week (Saturday 11:59 pm).

#### Section 18.1 and 18.2



We recommend the following change: Pre-operational checks will be divided into two (2) types. Type 1 is a check that is required every 8 hours and type 2 is a check that is required every 24 hours. They will be referred to as an 8 hour pre-operational check and a 24 hour pre-operational check respectively. A 24 hour pre-operational check will include all items currently required under 18.1 and 18.2. An 8 hour pre-operational check will include the following items:

- Assure that the equipment is clean and free of accumulations of combustibles
- Check for loose, unsecured materials stored or hauled on equipment
- Check for loose, leaking, or missing filter on exhaust conditioning system
- Check fire suppression system status panel (power light should blink)
- Check guards
- Check lifting jack and bar
- Check fire extinguisher
- Check lights and horn
- Check fuel level
- Check brakes

#### Section 19.1.e

Engine oil is to be replaced based solely on the results of the required 200 hour oil sample / analysis.

#### Section 7.1

- a. We recommend a change whereas we are no longer required to monitor nitric oxide (NO). This would match federal regulations. and
- b. Addition of the following revision: The reading known as the “downwind ambient” shall be taken in-line with the equipment operator’s position or in the middle of the entry. In no case shall the reading be taken in-line with the exhaust system.

#### Section 7.4

Regarding the concentrations of gasses and placing a unit back in service after it has been out of compliance, we recommend that the threshold of seventy five percent (75%) be increased to one hundred percent (100%). This would match federal regulations.

In conclusion, we support the proposed changes in administrative rule 56-23 but would recommend a more comprehensive review and updating of the requirements governing the operation of diesel equipment in underground instate coal mines.

**Comments submitted by the West Virginia Coal Association to the Emergency Rule Governing the Operation of Diesel Equipment in Underground Mines (56-23) filed with the Secretary of State's Office on June 22, 2017 by the WV Office of Miners' Health, Safety & Training, Submitted on July 24, 2017**

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