



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

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

From: Joel L. Watts, Administrator – BCMH&S

Subject: Rules and Regulations Governing the Safety of Persons in and around River Loadouts

Date: 28 September 2009

Effective Date: 1 October 2009

Action: Finalized Regulation – Title 36, Series 46

Authority: §22-6-4

The Board of Coal Mine Health and Safety is created pursuant to WV Code §22A-6-1

§36-46

This rule establishes safety mechanisms to assist in preventing injury to ‘rivermen’ defined as people employed by an operator to engage in the loading and/or inspecting of coal on a barge at the river loadout facility regulated by the Office of Miner’s Health, Safety and Training

This rule is filed in response to a fatal accident which occurred 29 December 2008 in which the victim fell into the river while checking for accumulations of standing water in the cargo area of a barge.

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

Form #5

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WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: 22A-6-4

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

22A-6-4

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 46

TITLE OF RULE BEING PROPOSED: Rules and Regulations Governing the Safety of Persons in and Around
River Loadouts

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



Authorized Signature

36 CSR 46

TITLE 36
LEGISLATIVE RULES
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 46
RULES AND REGULATIONS GOVERNING THE SAFETY OF
PERSONS IN AND AROUND RIVER LOADOUTS

§ 36-46-1. General.

1.1 Scope. These rules govern safety of persons in and around river loadouts.

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

1.3 Filing Date. September 28, 2009

1.4 Effective Date. October 1, 2009

1.5 Applicability. These regulations shall extend to all coal barges moored to any river loadout facility regulated by the Office of Miners' Health, Safety and Training.

§ 36-46-2. Effect of Law and Regulations.

2.1 These 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.

§ 36-46-3. Definitions.

3.1 The term "Director" means the Director of the Office of Miners' Health, Safety and Training provided for in Chapter 22A, Article 1, Section 3 of the West Virginia Code.

3.2 The term "facing-up" means connecting the boat to the end of the barge or fleet of barges.

3.3 The term "gaging" means to verify the empty and/or loaded draft of the barge.

3.4 The term "moored" means a coal barge physically attached to a river loadout facility for the purpose of coal being loaded into the barge.

3.5 The term "operator" means any firm, corporation, partnership or individual operating any coal mine, or part thereof, or engaged in the construction of any facility associated with a coal mine. For purposes of this rule, the term "operator" does not include any firm, corporation,

partnership or individual solely engaged in the business of delivery or retrieval of barges to the facility.

3.6 The term "riverman" means a person employed by an operator to engage in the loading and/or inspecting of coal on a barge at the river loadout facility regulated by the Office of Miners' Health, Safety and Training.

3.7 The term "working line" means any line other than a rigging wire used to position, maneuver, or secure a barge.

§ 36-46-4. Training Requirements of Rivermen Working on River Barges.

4.1 No operator may require or allow a riverman, in the course of his or her employment, to board a barge used for the transport of coal unless the riverman has successfully completed riverman task training promulgated by the Board of Miner Training, Education and Certification which shall include safety training, mandatory use of life jackets while aboard a barge, working lines, handling materials, facing-up, proper use of wire rigging, moving barge to loadout and set-up, gaging during and after loading, precautions to gaging, placing empty barges, securing empty barges, maneuvering of barges, slack in lines, pinch points, communicating with boat operator, avoiding shadows, and transitioning from boat to barge or barge to loadout. All persons covered by this provision shall have such required training and annual re-training recorded on an MSHA 5000-23 form a copy of which shall be maintained at the facility for a period of at least one (1) year. Notwithstanding the effective date of this rule, the provisions of this subsection related to promulgation of training requirements for rivermen shall be effective on January 1, 2010.

4.2 (A) No operator may require or allow any person to board a barge unless the person is wearing a life jacket approved by the United States Coast Guard.

(B) No operator may require or allow any riverman to board a barge unless he or she is equipped with and trained in the use and purpose of: (1) An operable strobe light; and (2) A marine whistle with lanyard.

(C) At all times a riverman is aboard a barge, he or she shall be equipped with a submersible, two-way communication device.

4.3 Any person other than a trained riverman shall be hazard trained before boarding a barge and shall be at all times within sight and sound of a trained riverman while aboard the barge. This requirement does not apply to employees of any firm, corporation, partnership or individual solely engaged in the business of delivery or retrieval of barges to the facility.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

BRIEFING DOCUMENT

Rule Title: 36 CSR 46 - Rules and Regulations Governing the Safety of Persons in and Around River Loadouts

A. AUTHORITY: W. Va. Code § 22A-6-4

B. SUMMARY OF RULE:

This rule establishes safety mechanisms to assist in preventing injury to “rivermen” defined as the people employed by an operator to engage in the loading and/or inspecting of coal on a barge at the river loadout facility regulated, by the Office of Miner’s Health, Safety and Training.

C. REQUIREMENTS:

Promulgation of this rule will enhance the safety of all people engaged in the loading and or inspection of coal.



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Findings of Fact and Conclusions of Law
Fatal 09-08
McElroy Coal Company, Ireland Loadout

Victim Information

Name: Mark. D. McIntyre
Age: 57
Total Mining Experience: 37 years
Occupation at time of accident: Foreman/Dozer Operator
Date of Accident: 29 December 2008

Mine Information

Mine Name: McElroy Coal Company
Total of Employees: 19
Number of Shifts: 3
Comprehensive Safety Program Anniversary Date: 13 August 2009

Findings of Fact

- 1) The victim was assigned the task of checking barges for excessive accumulations of water at the start of the afternoon shift,
- 2) The victim was instructed by Mr. Jeff Seckman, Acting Preparation Plant Superintendent, on how to determine an unacceptable amount of water in the empty barge cargo area,
- 3) The facility was loading 200 foot long jumbo barges. (Approximately 1800 ton capacity)
- 4) At approximately 9:30 pm Mr. McIntyre was in the operator's building when he noticed a barge on the working line, that he wasn't sure had been checked.
- 5) At approximately 10:00 p.m. he was last seen on the river side of the second barge out, on the working line,
- 6) At approximately 10:15 p.m. the preparation plant called for Mr. McIntyre, it was then realized that he was missing.
- 7) An extensive search was started to find Mr. McIntyre
- 8) The tug boats Robert Murry, Boonesboro, Champion, Quarto and Kimberly were utilized in the search.
- 9) At approximately 11:15 p.m., Mr. Seckman arrived at the facility and ordered the barges "taken apart" to search for Mr. McIntyre.
- 10) Mr. McIntyre surfaced when the number 470 barge was drifted out by the tug boat Kimberly.
- 11) At approximately 2:30 a.m. the victim was recovered by the tug boat Quarto.
- 12) Mr. McIntyre was recovered with all required personal safety equipment, including a life jacket.
- 13) It could not be determined if he had possession of a two way radio while out on the barges. No two way radio was recovered. Records were not available, at the plant, to determine if any radios were missing. Normally, supervisors do wear two way radios,
- 14) The water level of the Ohio River was higher than normal and the water current was swift. This was after several days of rain.
- 15) The downriver barges were moored with the rake (tapered) end facing upriver.

- 16) On January 7th, 2009, the Office of Miners' Health, Safety and Training was advised by the West Virginia Attorney General's Office that this agency has jurisdiction over moored barges.

CONCLUSION

Mr. Mark McIntyre fell into the river while checking for accumulations of standing water in the cargo area of the barges. There were no eye witnesses to the accident.

Recommendations:

The Board of Coal Mine Health and Safety recommends new safety measures and training regulations be created by the Board to prevent further accidents.