

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 1-10

By the Governor

WHEREAS, coal mining is vitally important to the State of West Virginia; and

WHEREAS, coal mine operators, mine supervisors, and miners themselves should strive to mine coal as safely as possible and should take whatever actions are necessary to ensure that mandatory health and safety standards are met and best practices are implemented to prevent mining accidents of any size or severity; and

WHEREAS, on April 5, 2010, an explosion occurred at Performance Coal Company's Upper Big Branch Mine-South, killing twenty-nine miners and injuring others; and

WHEREAS, the specific cause of the explosion has yet to be determined; and

WHEREAS, state and federal agencies are starting investigations and the Governor has appointed independent counsel to advise him on the status of the investigations and to make recommendations for reforms; and

WHEREAS, immediate action is warranted to identify and remedy conditions that create a risk of combustion or explosion in the underground coal mines in the state.

NOW, THEREFORE, I, JOE MANCHIN III, Governor of the State of West Virginia, under the authority vested in me by the Constitution and laws of this state, and subject to the continuing and ultimate authority of the Governor to act in matters which affect the lives and safety of the residents of this state, do hereby PROCLAIM that Friday, April 16, 2010, shall be observed as a day of honor and mourning for our fallen miners, and I do hereby DECLARE that coal should not be produced from any underground coal mine that day, and that miners should come to work that day and honor the memory of those who lost their lives by dedicating their shifts to safety. Each underground coal mine in the state is encouraged to honor this declaration by calling a halt to production activities for twenty-four hours, engaging miners in a thorough review of safety procedures and taking any actions necessary to ensure the mine's compliance with mandatory health and safety standards.

AND FURTHERMORE, I, JOE MANCHIN III, Governor of the State of West Virginia, pursuant to the authority vested in me by the Constitution and laws of this state, and subject to the continuing and ultimate authority of the Governor to act in matters which affect the lives and safety of the residents of this state, do hereby ORDER the following:

- (1) *Strict enforcement of mandatory health and safety standards.* -- At all times in the performance of any duties required by law or this Order, the Director of the Office of Miners' Health, Safety and Training and his authorized representatives shall continue to ensure strict adherence to the mandatory health and safety standards of this state and shall take all reasonable and necessary steps to protect the safety and well-being of miners, including, but not limited to, ordering the immediate inspection of all active underground coal mines and ordering the evacuation or closure of any coal mine that poses an imminent danger to the safety of miners.
- (2) *Definitions.* -- When used in this Order, the following words or phrases shall have the meanings assigned to them in this paragraph except where the context clearly requires a different meaning.

- a. "Combustion risk" means any violation of mandatory health and safety standards that creates a risk of combustion or explosion, including, but not limited to, standards relating to: ventilation; the detection, monitoring and removal of dangerous accumulations of explosive or noxious gases; electricity and electric equipment; and control of coal dust and rock dusting.
 - b. "Director" means the Director of the Office of Miners' Health, Safety and Training.
- (3) *Immediate inspections.* -- The Director shall order the immediate inspection of all active underground coal mines in the state. In addition to the performance of any duties required by law or the Director, any mine inspector performing an inspection pursuant to this Order shall investigate the coal mine for combustion risks. If the Director or an authorized representative of the Director identifies any combustion risk or other violation of mandatory health and safety standards, he or she shall take immediate steps as required by law to ensure compliance, including, but not limited to, ordering the evacuation or closure of all or a part of the coal mine.
- (4) *Priority of inspections.* -- Upon the effective date of this Order, the Director shall determine, with the assistance of the inspector-at-large assigned to each region of the state, the priority of inspections required by this Order. Any coal mine determined by the Director to be a high priority for inspection shall be inspected within two weeks of the effective date of this Order. For the purposes of this Order, a coal mine is a high priority for inspection if the Director determines that combustion risks have repeatedly occurred at the mine over the most recent twelve-month period. The Director may determine the priority of inspections required by this Order as he sees fit and is not required to create a schedule, list, document or other written or recorded instrument.
- (5) *Reinspection of coal mines.* -- After an inspection is conducted pursuant to this Order, the Director shall order the reinspection of any coal mine in which the Director or an authorized representative of the Director has identified combustion risks. The reinspection shall occur before and in addition to the next quarterly inspection of the coal mine required by section

fourteen, article one, chapter twenty-two-a of the West Virginia Code. In addition to the performance of any duties required by law or the Director, any mine inspector performing a reinspection pursuant to this Order shall investigate the coal mine for combustion risks.

(6) *Control of coal dust and rock dusting.* -- In addition to the performance of any duties required by law or the Director, mine inspectors conducting an inspection pursuant to this Order shall collect dust samples in all mines where rock dust is required to be applied and maintained upon the roof, floor and sides of the mine. The Director shall take immediate steps to secure necessary equipment and personnel to test dust samples collected by mine inspectors. Dust samples shall be tested by the Director or an authorized representative of the Director to determine compliance with mandatory total incombustible content (TIC) standards. In addition, the Director shall determine if the dust samples meet the TIC standards recommended by a National Institute of Occupational Safety and Health report that require eighty percent (80%) TIC in both intake airways and return airways. The Director shall consider compliance with mandatory or recommended TIC standards when determining whether an imminent danger exists in a mine or whether there is a history of repeated significant and substantial violations that warrants closure of a mine.

(7) *Reporting required.* -- In addition to any reports required by law or policy, the Director shall report to the Governor or his designated representative any combustion risks identified during an inspection. The Director shall include in his report a description of any administrative action, including, but not limited to, any notice of violation, finding of imminent danger, mine closure order, or civil penalties or special assessments. The Director shall also report on the circumstances of each coal mine operator's adherence to the Governor's proclamation that Friday, April 16, 2010, shall be observed as a day of honor and mourning for our fallen miners, and the Governor's declaration that coal should not be produced from any underground coal mine on that day and that miners should come to work and honor those who lost their lives by dedicating their shifts to safety.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol, in the City of Charleston, State of West Virginia, this fourteenth day of April, in the year of our Lord, Two Thousand Ten, and in the One Hundred Forty-Seventh year of the State.



Joe Manchin
GOVERNOR

By the Governor

Natalie E. Emond
SECRETARY OF STATE