

Legislative Update



West Virginia Coal Association
April 19, 2005

Disclaimer

Lingering concerns from previous comments

-- FEAR NOT --

“Kinder, Gentler Coal Association”

Introduction

- Water Quality Standards
- 2005 Special Session
- Regular Session

Water Quality Standards

- House Bill 4193 (2004)

- Manganese

- Aluminum

Manganese

- EQB and DEP treat all waters of West Virginia as Drinking Water Supplies (Category A)
- 1999 EQB proposes the Five-Mile Rule that would apply the Mn Drinking Water Criterion only if a discharge is within five miles of drinking water intake

Manganese.....

- Legislature approves the Exemption and EQB sends it to EPA Region III
- Three years later EPA rejects the Exemption
- 2004 the Legislature revises the language of the Exemption in an attempt to resolve perceived EPA concerns

Manganese...

- “The manganese human health criterion will only apply within a five mile zone upstream of known drinking water intake”
- Legislature instructs the EQB to hold a public hearing and comment period on the revision and submit to EPA for approval.
- EQB holds public comment period but it does not conform with WV CWA standards.

Manganese...

- Another comment period established, this time following guidelines
- Closed on March 24, 2005
- WV DEP filed supporting comments
- WVCA filed extensive package
- EQB has assembled a response document

Manganese...

- In response document EQB takes the odd position that it does not support the Five Mile Exemption.
- WVCA has submitted a clarification response to EPA.
- Status: Still Pending at EPA Region III
- Resolution— Either 5-Mile Exemption approved or legal challenge to Category A designation

Aluminum

- HB 4193– Directed EQB to examine the chronic Aluminum criterion and to issue an emergency rule revising that standard by October 2004.
- Hearings, comment periods and meetings
- Industry supported deletion of chronic criterion WV DEP supported revision

Aluminum...

- EQB issues an emergency rule that suspends the chronic criterion for **two years** while a study is prepared to determine the proper chronic standard for WV
- EQB and WV DEP had no \$\$\$ to prepare a study
- Industry commits to study chronic Al

Aluminum...

- Emergency Rule still pending at EPA Region III
- Consultant working on first phases of \$200,000 chronic aluminum study

Aluminum, EPA and Pennsylvania

- PA rejected the chronic aluminum standard
- Explained its rejection in a letter (no data) to EPA Region III
- EPA approves that rejection
- WV ???????

2005 Special Session

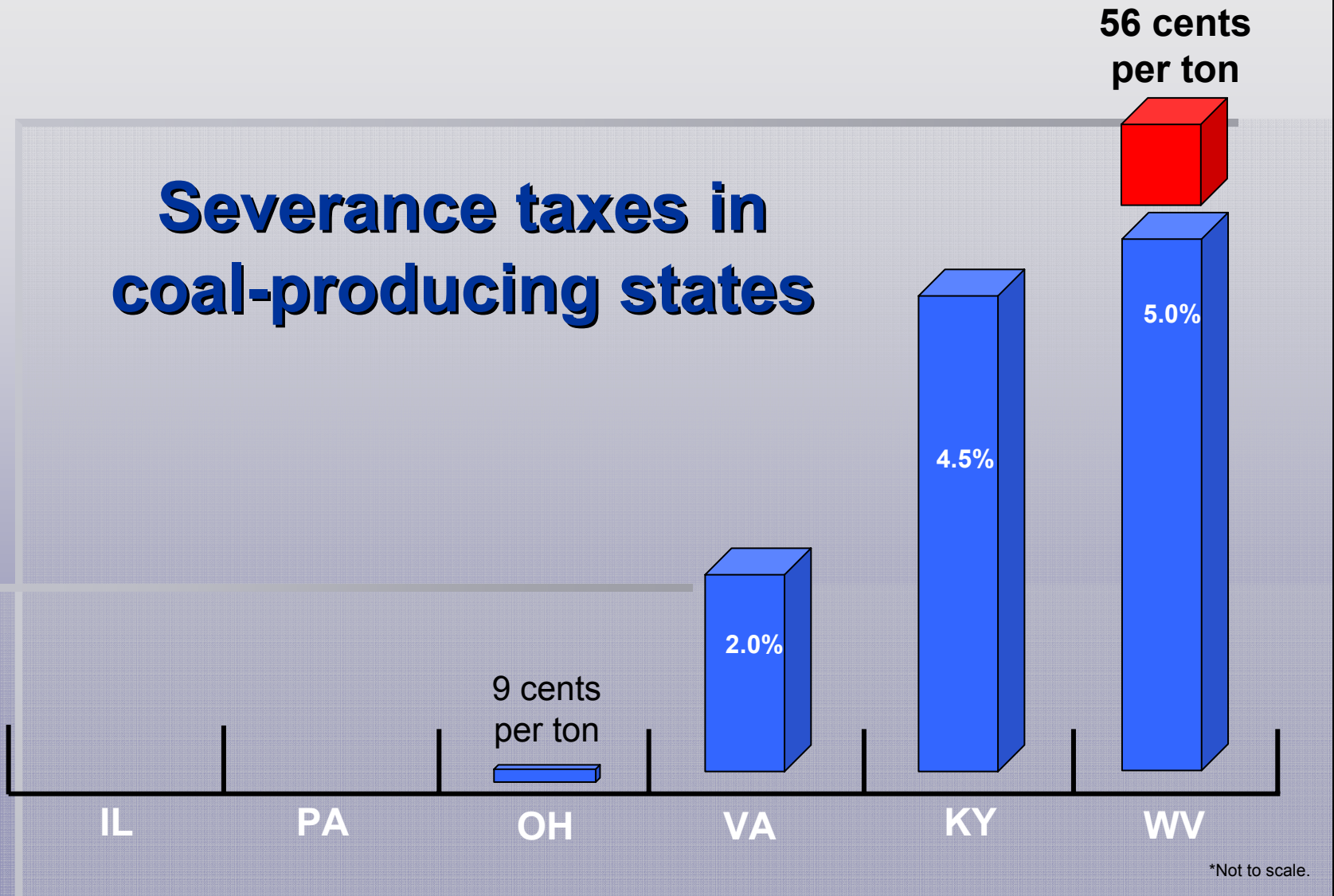
- Workers' Compensation—
- Huge legacy costs drives up premiums
- Governor proposes measure to “freeze and fund” the legacy cost and thereby reduce premiums
- About 35% of current coal industry premiums are dedicated to legacy costs

2005 Special Session...

- Legislature called to Special Session
- Extractive industries are faced with tax increases
- Coal industry (surprise surprise) faces the biggest tax increases

Tax Burden

Severance taxes in coal-producing states



2005 Regular Session

- **2116 Bills introduced**
- **265 Bills passed**

2005 Regular Session...

Bills Passed

- SB 406 Uniform Environmental Covenants Act
- SB 424 Conservation Easements
- SB 455 Pollution Control Financing

2005 Regular Session...

- **SB 433 “Advisory Council”**

- Increases membership of the WV DEP Advisory Council

- New members nominated by farming, forestry, oil & gas, UMWA, watershed association and Wildlife Federation

- Establishes timeframe for meeting notices

- Allows Council to appoint technical advisory committees

2005 Regular Session...

- **SB 748 “Mitigation Bill”**

- Eliminates mitigation requirement for waters isolated by permanent, Corps-permitted structure
- Requires the Secretary to provide credit for federal mitigation to the extent that Corps mitigation satisfies the requirements of state law

2005 Regular Session...

- **SB 287 “EQB Transfer Bill”**
 - Passed both houses last year but died when time ran out
 - Passed early this year
 - Transfers WQS rulemaking authority from EQB to WV DEP
 - Remining and site-specific variances to WV DEP
 - EQB remains as appeleate body

2005 Regular Session...

- **HB 3033 “Special Reclamation”**
 - Extends the extra 7 cent-per-ton coal tax to fund liability of SRF for one year
 - Charges the agency with looking at alternative funding mechanisms for addressing SRF legacy

2005 Regular Session...

- **HB 3089 “Coal Trucks”**

- Adds additional routes in Webster, Nicholas and Clay counties to CRTS.
- Establishes administrative body to approve additions/deletions to CRTS
- Additional routes will not require statutory action by the Legislature

2005 Regular Session...

- **HB 2333 “Environmental Good Samaritan Act”**

- Provides limited environmental and civil immunity to organizations performing voluntary environmental remediation activities.

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2005 Regular Session...

- **HCR 94 “Coal Tax Study”**
 - Requires a joint legislative interim committee to study the tax and regulatory burdens of the coal industry
 - Committee will issue a report that recommends government actions to maintain coal production

2005 Regular Session...

- **HB 2723 “WV DEP Rules Package”**
 - Removes the requirement that penalties be prepaid before conference
 - Added provisions for individual certified blaster review and penalties
 - Emergency Rule that suspends chronic AI criterion for two years

2005 Regular Session...

Bills that Failed

- **SB 289 “Fill vs. Waste”**
 - Clarified that overburden and coal refuse are “fill” and subject to section 404 and 401 permitting
 - Passed Senate with no problem
 - Raised eyebrows in the House
 - Passed the House at 11:45 p.m.
 - Senate had no time to concur with amendments

2005 Regular Session...

Bills that Failed

- **HB 2007**

“Environmental Walkaround Rights”

-UMWA would have walkaround rights on environmental inspections of signatory operations

2005 Regular Session...

Bills that Failed

- **HB 2308**

- “UMWA Permitting Notification”**

- Required company to notify and provide copies to UMWA when permitting actions were undertaken a signatory operations

2005 Regular Session...

Bills that Failed

- **HB 2498**

“Hardwoods Reclamation Bill”

-Required the application of eight feet of topsoil and planting of native hardwood species on non-variance surface mines

2005 Regular Session...

Bills that Failed

- **HB 3231**

- “Coal Investment Tax Credit Act”**

- Provided tax credit for qualified investment in coal-related infrastructure.

- HCR 94

- Maybe next year***

Busy Summer...

- Standing invitation from WV DEP to discuss regulatory issues
 - Baseline Water Quality (anti-deg)
 - State Mitigation
 - Coal NDPES and section 401 permitting
 - Remining
 - Selenium (federal and state)

Busy Summer...

- **Bonding/Special Reclamation Fund**

- HB 3033

- Time to resolve issues with SRF:

- Legacy Water Costs

Busy Summer...

- **Aluminum**

- Continue study effort

- Funding

- Approval of Emergency Rule

Busy Summer...

- **Water Use Survey**

- E-T Committee working on coal approach to survey

- Anticipate coal training sessions in May