



STATE OF WEST VIRGINIA  
BUREAU OF COMMERCE  
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311-2126 • TELEPHONE: (304) 554-1425 • FAX: (304) 554-1282

Gaston Caperton  
Governor

James B. Lawrence  
Commissioner

Stephen F. Webber  
Director

MEMORANDUM

TO: Inspectors-at-Large  
FROM: Stephen F. Webber, Director *Stephen F. Webber*  
DATE: August 19, 1994  
RE: Personal Protection (36-38-4)

On April 7, 1987, the Board of Coal Mine Health and Safety promulgated a regulation which required full time eye protection, Title 36, Series 38, Section 4, which read:

"Within 6 months of the effective dates of these regulations, approved eye protection shall be worn by all persons while in or around a mine, and shall be provided by the operator. Suitable eyeglass cleaning material shall be made available at each site.

Then on October 30, 1989, the regulation was amended by the Board to require eye protection when a hazard exists, which reads:

"All employees shall have approved eye protection on their person and use the same where there is a hazard from flying particles, or other eye hazards. Suitable eye protection or cleaning material shall be made available at the coal mine site by the operator."

In the enclosed order from the Kanawha County Circuit Court, Judge Canady concludes that deficiencies exist in the mandatory rulemaking process that resulted in the regulation of October 30, 1989, and he remands that regulation back to the Board with directions to follow statutory procedures. As a result of this action, the Secretary of State's Office now recognizes the regulation dated April, 1987, which requires full time eye protection as being in effect at this time.

Please have each inspector to contact their respective mining operations and convey to them that the agency will now be enforcing the regulation which requires full time eye protection. This notification must occur before any enforcement action is taken by the inspectors. If you have any questions, please call.

SEW:ks  
Attachment