

Legislative & Regulatory Update



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Vice-President

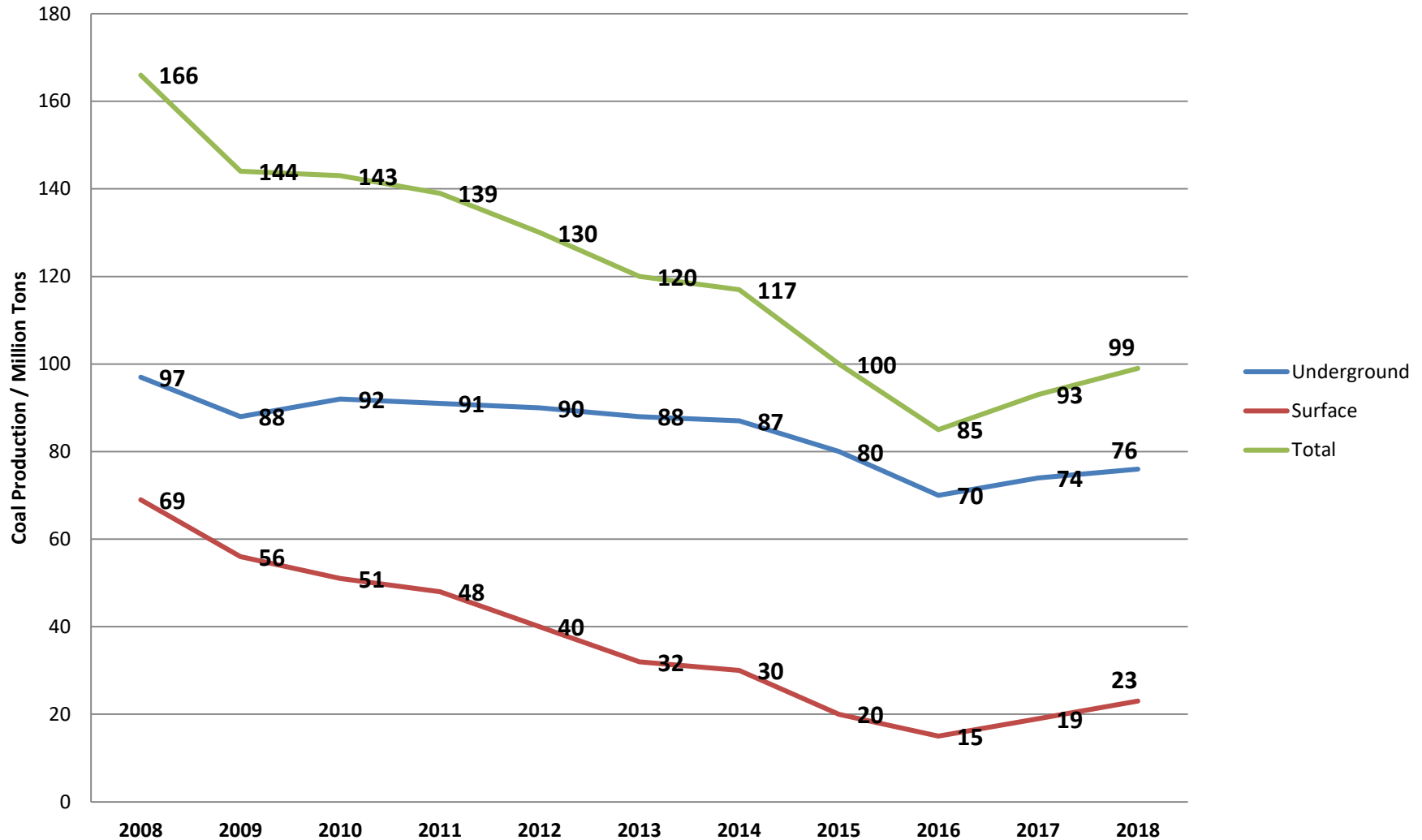
West Virginia Coal Association
West Virginia Mine Drainage Task Force Symposium
March 26, 2019

Introduction

- Production / Market Update
- Legislative Session
- Federal Issues: CAA, CWA, SMCRA, ESA
- State Issues: Narrative, WQStds
- Remainder of 2019

Recovery Continues...

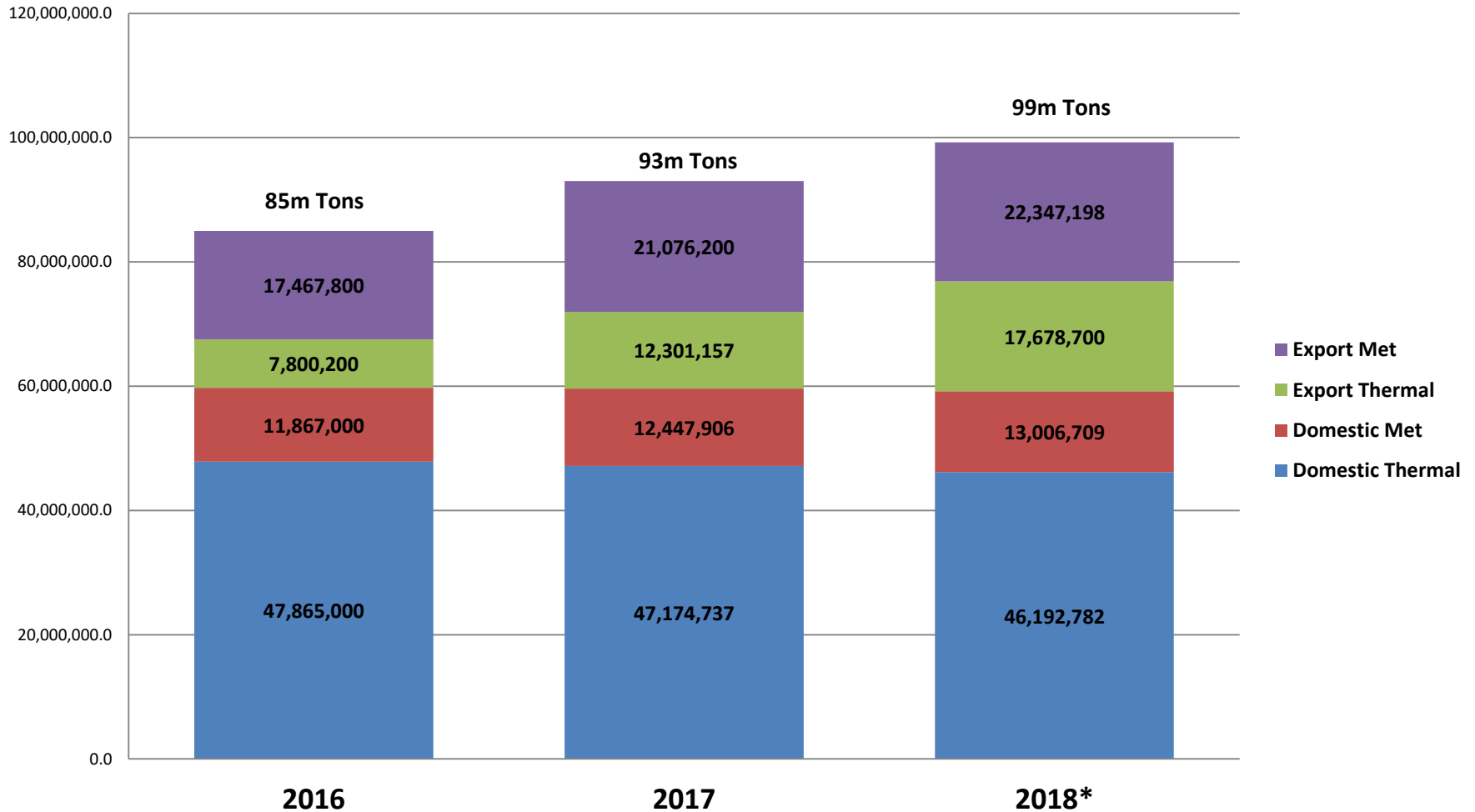
West Virginia Coal Production: 2008-2018



Recovery Continues...

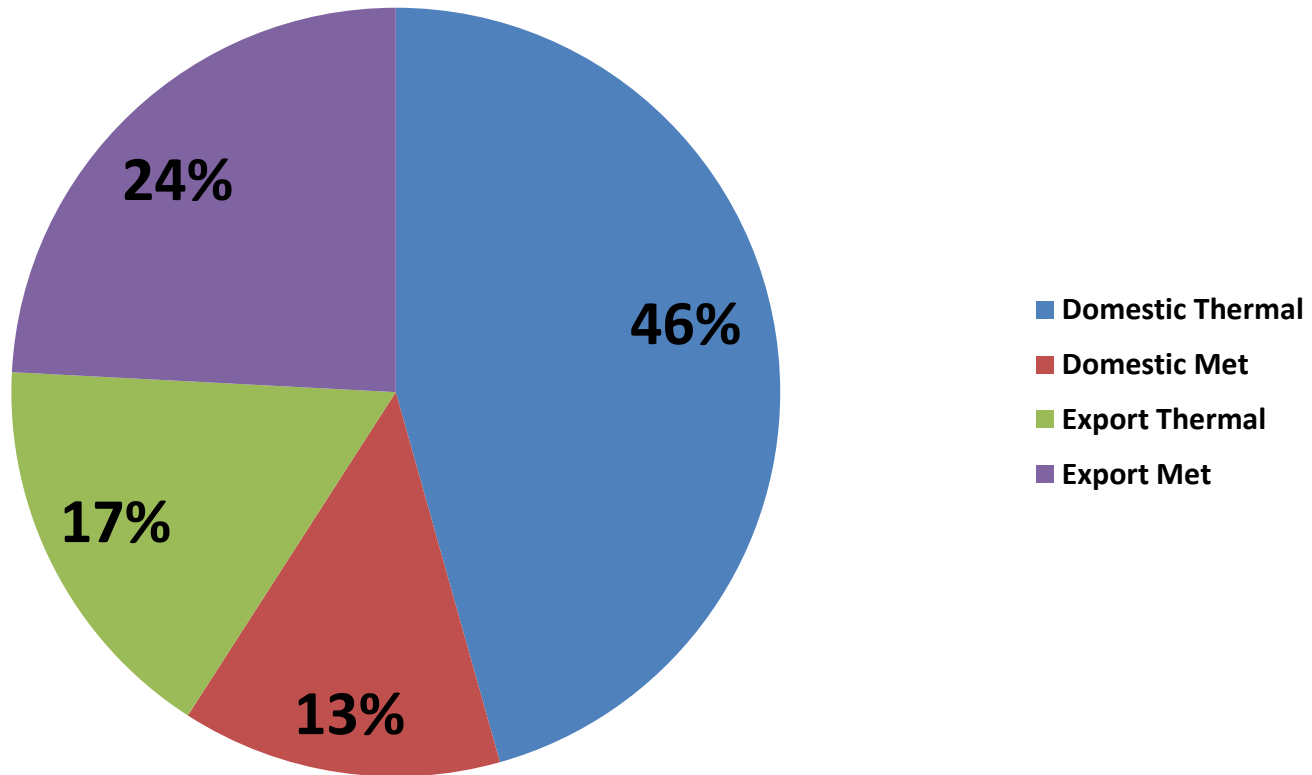
West Virginia Coal Production: 2016, 2017 & 2018

*Preliminary Data



Recovery Continues...

West Virginia Coal Production : 2018



2019 Regular Legislative Session

1,142	House Bills
681	Senate Bills
<u>1,825</u>	<u>Total bills</u>

**294 Completed
Legislative Action (16%)**

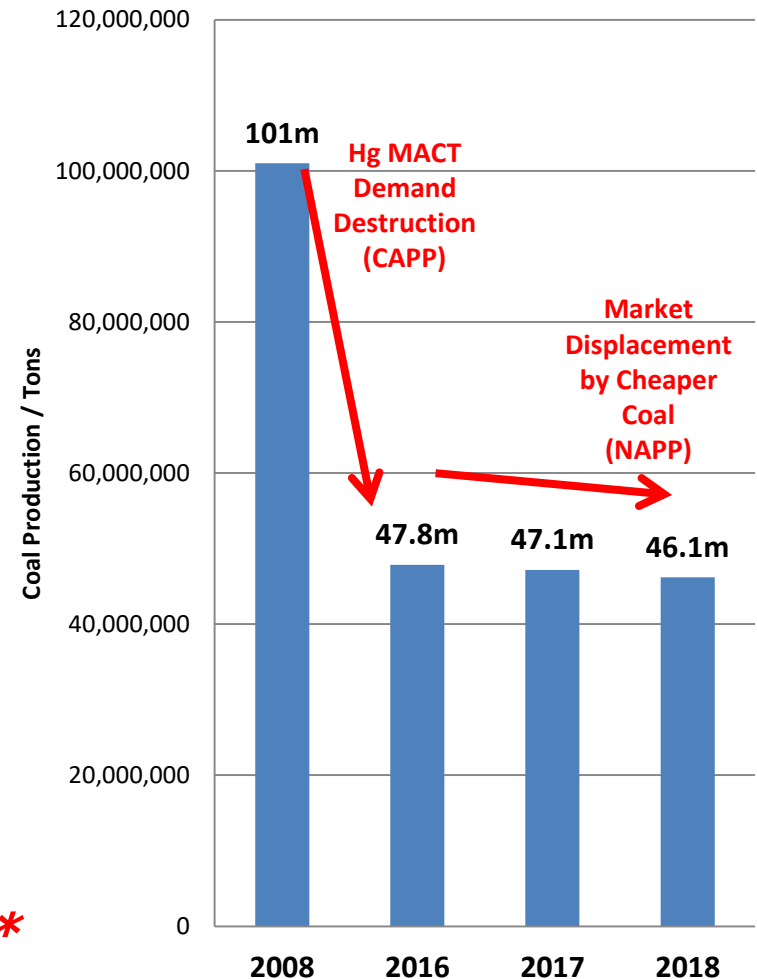


2019 Regular Legislative Session

- **HOUSE BILL 3142**
- **REDUCE SEVERANCE TAX FROM 5% TO 3% OVER THREE YEARS**
- 0.35% reduction on July 1, 2019
- additional 0.30% on July 1, 2020 (total of 0.65%)
- additional 0.35% on July 1, 2021 (total of 100%)
- **Protect tax distributions to counties/municipalities**
 - Coal-producing and non-coal-producing counties
 - 2018 base-year for coal-producing counties

*****Save Our Steam Coal Market*****

West Virginia Domestic Steam Coal Production



2019 Regular Legislative Session

- **HB 3144 INVESTMENT TAX REBATE**

QUALIFYING INVESTMENT

EQUIPMENT-MACHINERY-IMPROVEMENT

35% OF INVESTMENT AGAINST

AGAINST SEVERANCE TAX ON 80% INCREMENTAL INCREASE

BASE YEAR DETERMINATION

2 YEARS IN BUSINESS AT LEAST

TAX DEPARTMENT RULES

DEFINE SPECIFICS AND DEFINITIONS

******Build the Next Generation of the W.Va.
Coal Industry******

2019 Regular Legislative Session

- **Coal Jobs & Safety Act #5 Senate Bill 635**
 - Coalfield Community Development
 - Subsidence (Rulemaking)
 - Tanks (Revise GPA Rules)
 - NPDES Fees by Rulemaking
 - Mine Trespassing
 - Increased Penalties
 - “Hold Harmless” Provisions
 - Mine Rescue Team Members
 - Environmental Regs

2019 Regular Legislative Session

- **WV DEP Consolidated Rulemaking- SB 163**
 - 2018-2019 Triennial Review of State WQStds
 - Update to Human Health Standards for 56 Parameters
 - State Proposed Adoption of Federal Criteria **(!WRONG!)**
 - (Partially) Corrected During Public Comment Period
 - Legislature Removed Standards from Rulemaking Package***
 - WV DEP to Re-Calculate During Interim

State Regulatory Update- CWA

- Narrative WQStds:

- Interpretive Rule- Impairment Listing Decisions

- ***“Compliance Range” of Bug Scores 61 to 72***

- For 303(d) Listing Purposes (Chambers Decisions, EPA Settlement Agreements, etc.)

- Narrative WQStds Permitting Guidance Document Revision Will Be Necessary

- Just Published for Public Comment

State Regulatory Update- CWA



1999-2005

← 60 ↔ 68 →
WV SCI

2005-2009

← 68 →
WV SCI

2010-2012*

500 ↔ 300
Conductivity (uS/cm)

*EPA Guidance Document / As Implemented in NPDES Comments / Objections until D.C. District Court Decision in 2012

2012-Current

← 72 →
WV SCI

2015-2016 Proposal*

← 81 →
GLIMPSS

*Withdrawn by the agency before public notice

2017-2018 Proposal

← 61 ↔ 72 →
WV SCI

Federal Update-CAA

- **CO2 NSPS for New Coal Plants / CPP Existing Plants**
 - 1,900 lbs. Large EGUs / 2,000 Small EGUs
 - Improve Efficiency of Existing Plants
- **Hg MACT ****Most Expensive Regulation in History******
 - Keep Hg MACT limits in Place (Compliance)
 - “Co-Benefits” Removed from CAA Analysis (SO₂, NO_x, PM, etc.)
 - \$4 to \$6m in health benefits vs. ***\$7.5 to \$10b in Compliance Costs. Total Costs of \$175b (EPA & EIA)***
 - Undermines the Rule Legally*
 - ***Major CAA Policy Change***
 - Damage Has Been Done (400+ Plants, 600+ EGUs)***

Federal Update-CWA

- **Waters of the United States**

- Narrow Scope of Federal Jurisdiction
- Ephemeral Streams
- Manmade / Impacted “Features”
- 402 vs. 404 Jurisdiction
- Implementation Will be Complicated
- Clarification Needed*

Federal Update-CWA

- **Permit as a Shield (State Program Amendment)**
 - Published in the FR Oct 2018
 - Waiting for Final Publication / Approval
- **Aluminum WQStds (State Program Revision)**
 - Letter Received by WV DEP Feb 11 2019:
Final EPA Comments / Concerns
 - Drafting Response Now (WVCA & WV DEP)
 - Push to a Resolution
(Complicated by Federal Hardness Criteria)

Federal Update- SMCRA

- **Three-Year Not Started Permits (2012)**

- >100 Permits Issued in W.Va. Where Mining Not Commenced Within 3 Years or Started After 3 Years

- Federal Lawsuits in W.Va. and Alaska: Permit Expires “As a Function of SMCRA”

- W.Va. Did Not Follow Internal Policy for Notifying Permit Holders of Anniversary Date

- WV DEP to Issue “Retroactive Extensions”

- Administrative Confusion, TDNs and Continued Litigation BUT....

- Feb. 15, 2019: Favorable TDN Decision: Issuance of Extension not “inconsistent w/ SMCRA”

Federal Update- SMCRA

OSM Has Not Approved a West Virginia Program Amendment in 16 Years

- **MAJOR Program Improvements:**
 - Contemp. Reclamation
 - Blasting
 - Inactive Status
 - Special Reclamation Fund
 - CWA vs. SMCRA
- ???



Federal Update- ESA

- ESA Listings Continue...
- Species-Specific Protection & Enhancement Plans
 - Crayfish
 - Candy Darter
 - Recitation of What is Already in Your SMCRA, CWA Permits
- F&WS Director

2019 & Beyond: Federal Issues

- Complete Comment Periods (CAA, WOTUS)
- Narrative Standard
- F&WS: New Director Nominated & Confirmed, Bi-Op, Protections of the Mining Program

2019 & Beyond: Federal Issues

- WOTUS Rule- Finished, Get Ready for the Legal Challenges
- **Mitigation / 404 Permitting** Pittsburgh, Huntington- Preference for Mitigation Banks (2008 Rule) *But Disregards Guidance Issued by the Corps Specifically for the Coal Industry in Appalachia*
 - Why?
 - ***“Start Over” with the Corps- Permitting Dialogue, Policy Discussions, etc.***

2019 & Beyond: State Issues

- Coal Jobs & Safety Act Rulemaking
- Coalfield Development Office (fees, rulemaking)
- Narrative Interpretive Rule
- ***Think Big***: Category A, Trout Streams
(West Virginia Environmental Policy Act of 2020)

Thank You

