WEST VIRGINIA CODE CHAPTER 22 ARTICLE 27

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§22-27-1. Declaration of policy and purpose.

This article is intended to encourage the improvement of land and water adversely affected by mining, to aid in the protection of wildlife, to decrease soil erosion, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of the citizens of this state and to eliminate or abate hazards to health and safety. It is the intent of the Legislature to encourage voluntary reclamation of lands adversely affected by mining. The purpose of this article is to improve water quality and to control and eliminate water pollution resulting from mining extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution. This article is not intended to limit the liability of a person who by law is or may become responsible to reclaim the land or address the water pollution or anyone who by contract, order or otherwise is required to or agrees to perform the reclamation or abate the water pollution.

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§22-27-2. Legislative findings.

The Legislature finds and declares as follows:

(1) The state's long history of mining has left some lands and waters unreclaimed and polluted.

(2) These abandoned lands and polluted waters are unproductive, diminish the tax base and are serious impediments to the economic welfare and growth of this state.

(3) The unreclaimed lands and polluted waters present a danger to the health, safety and welfare of the people and the environment.

(4) The State of West Virginia does not possess sufficient resources to reclaim all the abandoned lands and to abate the water pollution.

(5) Numerous landowners, citizens, watershed associations, environmental organizations and governmental entities who do not have a legal responsibility to reclaim the abandoned lands or to abate the water pollution are interested in addressing these problems but are reluctant to engage in such reclamation and abatement activities because of potential liabilities associated with the reclamation and abatement activities.

(6) It is in the best interest of the health, safety and welfare of the people of this state and the environment to encourage reclamation of the abandoned lands and abatement of water pollution.

(7) That this act will encourage and promote the reclamation of these properties.

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§22-27-3. Definitions.

As used in this article unless used in a context that clearly requires a different meaning, the term:

(a) "Abandoned lands" means land adversely affected by mineral extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.

(b) "Consideration" means something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purpose of this article, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

(c) "Department" means the West Virginia Department of Environmental Protection.

(d) "Eligible land" means land adversely affected by mineral extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or causing water pollution and for which no person has a continuing reclamation or water pollution abatement obligation.

(e) "Eligible landowner" means a landowner that provides access to or use of the project work area at no cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(f) "Eligible project sponsor" means a person that provides equipment, materials or services at no cost or at cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(g) "Landowner" means a person who holds either legal or equitable interest in real property.

(h) "Mineral" means any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining. This includes, but is not limited to, limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and anthracite and bituminous coal.

(i) "Permitted activity site" means a site permitted by the Department of Environmental Protection under the provisions of article two, three or four of this chapter.

(j) "Person" means a natural person, partnership, association, association members, corporation, an agency, instrumentality or entity of federal or state government or other legal entity recognized by law as the subject of rights and liabilities.

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(k) "Project work area" means that land necessary for a person to complete a reclamation project or a water pollution abatement project.

(l) "Reclamation project" means the restoration of eligible land to productive use by regrading and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water, or to decrease or eliminate discharge of water pollution.

(m) "Water pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water located in the state.

(n) "Water pollution abatement facilities" means the methods for treatment or abatement of water pollution located on eligible lands. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate water pollution.

(o) "Water pollution abatement project" means a plan for treatment or abatement of water pollution located on eligible lands.

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§22-27-4. Eligibility and project inventory.

(a) General rule. -- An eligible landowner or eligible project sponsor who voluntarily provides equipment, materials or services at no charge or at cost for a reclamation project or a water pollution abatement project in accordance with the provisions of this article is immune from civil liability and may raise the protections afforded by the provisions of this article in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability. An eligible landowner or eligible project sponsor is only entitled to the protections and immunities provided by this article after meeting all eligibility requirements and compliance with a detailed written plan of the proposed reclamation project or water pollution abatement project which is submitted to and approved by the department. The project plan shall include the objective of the project and a description of the work to be performed to accomplish the objective and shall, additionally, identify the project location, project boundaries, project participants and all landowners.

(b) Notice. -- The department shall give written notice by certified mail to adjacent property owners and riparian land owners located downstream of the proposed project, provide Class IV public notice of the proposed project in a newspaper of general circulation, published in the locality of the proposed project, and shall give public notice in the state register. The project sponsor may also provide public notice. Any person having an interest which may be adversely affected by the proposed project has the right to file written objections to the department within thirty days after receipt of the written notice or within thirty days after the last publication of the Class IV notice. The department shall provide to the project sponsor a copy of each written objection received during the public comment period, which shall conclude at the expiration of the applicable thirty-day period provided for in this section.

(c) Advice. -- The department may provide advice to the landowner or to other interested persons based upon the department's knowledge and experience in performing reclamation projects and water pollution abatement projects.

(d) Departmental review. -- The department shall review each proposed reclamation project and approve the project if the department determines the proposed project:

(1) Will result in the appropriate reclamation and regrading of the land according to all applicable laws and regulations;

(2) Will result in the appropriate revegetation of the site;

(3) Is not likely to result in pollution as defined in article eleven of this chapter; and

(4) Is likely to improve the water quality and is not likely to make the water pollution worse.

(e) Project inventory. -- The department shall develop and maintain a system to inventory and record each project, the project location and boundaries, each landowner and each

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person identified in a project plan provided to the department. The inventory shall include the results of the department's review of the proposed project and, where applicable, include the department's findings under subsection (b), section ten of this article.

(f) Appeal. -- A person aggrieved by a department decision to approve or disapprove a reclamation project or a water pollution abatement project has the right to file an appeal with the environmental quality board under the provisions of article one, chapter twenty-two-b of this code.

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§22-27-5. Landowner liability limitation and exceptions.

(a) General rule. -- Except as specifically provided in subsections (b) and (c) of this section, an eligible landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

(1) Is immune from liability for any injury or damage suffered by persons working under the direct supervision of the project sponsor while such persons are within the project work area;

(2) Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of the project sponsor which occurs during the implementation of the reclamation project or the water pollution abatement project;

(3) Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a reclamation project or a water pollution abatement project;

(4) Is immune from liability for any pollution resulting from a reclamation project or water pollution abatement project;

(5) Is immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the eligible landowner negligently damages or destroys the water pollution abatement facilities or denies access to the project sponsor who is responsible for the operation, maintenance or repair the water pollution abatement facilities.

(b) Duty to warn. -- The eligible landowner shall warn the project sponsor of known, latent, dangerous conditions located on the project work area which are not the subject of the reclamation project or the water pollution abatement project. Nothing in this article shall limit an eligible landowner's liability which results from the eligible landowner's failure to warn of such known, latent, dangerous conditions.

(c) Exceptions to immunity. -- Nothing in this article may limit an eligible landowner's liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

(1) For injury or damage resulting from the landowner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(2) Where the landowner accepts or requires consideration for allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

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(3) For the landowner's unlawful activities.

(4) For damage to adjacent landowners or downstream riparian landowners which results from a reclamation project or water pollution abatement project where written notice or public notice of the proposed project was not provided.

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§22-27-6. Project sponsor liability limitation and exceptions.

(a) General rule. -- Except as specifically provided in subsection (b) of this section, a project sponsor who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

(1) Is immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project;

(2) Is immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project, provided that the project sponsor implements, operates, and maintains the project in accordance with the plans approved by the department;

(3) Is immune from liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) Exceptions. --

(1) Nothing in this article shall limit in any way the liability of a project sponsor which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(A) For injury or damage resulting from the project sponsor's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(B) For the person's unlawful activities.

(C) For damages to adjacent landowners or downstream riparian landowners which result from a reclamation project or a water pollution abatement project where written notice or public notice of the proposed project was not provided.

(2) Nothing in this article shall limit in any way the liability of a person who the Department has found to be in violation of any other provision or provisions of this chapter.

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§22-27-7. Permits and zoning.

Nothing in this article may be construed as waiving any existing permit requirements or waiving any local zoning requirements.

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§22-27-8. Relationship to federal and state programs.

The provisions of this article shall not prevent the department from enforcing requirements necessary or imposed by the federal government as a condition to receiving or maintaining program authorization, delegation, primacy or federal funds.

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§22-27-9. General permits.

If the department determines it will further the purposes of this article, the department may issue a general permit for each reclamation project or water pollution abatement project, which shall:

(1) Encompass all of the activities included in the reclamation project or water pollution abatement project.

(2) Be issued in place of any individual required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

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§22-27-10. Exceptions.

(a) General rule. -- Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for consideration or who receives some other benefit through a contract or any person who through a consent order and agreement or is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond for the site is not eligible nor may receive the benefit of the protections and immunities available under this article.

(b) Projects near mining or coal refuse sites. -- This article does not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under articles two, three or four of this chapter unless:

(1) The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started; and

(2) The department finds:

(A) The reclamation project or the water pollution abatement project will not adversely affect the permittee's obligations under the permit and the applicable law;

(B) The activities on the project work area cannot be used by the permittee to avoid the permittee's reclamation or water pollution treatment or abatement obligations; and

(3) The department issues a written notice of its findings and the approval of the project.

(c) Projects in lieu of civil or administrative penalties. -- This article shall not apply to a reclamation project or a water pollution abatement project that is performed in lieu of paying civil or administrative penalties.

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§22-27-11. Water supply replacement.

A public or private water supply affected by contamination or the diminution caused by the implementation of a reclamation project or the implementation of a water pollution abatement project shall be restored or replaced by the department with an alternate source of water adequate in quantity and quality for the purposes served by the water supply.

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§22-27-12. Rules.

The department may propose legislative rules in accordance with article three, chapter twenty-nine-a of this code as needed to implement the provisions of this article.

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