WEST VIRGINIA CODE: §22-3-10

§22-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(1) The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section nine of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farmlands and the average yield of food, fiber, forage or wood products from the lands obtained under high levels of management;

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses, and the relationship of the use to existing land use policies and plans and the comments of any owner of the surface, other state agencies and local governments which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(A) The post-mining land use proposed in any reclamation plan for lands proposed to be mined by surface mining methods shall comport with the land use that is specified in the approved master land use plan for the area as provided in section nine, article two-a, chapter five-b of this code: Provided, That the secretary may approve an alternative post-mining land use where the applicant demonstrates that:

(i) The proposed post-mining land use is a higher and better use than the land use specified in the approved master land use plan;

(ii) Site-specific conditions make attainment of a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area impractical; or

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(iii) The post-mining land use specified in the approved master land use plan would substantially interfere with the future extraction of a mineable coal bed, as that term is defined in rules promulgated by the Tax Commissioner relating to the valuation of active or reserve coal property for ad valorem property tax purposes, 110 C.S.R. 1I-3 or a successor rule, from the land to be mined.

(B) Existing permits with approved reclamation plans may be modified by the operator through an appropriate permit revision to include a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area as provided in section nine, article two-a, chapter five-b of this code;

(C) By complying with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code, a post-mining land use satisfies the requirements for an alternative post-mining land use and satisfies the variance requirements set forth in subsection (c), section thirteen, article three, chapter twenty-two of this code if applicable to the proposed use;

(4) A detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section thirteen of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section thirteen or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on the interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

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(11) A detailed description of the measures to be taken during the surface mining and reclamation process to assure the protection of:

(A) The quality of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation;

(B) The rights of present users to the water; and

(C) The quantity of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation or to provide alternative sources of water where the protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has made at the area to be covered by the permit or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties, including acid-forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding the mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Any other requirements as the director may prescribe by rule.

(b) A reclamation plan pending approval as of the effective date of this section may be amended by the operator to provide for a post-mining land use that comports with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code.

(c) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.

(d) The amendments to this section by the first extraordinary session of the Legislature in 2009 are effective upon the approval of the corresponding amendments to West Virginia's state program, as that term is defined in the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1291, by the federal Office of Surface Mining Reclamation and Enforcement.

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