WEST VIRGINIA CODE: §22-3-3

§22-3-3. Definitions.

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

(a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a manner so that the treated water does not violate the effluent limitations or cause a violation of the water quality standards established for the river, stream or drainway into which the water is released.

(b) "Affected area" means, when used in the context of surface mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface mining and reclamation activities. "Affected area" means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit: (1) By surface operations or facilities incident to underground mining activities; or (2) by underground operations.

(c) "Adjacent areas" means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface mining and reclamation operations conducted within a permit area during the life of the operations may have an impact. "Adjacent areas" means, for the purpose of conducting surface mining and reclamation operations, those land and water resources contiguous to or near the affected area upon which surface mining and reclamation operations conducted within a permit area during the life of the operations may have an impact.

(d) "Applicant" means any person who has or should have applied for any permit pursuant to this article.

(e) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated: Provided, That water impoundments may be permitted pursuant to subdivision (8), subsection (b), section thirteen of this article: Provided, however, That minor deviations may be permitted in order to minimize erosion and sedimentation, retain moisture to assist revegetation, or to direct surface runoff.

(f) "Assessment officer" means an employee of the division, other than a surface mining reclamation supervisor, inspector or inspector-in-training, appointed by the director to issue proposed penalty assessments and to conduct informal conferences to review notices, orders and proposed penalty assessments.

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(g) "Breakthrough" means the release of water which has been trapped or impounded, or the release of air into any underground cavity, pocket or area as a result of surface mining operations.

(h) "Coal processing wastes" means earth materials which are or have been combustible, physically unstable or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal processing plants after physical or chemical processing, cleaning or concentrating of coal.

(i) "Director" means the Director of the Division of Environmental Protection or other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(j) "Disturbed area" means an area where vegetation, topsoil or overburden has been removed or placed by surface mining operations, and reclamation is incomplete.

(k) "Division" means the Division of Environmental Protection.

(l) "Imminent danger to the health or safety of the public" means the existence of a condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before the condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person to the danger during the time necessary for the abatement.

(m) "Minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

(n) "Operation" means those activities conducted by an operator who is subject to the jurisdiction of this article.

(o) "Operator" means any person who is granted or who should obtain a permit to engage in any activity covered by this article and any rule promulgated under this article and includes any person who engages in surface mining or surface mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(p) "Permit" means a permit to conduct surface mining operations pursuant to this article.

(q) "Permit area" means the area of land indicated on the approved proposal map submitted by the operator as part of the operator's application showing the location of perimeter markers and monuments and shall be readily identifiable by appropriate markers on the site.

(r) "Permittee" means a person holding a permit issued under this article.

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(s) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(t) "Prime farmland" has the same meaning as that prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics and which historically have been used for intensive agricultural purposes and as published in the federal register.

(u) "Surface mine", "surface mining" or "surface mining operations" means:

(1) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of section fourteen of this article, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(2) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities: Provided, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article. Surface mining does not include any of the following:

(i) Coal extraction authorized pursuant to a government-financed reclamation contract;

(ii) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(iii) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

(v) "Underground mine" means the surface effects associated with the shaft, slopes, drifts or inclines connected with excavations penetrating coal seams or strata and the equipment

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connected therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(w) "Significant, imminent environmental harm to land, air or water resources" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term "environmental harm" means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife and fish, and the environmental harm is imminent if a condition or practice exists which is causing the harm or may reasonably be expected to cause the harm at any time before the end of the abatement time set by the director. An environmental harm is significant if that harm is appreciable and not immediately repairable.

(x) "Unanticipated event or condition" as used in section eighteen of this article means an event or condition in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.

(y) "Lands eligible for remining" means those lands that would be eligible for expenditures under section four, article two of this chapter. Surface mining operations on lands eligible for remining do not affect the eligibility of the lands for reclamation and restoration under article two of this chapter. In event the bond or deposit for lands eligible for remining is forfeited, funds available under article two of this chapter may be used to provide for adequate reclamation or abatement. However, if conditions constitute an emergency as provided in section 410 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, then those federal provisions apply.

(z) "Replacement of water supply" means, with respect to water supplies, contaminated, diminished or interrupted provision of water supply on both a temporary and permanent basis of equivalent quality and quantity. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance cost in excess of customary and reasonable delivery cost for the replaced water supplies.

Upon agreement by the permittee and the water supply owner, the obligation to pay the costs may be satisfied by a one-time payment in an amount which covers the present annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

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