WEST VIRGINIA CODE: §22-4-8

§22-4-8. Limitations; mandamus.

The Legislature finds that there are certain areas in the State of West Virginia which are impossible to reclaim either by natural growth or by technological activity and that if quarrying is conducted in these certain areas such operations may naturally cause stream pollution, landslides, the accumulation of stagnant water, flooding, the destruction of land for agricultural purposes, the destruction of aesthetic values, the destruction of recreational areas and future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and in general creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the director to delete certain areas from all quarrying operations.

No application for a permit shall be approved by the director if there is found on the basis of the information set forth in the application or from information available to the director and made available to the applicant that the requirements of this article or rules hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this article.

If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the State of West Virginia with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds; (2) landslides; or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

If the director finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property, then he or she shall delete such areas from the permit application before it can be approved.

The director shall not give approval to quarry within one hundred feet of any public road, stream, lake, or state, national or interstate park or other public property, and shall not approve the application for a permit where the quarry operation will cause adverse affects to these locations unless adequate screening and other measures approved by the director are to be utilized and the permit application so provides: Provided, That the one-hundred-foot restriction does not include berms, drainage control structures and ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor does it apply to the dredging and removal of minerals from the streams or

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watercourses of this state. The one hundred foot limitation may be waived only when the director, upon consideration of local land uses, finds that the land use of and near the permitted area will be significantly enhanced by an alteration of the topography within the one hundred foot barrier. Mineral removal shall be prohibited within twenty-five feet of all property lines: Provided, however, That the twenty-five foot setback area may, where appropriate, be used for tree planting, berms, visual barriers, vegetation, drainage structures, access rights-of-way or any other purposes approved by the director: Provided further, That existing berms, barriers, stockpiles, roads and other structures in existence within the twenty-five foot setback prior to the effective date of this section may remain in place. The permittee must provide adequate revegetation within the setback, as is appropriate for the intended use.

Whenever the director finds that ongoing quarry operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he or she may order immediate cessation of such operations and he or she shall take such other action or make such changes in the permit as he or she may deem necessary to avoid said described conditions.

The failure of the director to discharge the mandatory duty imposed by this section is subject to a writ of mandamus, in any court of competent jurisdiction by any private citizen affected thereby.

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