WEST VIRGINIA CODE CHAPTER 22 ARTICLE 4

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§22-4-1. Short title.

This article shall be known and may be cited as the Quarry Reclamation Act.

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§22-4-2. Legislative findings.

The Legislature finds that:

The extraction of noncoal minerals by quarrying is a basic, essential and vital industry making an important contribution to the economic well-being of West Virginia. From the small family-owned chert pit to the multinational limestone quarry, quarry aggregate production plays a vital role in West Virginia's economy and the quality of life for its residents; it is in the public interest to insure the availability and orderly development of mineral resources; aggregate minerals are necessary components in many construction activities, without fine and coarse aggregates, it would be impossible to build or maintain the state roadways and airports, with every type of significant construction activity being dependant on the availability and reasonable costs of aggregate minerals and aggregate mineral products; it is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of quarry operations precludes complete restoration of the land to its original condition.

This article also provides requirements intended to protect wildlife and prevent the pollution to the environment surrounding quarries, including rivers, streams, groundwater, aquifers and lakes, to prevent and eliminate hazards to health and safety, to protect all property owners' property rights, and to provide for reclamation of quarried areas so as to assure the continued use and enjoyment of these lands after quarrying is completed;

Further, certain areas in the state are inappropriate for quarry mining while in most locations of West Virginia, quarrying can be conducted in a fashion to prevent these undesirable conditions, while allowing for mining of valuable minerals.

Therefore, the Legislature finds that the quarrying of minerals and reclamation of quarry lands as provided by this article will allow the use of valuable minerals and will provide for the protection of the state's environment and for the subsequent beneficial use of the quarry and reclaimed land.

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§22-4-3. Definitions.

Unless the context in which it is used clearly requires a different meaning, as used in this article:

(1) "Abandoned quarry" or "abandoned quarry lands" means:

(A) A quarry which was operated and abandoned without proper reclamation prior to the effective date of this article; or

(B) A permitted quarry where no mineral has been produced or overburden removed for a period of at least six months and the permittee has vacated the site covered by the permit without having complied with all of the requirements of the permit.

Abandoned quarry lands does not mean a quarry which has been granted inactive status by the director and does not mean a quarry which has ceased operations and is in the process of stabilization and reclamation.

(2) "Backfill" means overburden, dirt, rock or other materials that are used as fill material to reduce steepness of slopes or to fill holes, depressions or excavations.

(3) "Berm" means a type of fill or pile used for a specific purpose other than excess spoil disposal; such purposes may include, but not necessarily be limited to drainage control, screening for noise control, screening for aesthetic value, or safety barriers; provided, however, that a berm of ten vertical feet or more at any point shall be designed and the construction certified by an approved person and provided further that any berm consisting of greater than twenty percent fines or nondurable rock must be protected from wind and water erosion.

(4) "Borrow pit" means an area from which soil or other materials are removed to be used, without further processing, as fill for activities such as landscaping, building construction or highway maintenance and construction.

(5) "Critical gradient" means the maximum stable inclination of an unsupported slope as measured from a horizontal plane.

(6) "Director" means the director of the Division of Environmental Protection and his or her authorized agents.

(7) "Disturbed area" means the land area from which the mineral is removed by quarrying and all other land area in which the natural land surface has been disturbed as a result of or incidental to quarrying activities of the operator, including private ways and private roads appurtenant to the area, land excavations, workings, refuse piles, product stockpiles, areas grubbed of vegetation, overburden, piles and tailings. The term does not include manufacturing sites or reclaimed quarry areas.

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

(9) "Fill" means a side of hill fill or valley fill.

(10) "Inactive operation" means either:

(A) A permitted site where active work has ceased temporarily due to weather conditions, market conditions or other reasonable cause; or

(B) A permitted site where active quarrying has not yet begun.

(11) "Manufacturing" means the process of converting raw materials to salable products but does not include crushing or screening of minerals undertaken in close proximity to active quarrying operations.

(12) "Manufacturing site" means an area of land on which manufacturing occurs and associated areas.

(13) "Minerals" means natural deposits of commercial value found on or in the earth, whether consolidated or loose, including clay, flagstone, gravel, sand, limestone, sandstone, shale, chert, flint, dolomite, manganese, slate, iron ore and any other metal or metallurgical ore. The term does not include coal or topsoil.

(14)"Mulch" means any natural or plant residue, organic or inorganic material, applied to the surface of the earth to retain moisture and curtail or limit soil erosion.

(15) "Operator" means a person who engages in any activities regulated by this article and any rules promulgated hereunder, who as a result is required to hold a permit pursuant to the provisions herein.

(16)"Permit area" means the area of land indicated on the approved map submitted by the permittee and designated in the permit including the location of end strip markers, permit markers and monuments.

(17) "Permittee" means any person who holds a valid permit issued by the division to conduct quarrying activities pursuant to this article.

(18) "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.

(19) "Protected structure" means any of the following structures that are situated outside the permit area: An occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past ninety days, a public building, a structure for commercial purposes, a school, a church, a community or institutional building, a public park, spring box or, water well.

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(20) "Quarrying" means any breaking of the ground surface in order to facilitate the extraction of minerals. Quarrying also includes any activity constituting all or part of a process for mineral extraction or removal from their original location as well as adjacent areas ancillary to the operation, including preparation and processing activities, storage areas and haulage ways, roads and trails. The term "quarrying" does not apply to manufacturing operations, including those operations adjacent to the permitted area where manufacturing is conducted.

(21) "Reclamation" means returning disturbed areas to a stable condition which does not create health or safety hazards or adverse environmental impact, and when appropriate or required by permit, returning disturbed quarry areas to a designated postmining land use.

(22)"Side of hill fill" means overburden, dirt or rock that is placed on a natural slope of more than twenty degrees.

(23)"Spoil pile" means overburden and waste material displaced by excavating equipment or other methods and placed on natural ground with an original slope of zero degrees to twenty degrees.

(24)"Surface of regraded bench" means the top portion or part of any regraded area.

(25)"Unreclaimed" means land which has not been stabilized, or if a permit has been issued pursuant to this enactment, land that has not been rehabilitated to a useful purpose in accordance with the quarrying and reclamation plan approved by the division.

(26)"Valley fill" means a fill structure consisting of material placed in a valley where the natural side slopes measured at the steepest point are greater than twenty degrees or the average slopes measured at the steepest point are greater than twenty degrees or the average slopes or the profile of the hollow are greater than twenty degrees.

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§22-4-4. Director of the Division of Environmental Protection; powers and duties.

The Director of the Division of Environmental Protection is vested with jurisdiction over all aspects of quarrying and with jurisdiction and control over land, water and soil aspects pertaining to quarry operations, and the restoration and reclamation of quarries and areas affected thereby. This article does not address coal mining activities unless covered by subdivision (2), subsection (u), section three, article three of this chapter.

In addition to any other powers or duties heretofore or hereinafter granted, the director has the following powers and duties:

(a) To control and exercise regulatory authority over all quarry operations in this state and enforce the provisions of this article;

(b) To employ all necessary personnel to carry out the purposes and requirements of this article;

(c) To propose any necessary legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article; and

(d) To make investigations and inspections necessary to ensure compliance with the provisions of this article.

(e) Nothing in this article may be construed as vesting in the director the jurisdiction to adjudicate property-rights disputes.

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§22-4-5. Quarry permit requirements.

(a) It is unlawful for any person to engage in quarrying without having first obtained from the division a permit as required by this article. The application shall fully state the information required by the director. Each new quarry permit shall be issued for a term of five years and is renewable for subsequent terms of five years. The director may grant an administrative extension of an existing permit for a period not to exceed one year. The application may be in writing and on a form prepared and furnished by the division, or the application may be submitted electronically. Applicants shall verify electronic submissions by signed affidavit.

(b) The application shall include the following information:

(1) The names and addresses of the applicant and every officer, partner, director, owner of the applicant;

(2) The names and mailing addresses of any person owning of record or beneficially ten percent or more of any class of stock of the applicant;

(3) The name of any person listed in subdivision (1) or (2) of this subsection who has ever had a quarry permit revoked or had a quarry bond forfeited;

(4) The names and addresses of the owners of the surface of the land to be quarried;

(5) The names and addresses of the owners of the mineral to be quarried;

(6) The source of the applicant's legal right to conduct quarrying on the land to be covered by the permit;

(7) A prequarry water assessment to establish the base level quality and quantity as provided in section fourteen of this article;

(8) The number of acres to be included in the permit area;

(9) A list of other quarrying permits previously or currently held by the applicant, by location and permit number, and any other type of mining permits being applied for or currently held by the applicant;

(10) The common name and geologic title, where applicable, of the mineral or minerals to be extracted;

(11) Provide proof of adequate insurance as required by this article;

(12) A quarrying and reclamation plan as is required by section seventeen of this article;

(13) Any other information required by the director reasonably necessary to effectuate the

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purposes of this article.

(c) The application for a permit shall be accompanied by copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area are acceptable if the plan for reclamation can be shown to the satisfaction of the director. Attendant documentation must include:

(1) A map prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a licensed land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land surveyor, and be in a scale approved by the director;

(2) Identify the area to correspond with application;

(3) Show probable limits of adjacent underground mining operations, probable limits of adjacent inactive or mined-out areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(4) Show the base of the crop line, including appropriate geologic cross sections, regrading cross sections and attendant narratives;

(5) Show the names and locations of streams, creeks, tributaries or bodies of public water, roads, buildings, cemeteries, active, abandoned or plugged oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(6) Show by appropriate markings the boundaries of the area of land to be disturbed and the total number of acres involved in the area of land to be disturbed;

(7) The date on which the map was prepared, the north point, and the longitude and latitude of the operation;

(8) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainage systems, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage plan, the director may furnish the office of water resources of the division a copy of all information required by this subdivision, as well as the names and locations of streams, creeks, tributaries or bodies of public water within five hundred feet of the area to be disturbed;

(9) Show the presence of known acid-producing materials which when present in the overburden, may cause spoil with a pH factor below 5.5, preventing effective revegetation. The presence of such materials, wherever occurring in significant quantity, shall be indicated on the map, filed with the application for permit. The operator shall also indicate the manner in which acid-bearing spoil will be suitably prepared for revegetation and stabilization, whether by application of mulch or suitable soil material to the surface or by

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some other type of treatment, subject to approval of the director.

(10) The operator shall also indicate the manner in which all permanent disposal sites will be stabilized.

(11) The certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the quarrying laws of this state." The certification shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

(d) Each applicant shall secure a performance bond or other appropriate financial assurance and insurance as required by this article.

(e) A permit may cover more than one tract of land, if the tracts are adjacent or part of the same quarrying complex, and described in the application.

(f) If a permittee has more than one permit at any quarrying site at an adjacent, or the same quarrying complex, and if the director deems appropriate, permits may be consolidated into one permit at the request of the permittee.

(g) A permit remains valid until quarrying is completed and the final inspection and report are approved or until the permit is revoked by the director.

(h) All underground quarry operations which disturb more than five acres of surface must obtain a quarry permit, including underground quarry operations located on more than one tract of land, if the tracts are adjacent or part of the same mining complex and the total disturbed area exceeds more than five acres. Those underground operations which disturb less than five acres of surface must:

(1) File a notice of intent to operate with the director at least sixty days prior to disturbance. The notice of intent to operate shall be made in writing on forms prescribed by the director and shall be signed and verified by the operator. This notice shall include the information required by subdivisions (1) through (11) and subdivision (13), subsection (b) of this section;

(2) The applicant shall publish a notice of intent to operate as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The notice shall contain, in abbreviated form, the following:

(A) The name and address of the operator;

(B) The name and addresses of the surface and mineral owners;

(C) That written comments on the application will be accepted until a specified date, within thirty days after the first date of publication of the notice;

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(D) A description of the general area where the quarry will be located;

(E) The address of the office of the division to submit written comments.

(3) The director shall issue a decision to approve or deny the notice of intent to operate, within thirty days of close of the public comment period, unless the period is extended by the director to receive additional application information. The director may deny or limit permission to operate upon the finding that the underground quarry will cause serious adverse environmental impacts pursuant to section seven or eight of this article.

(4) A minimum of a $10,000 performance bond is required for each underground mining intent to operate. This performance bond shall be released if the permittee has complied with all permit requirements and has begun underground mining. Underground mining must begin within two years of receipt of a notice of intent to operate.

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§22-4-6. Application review, public notice and comment, and permit approval.

(a) The director shall, upon receipt of an application for a permit, determine if the application is complete and contains the information required in the application. The director has thirty days to review the application for technical completeness. An application is complete when all required information has been submitted to the director. If the application is determined incomplete, the applicant shall be notified with written comments stating the deficiencies. If the director finds the application has technical deficiencies or other inadequacies which require further information, the thirty-day review period shall be interrupted on the date the notice is mailed to the applicant, and the time period shall resume upon receipt of the corrected and complete application. Should the applicant disagree with a decision of the director, the applicant may, by written notice, request a hearing before the director. The director shall hold the hearing within thirty calendar days of receipt of this notice. When a hearing has been held, the director shall notify the applicant of the decision by certified mail within twenty days of the hearing. An applicant aggrieved by a final order of the director may, after the hearing or without a hearing, appeal the order to the surface mine board. Any appeal to the board shall be taken without prejudice by the director in the final review of a permit application.

(b) Upon the director's determination that an application is complete, the applicant shall publish a notice of the application for a permit as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The notice shall contain, in abbreviated form, the information required in the application. The notice shall state that written comments on the application will be accepted until a specified date, within thirty days after the first date of publication of the notice. The notice shall also state that a copy of the complete application including the quarrying and reclamation plans and maps will be available for public inspection during the public comment period at the office of the county clerk in the county or counties in which the proposed permit area is located. The publication area of the notice required by this section is the county or counties in which any portion of the proposed permit area is located. The cost of all publications required by this section shall be the responsibility of the applicant.

(c) Prior to approval of any quarry mining permit, the division shall upon receipt of a written request of a person having expressed concern or objections to the proposed permit, cause a public hearing to be held in the locality where the quarry operation is proposed to be located for the purpose of receiving comment regarding the expected or perceived impacts of the quarry operation on the local area: Provided, That no public hearing is required for a notice of intent to operate an underground quarry with a surface disturbance less than five acres.

(d) The director shall receive and fully consider evidence or comments submitted during the public comment period by any member of the public.

(e) Within thirty days of close of the public comment period, upon the determination by the director that proper public notice has been given and comment has been received by the agency, and that the quarrying operation will be conducted consistent with the requirements

of this article, then the director shall issue a quarry permit to the applicant.

(f) The director, upon receipt of comments expressing substantial new questions regarding the application, may reopen the public comment period.

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§22-4-7. Denial of quarry permit.

(a) The director may deny a permit application, modification or transfer for one or more of the following reasons:

(1) Any requirement of federal or state environmental law, rule or regulation would be violated by the proposed permit.

(2) The proposed quarry operation will be located in an area in the state which the director finds ineligible for a permit pursuant to section eight.

(3) The applicant or any person required to be listed on the application pursuant to section five of this article has not corrected all violations of any prior permit issued pursuant to this article which resulted in:

(A) Revocation of a permit;

(B) Cessation of the operation by order of the director;

(C) Forfeiture of all or part of the permit bond or other surety; or

(D) A court order issued against the applicant related to mining or quarrying;

(E) The applicant or any person required to be listed on the application pursuant to section five of this article has not paid all fines or fees assessed by the agency or by court judgment imposed pursuant to the provisions of this article.

(b) An applicant whose application for a permit, modification or transfer was denied may petition the director for review of the denial decision. The director, in his or her discretion, may approve an application which was previously denied because of a past permit revocation or forfeiture if the person whose permit was revoked or bond forfeited pays into the abandoned quarry reclamation fund an amount determined by the director as adequate to reclaim the area disturbed under the prior permit or completes reclamation of site upon which the permit or bond was revoked or forfeited, and demonstrates to the director's satisfaction that he or she will comply with this article and rules promulgated thereunder.

(c) The director may approve a portion of a permit area upon a finding that approval of the entire permit area would otherwise be denied pursuant to the provisions of this section.

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§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 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

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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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§22-4-9. Permit renewals and revisions.

(a) Any valid permit issued pursuant to this article carries with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. All permittees shall publish a Class I legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code.

(b) If an application for renewal of a valid permit includes a proposal to extend the quarry mining operation beyond the boundaries authorized in the existing permit, that portion of the application for renewal which addresses any new land area is subject to the requirements for permit modifications as provided in section ten of this article. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

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§22-4-10. Modification of permits.

(a) Prior to expanding or otherwise altering quarrying operations beyond the activities authorized under an existing quarry permit, a permittee shall obtain approval for modification from the director. The application shall be in writing on forms provided by the division, or the application may be submitted electronically. Applicants shall verify electronic submissions by signed affidavit. Information that remains unchanged from the initial application is not required to be resubmitted. A permit may be modified in any manner, so long as the director determines that the modification fully meets the requirements of all applicable federal and state law, regulations and rules, and that the modifications would be consistent with the issuance of the original permit.

(b) No modification of a permit which has been approved by the director becomes effective until any required changes have been made in the performance bond or other security posted under the provisions of sections twenty or twenty-two of this article to assure the performance of obligations assumed by the permittee under the permit and the quarrying and reclamation plan.

(c) A minor permit modification is one in which the proposed modification would not cause a significant departure from the terms and conditions of the existing permit and would not result in a significant impact to the environment or to nearby property.

(d) An application for a minor permit modification shall require information related to the modification, any impact it may have on the original permit area and adjacent property, quarrying and reclamation plans, and any other information deemed necessary by the director. An application for a minor permit modification requires public notice, but does not require a public hearing.

(e) Any application for a permit modification that is not a minor permit modification is a major permit modification. An application for a major permit modification must meet the same requirements as for a new permit application. Modification of a buffer zone of a quarry operation is always a major modification.

(f) The director shall act upon the application for a permit modification pursuant to the provisions of subsection (a) of section six of this article.

(g) The director may deny the application for a permit modification for the reasons and under the stated procedure as for new permits set forth in sections seven and eight of this article.

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§22-4-11. Transfer of permits.

(a) When the interest of a permittee of any quarry operation is sold, leased, assigned, or otherwise disposed of, the director may transfer the permit and shall release the transferor from his or her liabilities imposed by this article or rules issued under this article if both the transferor and transferee have complied with the requirements of this article and the transferee in interest assumes the duties and responsibilities of the permit. The transferee shall provide applicable information as required by this article and shall meet public notice and comments requirements as required for major permit modifications.

(b) The proposed transferee shall pay a $500 fee with the filing of an application for transfer of permit.

(c) The director shall act upon the permit transfer as expeditiously as possible but not later than thirty days after the application forms and any supplemental information required are filed with the director.

(d) The director may deny the permit transfer for any reasons and under the same procedure set forth in sections seven and eight of this article. If the applicant proposes any change to the permit conditions, the director shall review the application and treat it as a modification as provided in this article.

(e) The director, for good cause shown, may allow transfer of a revoked permit if the transferee complies with the requirements of this article and assumes the duties and responsibilities of the permit.

(f) If the director denies an application to transfer a permit, the director shall give the permittee and the proposed transferee written notice of:

(1) The director's determination;

(2) Any changes in the application which would make it acceptable; and

(3) The right of the permittee and the proposed transferee to a hearing before either or both the director or the surface mine board.

(g)(1) If a hearing before the director is not requested within fifteen days after receipt of the director's notice of the denial, the denial is the director's final order on the matter appealable to the surface mine board.

(2) If a hearing before the director is requested within fifteen days after receipt of the director's notice, the date for the hearing may not be less than fifteen days nor more than thirty days after the date of the request unless the parties mutually agree on another date.

(3) The director shall enter a final order granting or denying the transfer application within thirty days after the hearing.

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§22-4-12. Preblast survey requirements.

(a) For all new permits issued after the effective date of this section, at least thirty days prior to commencing blasting, an operator or an operator's designee shall make the following notifications in writing to all owners and occupants of protected structures that the operator or operator's designee will perform preblast surveys in accordance with subsection (f) of this section. The required notifications shall be to all owners and occupants of protected structures within one thousand five hundred feet of the blasting area.

(b) For quarries in operation as of the effective date of this section, the quarry operator within one year, shall conduct a preblast survey of the first protected structure within one thousand feet of the blasting area. Any property owner may, at their own expense, pay for a preblast survey meeting the provisions of this article, for his or her protected structure to assess the impact of future blasts to those dwellings or structures by an existing quarry.

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subsection (a) of this section, may waive the right to a preblast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator's designee access to the protected structure and refuses to waive in writing the right to a preblast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the preblast survey shall indicate that access was refused, impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals.

(d) If a preblast survey was waived by the owner and was within the requisite area and the property is sold, the new owner may request a preblast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a preblast survey on structures constructed after the original preblast survey.

(f) The preblast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the operator and the permit number;

(4) The current general liability insurer of the operator;

(5) The name, address and telephone number of the person or firm performing the preblast

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survey;

(6) The current general liability insurer of the person or firm performing the preblast survey;

(7) The date of the preblast survey and the date it was mailed or delivered to the director;

(8) A general description of the structure and its appurtenances including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the preblast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate preblast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate preblast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate preblast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction technique and materials used on the structure and/or its appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities, and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

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(19) Any other information required by the director which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) The director may require a preblast survey as a condition of a major permit modification, upon a finding that the proposed blasting area will occur within one thousand five hundred feet from a protected structure, and will be of a nature and intensity to potentially cause blasting damage.

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§22-4-13. Blasting restrictions; blasting formula; filing preplan; site specific blasting requirements; penalties; notice.

(a) Where blasting of overburden or mineral is necessary, the blasting shall be done in accordance with established principles for preventing injury to persons and damage to residences, buildings and communities, and comply with the following:

(1) The weight in pounds of explosives to be detonated in any period less than an eight millisecond period without seismic monitoring shall conform to the following scaled distance formula: W = (D/50)(to the second power). Where W equals weight in pounds of explosives detonated at any one instant time, then D equals distance in feet from nearest point of blast to nearest residence, building or structure, other than operation facilities of the mine: Provided, That the scaled distance formulas need not be used if a seismograph measurement is located at the nearest protected structure is recorded and maintained for every blast. If access to the structure is refused by the owner of the protected structure, the measurement may be taken as close as practicable between the blast site and the protected structure. The peak particle velocity in inches per second in any one of the three mutually perpendicular directions shall not exceed the following values at any protected structure:

Seismograph Measurement Distance to the Nearest Protected Structure

1.25 0 - 300 feet

1.00 301 - 5,000 feet

0.75 5,001 feet or greater

The maximum ground vibration standards do not apply to the structures owned by the permittee and not leased to another person and structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the director before blasting.

(2) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public buildings, school or community or institutional building outside the permit area:

Lower frequency limit of measuring

system in Hz(+3dB) Maximum level in db

1Hz or lower-flat response* 134 peak

2Hz or lower-flat response 133 peak

6Hz or lower-flat response 129 peak

c-weighted-slow response* 105 peak dBC

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* only when approved by the director.

(3) Access to the blast area shall be controlled against the entrance of unauthorized personnel during blasting for a period thereafter until an authorized person has reasonably determined that:

(A) No unusual circumstances exist such as imminent slides or undetonated charges, etc.; and

(B) Access to and travel in or through the area can be safely resumed.

(4) A plan of each operation's methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the Division of Environmental Protection with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(5) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast the following information:

(A) Date and time of blast;

(B) Number of holes;

(C) Typical explosive weight per delay period;

(D) Total explosives in blast at any one time;

(E) Number of delays used;

(F) Weather conditions;

(G) Signature of operator employee in charge of the blast;

(H) Seismograph data; and

(I) Date of seismograph calibration.

(b) Blasting within one thousand feet of a protected structure shall have a site specific blast design which may vary from the requirements of this section as is approved by the director. The site specific blast plan shall limit the type of explosive and detonating equipment, the size, timing and frequency of blasts to: Prevent injury to persons; prevent damage to public and private property outside the permit area; prevent adverse impacts to any underground mine; and to minimize dust outside the permit area: Provided, That for quarries permitted pursuant to section twenty-seven, site specific blasting plan will not be required if not required as part of its existing blasting plan, unless the director determines that based on

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valid local complaints, the local conditions require a site specific blasting plan.

(c) All assessments as set forth in this section shall be assessed by the director, collected by the director and deposited with the treasurer of the State of West Virginia, to the credit of the quarry reclamation fund.

(d) The director shall propose legislative rules pursuant to article three, chapter twenty-nine-a of this code which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area.

(e) Where inspection by the Division of Environmental Protection establishes that the scaled distance formula or the seismograph results or the approved preplan are not being adhered to, the following penalties shall be imposed:

(1) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than $500 nor more than $1,000;

(2) For the second offense in any one permit year under this section, the permit holder shall be assessed not less than $1,000 nor more than $5,000;

(3) For the third offense in any one permit year under this section or for the failure to pay any assessment herein above set forth within a reasonable time established by the director, the permit shall be revoked.

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§22-4-14. Performance standards.

Each permit issued by the director pursuant to this article shall require the quarry operation, at a minimum, to meet the following performance standards:

(a) The operator shall impound, drain or treat all runoff water so as to reduce soil erosion, damage to agricultural lands and prevent unlawful pollution of streams and other waters. The director shall require as a condition of a new permit, groundwater testing prior to and during quarrying. Tests shall be for both quantity and quality of surrounding groundwaters. Groundwater test sites above and below gradient of the proposed quarry shall be established prior to quarrying to establish a six months baseline for area groundwater. Test wells, seeps and springs may be utilized as is appropriate. Monthly testing shall be done prior to the beginning of quarrying, and quarterly monitoring the first year of quarrying. Annual testing is to be done for an additional four years. If no adverse impact to groundwater is discovered, no further monitoring will be required. However, upon subsequent discovery of possible adverse impact, the director may require monthly monitoring and appropriate remedial actions to be done by the permittee.

(b) In the case of storm water accumulations or any breakthrough of water, adequate treatment shall be undertaken by the operator so as to prevent pollution occurring from the release of water. Treatment may include check-dams, settling ponds and chemical or physical treatment. In the case of a breakthrough of water, when it is possible, the water released shall be impounded immediately. All water so impounded shall receive adequate treatment by the operator before it is released into the natural drainway.

(c) Water leaving the permit area is subject to the requirements of article eleven of this chapter.

(d) The permittee shall place a monument as prescribed by the division in an approved location near the operation. If a quarry operation is under a single permit and is not geographically continuous, the permittee shall locate additional monuments and submit additional maps, as required by section five of this article, before mining other permitted areas.

(e) The operator shall remove or properly dispose of all metal, equipment and other refuse resulting from the operation. No permittee may engage in or allow, the throwing, dumping, piling or otherwise placing of any overburden, stones, rocks, coal, mineral, earth, soil, dirt, debris, trees, wood, logs or other materials or substances of any kind or nature beyond or outside the area of land which is under permit for which bond has been posted, unless it is placed on a site which has a permit allowing that activity, nor may any operator place any of the foregoing listed materials in a way that normal erosion or slides brought about by natural physical causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.

(f) Prior to beginning quarrying operations, the operator shall install, certify, and maintain a

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drainage system in accordance with the approved drainage control plan. Lateral drainage ditches connecting to natural or man-made waterways shall be constructed to control water runoff, prevent erosion and provide adequate drainage control. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

(g) When the planting of an area has been completed and full or partial bond release is requested the operator shall file a planting report with the director on a form to be prescribed and furnished by the director providing the following information:

(1) Identification of the operation;

(2) The types and rate of application of planting or seeding, including mixtures and amounts;

(3) Types and rates of fertilizer and any other chemicals used or added to the soil;

(4) The date of planting or seeding;

(5) The area of land planted; and

(6) Other relevant information required by the director.

All planting shall be certified by the permittee, or by the party with whom the permittee contracted for planting.

(h) All fill and cut slopes of the operation and haulage ways shall be seeded and planted in a manner as prescribed by the quarrying and reclamation plan.

(i) After quarrying is completed, the site will be stabilized to prevent erosion. Stabilization may be accomplished by vegetative cover or other means as approved in the quarrying and reclamation plan. Rules proposed pursuant to this article shall contain guidelines for establishing the various types of stabilization.

(j) Planting shall be carried out so that it is completed before the end of the first planting season. Vegetative planting may be completed by the operator or the permittee may contract with the local soil conservation district or a private contractor. A revegetation schedule shall be incorporated into the quarrying and reclamation plan.

(k) The operator may, where appropriate, use visual screening methods such as berms, plantings, or fences which may be placed within the buffer where conditions allow and where the site is readily visible to the general public.

(l) If the permittee or other person desires to conduct underground quarrying upon the premises or use underground quarry surface haulage ways for other lawful purposes, the permittee may designate locations to be used for these purposes where it will not be necessary to backfill if required by the permit, until the underground quarrying or other

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uses is completed, during which time the bond on file for that portion of that operations may not be released. Locations shall be described on the map required by the provisions of section five of this article.

(m) The operator shall also comply with all other permit conditions and requirements of this article and any rules promulgated thereunder.

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§22-4-15. Groundwater protection.

The Groundwater Protection Act provisions contained in subsection (b), section four, article twelve of this chapter do not apply to mineral extraction areas of quarry mining sites regulated under this article. All other areas of the mine, including groundwater beneath the mineral extraction area, and water discharges from the quarry shall meet the requirements of article twelve of this chapter.

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§22-4-16. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects the rights of any person to enforce or protect, under applicable law, that person's interest in water resources affected by removal of mineral resources.

(b) Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the mineral removal and associated activities, unless right of replacement is waived by the owner or unless the water supply is furnished by a public service district, municipality, government entity or some other third party.

(c) A public service district, municipality, government entity, or other party may contract with a permittee to obtain water and waive the replacement of water supply if contamination, diminution, or interruption should occur.

(d) If the director determines that: (1) Contamination, diminution or damage to an owner's underground water supply exists; and (2) the contamination, diminution, or damage to the underground water supply could not be due to seasonal variations, or other possible causes, then the permittee shall upon receiving written notification from the director: (A) Provide an emergency drinking water supply within twenty-four hours; (B) provide a temporary water supply within seventy-two hours; (C) provide a permanent water supply within thirty days; and (D) pay all reasonable costs incurred by the owner in securing a water supply: Provided, That the permittee is entitled to recover the cost of replacing an owner's water supply if it is determined that contamination, diminution, or damage to the water supply was not caused by mineral removal activity of the permittee.

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§22-4-17. Quarrying and reclamation plan.

(a) The application for a new permit shall include a proposed quarrying and reclamation plan. In developing this complete quarrying and reclamation mining plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property.

(b) The quarrying and reclamation plan is required to be completed by a person approved by the director. It shall include the following information:

(1) The purpose for which the land to be permitted was previously used;

(2) The proposed useful purposes of the land following completion of quarrying;

(3) A general description of the manner in which the land is to be opened for quarrying and how the quarrying activity is to progress across the permitted area and an approximate time frame for reclamation of each area or phase of the quarrying;

(4) The manner in which topsoil is to be conserved and used in reclamation and, if conditions do not permit conservation and restoration of all or part of the topsoil, an explanation of the conditions and proposed alternative procedures;

(5) The description of the proposed final topography for the applicant's proposed land use after reclamation is completed and the proposed method of accomplishment;

(6) The practices to provide public safety for adjacent properties and provisions for fencing, berms or other site improvements reasonably necessary to assure safety at the permitted site after mining and reclamation is completed; and

(7) The manner and type of revegetation or other surface treatment of the disturbed area.

(c) An application for a permit shall indicate the existence of known, threatened or endangered species located within the proposed permit boundary as defined by federal Endangered Species Act of 1973.

(d) The application shall provide the information on slope gradient and fill plans as required in section eighteen of this article.

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§22-4-18. Land reclamation requirements.

(a) Quarries shall meet the final design requirements for slopes and gradients:

(1) Final slope gradients of fill areas shall be designed using recognized standards and certified by a professional engineer or other approved professional specialist, except for backfill within the mineral excavation pit area, where no standard applies.

(2) The designed steepness and proposed treatment of the final slopes shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements and other factors and may range from ninety degrees in a sound limestone or similar hard rock to less than twenty degrees in unconsolidated materials.

(3) The quarrying and reclamation plan shall specify slope angles flatter than the critical gradient for the type of material involved.

(4) The toe of the proposed fill will rest on natural slopes no steeper than twenty degrees unless a detailed geotechnical study of the toe foundation area is completed. The results of this study and subsequent stability evaluations must assure a static safety factor of at least one and one-half. Engineering designs for fills constructed on natural slopes steeper than twenty degrees may require over excavation of the toe area to rock, incorporation of toe buttresses or other engineered configurations to enhance stability. The design and construction of all fills proposed on natural slopes steeper than twenty degrees shall be certified by a registered professional engineer.

(5) Constructed slope fills steeper than two horizontal to one vertical must exhibit a static safety factor of one and one-half.

(6) Fills may be constructed so that the outer slope shall be no steeper than two horizontal to one vertical. A twenty foot wide bench shall be installed at a maximum of every fifty feet in vertical height of the fill with a one percent to five percent slope toward a constructed protected channel or natural drainway: Provided, That constructed fill slopes may be steeper than two horizontal to one vertical if they meet a static safety factor of one point five (1.5) and are certified by a registered professional engineer.

(7) Surface water runoff from the area above fills shall be diverted away from the fill into stabilized diversion channels. Runoff from the fill surface shall be diverted to stabilized channels off the fill.

(8) During and after construction of a fill area, slope protection shall be provided to minimize surface erosion. All disturbed areas of the fill, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(b) Highwalls which are to be left after completion of quarrying shall be backfilled or shot down to provide a final slope in compliance with subsection (d) of this section unless:

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(1) It is demonstrated that the highwall is stable;

(2) Adequate material removed in the process of quarrying and not located in a permanent disposal area, is not available; or

(3) These actions are precluded by close proximity to permit boundaries, other physical limitations, or the post quarry land use requires that the highwall remain.

(c) Backfills, fills, cut slopes or highwalls that exist and are part of a permit area prior to the effective date of this article are not required to comply with subdivisions (1) through (8), subsection (a) of this section. Permits issued prior to the effective date of this section which contain the requirements of subdivisions (1) and (2), subsection (a) or subsection (b) of this section are not exempt unless modified by the division.

(d) The final land form shall be graded to provide positive drainage throughout the permit area except areas that are to be inundated in accordance with the quarrying and reclamation plan map.

(e) Backfill may be exported off the permitted areas only for beneficial uses as approved by the director.

(f) Permanent spoil piles will be stabilized, covered with suitable material and revegetated.

(g) Upon an order of the director, the operator shall, within sixty days after service of a copy of the order to the operator by certified United States mail, furnish to the division four copies of a progress map which is prepared consistent with maps prepared for permit applications as provided in section five of this article, which shall show in detail completed reclamation work, as required by the director. The progress map shall be within a reasonable degree of accuracy as is required by the director. When no additional land has been disturbed by operations during the preceding year and the prior map is still up to date, in lieu of a progress map, the operator shall provide a signed statement regarding the status of the operation to the director. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended.

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§22-4-19. Time period for reclamation.

(a) The operator shall commence the reclamation of the incremental area of land disturbed by the operator after the completion of all quarrying of that area in accordance with the approved quarrying and reclamation plan. The quarrying and reclamation plan for each operation shall be site specific in describing how the quarrying and reclamation activities are to be coordinated to minimize total land disturbance and to keep reclamation operations as contemporaneous as possible with the advance of the quarry operations. All quarry operations shall be conducted in compliance with the approved quarrying and reclamation plan and the requirements of this article.

(b) At the option of the permittee and with the director's concurrence, a quarry permit may be inactive for a time so specified by the director, during which no mineral or overburden is removed if the following conditions are met:

(1) That economically viable mineral reserves remain in the permitted area;

(2) All disturbed areas are reclaimed or stabilized to prevent erosion and sedimentation;

(3) All drainage and sediment control structures, such as culverts, ditches, sediment basins and traps are maintained; and

(4) All vegetation is maintained and reseeded as necessary.

(c) Any permit which is not in operation and has failed to apply for inactive status within six months is deemed an abandoned quarry.

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§22-4-20. Fiscal responsibility.

(a) Each applicant must provide a certificate of insurance issued by an insurance company authorized to do business in this state for all operators at the site including blasting and quarrying operators. Blasting insurance is not required of quarry operations which do not conduct blasting. The coverage shall include not less than $1 million for personal injury per occurrence, and not less than $500,000 for property damage per occurrence. Proof of continuing insurance coverage shall be required on an annual basis. In addition, the insurance company shall promptly notify the director of any lapses, default, nonrenewal, cancellation, or termination of coverage.

(b) Each applicant who makes application for a new permit under section five of this article shall furnish a performance bond after permit approval but before its issuance, on a form to be prescribed and furnished by the director, payable to the State of West Virginia and conditioned that the permittee faithfully performs all of the requirements of this article. The bond or bonds shall cover the entire area disturbed by quarrying plus the estimated number of acres to be disturbed in the upcoming year. As additional areas outside the bonded acreage are needed to facilitate the quarry operation, the permittee shall file an additional bond or bonds to cover the additional acreage with the director. The bond shall be posted and accepted by the director prior to disturbing an area for quarrying.

(c) The amount of the bond shall be at least $1,000 for each acre or fraction of an acre of land to be disturbed. The director shall determine the amount per acre of the bond that is required before a permit is issued. The minimum amount of bond required is $10,000.

(d) In lieu of a performance bond covering the entire permitted area, the director may accept incremental bonding. If incremental bonding is used, as succeeding increments of quarry operations are to be initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover the increments in accordance with this section.

(e) The applicant may elect to execute the performance, surety bonding, collateral bonding, establishment of an escrow account, performance bonding fund participation, self-bonding or a combination of these methods.

(f) If collateral bonding is used, the applicant may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia, or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the State of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the

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deposit is made when the permit is issued. The applicant or permittee making the deposit is entitled from time to time to receive from the state Treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. Interest received on financial instruments shall accrue to the applicant or permittee.

(g) The director shall authorize release of incremental portions of a bond or other surety required in this section upon verification of completion of adequate reclamation of a previously mined portion of a quarry covered by the bond or other surety.

(h) The performance bond or deposits from the bond pooling fund shall be forfeited upon failure of the permittee to perform in the manner set forth in the approved quarrying and reclamation plan or to reclaim the land as provided for in the permit or upon revocation of the permit. The director shall notify the permittee by certified mail, return receipt requested, of its intention to initiate forfeiture proceedings. The permittee has thirty days to request a hearing before the director. The director shall render a decision within thirty days of the hearing. Where the operation has deposited cash or securities as collateral in lieu of corporate surety, the director shall declare said collateral forfeited and shall direct the state Treasurer to pay said funds into the "quarry reclamation fund" as created in section twenty-three of this article, to be used by the director to effect proper reclamation and to defray the cost of administering this article. Should any corporate surety fail to promptly pay in full the forfeited bond, it is disqualified from writing any further surety bonds under this article.

(i) Additional bond procedures shall be provided in legislative rules proposed by the director and promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(j) The liability under the bond is for the duration of the permit and for a period of two years after reclamation unless previously released, in whole or part, as provided in section twenty-one of this article.

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§22-4-21. Release of bonds.

On completion of the reclamation, and after the requirements of the permit have been fully complied with, the director shall release the bond. An amount of the bond or cash deposit, proportioned to the reclaimed portion of the disturbed land in ratio to all of the disturbed land covered by the permit, may be released on application by the permittee and inspection and approval by the director. Performance bonds shall be released upon acceptance into the bond pooling fund and payment of the required fees. Performance bonds for the transferor of a permit shall be released after the transferee posts a bond acceptable to the director.

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§22-4-22. Bond pooling fund.

(a) Quarry operators who have operated for five years without a serious violation under previous West Virginia mining law or the provisions of this article, in lieu of the bonding requirements of section twenty of this article, shall contribute to the "Bond Pooling Fund," as provided in this section.

(b) For each quarry, permittees contributing to the pool shall make an initial payment to the fund of $50 for each acre currently disturbed plus each acre estimated to be newly disturbed during the next ensuing year. Thereafter, the permittee shall make an annual payment of $12.50 for each disturbed acre plus each acre estimated to be newly disturbed during the next ensuing year. The payments shall continue until the permittee has paid into the bond pooling fund a total of $1,000 for each disturbed acre.

(c) There is hereby created in the State Treasury a special revenue fund known as the "Bond Pooling Fund." The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of fees collected by the director in accordance with the provisions of this article. Interests of moneys from this fund shall be deposited in the quarry reclamation fund as established in section twenty-three of subsection (b) of this section. Interest earned on moneys in this fund shall be deposited in the quarry reclamation fund as established in section twenty-three of this article.

(d) No annual bond pooling fund deposits may be collected from permittees where the permit bond pooling fund deposits divided by the number of disturbed acres bonded is equal to or greater than one thousand per acre.

(e) Permittee deposits into the bond pooling fund shall be released under any of the following conditions:

(1) On completion of the quarrying and reclamation, and after all permit requirements have been fully complied with, the director shall return all bond pooling fund deposits to the permittee consistent with the bonding release requirements of section twenty-one of this article.

(2) When the bond pooling fund balance for a permittee exceeds $1,000 for each disturbed acre and each acre estimated to be disturbed during the next ensuing year the director shall return the excess funds to the permittee.

(f) The interest transferred to the quarry reclamation fund under subsection (c) of this section shall be used to reclaim abandoned quarry lands as provided in section twenty-three of this article.

(g) If a permit is revoked pursuant to this article the payments that the permittee has made

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to the bond pooling fund for that permit shall be forfeited. The director shall use those forfeited payments for the reclamation of the quarry to which it applied.

(h) If the cost of reclamation exceeds the amount of payments the permittee shall be liable for the reclamation costs that exceed the permittee's payments to the bond pooling fund.

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§22-4-23. Quarry reclamation fund.

(a) All funds received by the division from forfeiture of bonds, civil administrative penalties, or interest from the bond pooling fund shall be deposited into a special interest-bearing account in the state Treasury designated the Quarry Reclamation Fund. The quarry reclamation fund shall be used by the division for reclamation of abandoned quarries.

(b) If the forfeiture of a performance bond or bonding pool fund payments exceeds the cost of reclamation for which the liability was charged, any excess amount shall be deposited into the quarry reclamation fund.

(c) Reclamation projects that are to be financed by the quarry reclamation fund shall be designed by the division.

(d) The director shall administer and approve all expenditures from the quarry reclamation fund.

(e) The division shall compile a list of abandoned quarries in the state and rank them in order of need for reclamation.

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§22-4-24. Orders, inspections and enforcement; permit revocation, damages, civil and criminal penalties.

(a) The director may at reasonable times without prior notice and upon presentation of appropriate credentials, enter any quarry and conduct periodic inspections and examine any required documentation to effectively implement and enforce the provisions of this article and rules promulgated thereunder.

(b) Whenever the director finds that an ongoing quarry operation is causing or is likely to cause imminent and substantial harm to the environment, public safety, or public health, the director may order immediate cessation of such operations, or portions of operations, and shall take other action as is deemed necessary to avoid adverse impact to the area.

(c) If the director, upon inspection or investigation observes, discovers or learns of a violation of this article, rules promulgated thereunder, or any permit condition or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Notice of noncompliance, orders suspending, revoking or modifying permits, consent agreements which provide opportunity for correction without further agency action, orders requiring a permittee to take remedial action within a specified time, and cease and desist orders;

(2) Seek an injunction in accordance with subsection (g) of this section;

(3) Revoke the permit and pursue an appropriate remedy as provided in this section;

(4) Institute a civil action in accordance with subsection (g) of this section; or

(5) Request the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (g) or (h) of this section.

(d) If the operator has not reached an agreement with the director or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the director and the performance bond or contributions to the bonding pooling fund shall then be forfeited. If an agreement satisfactory to the director has not been reached within thirty days after suspension of any permit, any and all suspended permits shall then be declared revoked and the performance bonds or contributions to the bond pooling fund with respect thereto forfeited.

(e) Any person who violates any provision of this article, any permit condition or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than $5,000 for each day of such violation, not to exceed a

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maximum of $20,000. The director may accept in kind assessment by reclamation of an abandoned quarry site in lieu of cash payment of a civil administrative penalty.

In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing.

The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director's decision, the alleged violator may request a formal hearing before the surface mine board. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied. No combination of assessments against a violator under this section shall exceed $5,000 for each day of such violation: Provided, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with this article and rules issued pursuant to this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the quarry reclamation fund established in section twenty-three of this article. No assessment levied pursuant to this subsection becomes due and payable until the procedures for review of such assessment as set out herein have been completed.

(f) Any person who violates any provision of this article, any permit condition, rule or order issued pursuant to this article is subject to a civil penalty not to exceed $5,000 for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(g) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit condition, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post

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bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(h) Any person who willfully or negligently violates the provisions of this article, any permit condition or any rule or order issued pursuant to this article is subject to the same criminal penalties as set forth in section twenty-four, article eleven of this chapter.

(i) Upon request of the director, the prosecuting attorney of the county in which the violation occurs shall assist the director in any civil or criminal action under this section.

(j) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs, reasonable attorney's fees, and, when a permit has been revoked, any actual costs incurred by the agency to complete reclamation of a permitted site above and beyond moneys received as a result of bond forfeiture.

(k) In addition to and notwithstanding any other penalties provided herein, any operator who directly causes damage to the property of others as a result of quarrying is liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one year after such operator has completed all reclamation work with respect to the land on which such quarrying was carried out and all bonds of such operator with respect to such reclamation work are released. Such damages are recoverable in an action at law in any court of competent jurisdiction.

(l) The director may reinstate a revoked permit and allow resumption of quarrying upon a finding that the circumstance causing the revocation has been abated and the director has determined that the cause of the revocation will not reoccur upon reinstatement.

(m) It is unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of the operator's obligation to the state for the reclamation of lands disturbed by the operator. The director may initiate an action pursuant to either subsection (g) or (h) of this section, to enforce this prohibition.

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§22-4-25. Appeals to board.

Any person claiming to be aggrieved or adversely affected by any ruling or order of the director or his or her failure to enter an order may appeal to the surface mine board, pursuant to the provisions of article one, chapter twenty-two-b of this code, for an order vacating or modifying the ruling or order, or for an order that the director should have entered.

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§22-4-26. Required fees, quarry inspection and enforcement fund.

The permit application fee is $1,000. The fee for the original permit is $1,000. The permit renewal fee of $500 shall be submitted with the renewal application and a progress report map. The fee for transferring a permit is $500. The fee for a minor permit modification is $200 and for major modifications, $500. There is hereby created in the state Treasury a special revenue fund known as the Quarry Inspection and Enforcement Fund. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of fees collected by the director in accordance with the provisions of this section, as well as interest earned on investments made from moneys deposited in the fund. Moneys from this fund shall be expended by the director for the administration, permitting, enforcement, inspection, monitoring and other activities required by this article.

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§22-4-27. Exception for certain existing quarries.

(a) Quarries that are in operation on or before the effective date of this article, shall comply with the following:

(1) Within two years of the effective date of this article, all quarry operations shall submit to the director a quarrying and reclamation plan to bring the facility into compliance with the requirements of this article and any rules promulgated thereunder. These quarrying and reclamation plans shall include a reasonable schedule, based on site specific conditions and the nature of the quarry operation, to allow a transitional time period to bring the operation into compliance with current reclamation standards. Quarry areas that are disturbed on the effective date of this article are exempt from further reclamation requirements. For the purpose of this section, disturbed areas include existing highwalls and all material vertically below the surface of the area disturbed.

(2) Preblast survey and blasting plan requirements as provided for existing quarries as provided by section twelve of this article.

(3) Groundwater protection monitoring required by section fourteen of this article will not be required if the director verifies the operator's certification that no groundwater problems at the quarry have occurred in the previous five years.

(b) The exclusions of this section are also applicable to quarries permitted on or before the effective date of this article and consolidated or renewed pursuant to subsection (f) of section five of this article.

(c) Quarries in operation as of the effective date of this article for the past five years without a serious permit violation, shall participate in the bond pooling fund created in section twenty-two of this article. All other operations shall comply with the bonding requirements of section twenty of this article.

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§22-4-28. Persons ineligible for a permit.

No public officer or employee in the division having any responsibility or duty either directly or of a supervisory nature with respect to the administration or enforcement of this article may:

(1) Engage in quarrying as a sole proprietor or as a partner;

(2) Be an officer, director, stockholder, owner or part owner of any corporation or other business entity engaged in quarrying; or

(3) Be employed as an attorney, agent or in any other capacity by any person, partnership, firm, association, trust or corporation engaged in quarrying.

Any violation of this section by any public officer or employee subject to the prohibitions contained in this section is grounds for removal from office or dismissal from employment, as the case may be.

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§22-4-29. Exemptions.

(a) The provisions of this article do not apply to activities of the West Virginia Department of Transportation or any legally constituted public governing entities including municipal corporations or other political subdivisions, including the federal government, or to activities of any person acting under contract with any of these public agencies or entities, on highway rights-of-way or borrow pits owned, operated, or maintained solely in connection with the construction, repair and maintenance of the public roads system of the state or other public facilities. This exemption does not become effective until the public agencies or entities have adopted reclamation standards applying to the activities.

(b) The provisions of this article do not apply to quarrying on federal lands when performed under a valid permit from the appropriate federal agency having jurisdiction over the land.

(c) The provisions of this article do not apply to the following activities:

(1) Operations engaged only in processing minerals;

(2) Excavation or grading conducted solely in aid of on-site farming or on-site construction for purposes other than quarrying;

(3) Removal of overburden and of limited amounts of any mineral when done only for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit, if no minerals are sold, processed for sale or consumed in the regular operation of business;

(4) The handling, processing or storage of minerals on the premises of a manufacturer as a part of any manufacturing process that requires minerals as raw material;

(5) The removal or deposit of backfill material associated with construction, farming and noncommercial activities;

(6) Noncommercial quarry operations by a landowner if the disturbed area does not exceed one acre in area, upon notice to the director by the owner of his or her intent to establish the quarry.

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