WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED

Committee substitute from
HOUSE BILL No. 294

(By [committee on Forestry and Conservation])

PASSED March 6, 1963

In Effect July 1, 1963, Passage

Filed in Office of the Secretary of State of West Virginia 3-15-63

JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

COMMITTEE SUBSTITUTE

For

House Bill No. 296

[Originating in the Committee on Forestry and Conservation.]

[Passed March 6, 1963; in effect July 1, 1963]

AN ACT to amend chapter twenty by amending and reenacting sections one, two, three, four, five, six, seven and eight, article six, and by adding to said article six five new sections, designated nine, ten, eleven, twelve and thirteen; and to amend chapter twenty-two by repealing articles two-b and three, by repealing sections one, two, three, ten, eleven and twelve, article two-a, and by adding to said article two-a thirteen new sections, designated one, two, three, three-a, four, five, six, seven, eight, nine, ten, eleven and twelve, all of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, and the same relating to the administration and control of surface mining, and the reclamation of lands affected thereby.

Be it enacted by the Legislature of West Virginia:

That chapter twenty be amended by amending and reenacting sections one, two, three, four, five, six, seven and eight, article six, and by adding to said article six, five new sections, designated nine, ten, eleven, twelve and thirteen; and that chapter twenty-two be amended by repealing articles two-b and three, by repealing sections one, two, three, ten, eleven and twelve, article two-a, and by adding to said article two-a, thirteen new sections, designated one, two, three, three-a, four, five, six, seven, eight, nine, ten, eleven and twelve, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all to read as follows:

CHAPTER 20. NATURAL RESOURCES

Article 6. Reclamation.

Section 1. Division of Reclamation; Duties and Functions.—The division of reclamation, herein created and established, shall have within its jurisdiction and super-
vision all lands and areas of the state mined or susceptible of being mined for the removal of minerals and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive, and subject to soil erosion and waste, except land being utilized in the production of agricultural commodities. Included within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, land and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the division shall be consistent with other provisions of this chapter, shall be in cooperation with other offices and divisions of the department, and shall not interfere with or encroach upon powers, functions and services lawfully within the jurisdiction of the government of the United States.

The chief of the division shall organize and staff his division for the orderly, efficient and economical execution and administration of the provisions of this article
as an integral part of the department's natural resources program.

The director of the West Virginia agricultural experiment station at West Virginia university shall select and designate a competent and qualified person and a member of his staff to be state land reclamation specialist who will study mining procedures and methods and their relation to subsequent land reclamation of disturbed areas. He shall also serve in a liaison and advisory capacity between the experiment station and agencies with responsibilities or interests in reclamation programs and projects. The director of the experiment station shall fix the state land reclamation specialist's salary, which shall be paid from university funds, and shall arrange on the university campus for adequate office facilities, stenographic and clerical assistance, and such other supplies and materials as needed by the state land reclamation specialist. When performing services for such agencies, his travel expenses may be paid from the agency's funds. The state land reclamation specialist shall study and develop reclamation programs and
projects consistent with the provisions of this chapter
and be under the supervision and direction of the di-
rector of the experiment station.

Sec. 2. Legislative Purpose; Apportionment of Respon-
sibility.—The Legislature finds and declares that the de-
partment of natural resources shall have jurisdiction and
control over land and soil aspects of surface mining op-
erations, and the restoration and reclamation of lands
surface mined and areas affected thereby, but that sur-
face mining as an industrial enterprise and occupation
shall be under the jurisdiction and control and subject
to the regulations of the state department of mines.

The director of the department of mines and the direc-
tor of the department of natural resources shall correlate
and coordinate their respective departmental programs
and records so as to effect an orderly and harmonious
administration of the provisions of this article.

Sec. 3. Definitions.—For the purpose of this article:
the term "surface mining" shall include all industrial
activity for the recovery of minerals except those sub-
ject to the provisions of articles one, two, four, five and
seven of chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and, subject to such exception, shall include plant and equipment used in processing said minerals.

For the purpose of this article a "surface mine" shall include all areas surface mined or being surface mined as well as adjacent areas ancillary to the operation together with preparation and processing plants, storage areas and haulageways: Provided, That such areas are sufficiently concentrated that they can be adequately supervised by one foreman: And provided further, That mines subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, as amended, are not "surface mines" within this definition.

For the purpose of this article, "disturbed land", shall include the area from which the overburden has been removed in surface mining operations, plus the area covered by the spoil, and any areas used in surface mining operations which by virtue of their use are susceptible to excessive erosion.
For the purpose of this article, "operator" shall mean any individual, a corporation, a partnership, an association or a trust which is granted a permit to engage in any activity covered by this article.

Sec. 4. Duties of Operators; Requirements; Procedures.

It shall be the duty of each operator to:

1. Remove metal, lumber and other debris resulting from mining operations.

2. Regrade in a manner to be established by rules and regulations of the director, in accordance with, but not limited to, the following principles of reclamation:

   a. Wherever practicable, and wherever spoil banks form adjoining ridges or peaks above the level of the coal seam from which such spoil banks have been removed, grade the surface of such spoil banks so as to reduce the depressions between the peaks of such spoil banks to a surface which will be a rolling topography. Such grading shall be done in such a way as will minimize erosion due to rainfall and will also eliminate steep grades between peaks and make the surface more suitable for tree cutting or logging operations or for cattle grazing. Such grading...
shall be done in a manner which will minimize, as far as practicable, the presence of large rocks, or materials which would be toxic to plant life, on the surface of the graded area. Where spoil banks consist of single isolated peaks, and where such peaks extend above the level of the coal seam from which such spoil banks have been removed, such peaks shall be graded to an approximately level surface having a width of not less than fifteen feet.

(b) Wherever the final cut of an operation is not to be used for water impoundment as provided for in subsection (5), and wherever such final cut is within a reasonable grading distance of overburden deposits, and wherever such overburden deposits are composed of materials which are suitable for the support of tree growth, or the growth of grasses or other reclamation vegetation, or where such material reasonably can be expected to become suitable by natural leaching and weathering processes, such overburden material shall be graded so as to cover the bottom of such final cut.

In planning and executing surface mining operations the operator shall at all times have proper regard for the
duties imposed by subparagraphs (a) and (b) of this section and shall exercise all reasonable and practical measures required so as not unnecessarily to lose or make unavailable overburden material for the grading required by subparagraphs (a) and (b).

(3) Where the outside spoil deposit is made on a steep hillside, rocks that have rolled down into a cleared valley shall be placed back at the toe of the hillside or deposited at some equally suitable location.

(4) Seal off with a fill all openings from underground mining operations at the base of the final cut. Such sealing off with a fill shall be done in such a way as to avoid creating danger from the impoundment of large quantities of water.

(5) Where the operator elects to impound water to provide lakes or ponds for wildlife, recreational or water supply purposes, such operator shall file formal request with the department of natural resources and receive approval before such ponds or lakes can be created in impounding such water. In making such improvements such operator must avoid the creation of conditions that
might encourage slides, acid formation, or flood hazard.

(6) Plant in a manner so as to establish a satisfactory cover of trees, shrubs, grasses or vines upon the part of the area of land affected where such revegetation is practicable, within a reasonable length of time, or offer to deposit with the conservation district, in which the operation covered by such permit is located, a sufficient amount of money to reclaim, insofar as planting, the area of land affected, as estimated by the district. If the district assumes responsibility for the planting, the director shall release the bond and return the security given in lieu of bond.

The intent of this section is to, insofar as reasonably practical, restore the land to a desirable purpose and use. The director may, in the exercise of his sound discretion, when not in conflict with the intent of this section, modify such requirements to bring about a more desirable land use, including but not limited to industrial sites, sanitary landfills, recreational areas, building sites, etc.: Provided, however, That the person, firm, corporation, or agency making such modifications will execute contracts, post
bond or otherwise insure full compliance with this section in the event such modified program is not carried to completion within a reasonable length of time.

For failure to complete the duties of the operator within a reasonable length of time, as prescribed by the director, and after receipt of a thirty-day notice in writing from the director, which notice may be sent by registered or certified mail to the operator, at his last known address, that any one or more of such things have not been done, the permit covering the particular operation shall be revoked by the director and the performance bond shall be forfeited, and any other permits that may have been issued to the operator involved shall be suspended, unless the operator shall submit a plan of reclamation suitable to the director and accepted by him within said thirty-day period. Unless the operator carries out the plan of reclamation accepted by the director, within the time limits prescribed in such plan, the director shall revoke the permit covering the particular operation, and forfeit the performance bond, and any and all other permits that may have been issued to the
operator involved shall be revoked and any and all performance bonds shall be forfeited.

Any operator whose mining permit has been revoked shall not be eligible to receive another such permit or to have suspended permits reinstated until he shall have complied with the requirements of all the laws in respect to former permits issued him.

Sec. 5. Performance Bond; Forfeiture; Procedure; Funds and Uses.—Upon default in the performance of the conditions of the performance bond, the director shall give notice to the attorney general and it shall be his duty to collect the forfeiture without delay.

All such forfeitures hereafter collected, as provided in this article, shall be deposited with the state treasurer in a special fund to be designated "Surface Mining Reclamation Fund", to the credit of the department and shall be expended to reclaim and rehabilitate land disturbed in accordance with the provisions of this article.

It shall be the duty of the director to cause to be prepared a plan for the reclamation and rehabilitation of land affected in accordance with the provisions of section
four of this article and said director shall reclaim and
rehabilitate said lands in accordance with said plan and in
so doing the director shall comply with the provisions of
article three, chapter five-a of the code of West Virginia
in obtaining supplies, materials, equipment and contrac-
tual services deemed necessary by the director for the
proper reclamation and rehabilitation of said land. The
monies in the fund shall be expended upon the lands upon
which the permit was issued and for which the bond was
posted. The director may expend any monies remaining,
over and above that required to reclaim the area for
which the bond was posted, to reclaim any area covered
under the provisions of this article. The department may,
when deemed necessary, avail itself of any services which
may be provided by the state or federal governments.

Sec. 6. Validity of Existing Permits and Bonds.—The
provisions of chapter eighty-four of the acts of the Legis-
lature of West Virginia, regular session, one thousand nine
hundred thirty-nine; the provisions of chapter eighty-five
of the acts of the Legislature of West Virginia, regular
session, one thousand nine hundred forty-five; the pro-
visions of chapter ninety-nine of the acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-nine; the provisions of chapter one hundred thirty-three of the acts of the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, shall continue to be in full force and govern in all respects every existing right for surface mining operations, every outstanding permit for surface mining operations and every existing cash or other bond posted in connection therewith, and the enactment of this article shall not affect any offenses or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued, or accruing before the day this law takes effect. Any money received from the forfeiture of bonds given under the provisions of said acts shall be deposited in the same fund and used in the same manner as forfeitures under this article. Every operator under an existing permit, under which actual mining operations have not been commenced prior to the effective date of this article, shall nevertheless be required to perform all duties specified in section four of this article, and for failure to do so,
his bond shall be forfeited and he shall be subject to all other penalties provided by the above mentioned former act. Every such operator shall be required to comply with the provisions of section four of this article under which actual mining operations have not been commenced prior to the effective date of this article.

Sec. 7. When Bond Released and Discharged.—Upon satisfactory completion of all requirements of law under the permit granted to any operator pursuant to the provisions hereof, the director of the department of natural resources shall issue to the operator a certificate releasing and discharging the bond and surety thereon, or shall cause to be returned to the operator any securities given under section five, article two-a, chapter twenty-two of the code.

Sec. 8. Special Reclamation Fund; Purposes and Uses. —The Legislature finds and declares that lands within this state have been subjected to surface mining operations and have not been reclaimed in accordance with modern standards and which are not now covered by bond to guarantee such reclamation. This Legislature
further finds and declares that the cost of reclaiming these lands will be nine hundred thousand dollars. The Legislature has devised a method of collecting special fees, as set forth in section three-a, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the reclamation and rehabilitation of the above referred to lands and accordingly there is hereby created a special fund designated "Special Reclamation Fund." The purpose of this fund shall be solely that of a depository for special reclamation fees collected, pursuant to sections three and three-a, article two-a, chapter twenty-two, as amended, which said special fees shall be used only for the purpose of reclaiming and rehabilitating the lands above referred to. The special reclamation fund shall be administered by the director of the department of natural resources. Said director shall cause to be prepared plans for the reclamation and rehabilitation of lands herein above referred to and shall prepare specifications for reclamation of said lands, and said director, as funds become available in the special reclamation fund, shall reclaim and
rehabilitate said lands in accordance with said plans and specifications, and in so doing the director shall comply with the provisions of article three, chapter five-a, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, in obtaining supplies, materials, equipment and contractual services deemed necessary by the director for the purposes of reclamation and rehabilitation of said lands.

The special reclamation fund shall remain in existence until such time as special reclamation fees have been collected and expended in the net amount of nine hundred thousand dollars, after refunds provided for in section three-a, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Sec. 9. Rules and Regulations.—The director shall promulgate rules and regulations for the effective administration of this article.

Sec. 10. Orders Shall Be in Writing.—Every adjudication, determination or finding by the director affecting the rights, duties or privileges of any person subject to this
article shall be made by written order and shall contain a written finding of fact by the director of the facts upon which the adjudication, determination or finding is based. Notice of the making of such order shall be given to the person whose rights, duties or privileges are affected thereby by mailing a true copy thereof to such person by registered mail.

Sec. 11. Reclamation Board of Review.—There is hereby created a reclamation board of review consisting of five members appointed by the governor with the advice and consent of the senate for terms of five years, except that the terms of the first five members of said board shall be for one, two, three, four and five years, respectively, as designated by the governor at the time of the appointment, except that any vacancy in the office of member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by rea-
son of his previous vocation, employment, or affiliations,

can be classed as a representative of coal surface mine

operators. One of the appointees to such board shall be

a person who, by reason of his previous training and

experience, can be classed as one learned and experienced

in modern forestry practices. One of the appointees to

such board shall be a person who, by reason of his

previous training and experience, can be classed as one

capable and experienced in the practice of agriculture.

One of the appointees to such board shall be a person

who, by reason of his previous training and experience,

can be classed as one capable and experienced in earth-
grading problems. One of the appointees to such board

shall be a person who, by reason of his previous train-
ing and experience, can be classed as one capable and

experienced in water conservation problems. Not more

than three members shall be members of the same poli-
tical party.

The board may designate an employee of the reclama-
tion division to act as its secretary. Such secretary shall

perform such duties as the board prescribes.
Three members constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings.

Each member shall be paid as compensation for his work as such member twenty dollars per day when actually engaged in the performance of his work as a member and when engaged in travel necessary in connection with such work from funds appropriated for such purpose. In addition to such compensation each member shall be reimbursed for all traveling, hotel and other expenses necessarily incurred in the performance of his work as a member.

Annually one member shall be elected as chairman and another member shall be elected as vice-chairman. Such officers shall serve for terms of one year.

The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance, after delivering to such member the charges against him in writing together with at least ten days' written notice of the time and
place at which the governor will publicly hear such member, either in person or by counsel, in defense of the charges against him. If such member is removed from office, the governor shall file in the office of the secretary of state a complete statement of the charges made against such member and a complete report of the proceedings thereon. In such case the action of the governor removing such member from office is final.

Sec. 12. Appeal to Board.—Any person claiming to be aggrieved or adversely affected by any order of the director or by his failure to enter an order may appeal to the reclamation board of review for an order vacating or modifying such order, or for such order as the director should have entered.

The person so appealing to the board shall be known as appellant and the director shall be known as appellee. Appellant and appellee shall be deemed to be parties to the appeal.

Such appeal shall be in writing and shall set forth the order or omission complained of and the grounds upon which the appeal is based. Where appellant claims to be
adversely affected by an order, such appeal shall be filed with the board within thirty days after the date upon which appellant received notice by registered mail of the making of the order complained of. Notice of the filing of such appeal shall be filed with the director within three days after the appeal is filed with the board.

Within seven days after receipt of such notice of appeal the director shall prepare and certify to the board at the expense of appellant a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the director's file relating to the matter.

Upon the filing of such appeal the board shall fix the time and place at which the hearing on the appeal will be held, which hearing shall be held within twenty days after notice of appeal is filed, and shall give appellant and the director at least ten days' written notice thereof by mail. The board may postpone or continue any hearing upon its own motion or upon application of appellant or of the director.
The filing of an appeal provided for in this section shall stay execution of the order appealed from.

The board shall hear the appeal de novo, and either party to the appeal may submit evidence.

For the purpose of conducting a hearing on an appeal, the board may require the attendance of witnesses and the production of books, records, and papers, and it may, and at the request of any party it shall, issue subpoenas for witnesses or *subpoenas duces tecum* to compel the production of any books, records, or papers directed to the sheriff of the counties where such witnesses are found, which subpoenas shall be served and returned in the same manner as subpoenas in civil litigation are served and returned. The fees and mileage of sheriffs and witnesses shall be the same as those allowed in litigation in trial courts. Such fees and mileage expenses incurred at the request of appellant shall be paid in advance by appellant, and the remainder of such expenses shall be paid out of funds appropriated for the expenses of the division of reclamation.

In case of disobedience or neglect of any subpoena
served on any person, or the refusal of any witnesses to
testify to any matter regarding which he may be law-
fully interrogated, the circuit court of the county in
which such disobedience, neglect, or refusal occurs, or
any judge thereof, on application of the board or any
member thereof, shall compel obedience by attachment
proceedings for contempt as in the case of disobedience
of the requirements of a subpoena issued from such court
or a refusal to testify therein. Witnesses at such hearings
shall testify under oath, and any member of the board
may administer oaths or affirmations to persons who so
testify.

At the request of any party to the appeal, a stenographic
record of the testimony and other evidence submitted
shall be taken by an official court shorthand reporter at
the expense of the party making the request therefor.
Such record shall include all of the testimony and other
evidence and the rulings on the admissibility thereof
presented at the hearing. The board shall pass upon the
admissibility of evidence, but any party may at the time
object to the admission of any evidence and except to the
rulings of the board thereon, and if the board refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

If upon completion of the hearing the board finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the board finds that such order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order which it finds the director should have made; and if the board finds that the director has unreasonably or unlawfully failed to act or enter an order it shall enter such order as it finds the director should have made. Every order made by the board shall contain a written finding by the board of the facts upon which the order is based. Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by registered mail.

The order of the board shall be final unless vacated by a circuit court on appeal.
Sec. 13. Appeal to Court.—Any party adversely affected by an order of the reclamation board of review may appeal to the circuit court of Kanawha county or the circuit court of the county where the land involved in the controversy may be. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law or questions of law and fact. A copy of such notice shall also be filed by appellant with the court and shall be mailed or otherwise delivered to appellee. Such notices shall be filed and mailed or otherwise delivered within thirty days after the date upon which appellant received notice from the board by registered mail of the making of the order appealed from. No appeal bond shall be required to make either an appeal on questions of law or an appeal on questions of law and fact effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order
pending determination of the appeal, the court may grant
a suspension of such order and fix its terms.

Within fifteen days after receipt of the notice of appeal
the board shall prepare and file in the court the complete
record of proceedings out of which the appeal arises,
including a transcript of the testimony and other evidence
which has been submitted before the board. The expense
of preparing and transcribing such record shall be taxed
as a part of the costs of the appeal. Appellant shall pro-
vide security for costs satisfactory to the court. Upon
demand by a party the board shall furnish at the cost of
the party requesting the same a copy of such record. In
the event such complete record is not filed in the court
within the time provided for in this section either party
may apply to the court to have the case docketed, and the
court shall order such record filed.

Appeals taken on questions of law, facts or both, shall
be heard upon assignments of error filed in the cause or
set out in the briefs of the appellant. Errors not
argued by brief may be disregarded, but the court may
consider and decide errors which are not assigned or
argued.
The hearing before the court shall be upon the record made before the reclamation board of review. The court may set aside any findings of fact of the reclamation board of review which are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or which are determined by the court to involve a clearly unwarranted exercise of discretion. The judgment of the court shall be final unless reversed, vacated, or modified on appeal to the supreme court of appeals of West Virginia and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided for civil appeals generally.

CHAPTER 22. MINES AND MINERALS

Article 2-a. Surface Mining.

Section 1. Legislative Purpose; Apportionment of Responsibility.—The Legislature finds and declares that the department of mines shall have jurisdiction and control over all aspects of surface mining as an industrial enterprise: Provided, however, That the jurisdiction and control over land and soil aspects of surface mining and
the restoration and reclamation of lands surface mined
and the areas affected thereby shall be under the juris-
diction and control of the department of natural re-
sources. The director of the department of mines and
the director of natural resources shall correlate and
coordinate their respective departmental programs and
records so as to effect an orderly and harmonious ad-
ministration of the provisions of this article.

Sec. 2. Definitions.—For the purpose of this ar-
ticle, the term “surface mining” shall include all in-
dustrial activity for the recovery of minerals, except
those subject to the provisions of articles one, two,
four, five and seven of chapter twenty-two of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, and subject to such excep-
tion, shall include plant and equipment used in process-
ing said minerals.

For the purpose of this article, a “surface mine” shall
include all areas surface mined or being surface mined,
as well as adjacent areas ancillary to the operation, to-
gether with preparation and processing plants, storage
areas and haulageways: *Provided*, That such areas are sufficiently concentrated that they can be adequately supervised by one foreman: *And provided further*, That mines subject to the provisions of articles one, two, four, five and seven of chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are not "surface mines" within this definition.

For the purpose of this article, "disturbed land" shall include the area from which the overburden has been removed in surface mining operations, plus the area covered by the spoil, plus any areas used in surface mining operations which by virtue of their use are susceptible to excessive erosion.

For the purpose of this article, "operator" shall mean any individual, a corporation, a partnership, an association or a trust which is granted a permit to engage in any activity covered by this article.

**Sec. 3. Permit Required; Fees and Use of Proceeds.**

It shall hereafter be unlawful for any person, firm, partnership, association, trust or corporation, to engage in surface mining without having first obtained from the
department of mines a permit therefor as provided in this section. Application for a surface mining permit shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant, its principal executive officer or officers and a majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons having the power of control over the management of the applicant). The application, in addition to such other information as may be reasonably required by the director shall contain the following information:

1. The common name and geologic title, where applicable, of the mineral or minerals to be extracted;
2. a map as provided in section eight hereof;
3. the owner or owners of the surface of the land;
4. the owner or owners of the mineral;
5. the source of the operator's legal right to enter and conduct operations on the land covered by the permit;
6. a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit during the en-
suing one and one-half years; (7) the permanent and temporary post office addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface mining permits are now held and the numbers thereof; (9) the names and post office addresses of every officer, partner, director (or person performing a similar function), of applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten percent or more of any class of stock of the applicant; (10) if known, whether applicant, any subsidiary or affiliate or any person, partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface or strip mining permit issued under the laws of this state revoked or has ever had a surface or strip mining bond, or security deposited in lieu of bond, forfeited.

Upon filing of an application in proper form accompanied by the fees and bond or other security required by this article the director shall issue the permit applied for, unless the director finds that the applicant is or has
been affiliated with or managed, or controlled by, or is
or has been under common control with a person, part-
nership, association, trust or corporation which has had
a surface or strip mining permit revoked or bond or other
security forfeited for failure to reclaim lands as required
by the laws of this state; Provided, however, That no
surface mining permit shall be refused because of any
past revocation of a permit or forfeiture of a bond or
other security if, after such revocation or forfeiture the
lands disturbed have been properly reclaimed without
cost to the state or there has been paid into the surface
mining reclamation fund such sum, as the director of
the department of natural resources finds is adequate to
reclaim such lands.

The permit shall be valid for one year from its date
of issue. Upon verified application, containing such in-
formation as the director may reasonably require, accom-
panied by such additional fees, bond or other security
as is required by this article, the director shall from year
to year renew the permit.
Except as otherwise herein provided, a registration fee of ten dollars shall be paid to the department of mines for each surface mine, and said registration fee shall be paid upon application for the permit for such surface mine. Registration fees for surface mine permits other than permits for surface mining of coal shall be deposited with the state treasurer to the credit of the general revenue fund.

The registration fee for permits for surface mining of coal whether by open cut, auger method or by highwall mechanical mining shall be one hundred dollars. The annual renewal fee for permits for surface mining of coal shall be fifty dollars payable on the anniversary date of said permit upon renewal.

Any operator who shall fail to request an annual renewal of any permit issued in accordance with this section and any operator who fails to pay any fees provided for in this article shall, in the discretion of the director, have his permit revoked by said director.

An operator who has been issued a surface mining permit may use any of the usual methods of mining, in-
including the auger method or highwall mechanical mining or a combination of mining methods described in section two, surface mining.

All registration and renewal fees for surface mining of coal shall be collected by the director and shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund created in section eight, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Sec. 3-a. Special Reclamation Fees.—In addition to the fees required in section three of this article, every applicant for a permit to surface mine coal shall, before said permit be issued, pay to the director a special reclamation fee of thirty dollars for each acre of land affected in the mining operation.

For the purpose of this article the area of land affected shall consist of the area from which the coal is actually produced after removal of the overburden, plus the acreage on which the overburden from the production area is deposited, delimited by lines perpendicular to the
highwall; except that in highwall mechanical mining, the area of land affected shall consist of the area of surface disturbed immediately adjacent to the highwall, plus the acreage on which excavated material is deposited. The initial payment shall be based on the same number of acres for which bond is posted. Every operator who shall amend his permit to surface mine coal to include additional acreage as provided in section five hereof shall at the same time as additional bond is furnished as provided in said section five, pay to the director a special reclamation fee of thirty dollars for each additional acre of land to be included in said operator's permit. Maps which are submitted as required in section eight shall indicate any affected areas from which coal has not been loaded. The director shall determine if special reclamation fees for each acre of land affected have been paid by such operator. In the event that all said fees have not been paid then said operator shall pay said fee or fees, as above set forth. In the event that said operator shall have paid a fee or fees for more acres than actually affected, the director shall certify said overpayment to the direc-
tor of natural resources who shall have refunded out of
the special reclamation fund such overpayment.

The director shall deposit with the treasurer of the
state of West Virginia to the credit of the special recla-
mation fund all special reclamation fees collected. All
refunds made by authority of this section shall be made
from said fund, which said fund was created in section
eight, article six, chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended. Said fees shall be collected only until such
time as the special reclamation fund shall expire as pro-
vided in said section.

Sec. 4. Inactive Permits.—The director, in his discre-
tion, may issue an inactive status permit to any operator
who has discontinued the production of coal on the area
covered by surface mining permit or permits. The di-
rector shall, prior to the granting of such inactive status,
ascertain from the director of natural resources that
sufficient reclamation work on lands disturbed shall
have been completed: Provided, however, That access
roads constructed in a manner approved by the director
of natural resources shall not be reclaimed: And provided further, That the operator shall maintain his right of entry. The annual renewal fee for inactive status permits shall be ten dollars.

Sec. 5. Performance Bond.—Each operator who shall make application for a permit under section three of this article shall, at the time such permit is requested, furnish bond on a form to be prescribed and furnished by the director payable to the state of West Virginia and conditioned that the operator shall faithfully perform all of the requirements of this article and the provisions of article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended. The amount of bond shall be one hundred fifty dollars per acre of land based upon the number of acres of land which the operator estimates will be disturbed by surface mining during the next ensuing one and one-half years. The minimum amount of bond furnished shall be one thousand dollars. Such bond shall be executed by the operator and a corporate surety licensed to do business in the state of West Virginia: Provided, however,
That in lieu of corporate surety, the operator may elect to deposit with the director cash or collateral securities as follows: bonds of the United States and its possessions; of the federal land banks; of the home owners 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. The cash deposit or market value of such securities shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash or securities, immediately place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purposes for which such deposit is made. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written order of the director, the whole or any portion of any securities so deposited, upon depositing with him, in lieu thereof, cash or other securities of the classes herein specified having value equal to or greater than the sum of the bond.
The director shall deliver to the director of the department of natural resources the corporate surety or a copy of the treasurer's receipt for collateral securities or cash deposited together with a copy of the permit, the permit application and a copy of the map for which the bond is posted.

Within sixty days following the anniversary date of the permit, the operator shall post additional bond in the amount of one hundred fifty dollars per acre for each additional acre estimated to be disturbed during the next year following the anniversary date of the permit. At this time bond previously posted may be released for any areas upon which reclamation work has been completed as provided for in section seven, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

In the event that the operator's estimate of land to be disturbed is less than the actual area disturbed, the operator shall file additional bond sufficient to cover an amended estimate of lands to be disturbed by surface
mining operations. No filing fee shall be required in the
filing of additional bond.

It shall be unlawful for any owner or owners of surface
rights or the owner or owners of mineral rights to inter-
fere with the operator in the discharge of his obligations
to the state for the reclamation of lands disturbed by
him. If the owner or owners of surface rights or the
owner or owners of mineral rights desire other operators
to conduct mining operations on lands disturbed by the
operator furnishing bond hereunder, it shall be the duty
of said owner or owners to require that the other operator
or operators have secured the necessary mining permit
and furnished suitable bond as provided herein in the
amount of one hundred fifty dollars an acre for that por-
tion of the disturbed area required for such operations.
The director shall certify to the director of the depart-
ment of natural resources that such bond has been posted
and permit issued. The director of the department of
natural resources shall then release an equivalent amount
of bonds of the operator originally furnishing bond on
the disturbed area.
Sec. 6. Performance Bond on Existing Permits.—Any operator holding a valid surface mining permit upon which tonnage has been produced within one year preceding the effective date of this article or any operator holding a valid surface mining permit upon which mining operations have not been commenced prior to the effective date of this article shall have the option of converting such permit, and the bonds posted therefor, to comply with the provisions of sections three and five of this article.

Sec. 7. Regulations for the Preservation of Life and Property.—All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The director of the department of mines shall have the power and authority to promulgate reasonable rules and regulations to effectuate the purpose of this article and to protect the safety of those employed in and around surface mines.

For the administration of mining laws and regulations, all surface mining operations shall be supervised by the
surface mining inspection force as provided in section eight hereof. All underground mining operations of whatever character shall be supervised by the mine inspectors as provided in section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Oil and gas wells shall be supervised by the oil and gas division of the department of mines.

Sec. 8. Maps, Plans and Locations.—Except as otherwise provided in the code of West Virginia, one thousand nine hundred thirty-one, as amended, applications shall be accompanied by a United States geological survey topographic map on which the operator has indicated the location of the operation. A monument as prescribed by the department of mines shall be placed in an approved location near the operation. If operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional location maps before mining on other areas. Within sixty days following the anniversary date of the permit, the operator shall furnish the department of mines
five copies of a map, prepared by a registered professional
civil engineer, mining engineer or land surveyor, showing
the area disturbed by operations. Such map shall be
furnished no later than sixty days following the anniversary date of the permit. Such map shall also show completed reclamation work. Maps shall include a geologic survey sketch showing the location of the operation and be properly referenced to a permanent land mark, and all work shall have an accuracy of not less than one in three hundred. If no land has been disturbed by operations during the preceding year, the operator shall notify the department of mines of this fact. A final map shall be submitted within three months after completion of mining operations. Failure to submit maps or notices at specified times shall cause the permit to be suspended.

Sec. 9. Surface Mining Supervisor and Inspectors; Appointment and Qualifications; Compensation and Expenses.—Not more than six surface mining inspectors and a state surface mining supervisor shall be appointed by the director of the department of mines. All such appointees shall be citizens of West Virginia in good health.
not less than thirty nor more than fifty-five years of age,
of good character and reputation, and temperate in
habits. Each of them shall have had at least five
years practical experience in surface mining in West
Virginia. The surface mining supervisor shall be paid not
less than six thousand six hundred dollars and not more
than seven thousand five hundred dollars per annum, and
the surface mining inspectors shall be paid not less than
six thousand dollars and not more than six thousand
four hundred dollars per annum. Each shall be allowed
reasonable traveling expenses when itemized by the
claimant who shall verify upon oath that such expenses
were actually incurred in the discharge of his official
duties for the department of mines. Within the limits
provided in this section, the salary of the supervisor and
of each inspector shall be fixed by the director of the de-
partment of mines, and in fixing such salaries the director
shall consider ability, performance of duty, responsibility
and experience of each. All such salaries and expenses
shall be paid from the department of mines funds.
Sec. 10. Duties of Surface Mining Supervisor and Inspectors Generally; Eligibility for Permanent Appointment; Tenure; Interest in Mining Operation; Oath and Bond.—The surface mining supervisor and surface mining inspectors shall make all necessary surveys and inspections of surface mining operations, shall effect practical and effective administration and enforcement of all mining laws and rules of the state applicable to surface mining, and shall perform such other duties and services as may be prescribed by the director of the department of mines.

No person shall be eligible for permanent appointment as surface mining supervisor or surface mining inspector until he has served in a probationary status for a period of one year to the satisfaction of the director of the department of mines. The surface mining supervisor and the surface mining inspectors serving as such on the effective date of this section shall retain such rights as they have accrued. Any person receiving permanent appointment as surface mining supervisor or surface mining inspector shall have permanent tenure until he becomes
sixty-five years of age, subject to removal only for physical or mental impairment, neglect of duty, drunkenness, malfeasance in office, or official misconduct. No person serving as surface mining supervisor or surface mining inspector shall be interested, directly or indirectly, as owner, operator, or stockholder of any mining operation in the state of West Virginia, and the existence or acquisition of such interest on the part of any such inspector shall immediately vacate his position.

Before any such supervisor or inspector shall enter upon the discharge of his duties, he shall take and subscribe to the public official’s oath as prescribed by the constitution of West Virginia, and shall execute a bond in the penal sum of two thousand dollars with surety approved by the director of the department of mines and conditioned upon the faithful discharge of his duties. Premiums on such bonds shall be paid from department of mines funds, and all such executed bonds and oaths shall be filed in the office of the secretary of state.

Sec. 11. Monthly Report by Operator.—The operator of every surface mine shall, on or before the end of each
calendar month, file with the director a report covering
the preceding calendar month on forms furnished by the
director. Such reports shall state the number of acci-
dents which have occurred, the number of persons em-
ployed, the days worked and the actual tonnage mined.

Sec. 12. Offenses; Penalties; Prosecutions.—Any per-
son, partnership, association, member of such partner-
ship or association, corporation, or trust, who shall con-
duct or allow to be conducted any surface mining oper-
ation, or any part thereof, without a permit or without
having furnished the required bond, or who shall carry
on such operation or be a party thereto on land not
covered by a permit; or who shall fail to submit a
monthly report as required in section eleven hereof, or
who shall falsely represent any material fact in an appli-
cation for a permit or in an application for a renewal
of a permit, and any owner or owners of surface or sur-
face rights or any owner or owners of minerals or mineral
rights who shall violate any provisions of section five
hereof shall be guilty of a misdemeanor, and upon con-
viction thereof, shall be fined an amount not exceeding
one thousand dollars for each such offense. It shall be the duty of the director to institute prosecutions for the violations of the provisions hereof. Any person aforesaid, convicted under the provisions of this section, shall, in addition to any fine imposed, pay to the director for deposit in the surface mining reclamation fund an amount sufficient to reclaim the area upon which such conviction was based in accordance with the provisions of section four, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended. The director may institute any suit or other legal action necessary for the effective administration of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]
Chairman Senate Committee
Chairman House Committee

Originated in the House.

Takes effect July 1, 1963.

[Signatures]
Clerk of the Senate

[Signatures]
Clerk of the House of Delegates

[Signatures]
President of the Senate
Speaker House of Delegates

The within approved this the 14th day of March, 1963.

[Signature] Governor