

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

Com. Sub. for
SENATE BILL NO. 61

(By Mr. *Cason* [Mr. President] and
Mr. Gainer original sponsors)

PASSED March 9, 1967

In Effect July 1, 1967 Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
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ENROLLED
NATURAL RESOURCES
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 61

(MR. CARSON [MR. PRESIDENT] and MR. GAINER original sponsors)

[Passed March 9, 1967; in effect July 1, 1967.]

AN ACT to repeal article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to surface mining; and to repeal article six, chapter twenty of said code and to enact in lieu thereof a new article six, relating to surface mining and the reclamation of surface mined lands in West Virginia; providing for the regulation of surface mining; providing penalties; and authorizing under certain circumstances the recovery of treble damages for property damage resulting from surface mining.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article six, chapter twenty of said code, be repealed and a new article six enacted in lieu thereof to read as follows:

§20-6-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.

Except as otherwise provided in section twenty-one of
2 this article, the department of natural resources is hereby
3 vested with jurisdiction over all aspects of surface min-
4 ing and with jurisdiction and control over land, water
5 and soil aspects pertaining to surface-mining operations,
6 and the restoration and reclamation of lands surface
7 mined and areas affected thereby.

8 The Legislature finds that, although surface mining
9 provides much needed employment and has produced
10 good safety records, unregulated surface mining causes
11 soil erosion, pyritic shales and materials, landslides, nox-
12 ious materials, stream pollution and accumulation of
13 stagnant water, increases the likelihood of floods and

14 slides, destroys the value of some lands for agricultural
15 purposes and some lands for recreational purposes, de-
16 stroys aesthetic values, counteracts efforts for the con-
17 servation of soil, water and other natural resources, and
18 destroys or impairs the health, safety, welfare and prop-
19 erty rights of the citizens of West Virginia, where proper
20 reclamation is not practiced.

21 The Legislature also finds that there are wide varia-
22 tions regarding location and terrain conditions surround-
23 ing and arising out of the surface mining of minerals,
24 primarily in topographical and geological conditions, and
25 by reason thereof, it is necessary to provide the most
26 effective, beneficial and equitable solution to the problems
27 involved.

28 The Legislature further finds that authority should
29 be vested in the director of the department of natural
30 resources to administer and enforce the provisions of this
31 article.

32 The director of the department of natural resources
33 and the director of the department of mines shall co-
34 operate with respect to departmental programs and rec-

35 ords so as to effect an orderly and harmonious adminis-
36 tration of the provisions of this article. The director of
37 natural resources may avail himself of any services which
38 may be provided by other state agencies in this state and
39 other states or by agencies of the federal government,
40 and may reasonably compensate them for such services.
41 He may also receive any federal funds, state funds or any
42 other funds for the reclamation of land affected by sur-
43 face mining. The department of mines and all depart-
44 ments, schools and colleges of West Virginia University
45 shall cooperate fully with the division of reclamation of
46 the department of natural resources in administering and
47 enforcing the provisions of this article.

48 No public officer or employee in the department of nat-
49 ural resources, the department of mines, or the office of
50 attorney general, having any responsibility or duty either
51 directly or of a supervisory nature with respect to the ad-
52 ministration or enforcement of this article shall (1) en-
53 gage in surface mining as a sole proprietor or as a partner
54 or (2) be an officer, director, stockholder, owner or part-
55 owner of any corporation or other business entity en-

56 gaged in surface mining or (3) be employed as an at-
57 torney, agent or in any other capacity by any person, part-
58 nership, firm, association, trust, or corporation engaged in
59 surface mining. Any violation of this paragraph by any
60 such public officer or employee shall constitute grounds
61 for his removal from office or dismissal from his employ-
62 ment, as the case may be.

§20-6-2. Definitions.

Unless the context in which used clearly requires a
2 different meaning as used in this article:

3 (a) "Surface mining" shall mean all industrial ac-
4 tivity for the recovery of minerals, except those activ-
5 ities subject to the provisions of articles one, two, four,
6 five and seven, chapter twenty-two of the code of West
7 Virginia, one thousand nine hundred thirty-one, as
8 amended, and subject to such exception, shall include
9 plant and equipment used in processing said minerals;

10 (b) "Surface mine" shall mean all areas surface
11 mined or being surface mined, as well as adjacent areas
12 ancillary to the operation, together with preparation and
13 processing plants, storage areas and haulageways: *Pro-*

14 *vided*, That mines subject to the provisions of article one,
15 two, four, five and seven, chapter twenty-two of said code,
16 are not “surface mines” within this definition;

17 (c) “Disturbed land” or “land disturbed” shall mean
18 (1) the area from which the overburden has been re-
19 moved in surface-mining operations, (2) the area covered
20 by the spoil, and (3) any areas used in surface mining
21 operations which by virtue of their use are susceptible to
22 excessive erosion including all lands disturbed by the con-
23 struction or improvement of haulageways;

24 (d) “Minerals” as used in this article shall mean coal,
25 clay, manganese and iron ore;

26 (e) “Director” shall mean the director of natural re-
27 sources or his authorized agents;

28 (f) “Operator” shall mean any individual, partnership,
29 firm, association, trust, or corporation who or which is
30 granted a permit to engage in any activity covered by this
31 article; and

32 (g) “Person” shall mean any individual, partnership,
33 firm, association, trust or corporation.

§20-6-3. Division of reclamation; duties and functions; selections, duties and compensation.

There is hereby created within the department of
2 natural resources a division of reclamation, and the direc-
3 tor of natural resources shall appoint and fix the compen-
4 sation of the head of said division who shall be known as
5 the chief of the division of reclamation. Said chief shall
6 have graduated from an accredited four-year college or
7 university with a degree in the field of engineering,
8 agriculture, forestry or related resource field, and shall
9 have four years of full-time paid employment in some
10 phase of natural resources management, two years of
11 which must have been in a supervisory or administrative
12 capacity.

13 Except as otherwise provided in this article, the di-
14 vision shall administer all of the laws of this state relating
15 to surface mining and subject to the approval of the di-
16 rector of natural resources shall exercise all of the powers
17 and perform all of the duties by law vested in and im-
18 posed upon said director in relation to said operations.

19 The division of reclamation shall have within its jurisdic-

20 tion and supervision all lands and areas of the state, mined
21 or susceptible of being mined, for the removal of min-
22 erals and all other lands and areas of the state deforested,
23 burned over, barren or otherwise denuded, unproductive
24 and subject to soil erosion and waste. Included within
25 such lands and areas shall be lands seared and denuded
26 by chemical operations and processes, abandoned coal-
27 mining areas, swamplands, lands and areas subject to
28 flowage easements and backwaters from river locks and
29 dams, and river, stream, lake and pond shore areas sub-
30 ject to soil erosion and waste. The jurisdiction and super-
31 vision exercised by the division shall be consistent with
32 other provisions of this chapter, and the division shall
33 cooperate with other offices and divisions of the depart-
34 ment.

**§20-6-4. Surface-mining reclamation supervisors and inspec-
tors; appointment and qualifications.**

The director shall determine the number of surface
2 mining reclamation supervisors and inspectors needed to
3 carry out the purposes of this article and appoint them as
4 such. All such appointees shall be qualified civil service

5 employees, but no person shall be eligible for such ap-
6 pointment until he has served in a probationary status
7 for a period of one year to the satisfaction of the director
8 of natural resources: *Provided*, That the provisions of this
9 section shall not affect the status of persons employed on
10 the effective date of this article as reclamation inspectors
11 under the former provisions of this article, if such persons
12 are qualified civil service employees.

§20-6-5. Duties of surface mining reclamation inspectors.

The surface mining reclamation inspectors shall make
2 all necessary surveys and inspections of surface-mining
3 operations, shall administer and enforce all surface-min-
4 ing laws, rules and regulations, and shall perform such
5 other duties and services as may be prescribed by the
6 director of the department of natural resources. Such
7 inspectors shall give particular attention to the condi-
8 tions of each permit to insure compliance therewith. The
9 director shall cause inspections to be made of each surface
10 mining operation in this state by a surface-mining recla-
11 mation inspector at least once every thirty days. Said in-
12 spector shall note all violations of law thereat and report

13 the same to the director in writing, furnishing a copy of
14 said report to the operator concerned.

§20-6-6. Reclamation commission; duties, functions and compensation.

There is hereby created and established in the department of natural resources a reclamation commission which shall be composed of the director of natural resources, serving as chairman, the chief of the division of reclamation, and the director of the department of mines. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for their expenses incurred in performing their functions. The commission shall meet upon the call of any member. The director, if he deem such action necessary, may request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and appoint one or more assistant attorneys general, to serve at the will and pleasure of the attorney general, and such assistant or assistants, shall be paid out of any

18 funds made available for that purpose by the Legislature
19 to the department of natural resources.

20 The commission shall have authority to:

21 (a) Promulgate reasonable rules and regulations, in
22 accordance with the provisions of chapter twenty-nine-a
23 of this code, to implement the provisions of this article;

24 (b) Make investigations or inspections necessary to
25 insure compliance with the provisions of this article;

26 (c) Conduct hearings under provisions of this article
27 or rules and regulations adopted by the commission and
28 for the purpose of any investigation or hearing, here-
29 under, the commission or any member thereof may
30 administer oaths or affirmations, subpoena witnesses,
31 compel their attendance, take evidence and require pro-
32 duction of any books, papers, correspondence, memoranda,
33 agreements, or other documents or records relevant or
34 material to the inquiry;

35 (d) Order, through the director, the suspension of
36 any permit for failure to comply with any of the pro-
37 visions of this article or any rules and regulations adopted
38 pursuant thereto;

39 (e) Order, through the director, a cease and desist
40 order of any operation that is started without a permit
41 as required by law;

42 (f) Appoint such advisory committees as may be of
43 assistance to the commission in the development of pro-
44 grams and policies; and

45 (g) Review orders and decisions of the director.

§20-6-7. Prospecting permit; bond.

It shall hereafter be unlawful for any person to use
2 excavating equipment in an area not covered by a surface
3 mine permit for the purpose of removing the overburden
4 to determine the location, quantity or quality of a natural
5 coal deposit, making feasibility studies or for any other
6 purpose without having first obtained from the depart-
7 ment of natural resources a permit therefor as provided
8 in this section. Application for a prospecting permit shall
9 be made in writing on forms prescribed by the director
10 of natural resources and shall be signed and verified by
11 the applicant. The application shall be accompanied by:
12 (1) a United States geological survey topographic map
13 showing by proper markings the crop line and the name,

14 where known, of the seam or seams to be prospected;
15 (2) a reclamation plan for the proposed disturbed areas
16 as required for holders of surface mining permits in sec-
17 tion nine of this article; and (3) a bond, or cash or col-
18 lateral securities or certificates of the same type, form
19 and amount and in the same manner as provided in sec-
20 tion sixteen of this article in the amount of one hundred
21 fifty dollars per acre for the total estimated disturbed
22 acreage. If such bond is used it shall be payable to the
23 state of West Virginia and conditioned that the operator
24 shall faithfully perform the requirements of this article
25 as they relate to reclamation of the disturbed acreage.
26 The prospecting permit and the bond accompanying said
27 permit shall be released by the director in the same man-
28 ner as surface-mining permits and bonds are released.
29 In the event the holder of a prospecting permit desires to
30 mine the area covered by the prospecting permit, the di-
31 rector shall permit such holder to convert the prospecting
32 permit to a surface mining permit, provided the holder of
33 said permit shall comply with the provisions of this arti-
34 cle as they relate to surface mining permits.

§20-6-8. Permit required; applications; issuance and renewals; fees and use of proceeds.

It shall hereafter be unlawful for any person to engage
2 in surface mining without having first obtained from the
3 department of natural resources a permit therefor as pro-
4 vided in this section. Application for a surface-mining
5 permit shall be made in writing on forms prescribed by
6 the director of natural resources, and shall be signed and
7 verified by the applicant. The application, in addition to
8 such other information as may be reasonably required by
9 the director, shall contain the following information:
10 (1) The common name and geologic title, where applic-
11 able, of the mineral or minerals to be extracted; (2)
12 maps and plans as provided in section nine hereof; (3)
13 the owner or owners of the surface of the land to be
14 mined; (4) the owner or owners of the mineral to be
15 mined; (5) the source of the operator's legal right to
16 enter and conduct operations on the land to be covered
17 by the permit; (6) a reasonable estimate of the number
18 of acres of land that will be disturbed by mining on the
19 area to be covered by the permit; (7) the permanent and

20 temporary post office addresses of the applicant and of
21 the owners of the surface and the mineral; (8) whether
22 any surface-mining permits are now held and the num-
23 bers thereof; (9) the names and post office addresses of
24 every officer, partner, director (or person performing a
25 similar function), applicant, together with all persons,
26 if any, owning of record or beneficially (alone or with
27 associates), if known, ten per cent or more of any class
28 of stock of the applicant: *Provided*, That if such list be so
29 large as to cause undue inconvenience, the director may
30 waive the requirement that such list be made a part of such
31 application; (10) if known, whether applicant, any sub-
32 sidiary or affiliate or any person controlled by or under
33 common control with applicant, or any person required to
34 be identified by item (9) above, has ever had a surface or
35 strip mining permit issued under the laws of this state
36 revoked or has ever had a surface mining bond, or security
37 deposited in lieu of bond, forfeited; and (11) the reputed
38 owner or owners of all surface area within five hundred
39 feet of any part of proposed disturbed land. There shall
40 be attached to the application a certificate of insurance

41 certifying that the applicant has in force a public liability
42 insurance policy issued by an insurance company author-
43 ized to do business in this state covering all surface-
44 mining operations of the applicant in this state and afford-
45 ing personal injury and property damage protection in a
46 total amount of not less than fifty thousand dollars.

47 Upon the filing of an application in proper form, ac-
48 companied by the fees and bond required by this article
49 and said certificate of insurance, the director of natural
50 resources may issue the permit applied for if the applicant
51 has complied with all of the provisions of this article. If
52 the director finds that the applicant is or has been affili-
53 ated with or managed or controlled by, or is or has been
54 under the common control of, other than as an employee,
55 a person who or which has had a surface or strip mining
56 permit revoked or bond or other security forfeited for
57 failure to reclaim lands as required by the laws of this
58 state, he shall not issue a permit to the applicant: *Pro-*
59 *vided, however,* That no surface mining permit shall be
60 refused because of any past revocation of a permit and
61 forfeiture of a bond or other security if, after such revo-

62 cation and forfeiture, the operator whose permit has been
63 revoked and bond forfeited shall have paid into the sur-
64 face-mining reclamation fund the full amount of the bond
65 so forfeited, and any additional sum of money determined
66 by the director of the department of natural resources to
67 be adequate to reclaim the land covered by such forfeited
68 bond.

69 The permit shall be valid for one year from its date
70 of issue. Upon verified application, containing such in-
71 formation as the director may reasonably require, ac-
72 companied by such fees and bond as are required by this
73 article, and a certificate of insurance as aforesaid, the
74 director shall from year to year renew the permit, if the
75 operation is in compliance with the provisions of this
76 article.

77 The registration fee for permits for surface mining,
78 whether by open cut, auger method or by highwall
79 mechanical mining or modification thereof, shall be one
80 hundred dollars. The annual renewal fee for permits for
81 surface mining shall be fifty dollars payable on the anni-
82 versary date of said permit upon renewal.

83 The permit of any operator who fails to pay any fees
84 provided for in this article shall be either suspended or
85 revoked.

86 An operator who has been issued a surface mining per-
87 mit may use any of the usual methods of mining, includ-
88 ing the auger method or highwall mechanical mining
89 or any combination of mining methods defined as “surface
90 mining” in section two of this article, unless otherwise
91 provided by law. Any modifications of these methods
92 shall also be under the director’s jurisdiction.

93 All registration and renewal fees for surface mining
94 shall be collected by the director and shall be deposited
95 with the treasurer of the state of West Virginia to the
96 credit of the surface reclamation fund.

§20-6-9. Preplanning plans.

Under the provisions of this article, and rules and regu-
2 lations adopted by the commission, the operator shall
3 prepare a complete reclamation plan for the area of land
4 to be disturbed. Said reclamation plan shall include, but
5 not necessarily be limited to, a proposed method of opera-
6 tion, grading, backfilling, soil preparation and planting

7 and such other proposals as may be necessary to develop
8 the complete reclamation plan contemplated by this
9 article. In developing this complete reclamation plan all
10 reasonable measures shall be taken to eliminate damages
11 to members of the public, their real and personal prop-
12 erty, public roads, streams and all other public property
13 from soil erosion, rolling stones and overburden, water
14 pollution and hazards dangerous to life and property. The
15 plan shall be submitted to the director and the director
16 shall notify the applicant by certified mail within thirty
17 days after receipt of the plan and complete application
18 if it is or is not acceptable. If the plan is not acceptable,
19 the director shall set forth the reasons why the plan is
20 not acceptable and he may propose modifications, delete
21 areas or reject the entire plan. Should the applicant disa-
22 gree with the decision of the director, he may, by writ-
23 ten notice, request a hearing before the commission. The
24 commission shall hold such hearing within thirty days
25 after receipt of this notice. When a hearing is held by
26 the commission, it shall notify the applicant of its decision
27 by certified mail within twenty days after the hearing.

28 Any person aggrieved by a final order of the commission
29 made after the hearing or without a hearing may appeal
30 to the reclamation board of review.

31 The application for a permit shall be accompanied by
32 two copies of an enlarged United States geological survey
33 topographic map meeting the requirements of the sub-
34 paragraphs below. Aerial photographs of the area shall
35 be acceptable if the plan for reclamation can be so shown
36 to the satisfaction of the director. The maps shall:

37 (a) Be prepared and certified by or under the super-
38 vision of a registered professional civil engineer or regis-
39 tered professional mining engineer, or by a land surveyor
40 approved by the director;

41 (b) Identify the area to correspond with the application;

42 (c) Show probable limits of adjacent deep mining
43 operations, probable limits of adjacent inactive or mined
44 out deep mined areas and the boundaries of surface prop-
45 erties and names of surface and mineral owners of the
46 proposed disturbed area and the reputed owner or owners
47 of the surface area within five hundred feet of any part
48 of the proposed disturbed area;

49 (d) Be of such scale as may be prescribed by the
50 director;

51 (e) Show the names and locations of all streams,
52 creeks, or other bodies of public water, roads, buildings,
53 cemeteries, oil and gas wells, and utility lines on the area
54 of land to be disturbed and within five hundred feet of
55 such area;

56 (f) Show by appropriate markings the boundaries of
57 the area of land to be disturbed, the crop line of the seam
58 or deposit of coal to be mined, and the total number of
59 acres involved in the area of land to be disturbed;

60 (g) Show the date on which the map was prepared, the
61 north point and the quadrangle sketch and exact location
62 of the operation; and

63 (h) Show the drainage plan on and away from the
64 area of land to be disturbed. Such plan shall indicate the
65 directional flow of water, constructed drainways, nat-
66 ural waterways used for drainage, and the stream or
67 tributaries receiving or to receive this discharge.

68 The director may, in the exercise of his sound discre-
69 tion, permit deviation from the map requirements pro-
70 vided for in this section.

71 The certification of the maps shall read as follows: "I,
72 the undersigned, hereby certify that this map is correct,
73 and shows to the best of my knowledge and belief all
74 the information required by the surface mining laws of
75 this state". The certification shall be signed and notarized.
76 The director may reject any map as incomplete if its ac-
77 curacy is not so attested.

78 In addition to the information and maps required above,
79 each application for a permit shall be accompanied by
80 a detailed reclamation plan as required by this article.

81 A monument as prescribed by the department of nat-
82 ural resources shall be placed in an approved location
83 near the operation. If operations under a single permit
84 are not geographically continuous, the operator shall
85 locate additional monuments and submit additional maps
86 before mining other areas.

87 Upon an order of the director, the operator shall, within
88 thirty days after service of a copy of said order upon said
89 operator by certified United States mail, furnish to the
90 department of natural resources three copies of a progress
91 map prepared by or under the supervision of a registered

92 professional civil engineer or registered professional min-
93 ing engineer, or by a land surveyor approved by the di-
94 rector, showing the area disturbed by operations to the
95 date of such map. Such progress map shall contain infor-
96 mation identical to that required for both the proposed
97 and final maps, required by this article, and shall show
98 in detail completed reclamation work, as required by the
99 director. Such progress map shall include a geologic sur-
100 vey sketch showing the location of the operation, shall be
101 properly referenced to a permanent landmark, and shall
102 be within such reasonable degree of accuracy as may be
103 prescribed by the director. If no land has been disturbed
104 by operations during the preceding year, the operator
105 shall notify the director of this fact. A final map shall be
106 submitted within sixty days after completion of mining
107 operations. Failure to submit maps or aerial photographs
108 or notices at specified times shall cause the permit in
109 question to be suspended.

§20-6-10. Alternative plans; time.

An operator may propose alternative plans not calling
2 for backfilling where a water impoundment is desired, if

3 such restoration will be consistent with the purpose of
4 this article. Such plans shall be submitted to the director,
5 and if such plans are approved by the director and com-
6 plied with within such time limits as may be determined
7 by him as being reasonable for carrying out such plans,
8 the backfilling requirements of this article may be modi-
9 fied.

10 By regulations of the commission, time limits shall be
11 established requiring backfilling, grading and planting to
12 be kept current. All backfilling and grading shall be com-
13 pleted before equipment necessary for such backfilling
14 and grading is moved from the operation: *Provided*, That
15 the director may allow said equipment to be moved be-
16 fore said backfilling and grading is completed in order to
17 prevent unreasonable hardship on the operator involved.

18 If the operator or other person desires to conduct deep
19 mining upon the premises or use a deep-mine opening for
20 haulageways or other lawful purposes, the operator may
21 designate locations to be used for such purposes at which
22 places it will not be necessary to backfill as herein pro-
23 vided for until such deep mining or other use is com-

24 pleted, during which time the bond on file for that por-
25 tion of the operation shall not be released. Such locations
26 shall be described and designated on the map required
27 by the provisions of section nine of this article.

28 When the backfilling and grading have been completed
29 and approved by the director, the director shall release
30 that portion of the bond which was filed and designated
31 to cover the backfilling and grading requirements of this
32 article, the remaining portion of the bond in an amount
33 equal to one hundred dollars per acre, but not less than a
34 total amount of one thousand dollars being retained by
35 the treasurer until such time as the planting and revege-
36 tation is done according to law and is approved by the
37 director, at which time the director shall release the re-
38 mainder of the bond.

39 After the operation has been backfilled, graded and ap-
40 proved by the director, the operator shall prepare or
41 cause to be prepared a planting plan for the planting of
42 trees, shrubs, vines, grasses or legumes upon the area of
43 the land affected in order to provide a suitable vegetative
44 cover. The seed or plant mixtures, quantities, method of

45 planting, type and amount of lime or fertilizer, and any
46 other measures necessary to provide a suitable vegetative
47 cover shall be defined by the rules and regulations of the
48 commission. Such rules and regulations shall be promul-
49 gated, under the provisions of article three, chapter
50 twenty-nine-a of this code.

51 After the regrading has been approved by the director,
52 the planting called for by the pre-plan shall be carried out
53 in a manner so as to establish a satisfactory cover of trees,
54 shrubs, grasses, legumes or vines upon the disturbed area
55 covered by the planting plan within a reasonable period
56 of time. Such planting shall be done by the operator or
57 such operator may contract in writing with the soil con-
58 servation district for the district in which the operation
59 covered by such permit is located or with a private con-
60 tractor approved by the director to have such planting
61 done by such district or private contractor. When the
62 planting and revegetation is done by the operator accord-
63 ing to law and is approved by the director, that portion
64 of the bond then in effect shall be released. If any such
65 contract is entered into and such operator deposits with

66 such district or private contractor, as the case may be, a
67 sufficient amount of money for such planting, and re-
68 sponsibility for the planting is assumed by such soil con-
69 servation district or private contractor, that portion of the
70 bond then in effect shall be released.

71 The purpose of this section is to require restoration of
72 land disturbed by surface mining to a desirable purpose
73 and use. The director may, in the exercise of his sound
74 discretion when not in conflict with such purpose, modify
75 such requirements to bring about a more desirable land
76 use, including but not limited to, industrial sites, sanitary
77 landfills, recreational areas, building sites, etc.: *Provided,*
78 That the person or agency making such modifications will
79 execute contracts, post bond or otherwise insure full com-
80 pliance with the provisions of this section in the event
81 such modified program is not carried to completion within
82 a reasonable length of time.

§20-6-11. Limitations.

The Legislature finds that there are certain areas in the
2 state of West Virginia which are impossible to reclaim
3 either by natural growth or by technological activity and

4 that if surface mining is conducted in these certain areas
5 such operations may naturally cause stream pollution,
6 landslides, the accumulation of stagnant water, flooding,
7 the destruction of land for agricultural purposes, the de-
8 struction of aesthetic values, the destruction of recrea-
9 tional areas and the future use of the area and surround-
10 ing areas, thereby destroying or impairing the health and
11 property rights of others, and in general creating hazards
12 dangerous to life and property so as to constitute an im-
13 minent and inordinate peril to the welfare of the state,
14 and that such areas shall not be mined by the surface-
15 mining process.

16 Therefore, authority is hereby vested in the director to
17 delete certain areas from all surface mining operations.

18 No application for a permit shall be approved by the
19 director if there is found on the basis of the information
20 set forth in the application or from information available
21 to the director and made available to the applicant that
22 the requirements of this article or rules and regulations
23 hereafter adopted will not be observed or that there is
24 not probable cause to believe that the proposed method of

25 operation, backfilling, grading or reclamation of the
26 affected area can be carried out consistent with the pur-
27 pose of this article.

28 If the director finds that the overburden on any part of
29 the area of land described in the application for a permit
30 is such that experience in the state of West Virginia with
31 a similar type of operation upon land with similar over-
32 burden shows that substantial deposition of sediment in
33 stream beds, landslides or acid water pollution cannot
34 feasibly be prevented, the director may delete such part of
35 the land described in the application upon which such
36 overburden exists.

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

43 The director shall not give approval to surface mine
44 any area which is within one hundred feet of any public
45 road, stream, lake or other public property and shall not

46 approve the application for a permit where the surface
47 mining operation will adversely affect a state, national or
48 interstate park unless adequate screening and other meas-
49 ures approved by the commission are to be utilized and
50 the permit application so provides: *Provided*, That the
51 one hundred-foot restriction aforesaid shall not include
52 ways used for ingress and egress to and from the minerals
53 as herein defined and the transportation of the removed
54 minerals, nor shall it apply to the dredging and removal
55 of minerals from the streams or watercourses of this state.

56 Whenever the director finds that ongoing surface min-
57 ing operations are causing or are likely to cause any of the
58 conditions set forth in the first paragraph of this section, he
59 may order immediate cessation of such operations and he
60 shall take such other action or make such changes in the
61 permit as he may deem necessary to avoid said described
62 conditions.

§20-6-12. Time in which reclamation shall be done.

It shall be the duty of an operator to commence the
2 reclamation of the area of land disturbed by his operation
3 after the beginning of surface mining of that area in ac-

4 cordance with plans previously approved by the director
5 and to complete such reclamation within twelve months
6 after the permit has expired, except that such grading,
7 backfilling and water management practices as are ap-
8 proved in the plans shall be kept current with the opera-
9 tion as defined by rules and regulations of the commis-
10 sion and no permit or supplement to a permit shall be
11 issued or renewed, if in the discretion of the director,
12 these practices are not current.

§20-6-13. Method of regrading surface mined areas.

On lands where the method of operation produces a
2 bench, backfilling shall be required and performed as fol-
3 lows: All highwalls must be reduced or backfilled. Sub-
4 ject to the discretion of the director, the steepest slope of
5 the reduced or backfilled highwall shall be no greater
6 than forty-five degrees from the horizontal: *Provided,*
7 That if the highwall is composed of materials of sufficient
8 hardness as to ordinarily require blasting to displace,
9 the commission, by rules and regulations, may modify the
10 requirements of this section; the table portion of the re-
11 stored area shall be a terrace with a slope toward the re-

12 duced highwall that will direct surface water toward the
13 highwall in such a manner as to prevent water from flow-
14 ing over the outer slope of the disturbed area; The restored
15 area shall have a minimum depth of fill over the floor of
16 the pit from which the coal has been removed sufficient to
17 cover all materials determined by the director to be acid-
18 producing, toxic or created a fire hazard and to support
19 vegetation, as may be prescribed by the director; There
20 shall be no depressions to accumulate water, but lateral
21 drainage ditches connecting to natural or constructed wa-
22 terways shall be constructed whenever directed by the
23 director; Additional restoration work may be required by
24 the director according to rules and regulations promul-
25 gated by the commission; and in addition to the backfilling
26 and grading requirements above, the operator's method of
27 operation on steep slopes may be regulated and controlled
28 according to rules and regulations adopted by the com-
29 mission. Such rules and regulations may limit bench
30 widths, control the amount of overburden to be placed
31 beyond the solid bench, prohibit any overburden from
32 being placed beyond the solid bench on precipitous slopes

33 as defined by the commission, or require any measure to
34 accomplish the purpose of this article.

35 On lands where the method of operation does not pro-
36 duce a bench, complete backfilling shall be required, not
37 to exceed the approximate original contour of the land.
38 Such backfilling shall eliminate all highwalls and spoil
39 peaks. Whenever directed by the director, the operator
40 shall construct, in the final grading, such diversion ditches
41 or terraces as will control the water runoff on long unin-
42 terrupted slopes. Additional restoration work may be
43 required by the director, according to rules and regula-
44 tions adopted by the commission.

§20-6-14. Obligations of the operator.

In addition to the method of operation, grading, back-
2 filling and reclamation requirements of this article and
3 rules and regulations adopted pursuant thereto, the oper-
4 ator shall be required to perform the following: (1) Cover
5 the face of the coal and the disturbed area with material
6 suitable to support vegetative cover of such thickness as
7 may be prescribed by the director or with a permanent
8 water impoundment; (2) Bury under adequate fill all

9 toxic materials, roof coal, pyritic shale or materials de-
10 termined by the director to be acid-producing, toxic or
11 creating a fire hazard; (3) Seal off, as directed by rules
12 and regulations, any breakthrough of acid water caused
13 by the operator; (4) Impound, drain or treat all runoff
14 water so as to reduce soil erosion, damage to agricultural
15 lands and pollution of streams and other waters; and (5)
16 Remove or bury all metal, lumber, equipment and other
17 refuse resulting from the operation.

18 No operator shall throw, dump or pile or permit the
19 dumping, piling or throwing or otherwise placing of any
20 overburden, stones, rocks, coal, particles of coal, earth,
21 soil, dirt, debris, trees, wood, logs or any other materials
22 or substances of any kind or nature beyond or outside
23 of the area of land which is under permit and for which
24 bond has been posted or place any of the foregoing in
25 such a way that normal erosion or slides brought about
26 by natural physical causes will permit the same to go
27 beyond or outside of the area of land which is under
28 permit and for which bond has been posted.

§20-6-15. Completion of planting; inspection and evaluation.

When the planting of an area is completed, the operator shall file or cause to be filed a planting report with the director on a form to be prescribed and furnished by the director, giving the following information: (1) Identification of the operation; (2) The type of planting or seeding, including mixtures and amounts; (3) The date of planting or seeding; (4) The area of land planted; and (5) Such other relevant information as the director may require. All planting reports shall be certified by the operator, or by the party with which the operator contracted for such planting, as aforesaid.

If the director authorizes an operator to defer planting to provide vegetative cover for an area of land, he shall set the time within which such planting shall be carried out. If the operator has carried out on that area of land the method of operation, backfilling, and grading and the reclamation plans approved by the director other than the planting, the director shall release that portion of the bond filed by the operator and designated to cover the backfilling and grading requirements of this article,

21 the remaining portion of the bond in an amount equal
22 to one hundred dollars per acre, to be retained until a
23 satisfactory planting plan has been carried out, or until
24 the remainder of such bond has been forfeited by the
25 operator: *Provided*, That the bond shall not be reduced,
26 because of the completion of the backfilling and grading
27 requirements, below one thousand dollars. If the re-
28 mainder of the bond is forfeited, it shall be expended
29 by the director in a planting program for the area of
30 land for which it was posted. If the operator does not
31 meet the planting requirements but does not want his
32 bond forfeited, he may pay to the director for deposit
33 in the reclamation fund a sufficient sum to cover the
34 remaining reclamation costs for the area covered by the
35 bond filed by him and such bond may then be released
36 by the director.

§20-6-16. Performance bonds.

Each operator who shall make application for a permit
2 under section eight of this article shall, at the time such
3 permit is requested, furnish bond, on a form to be pre-
4 scribed and furnished by the director, payable to the state

5 of West Virginia and conditioned that the operator shall
6 faithfully perform all of the requirements of this article.
7 The amount of the bond shall be not less than one hun-
8 dred dollars for each acre or fraction thereof of the land
9 to be disturbed: *Provided*, That the director shall have
10 the discretion to determine the amount per acre of the
11 bond that shall be required before a permit is issued,
12 such amount to be based upon the estimated reclamation
13 costs per acre, not to exceed a maximum of five hundred
14 dollars per acre or fraction thereof. The minimum
15 amount of bond furnished shall be three thousand
16 dollars. Such bond shall be executed by the operator and
17 a corporate surety licensed to do business in the state of
18 West Virginia: *Provided, however*, That in lieu of cor-
19 porate surety, the operator may elect to deposit with the
20 director cash, or collateral securities or certificates as
21 follows: Bonds of the United States or its possessions, of
22 the federal land banks, or of the home owners' loan cor-
23 poration; full faith and credit general obligation bonds of
24 the state of West Virginia, or other states, and of any
25 county, district or municipality of the state of West Vir-

26 ginia or other states; or certificates of deposit in a bank
27 in this state, which certificates shall be in favor of the
28 commission. The cash deposit or market value of such
29 securities or certificates shall be equal to or greater than
30 the sum of the bond. The director shall, upon receipt of
31 any such deposit of cash, securities or certificates, im-
32 mediately place the same with the treasurer of the state
33 of West Virginia whose duty it shall be to receive and
34 hold the same in the name of the state in trust for the
35 purposes for which such deposit is made. The operator
36 making the deposit shall be entitled from time to time to
37 receive from the state treasurer, upon the written order
38 of the director, the whole or any portion of any cash,
39 securities or certificates so deposited, upon depositing
40 with him in lieu thereof, cash or other securities or
41 certificates of the classes herein specified having value
42 equal to or greater than the sum of the bond.

43 It shall be unlawful for the owner or owners of surface
44 rights or the owner or owners of mineral rights to inter-
45 fere with the operator in the discharge of his obligations
46 to the state for the reclamation of lands disturbed by him.

47 If the owner or owners of the surface rights or the owner
48 or owners of the mineral rights desire another operator
49 or other operators to conduct mining operations on lands
50 disturbed by the operator furnishing bond hereunder, it
51 shall be the duty of said owner or owners to require the
52 other operator or operators to secure the necessary mining
53 permit and furnish suitable bond as herein provided.
54 The director may then release an equivalent amount of
55 the bond of the operator originally furnishing bond on the
56 disturbed area. The director shall determine the amount
57 of bond per acre required for other mining operations
58 within the limitations of this section: *Provided, further,*
59 That the minimum bond for this type of operation shall
60 be five hundred dollars. The director shall take into con-
61 sideration the character and nature of the overburden,
62 the future use of the land and all costs of backfilling,
63 grading and adequate reclamation, including planting,
64 and shall determine the total bond required for other
65 mining operations.

§20-6-17. Special reclamation fee.

In addition to the fees required by the provisions of sec-
2 tion eight of this article, every applicant for a permit to

3 surface mine coal shall, before said permit be issued, pay
4 to the director a special reclamation fee of thirty dollars
5 for each acre of land to be ~~distributed~~^{disturbed} in the mining opera-
6 tion, with the exception of exempted roadways, storage
7 areas and processing plants. The director shall in due
8 course determine if the special reclamation fee for each
9 acre of land disturbed has been paid by such operator. In
10 the event that all said fees have not been paid, said oper-
11 ator shall pay said fee or fees, as above set forth. In the
12 event that said operator shall have paid a fee or fees for
13 more acres than actually disturbed, the director shall
14 certify said overpayment to the treasurer who shall re-
15 fund out of the special reclamation fund such overpay-
16 ment.

17 The director shall deposit with the treasurer of the state
18 of West Virginia, to the credit of the special reclamation
19 fund, all special reclamation fees collected.

20 The special reclamation fund shall be administered by
21 the director of the department of natural resources. The
22 director shall cause to be prepared plans for the reclama-
23 tion and rehabilitation of lands which are unreclaimed

24 and for which bond is either not posted or is uncollectable
25 and shall prepare specifications for reclamation of said
26 lands, and said director, as funds become available in the
27 special reclamation fund, shall reclaim and rehabilitate
28 said lands in accordance with said plans and specifica-
29 tions, and in so doing the director shall comply with the
30 provisions of article three, chapter five-a of the code of
31 West Virginia, one thousand nine hundred thirty-one, as
32 amended, in obtaining supplies, materials, equipment and
33 contractual services deemed necessary by the director for
34 the purposes of reclamation and rehabilitation of said
35 lands.

36 Some of the special reclamation fees collected may be
37 made available for the purchase of orphaned surface-
38 mined lands, for the reclamation thereof, and for the
39 engineering, administrative and research costs necessary
40 to said reclamation, providing federal funds on a match-
41 ing basis are made available for the purpose of reclaiming
42 said orphaned surface-mined lands.

43 The director shall make an annual report to the gov-
44 ernor and to the Legislature setting forth the number of

45 acres reclaimed and rehabilitated through the use, in
46 whole or in part, of the special reclamation fund provided
47 for herein. Such report shall identify each such reclama-
48 tion project, state the number of acres reclaimed thereby,
49 and show the county wherein located, and shall make a
50 detailed accounting of expenditures from the special
51 reclamation fund.

**§20-6-18. Exception as to highway construction projects from
reclamation requirements.**

Any provision of this article to the contrary notwith-
2 standing, a person or operator shall not be subject to any
3 duty or requirement whatever with respect to reclama-
4 tion requirements when engaged in the removal for bor-
5 row and fill material for grading in federal and state
6 highway construction projects: *Provided*, That the pro-
7 visions of the highway construction contract requires the
8 furnishing of a suitable bond which provides for reclama-
9 tion wherever practicable of the area affected by such
10 recovery activity.

§20-6-19. Existing permits and performance bonds.

Any operator holding a valid surface mining permit
2 under which tonnage has been produced within one year

3 preceding the effective date of this article or any oper-
4 ator holding a valid surface mining permit under which
5 mining operations have not been commenced prior to the
6 effective date of this article shall within one hundred
7 twenty days after the effective date hereof convert such
8 permit, and the bond or bonds posted therefor, to comply
9 with the provisions of this article, as to all mining opera-
10 tions conducted and to be conducted after said effective
11 date. The provisions of this section shall not be construed
12 to require the regrading or replanting of any area on
13 which such work was satisfactorily performed prior to
14 the effective date of this article.

**§20-6-20. Applicability of laws safeguarding life and property;
rules and regulations; supervision of operations.**

All provisions of the mining laws of this state intended
2 to safeguard life and property shall extend to all surface-
3 mining operations insofar as such laws are applicable
4 thereto. The director of the department of mines shall
5 promulgate reasonable rules and regulations, in accord-
6 ance with the provisions of chapter twenty-nine-a of
7 said code, to protect the safety of those employed in and

8 around surface mines, and the enforcement of all laws,
9 and rules and regulations relating to the safety of those
10 employed in and around surface mines is hereby vested
11 in the department of mines.

§20-6-21. Monthly report by the operator.

The operator of every surface mine shall, on or before
2 the end of each calendar month, file with the director
3 of mines a report covering the preceding calendar month
4 on forms furnished by the director. Such reports shall
5 state the number of accidents which have occurred, the
6 number of persons employed, the days worked and the
7 actual tonnage mined.

**§20-6-22. Leasing of lands owned by the state for the surface
mining of coal therefrom.**

No land or interest in land owned by the state shall be
2 leased, and no present lease shall be renewed by the state,
3 nor any agency of the state, for the purpose of conduct-
4 ing surface mining operations thereon, unless said lease
5 or renewal shall have been first authorized by an act of
6 the Legislature.

§20-6-23. Participation with federal government and other governmental agencies.

In the reclamation of land disturbed by surface mining
2 for which the department of natural resources has funds
3 available, the director may avail himself of any services
4 which may be provided by other state agencies or by
5 agencies of the federal government, and may compensate
6 them for such services. The director may also receive
7 any federal funds, state funds or any other funds for the
8 reclamation of land disturbed by surface mining. The
9 director may cause the reclamation work to be
10 done by his own employees or employees of other
11 governmental agencies or soil conservation districts, or
12 through contracts with qualified vendors. Such contracts
13 shall be awarded to the lowest responsible bidder upon
14 competitive bids after reasonable advertisement. The
15 director and any other agency and any contractor under
16 a contract with the department of natural resources shall
17 have the right of access to the land affected to carry out
18 such reclamation.

19 Any funds legally available to the director and any

20 public works program legally available (both funds and
21 services) may be expended and used to reclaim and re-
22 habilitate any lands that have been subjected to surface
23 mining that have not been reclaimed and rehabilitated
24 in accordance with standards set by the director and
25 which are not covered by bond to guarantee such recla-
26 mation.

§20-6-24. Rules and regulations.

The commission shall promulgate rules and regula-
2 tions, in accordance with the provisions of chapter twenty-
3 nine-a of said code, for the effective administration of this
4 article.

§20-6-25. Non-compliance.

If any of the requirements of this article or rules and
2 regulations promulgated pursuant thereto or the orders
3 of the director and the commission have not been com-
4 plied with within the time limits set by the director or
5 the commission or by this article, the director shall cause
6 a notice of non-compliance to be served upon the opera-
7 tor, which notice shall order the operation to cease, or
8 where found necessary, the director shall order the

9 suspension of a permit. A copy of such notice or order
10 shall be handed to the operator in person or served by
11 certified mail addressed to the operator at the permanent
12 address shown on the application for a permit. The notice
13 of non-compliance or order of suspension shall specify in
14 what respects the operator has failed to comply with this
15 article or the rules and regulations of the commission or
16 orders of the director and the commission. If the operator
17 has not reached an agreement with the director or has
18 not complied with the requirements set forth in the notice
19 of non-compliance or order of suspension within the time
20 limits set therein, the permit may be revoked by order of
21 the director and the performance bond shall then be
22 forfeited. If an agreement satisfactory to the director has
23 not been reached within thirty days after suspension of
24 any permit, any and all suspended permits shall then be
25 declared revoked and the performance bonds with respect
26 thereto forfeited.

27 When any bond is forfeited pursuant to the provisions
28 of this article, the director shall give notice to the at-
29 torney general who shall collect the forfeiture without
30 delay.

§20-6-26. Adjudications, findings, etc., to be by written order; contents; notice.

Every adjudication, determination or finding by the
2 commission or director affecting the rights, duties or
3 privileges of any person subject to this article shall be
4 made by written order and shall contain a written find-
5 ing by the commission or director of the facts upon which
6 the adjudication, determination or finding is based.
7 Notice of the making of such order shall be given to the
8 person whose rights, duties or privileges are affected
9 thereby by mailing a true copy thereof to such person by
10 certified mail.

§20-6-27. Reclamation board of review.

There is hereby created a reclamation board of review
2 consisting of five members to be appointed by the gov-
3 ernor with the advice and consent of the Senate for terms
4 of five years, except that the terms of the first five mem-
5 bers of said board shall be for one, two, three, four and
6 five years, respectively, as designated by the governor at
7 the time of the appointment and except that any vacancy
8 in the office of member of said board shall be filled by

9 appointment by the governor for the unexpired term of
10 the member whose office shall be vacant. Each vacancy
11 occurring on said board shall be filled by appointment
12 within sixty days after such vacancy occurs. One of the
13 appointees to such board shall be a person who, by reason
14 of his previous vocation, employment, or affiliations, can
15 be classed as a representative of coal surface mine oper-
16 ators. One of the appointees to such board shall be a per-
17 son, who, by reason of his previous training and experi-
18 ence, can be classed as one learned and experienced in
19 modern forestry practices. One of the appointees to such
20 board shall be a person who, by reason of his previous
21 training and experience, can be classed as one capable
22 and experienced in the practice of agriculture. One of the
23 appointees to such board shall be a person who, by reason
24 of his previous training and experience, can be classed
25 as one capable and experienced in engineering. One of
26 the appointees to such board shall be a person who, by
27 reason of his previous training and experience, can be
28 classed as one capable and experienced in water conserva-
29 tion problems. Not more than three members shall be
30 members of the same political party.

31 The board may designate an employee of the reclama-
32 tion division to act as its secretary. Such secretary shall
33 perform such duties as the board prescribes.

34 Three members shall constitute a quorum and no action
35 of the board shall be valid unless it has the concurrence of
36 at least three members. The board shall keep a record of
37 its proceedings.

38 Each member shall be paid as compensation for his
39 work as such member, from funds appropriated for such
40 purposes, twenty-five dollars per day when actually en-
41 gaged in the performance of his work as a member and
42 when engaged in travel necessary in connection with such
43 work. In addition to such compensation each member
44 shall be reimbursed for all traveling, hotel and other ex-
45 penses necessarily incurred in the performance of his
46 work as a member.

47 Annually, one member shall be elected as chairman and
48 another member shall be elected as vice chairman. Such
49 officers shall serve for terms of one year.

50 The governor may remove any member of the board
51 from office for inefficiency, neglect of duty, malfeasance,

52 misfeasance or nonfeasance, after delivering to such
53 member the charges against him in writing, together with
54 at least ten days' written notice of the time and place at
55 which the governor will publicly hear such member,
56 either in person or by counsel, in defense of the charges
57 against him, and affording such member such hearing.
58 If such member is removed from office, the governor shall
59 file in the office of the secretary of state a complete state-
60 ment of the charges made against such member and a
61 complete report of the proceedings thereon. In such case
62 the action of the governor removing such member from
63 office shall be final.

**§20-6-28. Appeals to board; hearing; record; findings and
orders of board.**

Any person claiming to be aggrieved or adversely
2 affected by any rule and regulation or order of the recla-
3 mation commission or order of the director or by their
4 or his failure to enter an order may appeal to the recla-
5 mation board of review for an order vacating or modify-
6 ing such rule and regulation or order, or for such order
7 as the commission or director should have entered.

8 The person so appealing to the board shall be known
9 as the appellant and the commission and/or director shall
10 be known as the appellee or appellees. The appellant and
11 appellee or appellees shall be deemed to be parties to
12 the appeal.

13 Such appeal shall be in writing and shall set forth the
14 rule and regulation, order or omission complained of and
15 the grounds upon which the appeal is based. Where the
16 appellant claims to be aggrieved or adversely affected by
17 an order, such appeal shall be filed with the board within
18 thirty days after the date upon which the appellant re-
19 ceived notice by certified mail of the making of the order
20 complained of. Where the appellant claims to be ag-
21 grieved or adversely affected by any rule and regulation
22 or omission, such appeal may be filed with the board at
23 any time. A notice of the filing of such appeal shall be
24 filed with the commission and director within three days
25 after the appeal is filed with the board.

26 Within seven days after receipt of such notice of appeal,
27 the commission or director shall prepare and certify to the
28 board a complete record of the proceedings of the reclama-

29 tion commission or director out of which the appeal arises,
30 including all documents and correspondence relating to
31 the matter. The expense of preparing the record shall be
32 taxed as a part of the costs of the appeal.

33 Upon the filing of such appeal, the board shall fix the
34 time and place at which the hearing on the appeal will be
35 held, which hearing shall be held within twenty days after
36 the notice of appeal is filed, and shall give the appellant
37 and the commission and director at least ten day's writ-
38 ten notice thereof by certified mail. The board may post-
39 pone or continue any hearing upon its own motion or upon
40 application of the appellant or of the commission or direc-
41 tor.

42 The filing of an appeal provided for in this section shall
43 not stay execution of the order appealed from.

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

46 For the purpose of conducting a hearing on an appeal,
47 the board may require the attendance of witnesses and
48 the production of books, records and papers, and it may,

49 and at the request of any party it shall, issue subpoenas
50 for witnesses or subpoenas duces tecum to compel the
51 production of any books, records or papers, directed to
52 the sheriff of the county where such witnesses, books,
53 records or papers are found, which subpoenas and sub-
54 poenas duces tecum shall be served and returned in the
55 same manner as subpoenas and subpoenas duces tecum in
56 civil litigation are served and returned. The fees and
57 allowances for mileage of sheriffs and witnesses shall be
58 the same as those permitted in civil litigation in trial
59 courts. Such fees and mileage expenses incurred at the
60 request of the appellant shall be paid in advance by the
61 appellant, and the remainder of such fees and expenses
62 shall be paid out of funds appropriated for the expenses
63 of the division of reclamation.

64 In case of disobedience or neglect of any subpoena or
65 subpoena duces tecum served on any person, or the re-
66 fusal of any witness to testify to any matter regarding
67 which he may be lawfully interrogated, the circuit court
68 of the county in which such disobedience, neglect or
69 refusal occurs, or any judge thereof in vacation, on appli-

70 cation of the board or any member thereof, shall compel
71 obedience by attachment proceedings for contempt as
72 in the case of disobedience of the requirements of a sub-
73 poena or subpoena duces tecum issued from such court
74 or a refusal to testify therein. Witnesses at such hearings
75 shall testify under oath, and any member of the board
76 may administer oaths or affirmations to persons who so
77 testify.

78 At the request of any party to the appeal, a stenographic
79 record of the testimony and other evidence submitted
80 shall be taken by an official court shorthand reporter at
81 the expense of the party making the request therefor.
82 Such record shall include all of the testimony and other
83 evidence and the rulings on the admissibility of evidence,
84 but any party may at the time object to the admission
85 of any evidence and except to the rulings of the board
86 thereon, and if the board refuses to admit evidence the
87 party offering same may make a proffer thereof, and
88 such proffer shall be made a part of the record of such
89 hearing.

90 If upon completion of the hearing the board finds that

91 the rule and regulation or order appealed from was law-
92 ful and reasonable, it shall make a written order affirming
93 the rule and regulation or order appealed from; if the
94 board finds that such rule and regulation or order was
95 unreasonable or unlawful, it shall make a written order
96 vacating or modifying the rule and regulation or order
97 appealed from; and if the board finds that the commission
98 or director has unreasonably or unlawfully failed to
99 enter an order, it shall enter such order as it finds the
100 commission or director should have made. Every order
101 made by the board shall contain a written finding by the
102 board of the facts upon which the order is based. Notice
103 of the making of such order shall be given forthwith to
104 each party to the appeal by mailing a certified copy there-
105 of to each such party by certified mail.

106 The order of the board shall be final unless vacated
107 upon judicial review thereof.

§20-6-29. Appeal from order of board.

Any party adversely affected by an order of the re-
2 clamation board of review, other than an order affirming,
3 modifying, or vacating a rule and regulation of the com-

4 mission, may obtain judicial review thereof by appealing
5 therefrom either to the circuit court of Kanawha county
6 or the circuit court of the county in which the surface
7 mining operation to which the order relates is or was
8 conducted or is or was proposed to be conducted. Any
9 party adversely affected by an order of the reclamation
10 board of review, which order affirms, modifies or vacates
11 a rule and regulation of the commission, may obtain
12 judicial review thereof by appealing therefrom either
13 to the circuit court of Kanawha county or the circuit
14 court of the county in which the surface mining operation
15 to which the rule and regulation in question relates is or
16 was conducted or is or was proposed to be conducted.
17 Any party desiring to so appeal shall file with the board
18 a notice of appeal designating the order appealed from
19 and stating whether the appeal is taken on questions of
20 law, questions of fact or questions of law and fact. A
21 copy of such notice shall also be filed by the appellant
22 with the court and shall be mailed or otherwise delivered
23 to the appellee or appellees. Such notice and copies there-
24 of shall be filed and mailed or otherwise delivered with-

25 in thirty days after the date upon which the appellant
26 received notice from the board by certified mail of the
27 making of the order appealed from. No appeal bond shall
28 be required to make an appeal on questions of law, ques-
29 tions of fact or questions of law and fact effective.

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

36 Within fifteen days after receipt of the notice of appeal,
37 the board shall prepare and file in the court the complete
38 record of the proceedings out of which the appeal arises,
39 including a transcript of the testimony and other evidence
40 which was submitted before the board. The expense of
41 preparing and transcribing such record shall be taxed as a
42 part of the costs of the appeal. The appellant shall provide
43 security for costs satisfactory to the court. Upon demand
44 by a party, the board shall furnish, at the cost of the party
45 requesting the same, a copy of such record. In the event

46 such complete record is not filed in the court within the
47 time provided for in this section, either party may apply
48 to the court to have the case docketed, and the court shall
49 order such record filed.

50 Appeals taken on questions of law, fact or both, shall
51 be heard upon assignment of error filed in the case or set
52 out in the briefs of the appellant. Errors not argued by
53 brief may be disregarded, but the court may consider
54 and decide errors which are not assigned or argued.

55 The hearing before the court shall be upon the record
56 made before the reclamation board of review. The court
57 may set aside any order of the reclamation board of
58 review which is clearly erroneous in view of the reliable,
59 probative and substantial evidence on the whole record,
60 or which is determined by the court to involve a clearly
61 unwarranted exercise of discretion. The judgment of the
62 court shall be final unless reversed, vacated or modified on
63 appeal to the supreme court of appeals of West Virginia,
64 and jurisdiction is hereby conferred upon such court to
65 hear and entertain such appeals upon application made
66 therefor in the manner and within the time provided for
67 civil appeals generally.

§20-6-30. Offenses; penalties; prosecutions; treble damages.

(a) Any person who shall conduct any surface-mining
2 operation, or any part thereof, without a permit or with-
3 out having furnished the required bond, or who shall
4 carry on such operation or be a party thereto on land not
5 covered by a permit, or who shall falsely represent any
6 material fact in an application for a permit or in an
7 application for the renewal of a permit, or who wilfully
8 violates any provision of this article, shall be guilty of
9 a misdemeanor, and, upon conviction thereof, shall be
10 punished by a fine of not less than one hundred nor more
11 than one thousand dollars or by imprisonment not exceed-
12 ing six months, or by both. Any person who delib-
13 erately violates any provision of this article or con-
14 ducts surface-mining operations without a permit shall
15 be guilty of a misdemeanor, and, upon conviction thereof,
16 shall be punished by a fine of not less than one thousand
17 nor more than ten thousand dollars or by imprisonment
18 not exceeding six months, or by both. Each day of viola-
19 tion constitutes a separate offense. It shall be the duty
20 of the director to institute prosecutions for violations

21 of the provisions hereof. Any person convicted un-
22 der the provisions of this section shall, in addition to
23 any fine imposed, pay to the director for deposit in the
24 surface mining reclamation fund an amount sufficient
25 to reclaim the area with respect to which such conviction
26 relates. The director shall institute any suit or other legal
27 action necessary for the effective administration of the
28 provisions of this article.

29 (b) In addition to and notwithstanding any penalties
30 provided by law, any operator who directly causes dam-
31 age to the property of others as a result of surface mining
32 shall be liable to them, in an amount not in excess of three
33 times the provable amount of such damage, if and only
34 if such damage occurs before or within one year after such
35 operator has completed all reclamation work with respect
36 to the land on which such surface mining was carried out
37 and all bonds of such operator with respect to such
38 reclamation work are released. Such damages shall be
39 recoverable in an action at law in any court of competent
40 jurisdiction. The director shall require, in addition to any
41 other bonds and insurance required by other provisions of

42 this article, that any person engaged in the business of
43 surface mining shall file with the director a certificate of
44 insurance, or other security, in an amount of not less than
45 ten thousand dollars, to cover possible damage to property
46 for which a recovery may be sought under the provisions
47 of this subsection.

§20-6-31. Effective date of article.

This article shall become effective on July first, one
2 thousand nine hundred sixty-seven. Irrespective of the
3 date of issuance of a permit, all operators shall immedi-
4 ately conform to any statutes enacted or rules and regula-
5 tions adopted on the effective date of such statute or rule
6 and regulation. The provisions of this section shall not
7 be construed to require the regrading or replanting of any
8 area on which such work was satisfactorily performed
9 prior to the effective date of the statute or rule and regu-
10 lation.

§20-6-32. Severability of provisions.

If any of the provisions of this article shall be held to
2 be invalid or unconstitutional, such invalidity or uncon-
3 stitutionality shall not affect other provisions of the

4 article, and to this end, the provisions of this article are
5 declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompas
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

Roman Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

N. Saban White
Speaker House of Delegates

The within approved this the 17
day of March, 1967.

Hubert C. Smith
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/67

Time 11:08 AM