

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

Committee Substitute

SENATE BILL NO. 193

Original Sponsor

(By Mr. Galperin)

PASSED March 13 1971

In Effect From Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71

193

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 193
(MR. GALPERIN, *original sponsor*)

[Passed March 13, 1971; in effect from passage.]

AN ACT to amend and reenact sections two, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen and thirty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto four new sections, designated sections nine-a, eleven-a, thirteen-a and fourteen-a; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to surface mining and reclamation; definitions of terms, duties of surface-mining reclamation inspectors; reclamation commission, its duties, functions and compensation; prospecting permit, bond and postpone-

ment of reclamation; surface mine permits required, applications, issuance and renewal of permits, fees and use of proceeds; preplanning plans; alternative plans; time affecting plans; limitations; mandamus; blasting restriction, formula, filing preplan, penalties and warning; requirements regarding surface-mined areas where benches result; requirements regarding surface-mined areas where benches do not result; obligations of the operator; cessation of operation by inspector; completion of planting, inspection and evaluation; performance bonds; special reclamation tax and offenses, penalties, prosecutions, treble damages and injunctive relief; providing that commencing on the effective date of this act and ending two years thereafter, no new permits, including prospecting permits, shall be issued under the provisions of article six of this chapter for the surface mining of coal in any county in which no surface mining existed during calendar year one thousand nine hundred seventy, under lawful permit.

Be it enacted by the Legislature of West Virginia:

That sections two, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen and thirty, article

six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted; that said article be further amended by adding thereto four new sections, designated sections nine-a, eleven-a, thirteen-a and fourteen-a; and that said chapter be further amended by adding thereto a new article, designated article six-a, all to read as follows:

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-2. Definitions of terms.

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

3 (a) "Adequate treatment" shall mean treatment of
4 water by physical, chemical or other approved meth-
5 ods in a manner that will cause the analyzed PH level
6 of the treated water to be 5.5 or more and analyzed con-
7 tent of iron of the treated water to be ten milligrams
8 per liter or less or approved treatment which will not
9 lower the water quality standards established for the
10 river, stream or drainway into which such water is
11 released.

12 (b) "Breakthrough" shall mean the release of water
13 which has been trapped or impounded underground, or

14 the release of air into any underground cavity, pocket
15 or area.

16 (c) "Director" shall mean the director of natural re-
17 sources or his authorized agents.

18 (d) "Disturbed land" or "land disturbed" shall mean
19 (1) the area from which the overburden has been re-
20 moved in surface-mining operations, (2) the area cov-
21 ered by the spoil, and (3) any areas used in surface-min-
22 ing operations which by virtue of their use are sus-
23 ceptible to excessive erosion including all lands disturbed
24 by the construction or improvement of haulageways,
25 roads or trails.

26 (e) "Minerals" shall mean coal, clay, flagstone, gravel,
27 limestone, manganese, sand, sandstone, shale, iron ore
28 and any other metal or metallurgical ore.

29 (f) "Mulch" shall mean any natural or plant residue,
30 organic or inorganic material, applied to the surface of
31 the earth to retain moisture and curtail or limit soil
32 erosion.

33 (g) "Multiple bench" or "multiple seam" shall mean
34 a form of surface mining in which two or more benches

35 are produced, one above the other, in order to allow the
36 removal of minerals from superjacent seams.

37 (h) "Operator" shall mean any individual, partner-
38 ship, firm, association, trust or corporation who or which
39 is granted a permit to engage in any activity covered
40 by this article.

41 (i) "Permit area" shall mean the area of land indi-
42 cated on the approved map submitted by the operator
43 with the reclamation plan as specified in section nine of
44 this article showing the exact location of end strip mark-
45 ers, permit markers and monument.

46 (j) "Person" shall mean any individual, partnership,
47 firm, association, trust or corporation.

48 (k) "Surface mine" shall mean all areas surface mined
49 or being surface mined, as well as adjacent areas ancil-
50 lary to the operation, together with preparation and
51 processing plants, storage areas and haulageways, roads
52 or trails: *Provided*, That mines subject to the provisions
53 of articles one, two, four, five and seven, chapter twenty-
54 two of said code, are not "surface mines" within this
55 definition.

56 (1) "Surface mining" shall mean all activity for the
57 recovery of minerals, except those activities subject to
58 the provisions of articles one, two, four, five and seven,
59 chapter twenty-two of the code of West Virginia, one
60 thousand nine hundred thirty-one, as amended, and sub-
61 ject to such exception, shall include any and all plants
62 and equipment used in processing said minerals: *Pro-*
63 *vided, however,* That the bonding and reclamation pro-
64 visions of this chapter shall not apply to surface-mining
65 of limestone, sandstone and sand, and that the surface-
66 mining of limestone, sandstone and sand shall be subject
67 to separate rules and regulations to be promulgated by
68 the commission.

(m) "Surface of a re-
graded bench" shall mean
the top portion or part
of any regraded area.

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

1 The surface-mining reclamation inspectors shall make
2 all necessary surveys and inspections of surface-mining
3 operations, shall administer and enforce all surface-mining
4 laws, rules and regulations, and shall perform such other
5 duties and services as may be prescribed by the director.
6 Such inspectors shall give particular attention to all con-
7 ditions of each permit to insure complete compliance

8 therewith. The director shall cause inspections to be
9 made of each active surface-mining operation in this
10 state by a surface-mining reclamation inspector at least
11 once every fifteen days. Said inspector shall note all vio-
12 lations of law thereat and immediately report such vio-
13 lations to the director in writing, furnishing at the same
14 time a copy of such report to the operator concerned and
15 to the prosecuting attorney of the county wherein the
16 operation lies.

**§20-6-6. Reclamation commission; duties, functions and com-
pensation.**

1 There is hereby created and established in the de-
2 partment of natural resources a reclamation commission
3 which shall be composed of the director of natural re-
4 sources, serving as chairman, the chief of the division of
5 reclamation, the chief of the water resources division and
6 the director of the department of mines. The members of
7 the commission shall receive no compensation for their
8 services on the commission, but shall be reimbursed for ex-
9 penses necessarily incurred in performing their functions.
10 The commission shall meet upon the call of any member.

11 The director shall request the attorney general to appoint
12 one or more assistant attorneys general who shall perform
13 such duties as may be required by the director. The at-
14 torney general, in pursuance of such request, may select
15 and appoint one or more assistant attorneys general, to
16 serve at the will and pleasure of the attorney general,
17 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 in-
25 sure complete compliance with the provisions of this ar-
26 ticle;

27 (c) Conduct hearings under provisions of this article
28 or rules and regulations adopted by the commission and
29 for the purpose of any investigation or hearing, hereun-
30 der, the commission or any member thereof may ad-
31 minister oaths or affirmations, subpoena witnesses, com-

32 pel their attendance, take evidence and require produc-
33 tion of any books, papers, correspondence, memoranda,
34 agreements, or other documents or records relevant or
35 material to the inquiry;

36 (d) Order, through the director, the suspension or
37 revocation of any permit for failure to comply with any
38 of the provisions of this article or any rules and regula-
39 tions adopted pursuant thereto;

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

43 (f) Appoint such advisory committees as may be of
44 assistance to the commission in the development of pro-
45 grams and policies: *Provided*, That such advisory com-
46 mittees shall, in each instance, include members repre-
47 sentative of the general public; and

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

**§20-6-7. Prospecting permit; bond; postponement of reclama-
tion.**

1 It shall hereafter be unlawful for any person to use
2 excavating equipment in an area not covered by a sur-

3 face mine permit for the purpose of removing the over-
4 burden to determine the location, quantity or quality
5 of a natural coal deposit, making feasibility studies or
6 for any other purpose without having first obtained from
7 the department of natural resources a permit therefor
8 as provided in this section. Application for a prospect-
9 ing permit shall be made in writing on forms prescribed
10 by the director and shall be signed and verified by the
11 applicant. The application shall be accompanied by:
12 (1) A fee of three hundred dollars; (2) a United States
13 geological survey topographic map showing by proper
14 markings the crop line and the name, where known, of
15 the seam or seams to be prospected; (3) a reclamation
16 plan for the proposed disturbed areas as required for
17 holders of surface-mining permits in section nine of this
18 article; and (4) a bond, or cash or collateral securities or
19 certificates of the same type, form and amount and in
20 the same manner as provided in section sixteen of this
21 article in the amount of five hundred dollars per acre
22 or fraction thereof for the total estimated disturbed acre-
23 age. If such bond is used, it shall be payable to the state

24 of West Virginia and conditioned that the operator shall
25 faithfully perform the requirements of this article as
26 they relate to reclamation of the disturbed acreage. The
27 prospecting permit and the bond accompanying said per-
28 mit shall be released by the director in the same manner
29 as surface-mining permits and bonds are released. In the
30 event the holder of a prospecting permit desires to mine
31 the area covered by the prospecting permit, the director
32 shall permit such holder to convert the prospecting per-
33 mit to a surface-mining permit, providing the holder of
34 said permit shall comply with the provisions of this
35 article as they relate to surface-mining permits: *Provided,*
36 That the prosecuting permit fee shall be a credit toward
37 the surface-mining permit fee if the area covered by the
38 prospecting permit is converted to a surface-mining per-
39 mit.

40 In the event the holder of a prospecting permit desires
41 to surface mine the area covered by the prospecting per-
42 mit, and has fulfilled all the remaining requirements of
43 a surface-mining permit, the director may permit the
44 postponement of the reclamation of the acreage pros-

45 pected if that acreage is incorporated into the complete
46 reclamation plan submitted with application for a surface-
47 mining permit within a period of three months following
48 completion of each separate excavation under the pros-
49 pecting permit. Any excavation carried out under a pros-
50 pecting permit and not incorporated into the complete
51 reclamation plan shall be reclaimed within a period of
52 three months: *Provided*, That nothing herein shall pre-
53 vent a landowner from obtaining coal from his own
54 property for use in his own household if the same is not
55 produced on a commercial basis.

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

1 It shall hereafter be unlawful for any person to en-
2 gage in surface mining without having first obtained from
3 the department of natural resources a permit therefor
4 as provided in this section. Application for a surface-
5 mining permit shall be made in writing on forms pre-
6 scribed by the director of natural resources, and shall
7 be signed and verified by the applicant. The application,
8 in addition to such other information as may be rea-

9 sonably required by the director, shall contain the fol-
10 lowing information: (1) The common name and geo-
11 logic title, where applicable, of the mineral or minerals
12 to be extracted; (2) maps and plans as provided in sec-
13 tion nine hereof; (3) the owner or owners of the surface
14 of the land to be mined; (4) the owner or owners of
15 the mineral to be mined; (5) the source of the opera-
16 tor's legal right to enter and conduct operations on the
17 land to be covered by the permit; (6) a reasonable es-
18 timate of the number of acres of land that will be dis-
19 turbed by mining on the area to be covered by the
20 permit; (7) the permanent and temporary post-office
21 addresses of the applicant and of the owners of the
22 surface and the mineral; (8) whether any surface-min-
23 ing permits are now held and the numbers thereof;
24 (9) the names and post-office addresses of every officer,
25 partner, director (or person performing a similar func-
26 tion), applicant, together with all persons, if any, own-
27 ing of record or beneficially (alone or with associates),
28 if known, ten percent or more of any class of stock
29 of the applicant: *Provided*, That if such list be so large

30 as to cause undue inconvenience, the director may waive
31 the requirements that such list be made a part of such
32 application, except the names and current addresses of
33 every officer, partner, director and applicant must ac-
34 company such application; (10) if known, whether ap-
35 plicant, any subsidiary or affiliate or any person con-
36 trolled by or under common control with applicant, or
37 any person required to be identified by item (9) above,
38 has ever had a surface or strip-mining permit issued
39 under the laws of this state revoked or has ever had a
40 surface-mining bond, or security deposited in lieu of
41 bond, forfeited; and (11) names and addresses of the
42 reputed owner or owners of all surface area within five
43 hundred feet of any part of proposed disturbed land,
44 which such owners shall be notified by registered or
45 certified mail of such application and such owners shall
46 be given ten days within which to file written objections
47 thereto, if any, with the director. There shall be attached
48 to the application a true copy of an original policy of
49 insurance issued by an insurance company authorized
50 to do business in this state covering all surface-mining

51 operations of the applicant in this state and affording
52 personal injury protection in an amount not less than
53 one hundred thousand dollars and property damage, in-
54 cluding blasting damage, protection in an amount of
55 not less than three hundred thousand dollars.

56 The director shall upon receipt of the application for
57 a permit, cause to be published, as a Class III legal ad-
58 vertisement in accordance with the provisions of article
59 three, chapter fifty-nine of this code, a notice of the
60 application for the permit. Such notice shall contain in
61 abbreviated form the information required by this sec-
62 tion, together with the director's statement that written
63 protests to such application will be received by him until
64 a specified date, which date shall be at least thirty days
65 after the first publication of the notice.

66 The publication area of the notices required by this
67 section shall be the county or counties in which the pro-
68 posed permit area is located. The cost of all publications
69 required by this section shall be borne by the applicant.

70 Upon the filing of an application in proper form, ac-
71 companied by the fees and bond required by this article

72 and said true copy of the policy of insurance, and after
73 consideration of the merits of the application and written
74 protests, if any, the director may issue the permit applied
75 for if the applicant has complied with all of the provi-
76 sions of this article. If the director finds that the applicant
77 is or has been affiliated with or managed or controlled
78 by, or is or has been under the common control of, other
79 than as an employee, a person who or which has had
80 a surface or strip-mining permit revoked or bond or
81 other security forfeited for failure to reclaim lands as
82 required by the laws of this state, he shall not issue a
83 permit to the applicant: *Provided, however,* That no
84 surface-mining permit shall be refused because of any
85 past revocation of a permit and forfeiture of a bond
86 or other security if such revocation and forfeiture oc-
87 curred before July one, one thousand nine hundred sev-
88 enty-one, and if, after such revocation and forfeiture, the
89 operator whose permit has been revoked and bond for-
90 feited shall have paid into the surface-mining reclamation
91 fund the full amount of the bond so forfeited, and any
92 additional sum of money determined by the director to

93 be adequate to reclaim the land covered by such forfeited
94 bond: *Provided, further,* That in no event shall such
95 additional sum be less than sixty dollars per acre.

96 The permit shall be valid for one year from its date
97 of issue. Upon verified application, containing such in-
98 formation as the director may reasonably require, ac-
99 companied by such fees and bond as are required by
100 this article, and a true copy of the policy of insurance
101 as aforesaid, the director shall from year to year renew
102 the permit, if the operation is in compliance with the
103 provisions of this article.

104 The registration fee for permits for surface mining,
105 whether by open cut, auger method or by highwall
106 mechanical mining or modification thereof, shall be five
107 hundred dollars. The annual renewal fee for permits for
108 surface mining shall be one hundred dollars payable on
109 the anniversary date of said permit upon renewal.

110 The permit of any operator who fails to pay any fees
111 provided for in this article shall be revoked.

112 An operator who has been issued a surface-mining
113 permit may use any of the usual methods of mining,

114 including the auger method or highwall mechanical
115 mining or any combination of mining methods defined
116 as "surface mining" in section two of this article, unless
117 otherwise provided by law. Any modifications of these
118 methods shall also be under the director's jurisdiction.

119 All registration and renewal fees for prospecting and
120 surface mining shall be collected by the director and
121 shall be deposited with the treasurer of the state of
122 West Virginia to the credit of the surface reclamation
123 fund.

§20-6-9. Preplans.

1 Under the provisions of this article, and rules and regu-
2 lations adopted by the commission, the operator shall pre-
3 pare a complete reclamation and mining plan for the
4 area of land to be disturbed. Said reclamation and min-
5 ing plan shall include a proposed method of operation
6 prepared by a registered professional engineer or a per-
7 son approved by the director for grading, backfilling, soil
8 preparation, mining and planting and such other pro-
9 posals as may be necessary to develop the complete re-
10 clamation and mining plan contemplated by this article.

11 In developing this complete reclamation and mining plan
12 all reasonable measures shall be taken to eliminate dam-
13 ages to members of the public, their real and personal
14 property, public roads, streams and all other public prop-
15 erty from soil erosion, rolling stones and overburden,
16 water pollution and hazards dangerous to life and prop-
17 erty. The plan shall be submitted to the director and
18 the director shall notify the applicant by certified mail
19 within thirty days after receipt of the plan and
20 complete application if it is or is not acceptable. If the
21 plan is not acceptable, the director shall set forth the
22 reasons why the plan is not acceptable and he may pro-
23 pose modifications, delete areas or reject the entire plan.
24 Should the applicant disagree with the decision of the
25 director, he may, by written notice, request a hearing
26 before the commission. The commission shall hold such
27 hearing within thirty days after receipt of this notice.
28 When a hearing is held by the commission, it shall noti-
29 fy the applicant of its decision by certified mail within
30 twenty days after the hearing. Any person aggrieved
31 by a final order of the commission made after the hear-

32 ing or without a hearing may appeal to the reclamation
33 board of review.

34 The application for a permit shall be accompanied by
35 two copies of an enlarged United States geological sur-
36 vey topographic map meeting the requirements of the
37 subdivisions below. Aerial photographs of the area
38 shall be acceptable if the plan for reclamation can
39 be shown to the satisfaction of the director. The maps
40 shall:

41 (a) Be prepared and certified by or under the super-
42 vision of a registered professional civil engineer, or a
43 registered professional mining engineer, or a registered
44 land surveyor, who shall submit to the director a cer-
45 tificate of registration as a qualified engineer or land
46 surveyor;

47 (b) Identify the area to correspond with the appli-
48 cation;

49 (c) Show probable limits of adjacent deep-mining op-
50 erations, probable limits of adjacent inactive or mined-
51 out deep-mined areas and the boundaries of surface prop-
52 erties and names of surface and mineral owners of the
53 surface area within five hundred feet of any part of the
54 proposed disturbed area;

55 (d) Be of such scale as may be prescribed by the direc-
56 tor;

57 (e) Show the names and locations of all streams,
58 creeks or other bodies of public water, roads, buildings,
59 cemeteries, active, abandoned or plugged oil and gas
60 wells, and utility lines on the area of land to be disturbed
61 and within five hundred feet of such area;

62 (f) Show by appropriate markings the boundaries of
63 the area of land to be disturbed, the crop line of the seam
64 or deposit of coal to be mined, and the total number of
65 acres involved in the area of land to be disturbed;

66 (g) Show the date on which the map was prepared,
67 the north point and the quadrangle sketch and exact lo-
68 cation of the operation;

69 (h) Show the drainage plan on and away from the
70 area of land to be disturbed. Such plan shall indicate the
71 directional flow of water, constructed drainways, natural
72 waterways used for drainage, and the streams or tribu-
73 taries receiving or to receive this discharge. Upon re-
74 ceipt of such drainage plan, the director shall furnish to
75 the chief of the division of water resources a copy of all

76 information required by this subdivision, as well as the
77 names and locations of all streams, creeks or other bodies
78 of public water within five hundred feet of the area to
79 be disturbed;

80 (i) Show the presence of any acid-producing materials
81 which when present in the overburden, may cause spoil
82 with a PH factor below 3.5, preventing effective revegeta-
83 tion. The presence of such materials, wherever occurring in
84 significant quantity, shall be indicated on the map, filed with
85 application for permit. The operator shall also indicate the
86 manner in which acid-bearing spoil will be suitably prepared
87 for revegetation and stabilization, whether by application
88 of mulch or suitable soil material to the surface or by some
89 other type of treatment, subject to approval of the director.

90 The certification of the maps shall read as follows:
91 "I, the undersigned, hereby certify that this map is cor-
92 rect, and shows to the best of my knowledge and belief
93 all the information required by the surface-mining laws
94 of this state." The certification shall be signed and no-
95 tarized. The director may reject any map as incomplete
96 if its accuracy is not so attested.

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

100 A monument as prescribed by the department of nat-
101 ural resources shall be placed in an approved location
102 near the operation. If the operations under a single per-
103 mit are not geographically continuous, the operator shall
104 locate additional monuments and submit additional maps
105 before mining other areas.

106 Upon an order of the director, the operator shall, with-
107 in thirty days after service of a copy of said order upon
108 said operator by certified United States mail, furnish to
109 the department of natural resources three copies of a
110 progress map prepared by or under the supervision of
111 a registered professional civil engineer or registered pro-
112 fessional mining engineer, or by a registered land sur-
113 veyor, showing the area disturbed by operations to the
114 date of such map. Such progress map shall contain in-
115 formation identical to that required for both the proposed
116 and final maps, required by this article, and shall show
117 in detail completed reclamation work, as required by

118 the director. Such progress map shall include a geologic
119 survey sketch showing the location of the operation, shall
120 be properly referenced to a permanent landmark, and
121 shall be within such reasonable degree of accuracy as
122 may be prescribed by the director. If no land has been
123 disturbed by operations during the preceding year, the
124 operator shall notify the director of this fact. A final
125 map shall be submitted within sixty days after com-
126 pletion of mining operations. Failure to submit maps or
127 aerial photographs or notices at specified times shall
128 cause the permit in question to be suspended.

§20-6-9a. Installation of drainage system.

1 Prior to the beginning of surface-mining operations,
2 the operator shall complete and shall thereafter main-
3 tain a drainage system including any necessary settling
4 ponds in accordance with the rules and regulations as
5 established by the commission.

§20-6-10. Alternative plans; time.

1 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 this

4 article. Such plans shall be submitted to the director,
5 and if such plans are approved by the director and
6 complied with within such time limits as may be deter-
7 mined by him as being reasonable for carrying out such
8 plans, the backfilling requirements of this article may
9 be modified.

10 By regulations of the commission, time limits shall be
11 established requiring backfilling, grading and planting
12 to be kept current. All backfilling and grading shall be
13 completed before equipment necessary for such back-
14 filling and grading is moved from the operation.

15 If the operator or other person desires to conduct deep
16 mining upon the premises or use a deep mine opening for
17 haulageways or other lawful purposes, the operator may
18 designate locations to be used for such purposes at
19 which places it will not be necessary to backfill as here-
20 in provided for until such deep mining or other use is
21 completed, during which time the bond on file for that
22 portion of the operation shall not be released. Such loca-
23 tions shall be described and designated on the map re-
24 quired by the provisions of section nine of this article.

25 Suitable soil material shall be used to cover the sur-
26 face of the regraded and backfilled area of operation
27 in an amount sufficient to support vegetation.

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

39 All fill and cut slopes shall be seeded during the first
40 planting or seeding season after the construction of a
41 haulageway to the area. Upon abandonment of a haulage-
42 way, the haulageway shall be seeded and every effort
43 made to prevent its erosion by means of culverts, water-
44 bars or other devices required by the director. In proper
45 season, all fill and cut slopes of the operation and haulage-

46 ways shall be seeded and planted in a manner as pre-
47 scribed by the director, as soil tests indicate soil suitability
48 and in accordance with accepted agricultural and re-
49 forestation practices.

50 In any such area where surface mining is being conduct-
51 ed, mulch shall be required on all disturbed areas where
52 the remaining slope exceeds twenty degrees from horizon-
53 tal as shown on the preplan map filed with the director as
54 required by the provisions of section nine of this article.

55 After the operation has been backfilled, graded and
56 approved by the director, the operator shall prepare or
57 cause to be prepared a final planting plan for the planting
58 of trees, shrubs, vines, grasses or legumes upon the area
59 of the land affected in order to provide a suitable vegeta-
60 tive cover. The seed or plant mixtures, quantities, method
61 of planting, type and amount of lime, fertilizer, mulch,
62 and any other measures necessary to provide a suitable
63 vegetative cover shall be defined by the rules and regu-
64 lations of the commission. Such rules and regulations shall
65 be promulgated under the provisions of article three,
66 chapter twenty-nine-a of this code.

67 The planting called for by the final planting plan shall
68 be carried out in a manner so as to establish a satisfactory
69 cover of trees, shrubs, grasses, legumes or vines upon
70 the disturbed area covered by the planting plan within
71 a reasonable period of time. Such planting shall be done
72 by the operator or such operator may contract in writing
73 with the soil conservation district for the district in
74 which the operation covered by such permit is located
75 or with a private contractor approved by the director to
76 have such planting done by such district or private con-
77 tractor. The director shall not release the operator's bond
78 until all haulageways, roads and trails within the permit
79 area have been abandoned according to the provisions
80 of this article and the rules and regulations promulgated
81 thereunder or such operator or any other person has
82 secured a permit to deep mine such area as required by
83 chapter twenty-two of the code of West Virginia, one
84 thousand nine hundred thirty-one, as amended.

85 The purpose of this section is to require restoration
86 of land disturbed by surface mining to a desirable pur-
87 pose and use. The director may, in the exercise of his

88 sound discretion when not in conflict with such purpose,
89 modify such requirements to bring about a more desir-
90 able land use, including but not limited to, industrial
91 sites, sanitary landfills, recreational areas, building sites:
92 *Provided*, That the person or agency making such
93 modifications will execute contracts, post bond or other-
94 wise insure full compliance with the provisions of this
95 section in the event such modified program is not car-
96 ried to completion within a reasonable length of time.

§20-6-11. Limitations; mandamus.

1 The Legislature finds that there are certain areas in
2 the state of West Virginia which are impossible to reclaim
3 either by natural growth or by technological activity
4 and that if surface mining is conducted in these certain
5 areas such operations may naturally cause stream pollu-
6 tion, landslides, the accumulation of stagnant water,
7 flooding, the destruction of land for agricultural purposes,
8 the destruction of aesthetic values, the destruction of
9 recreational areas and the future use of the area and
10 surrounding areas, thereby destroying or impairing the
11 health and property rights of others, and in general creat-

12 ing hazards dangerous to life and property so as to con-
13 stitute an imminent and inordinate peril to the welfare
14 of the state, and that such areas shall not be mined by
15 the surface-mining process.

16 Therefore, authority is hereby vested in the director
17 to 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
25 of 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
29 of the area of land described in the application for a
30 permit is such that experience in the state of West Vir-
31 ginia with a similar type of operation upon land with
32 similar overburden shows that one or more of the follow-

33 ing conditions cannot feasibly be prevented: (1) substan-
34 tial deposition of sediment in stream beds, (2) landslides
35 or (3) acid-water pollution, the director may delete such
36 part of the land described in the application upon which
37 such overburden exists.

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

44 The director shall not give approval to surface mine
45 any area which is within one hundred feet of any public
46 road, stream, lake or other public property, and shall not
47 approve the application for a permit where the surface-
48 mining operation will adversely affect a state, national or
49 interstate park unless adequate screening and other mea-
50 sures approved by the commission are to be utilized and
51 the permit application so provides: *Provided*, That the
52 one-hundred-foot restriction aforesaid shall not include
53 ways used for ingress and egress to and from the minerals

54 as herein defined and the transportation of the removed
55 minerals, nor shall it apply to the dredging and removal of
56 minerals from the streams or watercourses of this state.

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

64 The failure of the director to discharge the mandatory
65 duty imposed on him by this section shall be subject to
66 a writ of mandamus, in any court of competent jurisdic-
67 tion by any private citizen affected thereby.

**§20-6-11a. Blasting restriction; formula; filing preplan; pen-
alties; notice.**

1 Where blasting of overburden is necessary, such blast-
2 ing shall be done in accordance with established princi-
3 ples for preventing vibration damage to residences, build-
4 ings, and communities. Such blasting shall be consid-
5 ered in compliance with provisions of this act if the
6 following measures are followed:

7 (1) The weight in pounds of explosive charge deto-
8 nated at any one time shall conform with the following
9 scaled distance formula: $W = (D / 50)^2$. Where W equals
10 weight in pounds of explosives detonated at any one
11 instant time, then D equals distance in feet from nearest
12 point of blast to nearest residence, building, or structure,
13 other than operation facilities of the mine: *Provided,*
14 That explosive charges shall be considered to be deto-
15 nated at one time if their detonation occurs within eight
16 milliseconds or less of each other.

17 (2) Where blast sizes would exceed the limits under sub-
18 division (1) of this section, blasts shall be detonated by the
19 use of delay detonators (either electric or non-electric)
20 to provide detonation times separated by nine millisec-
21 onds or more for each section of the blast complying
22 with the scaled distance of the formula.

23 (3) A plan of each operation's methods for compliance
24 with this section (blast delay design) for typical blasts
25 which shall be adhered to in all blasting at each
26 operation, shall be submitted to the department of
27 natural resources with the application for a permit.

28 It shall be accepted if it meets the scaled distance
29 formula established in subdivision (1) of this sec-
30 tion.

31 (4) Records of each blast shall be kept in a log to
32 be maintained for at least three years, which will show
33 for each blast other than secondary (boulder breaking)
34 blasts the following information:

- 35 (a) Date and time of blast,
- 36 (b) Number of holes,
- 37 (c) Typical explosive weight per delay period,
- 38 (d) Total explosives at any one time,
- 39 (e) Number of delays used,
- 40 (f) Weather conditions, and
- 41 (g) Signature of operator employee in charge of the
42 blast.

43 (5) Where inspection by the department of nat-
44 ural resources establishes that the scaled distance
45 formula and the approved preplan are not being
46 adhered to, the following penalties shall be im-
47 posed:

48 (a) For the first offense in any one permit year under
49 this section, the permit holder shall be assessed not less
50 than five hundred dollars nor more than one thousand
51 dollars;

52 (b) For the second offense in any one permit year
53 under this section, the permit holder shall be assessed
54 not less than one thousand dollars nor more than five
55 thousand dollars;

56 (c) For the third offense in any one permit year under
57 this section or for the failure to pay any assessment here-
58 inabove set forth within a reasonable time established
59 by the director, the permit shall be revoked.

60 All such assessments as set forth in this section shall
61 be assessed by the director, collected by him and de-
62 posited with the treasurer of the state of West Virginia,
63 to the credit of the special reclamation fund.

64 The director shall promulgate rules and regulations
65 which shall provide for a warning of impending blasting
66 to the owners, residents or other persons who may be
67 present on property adjacent to the blasting area. Such
68 warning shall be by means approved by the director.

§20-6-13. Requirements regarding surface-mined areas where benches result.

1 On lands where the mining operation necessitates, re-
2 quires or produces benches, the bench width of the first
3 cut made shall not exceed the limits specified in the
4 table of maximum bench widths provided in this section.
5 In the event that more than one bench results from the
6 removal of minerals on a single slope, the limits specified
7 in the table of maximum bench width provided in this
8 section, shall apply equally to every such bench: *Provided,*
9 That the coal seams are more than one hundred and fifty
10 vertical feet apart. In multiple seam mining when
11 the interval between coal seams is less than one hundred
12 and fifty vertical feet, all overburden will be retained on
13 the bench immediately below the seams being mined.
14 The operator shall show on the map, filed with the ap-
15 plication for a permit, the percent of slope of original
16 surface within each two-hundred-foot interval along the
17 contour of the operation, the first measurement to be
18 taken at the starting point of the operation. The flagged
19 field measurement shall be made from the estimated

20 crop line or proposed coal seam down slope to the esti-
 21 mated toe of the outer spoil. All reasonable measures
 22 shall be taken so as not to overload the fill bench during
 23 the first cut. No overburden material in excess of the
 24 first cut shall be placed over the fill bench. With the
 25 exception of haulageways and auger-mining operations,
 26 trees and brush shall be removed from the upper one
 27 half of all fill sections prior to excavation, and no trees
 28 or brush removed from the cut section shall be placed
 29 therein or thereon.

MAXIMUM BENCH WIDTHS ALLOWED RELATED TO
 SLOPE OF ORIGINAL SURFACE

	Percent (degree) of slope of original surface	Maximum bench width allowed in feet
30	27% (15°)	250
31	36% (20°)	150
32	46% (25°)	120
33	58% (30°)	100
34	65% (33°)	60
35	Above 65% (33°) No fill material beyond cut section.	
36	No fill bench shall be produced on slopes of more than	

37 sixty-five percent, except for construction of haulage-
38 ways, and such haulageways shall not exceed thirty-five
39 feet in width, with very scattered forty-five-foot passing
40 areas permitted.

41 Lateral drainage ditches connecting to natural or con-
42 structed waterways shall be constructed to control water
43 runoff and prevent erosion whenever required by the
44 director. There shall be no depressions that will accumu-
45 late water except those the director may specify and
46 approve. The depth and width of natural drainage ditches
47 and any other diversion ditches may vary depending on
48 the length and degree of slope.

49 If the highwall is composed of materials of sufficient
50 hardness to ordinarily require blasting to displace, where
51 there is insufficient soil available to provide a suitable
52 vegetative cover on the reduced highwall, or where the
53 reduction of the highwall will result in excessive damage
54 to undisturbed vegetated lands above the highwall, such
55 highwall shall be backfilled with soil available from the
56 operation. In no instance shall the backfilling be less
57 than four feet above the seam of coal being worked, and

58 subject to the discretion of the director, no greater than
59 sixty percent from the horizontal. The highwall shall not
60 exceed thirty feet in vertical rise from the surface of the
61 regraded bench.

62 Suitable access to the lands above the highwall for at
63 least a four-wheel drive vehicle shall be provided. The
64 number and location of access roads shall be subject to
65 the approval of the director and shall be contained in the
66 final reclamation plan; however, in no case may access
67 roads be spaced further apart than one-half mile.

68 The table portion of the restored area shall be a terrace
69 with a slope toward the reduced highwall that will direct
70 surface water toward the highwall in a manner to pre-
71 vent water from flowing over the outer slope of the
72 disturbed area. The restored area shall have a minimum
73 depth of fill sufficient to cover all acid-producing material,
74 all toxic material and all material which constitutes a fire
75 hazard. Such fill shall also be sufficient to support vegeta-
76 tion, as may be prescribed by the director. Additional
77 restoration work may be required by the director accord-
78 ing to rules and regulations promulgated by the commis-

79 sion. In addition to the requirements specified in this
80 section, the operator's method of operation on slopes may
81 be further regulated and controlled according to rules
82 and regulations adopted by the commission.

**§20-6-13a. Requirements regarding surface-mined areas where
benches do not result.**

1 On lands where the mining operation does not produce
2 a bench, complete backfilling shall be required, not to
3 exceed the approximate original contour of the land. Such
4 backfilling shall eliminate all highwalls and spoil peaks.
5 Whenever directed by the director, the operator shall
6 construct, in the final grading, such diversion ditches or
7 terraces as will control the water runoff. Additional
8 restoration work may be required by the director, ac-
9 cording to rules and regulations adopted by the com-
10 mission.

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

1 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:

5 (1) Cover the face of the coal and the disturbed area
6 with material suitable to support vegetative cover and of
7 such thickness as may be prescribed by the director, or
8 with a permanent water impoundment.

9 (2) Bury under adequate fill to be determined by
10 the director, all roof coal, pyritic shale and materials
11 determined by the director to be acid-producing mater-
12 ials, toxic material or materials constituting a fire hazard.

13 (3) Seal off, as directed by rules and regulations, any
14 breakthrough of acid water caused by the operator.

15 Any breakthrough caused by the operator during the
16 course of his operations shall be sealed immediately and
17 reported immediately to the director. If the breakthrough
18 is one that allows air to enter a mine, the seal shall
19 either prevent any air from entering the mine by way of
20 the breakthrough, or prevent any air from entering the
21 breakthrough while allowing the water to flow from the
22 breakthrough. If the breakthrough is one that allows
23 acid water to escape, the seal shall prevent the acid
24 water from flowing. Seals shall be constructed of stone,
25 brick, block, earth or similar impervious materials which

26 are acid resistant. Any cement or concrete employed in
27 the construction of these seals shall also be of an acid
28 resistant, impervious type.

29 (4) Impound, drain or treat all runoff water so as to
30 reduce soil erosion, damage to agricultural lands and
31 pollution of streams and other waters.

32 Any sizeable quantity of storm water accumulating in
33 depressions in the area of operations or any breakthrough
34 of water caused by the operator during the course of his
35 operations shall be sampled immediately and analyzed
36 for PH, total acidity and total iron content. Such analysis
37 shall be made by a competent water analyst or chemist.
38 The original and at least one copy of such analysis shall
39 be retained by the operator, one copy submitted to the
40 director and one copy to the chief of the water resources
41 division.

42 In the case of storm water accumulations or any break-
43 through of water, adequate treatment shall be undertaken
44 by the operator so as to prevent pollution occurring from
45 the release of such water into the natural drainway or
46 stream. Treatment may include check-dams, settling ponds

47 and chemical or physical treatment. In the case of a break-
48 through of water, where it is possible, the water released
49 shall be impounded immediately. All water so impounded
50 shall receive adequate treatment by the operator before
51 it is released into the natural drainway or stream.

52 Storm water or water which escapes, including that
53 which escapes after construction of the seals, and is
54 polluted as defined in this code, or as defined in the rules
55 and regulations promulgated under this code, shall be
56 subject to the requirements of article five-a of this
57 chapter.

58 (5) Remove or bury all metal, lumber, equipment and
59 other refuse resulting from the operation. No operator
60 shall throw, dump or pile; or permit the throwing, dump-
61 ing, piling or otherwise placing of any (1) overburden, (2)
62 stones, (3) rocks, (4) coal, (5) particles of coal, (6) earth,
63 (7) soil, (8) dirt, (9) debris, (10) trees, (11) wood, (12)
64 logs or (13) other materials or substances of any kind or
65 nature beyond or outside the area of land which is under
66 permit and for which bond has been posted; nor shall
67 any operator place any of the foregoing listed materials

68 in such a way that normal erosion or slides brought about
69 by natural physical causes will permit the same to go
70 beyond or outside the area of land which is under permit
71 and for which bond has been posted.

§20-6-14a. Cessation of operation by inspector.

1 Notwithstanding any other provisions of this article, a
2 surface-mining reclamation inspector shall have the au-
3 thority to order the immediate cessation of any operation
4 where (1) any of the requirements of this article or the
5 rules and regulations promulgated pursuant thereto or
6 the orders of the director or the commission have not been
7 complied with or (2) the public welfare or safety calls
8 for the immediate cessation of the operation. Such ces-
9 sation of operation shall continue until corrective steps
10 have been started by the operator to the satisfaction of
11 the surface-mining reclamation inspector. Any operator
12 who believes he is aggrieved by the actions of the surface-
13 mining reclamation inspector may immediately appeal
14 to the director, setting forth reasons why the operation
15 should not be halted. The director shall determine when
16 and if the operation may continue.

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

1 When the planting of an area has been completed, the
2 operator shall file or cause to be filed a planting report with
3 the director on a form to be prescribed and furnished
4 by the director, providing the following information: (1)
5 Identification of the operation; (2) the type of planting
6 or seeding, including mixtures and amounts; (3) the date
7 of planting or seeding; (4) the area of land planted; and
8 (5) such other relevant information as the director may
9 require. All planting reports shall be certified by the
10 operator, or by the party with whom the operator con-
11 tracted for such planting, as aforesaid.

§20-6-16. Performance bonds.

1 Each operator who shall make application for a per-
2 mit under section eight of this article shall, at the time
3 such permit is requested, furnish bond, on a form to be
4 prescribed and furnished by the director, payable to the
5 state of West Virginia and conditioned that the operator
6 shall faithfully perform all of the requirements of this
7 article. The amount of the bond shall be not less than
8 six hundred dollars for each acre or fraction thereof

9 of the land to be disturbed: *Provided*, That the di-
10 rector shall have the discretion to determine the
11 amount per acre of the bond that shall be required
12 before a permit is issued, such amount to be based
13 upon the estimated reclamation costs per acre, not to
14 exceed a maximum of one thousand dollars per acre
15 or fraction thereof. The minimum amount of bond
16 furnished shall be ten thousand dollars. Such bond
17 shall be executed by the operator and a corporate surety
18 licensed to do business in the state of West Virginia:
19 *Provided, however*, That in lieu of corporate surety,
20 the operator may elect to deposit with the director
21 cash, or collateral securities or certificates as fol-
22 lows: Bonds of the United States or its possessions,
23 of the federal land banks, or of the home owners'
24 loan corporation; full faith and credit general obliga-
25 tion bonds of the state of West Virginia, or other states,
26 and of any county, district or municipality of the
27 state of West Virginia or other states; or certificates of
28 deposit in a bank in this state, which certificates shall be
29 in favor of the commission. The cash deposit or market

30 value of such securities or certificates shall be equal to
31 or greater than the sum of the bond. The director shall,
32 upon receipt of any such deposit of cash, securities or
33 certificates, immediately place the same with the treas-
34 urer of the state of West Virginia whose duty it shall be
35 to receive and hold the same in the name of the state
36 in trust for the purpose for which such deposit is made.
37 The operator making the deposit shall be entitled from
38 time to time to receive from the state treasurer, upon
39 the written order of the director, the whole or any por-
40 tion of any cash, securities or certificates so deposited,
41 upon depositing with him in lieu thereof, cash or other
42 securities or certificates of the classes herein specified
43 having value equal to or greater than the sum of the
44 bond.

45 It shall be unlawful for the owner or owners of surface
46 rights or the owner or owners of mineral rights to in-
47 terfere with the operator in the discharge of his obliga-
48 tion to the state for the reclamation of lands disturbed
49 by him. If the owner or owners of the surface rights
50 or the owner or owners of the mineral rights desire an-

51 other operator or other operators to conduct mining oper-
52 ations on lands disturbed by the operator furnishing
53 bond hereunder, it shall be the duty of said owner or
54 owners to require the other operator or operators to
55 secure the necessary mining permit and furnish suitable
56 bond as herein provided. The director may then release
57 an equivalent amount of the bond of the operator orig-
58 inally furnishing bond on the disturbed area. The direc-
59 tor shall determine the amount of bond per acre required
60 for other mining operations within the limitations of
61 this section: *Provided, however,* That the minimum bond
62 for this type of operation shall be one thousand dollars.
63 The director shall take into consideration the character
64 and nature of the overburden, the future use of the land
65 and all costs of backfilling, grading and adequate reclama-
66 tion, including planting, and shall determine the total
67 bond required for other mining operations.

68 The director shall not release that portion of any bond
69 filed by any operator which is designated to assure faith-
70 ful performance of, and compliance with, the backfilling
71 and regrading requirements of the reclamation plan un-

72 til all acid-bearing or acid-producing spoil within the
73 permit area has received adequate treatment as specified
74 in section ten of this article.

§20-6-17. Special reclamation tax.

1 In addition to the fees required by the provisions of
2 section eight of this article, every applicant for a permit
3 to surface mine coal shall, before such permit may be
4 issued, pay to the director a special reclamation tax of
5 sixty dollars for each acre of land to be disturbed in the
6 mining operation, with the exception of exempted road-
7 ways, storage areas and processing plants. The director
8 shall in due course determine whether the special recla-
9 mation tax for each acre of land disturbed has been paid
10 by such operator. In the event that all such taxes have not
11 been paid, said operator shall pay such taxes, as above set
12 forth. In the event that said operator shall have paid
13 taxes for more acres than were actually disturbed, the
14 director shall certify such overpayment to the treasurer
15 who shall refund out of the special reclamation fund such
16 overpayment.

17 The director shall deposit with the treasurer of the

18 state of West Virginia, to the credit of the special reclama-
19 tion fund, all special reclamation taxes collected.

20 The special reclamation fund shall be administered
21 by the director. The director shall cause to be pre-
22 pared plans for the reclamation and rehabilitation of
23 lands which are unreclaimed and for which bond either
24 has not been posted or is uncollectible and shall pre-
25 pare specifications for reclamation of such lands. The
26 director, as funds become available in the special rec-
27 lamation fund, shall reclaim and rehabilitate such lands
28 in accordance with such plans and specifications, and
29 in so doing the director shall comply with the pro-
30 visions of article three, chapter five of this code in
31 obtaining supplies, materials, equipment and contractual
32 services deemed necessary by the director for the pur-
33 poses of reclamation and rehabilitation of said lands:
34 *Provided*, That during the first year after the effective
35 date of this article, twenty-five percent of the special
36 reclamation taxes collected may be used by the director
37 to pay inspectors, provide necessary equipment, conduct
38 research and conduct inspection of permit areas and sur-

39 face-mined areas: *Provided, however,* That during the first
40 year a maximum of four hundred fifty thousand dollars
41 from the special reclamation taxes collected shall be made
42 available for the director's use as provided above: *Pro-*
43 *vided further,* That during the second year after the
44 effective date of this article and each year thereafter,
45 fifteen percent of the special reclamation taxes collected
46 may be used by the director for the same purposes: *And*
47 *provided further,* That a portion of the special reclama-
48 tion taxes allocated for the director's use may be used
49 by the director to provide a subsistence allowance not
50 to exceed one hundred fifty dollars per month to each
51 inspector.

52 Some of the special reclamation taxes collected may
53 be made available for the purchase of orphaned surface-
54 mined lands, for the reclamation thereof, and for the
55 engineering, administrative and research costs necessary
56 to said reclamation, providing federal funds on a match-
57 ing basis are made available for the purpose of reclaiming
58 said orphaned surface-mined lands.

59 The director shall make an annual report to the gov-

60 error and to the Legislature setting forth the number of
61 acres reclaimed and rehabilitated through the use, in
62 whole or in part, of the special reclamation fund provided
63 for herein. Such report shall identify each such reclama-
64 tion project, state the number of acres reclaimed thereby,
65 show the county wherein located, and furnish a detailed
66 accounting of expenditures from the special reclama-
67 tion fund.

**§20-6-30. Offenses; penalties; prosecutions; treble damages; in-
junctive relief.**

1 (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
5 not covered by a permit, or who shall falsely represent
6 any material fact in an application for a permit or in
7 an application for the renewal of a permit, or who wil-
8 fully violates any provision of this article, shall be guilty
9 of a misdemeanor, and, upon conviction thereof, shall
10 be punished by a fine of not less than one hundred nor
11 more than one thousand dollars or by imprisonment

12 not exceeding six months, or by both. Any person who
13 deliberately 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 there-
16 of, shall be punished by a fine of not less than one
17 thousand nor more than ten thousand dollars or by im-
18 prisonment not exceeding six months, or by both. Each
19 day of violation constitutes a separate offense. It shall
20 be the duty of the director to institute prosecutions for
21 violations of the provisions hereof. Any person convicted
22 under 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 to
25 reclaim the area with respect to which such conviction
26 relates. The director shall institute any suit or other
27 legal action necessary for the effective administration of
28 the provisions of this article.

29 (b) In addition to and notwithstanding any other penal-
30 ties provided by law, any operator who directly causes
31 damage to the property of others as a result of surface
32 mining shall be liable to them, in an amount not in excess

33 of three times the provable amount of such damage, if
34 and only if such damage occurs before or within one
35 year after such operator has completed all reclamation
36 work with respect to the land on which such surface min-
37 ing was carried out and all bonds of such operator with re-
38 spect to such reclamation work are released. Such dam-
39 ages shall be recoverable in an action at law in any court
40 of competent jurisdiction. The director shall require, in
41 addition to any other bonds and insurance required by
42 other provisions of this article, that any person engaged
43 in the business of surface mining shall file with the
44 director a certificate of insurance, or other security in
45 an amount of not less than ten thousand dollars, to
46 cover possible damage to property for which a recovery
47 may be sought under the provisions of this subsection.

48 (c) Upon application by the director, the attorney
49 general, or the prosecuting attorney of the county in
50 which the major portion of the permit area is located,
51 any court of competent jurisdiction may by injunction
52 compel compliance with and enjoin violations of the pro-
53 visions of this article. The court or the judge thereof

54 in vacation may issue a preliminary injunction in any
55 case pending a decision on the merits of any application
56 filed.

57 An application for an injunction under the provisions
58 of this section may be filed and injunctive relief granted
59 notwithstanding that all of the administrative remedies
60 provided for in this article have not been pursued or
61 invoked against the person or persons against whom such
62 relief is sought and notwithstanding that the person or
63 persons against whom such relief is sought have not been
64 prosecuted or convicted under the provisions of this
65 article.

66 The judgment of the circuit court upon any applica-
67 tion filed under the provisions of this article shall be
68 final unless reversed, vacated or modified on appeal to
69 the supreme court of appeals. Any such appeal shall be
70 sought in the manner provided by law for appeals from
71 circuit courts in other civil cases, except that the petition
72 seeking such review must be filed with said supreme
73 court of appeals within thirty days from the date of entry
74 of the judgment of the circuit court.

ARTICLE 6A. LIMITATIONS ON SURFACE MINING.

§20-6A-1. Limitation on the issuance of new permits for surface mining.

1 Commencing on the effective date of this act, and end-
2 ing two years from such date, no new permits, including
3 prospecting permits, shall be issued under the provisions
4 of article six of this chapter for the surface mining of
5 coal in any county where no surface mining existed
6 under lawful permit during the calendar year one thou-
7 sand nine hundred seventy: *Provided, however,* That if
8 in any such county any application for a permit was
9 made prior to the first day of January, one thousand
10 nine hundred seventy-one, such application shall be
11 processed and granted or refused, according to the provi-
12 sions of this article as if this section had not been enacted.

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

James G. Bruce
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Keyser
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

E. Hans McCourt
President of the Senate

Lewis N. McManus
Speaker House of Delegates

The within approved this the 1st
day of April, 1971.

Arch A. Starnes Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/19/71

Time 2:33 p.m.

RECEIVED

APR 2 11 50 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA