WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED
Senator Substitute
SENATE BILL NO. 193
Original Sponsor
(By Mr. Galperin)

PASSED March 12, 1971

In Effect

FILED IN THE OFFICE
JOHN D. ROCHEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71
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
ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-2. Definitions of terms.

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

3 (a) "Adequate treatment" shall mean treatment of water by physical, chemical or other approved methods in a manner that will cause the analyzed PH level of the treated water to be 5.5 or more and analyzed content of iron of the treated water to be ten milligrams per liter or less or approved treatment which will not lower the water quality standards established for the river, stream or drainway into which such water is released.

12 (b) "Breakthrough" shall mean the release of water which has been trapped or impounded underground, or
the release of air into any underground cavity, pocket or area.

(c) "Director" shall mean the director of natural resources or his authorized agents.

(d) "Disturbed land" or "land disturbed" shall mean (1) the area from which the overburden has been removed in surface-mining operations, (2) the area covered by the spoil, and (3) any areas used in surface-mining operations which by virtue of their use are susceptible to excessive erosion including all lands disturbed by the construction or improvement of haulageways, roads or trails.

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

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

(g) "Multiple bench" or "multiple seam" shall mean a form of surface mining in which two or more benches
are produced, one above the other, in order to allow the
removal of minerals from superjacent seams.

(h) "Operator" shall mean any individual, partnership, firm, association, trust or corporation who or which
is granted a permit to engage in any activity covered
by this article.

(i) "Permit area" shall mean the area of land indicated on the approved map submitted by the operator
with the reclamation plan as specified in section nine of
this article showing the exact location of end strip markers, permit markers and monument.

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

(k) "Surface mine" shall mean all areas surface mined
or being surface mined, as well as adjacent areas ancillary to the operation, together with preparation and
processing plants, storage areas and haulageways, roads
or trails: Provided, That mines subject to the provisions
of articles one, two, four, five and seven, chapter twenty-two of said code, are not "surface mines" within this
definition.
(l) "Surface mining" shall mean all activity for the recovery of minerals, except those activities subject to
the provisions of articles one, two, four, five and seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and subject to such exception, shall include any and all plants and equipment used in processing said minerals: Provided, however, That the bonding and reclamation provisions of this chapter shall not apply to surface-mining of limestone, sandstone and sand, and that the surface-mining of limestone, sandstone and sand shall be subject to separate rules and regulations to be promulgated by the commission.

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

1 The surface-mining reclamation inspectors shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the director.

6 Such inspectors shall give particular attention to all conditions of each permit to insure complete compliance
therewith. The director shall cause inspections to be made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days. Said inspector shall note all violations of law thereat and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned and to the prosecuting attorney of the county wherein the operation lies.

§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, the chief of the water resources division 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 expenses necessarily incurred in performing their functions. 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-
pel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(d) Order, through the director, the suspension or revocation of any permit for failure to comply with any of the provisions of this article or any rules and regulations adopted pursuant thereto;

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

(f) Appoint such advisory committees as may be of assistance to the commission in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public; and

(g) Review orders and decisions of the director.

§20-6-7. Prospecting permit; bond; postponement of reclamation.

It shall hereafter be unlawful for any person to use excavating equipment in an area not covered by a sur-
face mine permit for the purpose of removing the over-
burden to determine the location, quantity or quality
of a natural coal deposit, making feasibility studies or
for any other purpose without having first obtained from
the department of natural resources a permit therefor
as provided in this section. Application for a prospect-
ing permit shall be made in writing on forms prescribed
by the director and shall be signed and verified by the
applicant. The application shall be accompanied by:
(1) A fee of three hundred dollars; (2) a United States
geological survey topographic map showing by proper
markings the crop line and the name, where known, of
the seam or seams to be prospected; (3) a reclamation
plan for the proposed disturbed areas as required for
holders of surface-mining permits in section nine of this
article; and (4) a bond, or cash or collateral securities or
certificates of the same type, form and amount and in
the same manner as provided in section sixteen of this
article in the amount of five hundred dollars per acre
or fraction thereof for the total estimated disturbed acre-
age. If such bond is used, it shall be payable to the state
of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to reclamation of the disturbed acreage. The prospecting permit and the bond accompanying said permit shall be released by the director in the same manner as surface-mining permits and bonds are released. In the event the holder of a prospecting permit desires to mine the area covered by the prospecting permit, the director shall permit such holder to convert the prospecting permit to a surface-mining permit, providing the holder of said permit shall comply with the provisions of this article as they relate to surface-mining permits: Provided, That the prosecuting permit fee shall be a credit toward the surface-mining permit fee if the area covered by the prospecting permit is converted to a surface-mining permit.

In the event the holder of a prospecting permit desires to surface mine the area covered by the prospecting permit, and has fulfilled all the remaining requirements of a surface-mining permit, the director may permit the postponement of the reclamation of the acreage pros-
pected if that acreage is incorporated into the complete reclamation plan submitted with application for a surface-mining permit within a period of three months following completion of each separate excavation under the prospecting permit. Any excavation carried out under a prospecting permit and not incorporated into the complete reclamation plan shall be reclaimed within a period of three months: Provided, That nothing herein shall prevent a landowner from obtaining coal from his own property for use in his own household if the same is not 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 engage in surface mining without having first obtained from the department of natural resources a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the director of natural resources, and shall be signed and verified by the applicant. The application, in addition to such other information as may be rea-
sonably required by the director, shall contain the following information: (1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section nine hereof; (3) the owner or owners of the surface of the land to be mined; (4) the owner or owners of the mineral to be mined; (5) the source of the operator’s legal right to enter and conduct operations on the land to be covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit; (7) the permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface-mining permits are now held and the numbers thereof; (9) the names and post-office addresses of every officer, partner, director (or person performing a similar function), applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten percent or more of any class of stock of the applicant: Provided, That if such list be so large
as to cause undue inconvenience, the director may waive the requirements that such list be made a part of such application, except the names and current addresses of every officer, partner, director and applicant must accompany such application; (10) if known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface or strip-mining permit issued under the laws of this state revoked or has ever had a surface-mining bond, or security deposited in lieu of bond, forfeited; and (11) names and addresses of the reputed owner or owners of all surface area within five hundred feet of any part of proposed disturbed land, which such owners shall be notified by registered or certified mail of such application and such owners shall be given ten days within which to file written objections thereto, if any, with the director. There shall be attached to the application a true copy of an original policy of insurance issued by an insurance company authorized to do business in this state covering all surface-mining
operations of the applicant in this state and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, protection in an amount of not less than three hundred thousand dollars.

The director shall upon receipt of the application for a permit, cause to be published, as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of the application for the permit. Such notice shall contain in abbreviated form the information required by this section, together with the director's statement that written protests to such application will be received by him until a specified date, which date shall be at least thirty days after the first publication of the notice.

The publication area of the notices required by this section shall be the county or counties in which the proposed permit area is located. The cost of all publications required by this section shall be borne by the applicant.

Upon the filing of an application in proper form, accompanied by the fees and bond required by this article
and said true copy of the policy of insurance, and after consideration of the merits of the application and written protests, if any, the director may issue the permit applied for if the applicant has complied with all of the provisions of this article. If the director finds that the applicant is or has been affiliated with or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who or which has had a surface or strip-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant: *Provided, however, That no surface-mining permit shall be refused because of any past revocation of a permit and forfeiture of a bond or other security if such revocation and forfeiture occurred before July one, one thousand nine hundred seventy-one, and if, after such revocation and forfeiture, the operator whose permit has been revoked and bond forfeited shall have paid into the surface-mining reclamation fund the full amount of the bond so forfeited, and any additional sum of money determined by the director to
be adequate to reclaim the land covered by such forfeited
bond: Provided, further, That in no event shall such
additional sum be less than sixty dollars per acre.
The permit shall be valid for one year from its date
of issue. Upon verified application, containing such in-
formation as the director may reasonably require, ac-
 companied by such fees and bond as are required by
this article, and a true copy of the policy of insurance
as aforesaid, the director shall from year to year renew
the permit, if the operation is in compliance with the
provisions of this article.
The registration fee for permits for surface mining,
whether by open cut, auger method or by highwall
mechanical mining or modification thereof, shall be five
hundred dollars. The annual renewal fee for permits for
surface mining shall be one hundred dollars payable on
the anniversary date of said permit upon renewal.
The permit of any operator who fails to pay any fees
provided for in this article shall be revoked.
An operator who has been issued a surface-mining
permit may use any of the usual methods of mining,
including the auger method or highwall mechanical mining or any combination of mining methods defined as “surface mining” in section two of this article, unless otherwise provided by law. Any modifications of these methods shall also be under the director’s jurisdiction.

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

§20-6-9. Preplans.

Under the provisions of this article, and rules and regulations adopted by the commission, the operator shall prepare a complete reclamation and mining plan for the area of land to be disturbed. Said reclamation and mining plan shall include a proposed method of operation prepared by a registered professional engineer or a person approved by the director for grading, backfilling, soil preparation, mining and planting and such other proposals as may be necessary to develop the complete reclamation and mining plan contemplated by this article.
In developing this complete reclamation and mining plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the director shall set forth the reasons why the plan is not acceptable and he may propose modifications, delete areas or reject the entire plan. Should the applicant disagree with the decision of the director, he may, by written notice, request a hearing before the commission. The commission shall hold such hearing within thirty days after receipt of this notice. When a hearing is held by the commission, it shall notify the applicant of its decision by certified mail within twenty days after the hearing. Any person aggrieved by a final order of the commission made after the hear-
The application for a permit shall be accompanied by two copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area shall be acceptable if the plan for reclamation can be shown to the satisfaction of the director. The maps shall:

(a) Be prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a registered land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land surveyor;

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

(c) Show probable limits of adjacent deep-mining operations, probable limits of adjacent inactive or mined-out deep-mined areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;
(d) Be of such scale as may be prescribed by the director;

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

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

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

(h) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage plan, the director shall furnish to the chief of the division of water resources a copy of all
information required by this subdivision, as well as the
names and locations of all streams, creeks or other bodies
of public water within five hundred feet of the area to
be disturbed;
(i) Show the presence of any acid-producing materials
which when present in the overburden, may cause spoil
with a PH factor below 3.5, preventing effective revegeta-
tion. The presence of such materials, wherever occurring in
significant quantity, shall be indicated on the map, filed with
application for permit. The operator shall also indicate the
manner in which acid-bearing spoil will be suitably prepared
for revegetation and stabilization, whether by application
of mulch or suitable soil material to the surface or by some
other type of treatment, subject to approval of the director.
The certification of the maps shall read as follows:
"I, the undersigned, hereby certify that this map is cor-
rect, and shows to the best of my knowledge and belief
all the information required by the surface-mining laws
of this state." The certification shall be signed and no-
tarized. The director may reject any map as incomplete
if its accuracy is not so attested.
In addition to the information and maps required above, each application for a permit shall be accompanied by a detailed reclamation plan as required by this article. A monument as prescribed by the department of natural resources shall be placed in an approved location near the operation. If the operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional maps before mining other areas.

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the department of natural resources three copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show 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
article. Such plans shall be submitted to the director, and if such plans are approved by the director and complied with within such time limits as may be determined by him as being reasonable for carrying out such plans, the backfilling requirements of this article may be modified.

By regulations of the commission, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such backfilling and grading is moved from the operation.

If the operator or other person desires to conduct deep mining upon the premises or use a deep mine opening for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such deep mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. Such locations shall be described and designated on the map required by the provisions of section nine of this article.
Suitable soil material shall be used to cover the surface of the regraded and backfilled area of operation in an amount sufficient to support vegetation.

When the backfilling and grading have been completed and approved by the director, the director shall release that portion of the bond which was filed and designated to cover the backfilling and grading requirements of this article, the remaining portion of the bond in an amount equal to two hundred fifty dollars per acre, but not less than a total amount of five thousand dollars being retained by the treasurer until such time as the planting and revegetation is done according to law and is approved by the director, at which time the director shall release the remainder of the bond.

All fill and cut slopes shall be seeded during the first planting or seeding season after the construction of a haulageway to the area. Upon abandonment of a haulageway, the haulageway shall be seeded and every effort made to prevent its erosion by means of culverts, waterbars or other devices required by the director. In proper season, all fill and cut slopes of the operation and haulage-
ways shall be seeded and planted in a manner as pre-
scribed by the director, as soil tests indicate soil suitability
and in accordance with accepted agricultural and re-
forestation practices.

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

After the operation has been backfilled, graded and
approved by the director, the operator shall prepare or
cause to be prepared a final planting plan for the planting
of trees, shrubs, vines, grasses or legumes upon the area
of the land affected in order to provide a suitable vegeta-
tive cover. The seed or plant mixtures, quantities, method
of planting, type and amount of lime, fertilizer, mulch,
and any other measures necessary to provide a suitable
vegetative cover shall be defined by the rules and regu-
lations of the commission. Such rules and regulations shall
be promulgated under the provisions of article three,
chapter twenty-nine-a of this code.
The planting called for by the final planting plan shall be carried out in a manner so as to establish a satisfactory cover of trees, shrubs, grasses, legumes or vines upon the disturbed area covered by the planting plan within a reasonable period of time. Such planting shall be done by the operator or such operator may contract in writing with the soil conservation district for the district in which the operation covered by such permit is located or with a private contractor approved by the director to have such planting done by such district or private contractor. The director shall not release the operator's bond until all haulageways, roads and trails within the permit area have been abandoned according to the provisions of this article and the rules and regulations promulgated thereunder or such operator or any other person has secured a permit to deep mine such area as required by chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

The purpose of this section is to require restoration of land disturbed by surface mining to a desirable purpose and use. The director may, in the exercise of his
sound discretion when not in conflict with such purpose,
modify such requirements to bring about a more desir-
able land use, including but not limited to, industrial
sites, sanitary landfills, recreational areas, building sites:
Provided, That the person or agency making such
modifications will execute contracts, post bond or other-
wise insure full compliance with the provisions of this
section in the event such modified program is not car-
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-
ing hazards dangerous to life and property so as to con- 
stitute an imminent and inordinate peril to the welfare 
of the state, and that such areas shall not be mined by 
the surface-mining process.

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

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

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

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

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

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

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

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

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

1 Where blasting of overburden is necessary, such blast-
ing shall be done in accordance with established princi-
iples for preventing vibration damage to residences, build-
ings, and communities. Such blasting shall be consid-
ered in compliance with provisions of this act if the
following measures are followed:
(1) The weight in pounds of explosive charge detonated at any one time shall conform with the following scaled distance formula: 

\[ W = \left( \frac{D}{50} \right)^2 \]

Where \( W \) equals weight in pounds of explosives detonated at any one instant time, then \( D \) equals distance in feet from nearest point of blast to nearest residence, building, or structure, other than operation facilities of the mine: 

Provided, That explosive charges shall be considered to be detonated at one time if their detonation occurs within eight milliseconds or less of each other.

(2) Where blast sizes would exceed the limits under subdivision (1) of this section, blasts shall be detonated by the use of delay detonators (either electric or non-electric) to provide detonation times separated by nine milliseconds or more for each section of the blast complying with the scaled distance of the formula.

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

31 (4) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast other than secondary (boulder breaking) 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 blast.

43 (5) Where inspection by the department of natural resources establishes that the scaled distance formula and the approved preplan are not being adhered to, the following penalties shall be imposed:
(a) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than five hundred dollars nor more than one thousand dollars;

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

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

All such assessments as set forth in this section shall be assessed by the director, collected by him and deposited with the treasurer of the state of West Virginia, to the credit of the special reclamation fund.

The director shall promulgate rules and regulations which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area. Such 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, requires or produces benches, the bench width of the first cut made shall not exceed the limits specified in the table of maximum bench widths provided in this section.

2. In the event that more than one bench results from the removal of minerals on a single slope, the limits specified in the table of maximum bench width provided in this section, shall apply equally to every such bench: Provided,

3. That the coal seams are more than one hundred and fifty vertical feet apart. In multiple seam mining when the interval between coal seams is less than one hundred and fifty vertical feet, all overburden will be retained on the bench immediately below the seams being mined.

4. The operator shall show on the map, filed with the application for a permit, the percent of slope of original surface within each two-hundred-foot interval along the contour of the operation, the first measurement to be taken at the starting point of the operation. The flagged field measurement shall be made from the estimated
crop line or proposed coal seam down slope to the estimated toe of the outer spoil. All reasonable measures shall be taken so as not to overload the fill bench during the first cut. No overburden material in excess of the first cut shall be placed over the fill bench. With the exception of haulageways and auger-mining operations, trees and brush shall be removed from the upper one half of all fill sections prior to excavation, and no trees or brush removed from the cut section shall be placed therein or thereon.

MAXIMUM BENCH WIDTHS ALLOWED RELATED TO SLOPE OF ORIGINAL SURFACE

<table>
<thead>
<tr>
<th>Percent (degree) of slope of original surface</th>
<th>Maximum bench width allowed in feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 27% (15°)</td>
<td>250</td>
</tr>
<tr>
<td>31 36% (20°)</td>
<td>150</td>
</tr>
<tr>
<td>32 46% (25°)</td>
<td>120</td>
</tr>
<tr>
<td>33 58% (30°)</td>
<td>100</td>
</tr>
<tr>
<td>34 65% (33°)</td>
<td>60</td>
</tr>
<tr>
<td>35 Above 65% (33°) No fill material beyond cut section.</td>
<td></td>
</tr>
<tr>
<td>36 No fill bench shall be produced on slopes of more than</td>
<td></td>
</tr>
</tbody>
</table>
sixty-five percent, except for construction of haulage-
ways, and such haulageways shall not exceed thirty-five feet in width, with very scattered forty-five-foot passing areas permitted.

Lateral drainage ditches connecting to natural or constructed waterways shall be constructed to control water runoff and prevent erosion whenever required by the director. There shall be no depressions that will accumulate water except those the director may specify and approve. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

If the highwall is composed of materials of sufficient hardness to ordinarily require blasting to displace, where there is insufficient soil available to provide a suitable vegetative cover on the reduced highwall, or where the reduction of the highwall will result in excessive damage to undisturbed vegetated lands above the highwall, such highwall shall be backfilled with soil available from the operation. In no instance shall the backfilling be less than four feet above the seam of coal being worked, and
subject to the discretion of the director, no greater than sixty percent from the horizontal. The highwall shall not exceed thirty feet in vertical rise from the surface of the regraded bench.

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

The table portion of the restored area shall be a terrace with a slope toward the reduced highwall that will direct surface water toward the highwall in a manner to prevent water from flowing over the outer slope of the disturbed area. The restored area shall have a minimum depth of fill sufficient to cover all acid-producing material, all toxic material and all material which constitutes a fire hazard. Such fill shall also be sufficient to support vegetation, as may be prescribed by the director. Additional restoration work may be required by the director according to rules and regulations promulgated by the commis-
sion. In addition to the requirements specified in this section, the operator's method of operation on slopes may be further regulated and controlled according to rules 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 a bench, complete backfilling shall be required, not to exceed the approximate original contour of the land. Such backfilling shall eliminate all highwalls and spoil peaks.

2. Whenever directed by the director, the operator shall construct, in the final grading, such diversion ditches or terraces as will control the water runoff. Additional restoration work may be required by the director, according to rules and regulations adopted by the commission.

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

1. In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules and regulations adopted pursuant thereto, the operator shall be required to perform the following:
(1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the director, or with a permanent water impoundment.

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

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

Any breakthrough caused by the operator during the course of his operations shall be sealed immediately and reported immediately to the director. If the breakthrough is one that allows air to enter a mine, the seal shall either prevent any air from entering the mine by way of the breakthrough, or prevent any air from entering the breakthrough while allowing the water to flow from the breakthrough. If the breakthrough is one that allows acid water to escape, the seal shall prevent the acid water from flowing. Seals shall be constructed of stone, brick, block, earth or similar impervious materials which
are acid resistant. Any cement or concrete employed in the construction of these seals shall also be of an acid resistant, impervious type.

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

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

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

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

(5) Remove or bury all metal, lumber, equipment and
other refuse resulting from the operation. No operator
shall throw, dump or pile; or permit the throwing, dump-
ing, piling or otherwise placing of any (1) overburden, (2)
stones, (3) rocks, (4) coal, (5) particles of coal, (6) earth,
(7) soil, (8) dirt, (9) debris, (10) trees, (11) wood, (12)
logs or (13) other materials or substances of any kind or
nature beyond or outside the area of land which is under
permit and for which bond has been posted; nor shall
any operator place any of the foregoing listed materials
in such a way that normal erosion or slides brought about
by natural physical causes will permit the same to go
beyond or outside the area of land which is under permit
and for which bond has been posted.

§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 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, providing 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 whom the operator contracted for such planting, as aforesaid.

§20-6-16. Performance bonds.

1 Each operator who shall make application for a permit under section eight of this article shall, at the time such permit is requested, furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned that the operator shall faithfully perform all of the requirements of this article. The amount of the bond shall be not less than six hundred dollars for each acre or fraction thereof
Provided, That the di-
rector shall have the discretion to determine the
amount per acre of the bond that shall be required
before a permit is issued, such amount to be based
upon the estimated reclamation costs per acre, not to
exceed a maximum of one thousand dollars per acre
or fraction thereof. The minimum amount of bond
furnished shall be ten thousand dollars. Such bond
shall be executed by the operator and a corporate surety
licensed to do business in the state of West Virginia:
Provided, however, That in lieu of corporate surety,
the operator may elect to deposit with the director
cash, or collateral securities or certificates as fol-
lows: Bonds of the United States or its possessions,
of the federal land banks, or of the home owners'
loan corporation; full faith and credit general obliga-
tion bonds of the state of West Virginia, or other states,
and of any county, district or municipality of the
state of West Virginia or other states; or certificates of
deposit in a bank in this state, which certificates shall be
in favor of the commission. The cash deposit or market
value of such securities or certificates shall be equal to
or greater than the sum of the bond. The director shall,
upon receipt of any such deposit of cash, securities or
certificates, immediately place the same with the treas-
urer of the state of West Virginia whose duty it shall be
to receive and hold the same in the name of the state
in trust for the purpose for which such deposit is made.
The operator making the deposit shall be entitled from
time to time to receive from the state treasurer, upon
the written order of the director, the whole or any por-
tion of any cash, securities or certificates so deposited,
upon depositing with him in lieu thereof, cash or other
securities or certificates of the classes herein specified
having value equal to or greater than the sum of the
bond.

It shall be unlawful for the owner or owners of surface
rights or the owner or owners of mineral rights to in-
terfere with the operator in the discharge of his obliga-
tion to the state for the reclamation of lands disturbed
by him. If the owner or owners of the surface rights
or the owner or owners of the mineral rights desire an-
other operator or other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it shall be the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The director may then release an equivalent amount of the bond of the operator originally furnishing bond on the disturbed area. The director shall determine the amount of bond per acre required for other mining operations within the limitations of this section: Provided, however, That the minimum bond for this type of operation shall be one thousand dollars.

The director shall take into consideration the character and nature of the overburden, the future use of the land and all costs of backfilling, grading and adequate reclamation, including planting, and shall determine the total bond required for other mining operations.

The director shall not release that portion of any bond filed by any operator which is designated to assure faithful performance of, and compliance with, the backfilling and regrading requirements of the reclamation plan un-
til all acid-bearing or acid-producing spoil within the permit area has received adequate treatment as specified in section ten of this article.

§20-6-17. Special reclamation tax.

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

17 The director shall deposit with the treasurer of the
The special reclamation fund shall be administered by the director. The director shall cause to be prepared plans for the reclamation and rehabilitation of lands which are unreclaimed and for which bond either has not been posted or is uncollectible and shall prepare specifications for reclamation of such lands. The director, as funds become available in the special reclamation fund, shall reclaim and rehabilitate such lands in accordance with such plans and specifications, and in so doing the director shall comply with the provisions of article three, chapter five of this code in obtaining supplies, materials, equipment and contractual services deemed necessary by the director for the purposes of reclamation and rehabilitation of said lands:

Provided, That during the first year after the effective date of this article, twenty-five percent of the special reclamation taxes collected may be used by the director to pay inspectors, provide necessary equipment, conduct research and conduct inspection of permit areas and sur-
face-mined areas: Provided, however, That during the first year a maximum of four hundred fifty thousand dollars from the special reclamation taxes collected shall be made available for the director's use as provided above: Provided further, That during the second year after the effective date of this article and each year thereafter, fifteen percent of the special reclamation taxes collected may be used by the director for the same purposes: And provided further, That a portion of the special reclamation taxes allocated for the director's use may be used by the director to provide a subsistence allowance not to exceed one hundred fifty dollars per month to each inspector.

Some of the special reclamation taxes collected may be made available for the purchase of orphaned surface-mined lands, for the reclamation thereof, and for the engineering, administrative and research costs necessary to said reclamation, providing federal funds on a matching basis are made available for the purpose of reclaiming said orphaned surface-mined lands.

The director shall make an annual report to the gov-
error and to the Legislature setting forth the number of acres reclaimed and rehabilitated through the use, in whole or in part, of the special reclamation fund provided for herein. Such report shall identify each such reclamation project, state the number of acres reclaimed thereby, show the county wherein located, and furnish a detailed accounting of expenditures from the special reclamation fund.

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

1 (a) Any person who shall conduct any surface-mining operation, or any part thereof, without a permit or without having furnished the required bond, or who shall carry on such operation or be a party thereto on land not covered by a permit, or who shall falsely represent any material fact in an application for a permit or in an application for the renewal of a permit, or who wilfully violates any provision of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment
not exceeding six months, or by both. Any person who deliberately violates any provision of this article or conducts surface-mining operations without a permit shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months, or by both. Each day of violation constitutes a separate offense. It shall be the duty of the director to institute prosecutions for violations of the provisions hereof. Any person convicted under the provisions of this section shall, in addition to any fine imposed, pay to the director for deposit in the surface-mining reclamation fund an amount sufficient to reclaim the area with respect to which such conviction relates. The director shall institute any suit or other legal action necessary for the effective administration of the provisions of this article.

(b) In addition to and notwithstanding any other penalties provided by law, any operator who directly causes damage to the property of others as a result of surface 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
49 (c) Upon application by the director, the attorney
50 general, or the prosecuting attorney of the county in
51 which the major portion of the permit area is located,
52 any court of competent jurisdiction may by injunction
53 compel compliance with and enjoin violations of the pro-
54 visions of this article. The court or the judge thereof
in vacation may issue a preliminary injunction in any case pending a decision on the merits of any application filed.

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

The judgment of the circuit court upon any application filed under the provisions of this article shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry 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 ending two years from such date, 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 where no surface mining existed under lawful permit during the calendar year one thousand nine hundred seventy: Provided, however, That if in any such county any application for a permit was made prior to the first day of January, one thousand nine hundred seventy-one, such application shall be processed and granted or refused, according to the provisions 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor