WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
SENATE BILL NO. 404

(By Mr. McComas and Mr. Wallace, original sponsors)

PASSED MARCH 11, 1972

In Effect FROM Passage

Mar 29 11 35 PM '72
FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-29-72
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 404

(MR. MCCOURT, MR. PRESIDENT, AND MR. WALLACE,
original sponsors)

[Passed March 11, 1972; in effect from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to the Coal Refuse Disposal Control Act; definition of terms used in article; legislative findings concerning coal refuse disposal piles; duties of director; aerial and on-site inspection; findings and conclusions of director; remedial action by director in cases of imminent danger; recovery of cost; orders of director; injunctive relief; administrative hearing and appeal; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated six-b, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6B. COAL REFUSE DISPOSAL CONTROL ACT.

§20-6B-1. Short title.

1 This article may be known and cited as the “Coal
2 Refuse Disposal Control Act.”

§20-6B-2. Definitions.

1 As used in this article:
2 (a) “Director” means the director of the department
3 natural resources;
(b) "Coal refuse" means any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay and related materials, associated with or near a coal seam, which are either brought above ground or otherwise removed from a coal mine in the process of mining coal, or which are separated from coal during the cleaning or preparation operations;

(c) "Coal refuse disposal pile" means any deposit of coal refuse on or buried in the earth and intended as permanent disposal or long-term storage of such material;

(d) "Operator" means any person operating any coal refuse disposal pile, or part thereof; and

(e) "Operate" means to enter upon a coal refuse disposal pile, or part thereof, for the purpose of disposing, depositing or dumping coal refuse thereon, or to employ a coal refuse disposal pile for retarding the flow of or the impoundment of water.

§20-6B-3. Legislative findings.

The Legislature finds that in certain areas of the state the disposition of materials displaced in the mining of coal creates coal refuse disposal piles which have in the past and may in the future:

(a) Endanger the lives and properties of persons residing in the hollows and valleys of the affected watersheds;

(b) Threaten streams, roads, schools and other public properties and facilities; and

(c) Result in the creation of an emergency situation as to which there can be no delay in taking remedial action to alleviate resulting perils to persons and properties.

§20-6B-4. Administrative findings respecting coal refuse disposal piles.

Within sixty days of the effective date of this article, the director shall complete or have completed an aerial inspection and photographs of all coal refuse disposal piles and any associated water impoundments; and within one hundred twenty days thereafter, the director shall make findings, based on competent engineering evalua-
tions and opinions, concerning the stability and adequacy, including but not limited to the heaviest rainfall conditions based on a return frequency of fifty years, of coal refuse disposal piles which cause water impoundments; and within one year thereafter, the director shall make findings, based on competent engineering evaluations and opinions, concerning the stability and safety of coal refuse disposal piles which may cause water impoundments or otherwise pose a hazard to human life. The director shall have the right to enter upon the land where any coal refuse disposal piles are located in order to make such inspections, tests and surveys as he shall deem necessary. Each such set of findings shall be accompanied by a priority listing of those coal refuse disposal piles which constitute the greatest danger to persons and properties by reason of potential instability, explosions, slippage, shifting or sliding of the refuse deposited on such piles or the discharge of a substantial quantity of water.

The director shall prepare a report, containing conclusions and recommendations, on all findings which shall be available to the public.

The authority, powers and duties of the director shall not be limited by any time periods stated herein but shall be on a continuing basis.

§20-6B-5. Remedial action respecting dangerous coal refuse disposal piles.

Whenever the director finds that a coal refuse disposal pile constitutes imminent danger to human life, he may, without the necessity of obtaining the permission of the operator or the landowners involved, enter upon the premises where any such coal refuse disposal pile exists and take all remedial action as may be necessary or expedient to secure such coal refuse disposal pile and to abate the conditions which cause the danger to human life.

The costs reasonably incurred in any remedial action taken by the director under this section shall be paid for initially by funds appropriated to the department of natural resources for such purposes, and such sums so
expended shall be recovered from the operator by appro-
appropriate civil action to be initiated by the attorney general
upon request of the director.

§20-6B-6. Orders of the director; injunctive relief.

When the director makes a finding of a dangerous
condition not imminently dangerous with respect to any
new coal refuse disposal pile created hereafter or any
part of an existing coal refuse disposal pile which is
presently being operated, then the director shall order
the operator to take all remedial action at his own ex-
 pense, as may be necessary or expedient to prevent or
correct the condition, and it shall be the duty of such
operator to take such action. Any such order shall be
served by certified or registered mail, return receipt re-
quested, on the operator involved.

The director may apply to the circuit court of the
county in which any such coal refuse disposal pile so
operated is located for an injunction to enforce the orders
of the director.

§20-6B-7. Hearing upon orders of the director; costs and bond;
judicial review; appeal; legal assistance for com-
missioner.

Any operator adversely affected by any order of the
director shall have a right to a hearing thereon before
the director, providing that demand in writing for such
hearing is served upon the director, within ten days
following the receipt by such applicant or licensee of a
certified copy of said order. The service of such demand
for a hearing upon the director shall operate to suspend
the execution of the order with respect to which a hearing
is being demanded. The person demanding a hearing
shall either establish sufficient financial responsibility or
give security for the cost of such hearing in such form
and amount as the director may reasonably require. If
the person demanding such hearing does not substantially
prevail in such hearing or upon judicial review thereof
as hereinafter provided, then the costs of such hearing
shall be assessed against him by the director and may be
collected by an action at law or other proper remedy.
18 The director shall immediately set a date for such hearing and notify the person demanding such hearing thereof, which hearing shall be held within thirty days after receipt of said demand. At such hearing the director shall hear evidence and thereafter make and enter an order supported by findings of facts, affirming, modifying or vacating the order with respect to which such hearing was held, which order shall be final unless vacated or modified upon judicial review thereof.

27 Such hearing and the administrative procedure prior to, during and following the same shall be governed by and be in accordance with the provisions of article five, chapter twenty-nine-a of this code in like manner as if the provisions of article five were set forth in extenso in this section.

33 Any person adversely affected by an order entered following such hearing shall have the right of judicial review thereof in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code with like effect as if the provisions of said section four were set forth in extenso herein.

39 The judgment of a circuit court reviewing such order of the director shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

44 Legal counsel and services for the director in all such proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§20-6B-8. Severability.

1 If any article, section, subsection, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, subsections, provisions, clauses or phrases or applications of the chapter, and to this end each and every article, section, subsection, provision,
clause and phrase of this chapter is declared to be severable. The Legislature hereby declares that it would have
enacted the remaining articles, sections, subsections, provisions, clauses and phrases of this chapter even if it had
known that any articles, sections, subsections, provisions, clauses and phrases thereof would be declared to be
unconstitutional or invalid, and that it would have enacted this chapter even if it had known that the application
thereof to any person or circumstance would be held to be unconstitutional or invalid.
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 27th day of March, 1972.

Governor
PRESENTED TO THE GOVERNOR

Date 3/17/72
Time 12:30 p.m.