

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 404

(By Mr. McCourt Mr. President
AND Mr. WALLACE
ORIGINAL SPONSORS)

PASSED MARCH 11 1972

In Effect FROM Passage



MAR 29 11 35 PM '72
OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-29-72

404

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;

4 (b) "Coal refuse" means any waste coal, rock, shale,
5 slurry, culm, gob, boney, slate, clay and related
6 materials, associated with or near a coal seam, which are
7 either brought above ground or otherwise removed from
8 a coal mine in the process of mining coal, or which are
9 separated from coal during the cleaning or preparation
10 operations;

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

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

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

§20-6B-3. Legislative findings.

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

5 (a) Endanger the lives and properties of persons resid-
6 ing in the hollows and valleys of the affected watersheds;

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

9 (c) Result in the creation of an emergency sit-
10 uation as to which there can be no delay in taking
11 remedial action to alleviate resulting perils to persons
12 and properties.

**§20-6B-4. Administrative findings respecting coal refuse dis-
posal piles.**

1 Within sixty days of the effective date of this article, the
2 director shall complete or have completed an aerial in-
3 spection and photographs of all coal refuse disposal piles
4 and any associated water impoundments; and within
5 one hundred twenty days thereafter, the director shall
6 make findings, based on competent engineering evalua-

7 tions and opinions, concerning the stability and adequacy,
8 including but not limited to the heaviest rainfall condi-
9 tions based on a return frequency of fifty years, of coal
10 refuse disposal piles which cause water impoundments;
11 and within one year thereafter, the director shall make
12 findings, based on competent engineering evaluations and
13 opinions, concerning the stability and safety of coal refuse
14 disposal piles which may cause water impoundments or
15 otherwise pose a hazard to human life. The director shall
16 have the right to enter upon the land where any coal
17 refuse disposal piles are located in order to make such
18 inspections, tests and surveys as he shall deem necessary.

19 Each such set of findings shall be accompanied by a
20 priority listing of those coal refuse disposal piles which
21 constitute the greatest danger to persons and properties
22 by reason of potential instability, explosions, slippage,
23 shifting or sliding of the refuse deposited on such piles
24 or the discharge of a substantial quantity of water.

25 The director shall prepare a report, containing conclu-
26 sions and recommendations, on all findings which shall be
27 available to the public.

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

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

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

10 The costs reasonably incurred in any remedial action
11 taken by the director under this section shall be paid for
12 initially by funds appropriated to the department of
13 natural resources for such purposes, and such sums so

14 expended shall be recovered from the operator by appro-
15 priate civil action to be initiated by the attorney general
16 upon request of the director.

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

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

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

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

1 Any operator adversely affected by any order of the
2 director shall have a right to a hearing thereon before
3 the director, providing that demand in writing for such
4 hearing is served upon the director, within ten days
5 following the receipt by such applicant or licensee of a
6 certified copy of said order. The service of such demand
7 for a hearing upon the director shall operate to suspend
8 the execution of the order with respect to which a hearing
9 is being demanded. The person demanding a hearing
10 shall either establish sufficient financial responsibility or
11 give security for the cost of such hearing in such form
12 and amount as the director may reasonably require. If
13 the person demanding such hearing does not substantially
14 prevail in such hearing or upon judicial review thereof
15 as hereinafter provided, then the costs of such hearing
16 shall be assessed against him by the director and may be
17 collected by an action at law or other proper remedy.

18 The director shall immediately set a date for such hear-
19 ing and notify the person demanding such hearing thereof,
20 which hearing shall be held within thirty days after
21 receipt of said demand. At such hearing the director
22 shall hear evidence and thereafter make and enter an
23 order supported by findings of facts, affirming, modifying
24 or vacating the order with respect to which such hearing
25 was held, which order shall be final unless vacated or
26 modified upon judicial review thereof.

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

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

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

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

§20-6B-8. Severability.

1 If any article, section, subsection, provision, clause or
2 phrase of this article or the application thereof to any
3 person or circumstance is held unconstitutional or in-
4 valid, such unconstitutionality or invalidity shall not affect
5 other articles, sections, subsections, provisions, clauses or
6 phrases or applications of the chapter, and to this end
7 each and every article, section, subsection, provision,

8 clause and phrase of this chapter is declared to be sever-
9 able. The Legislature hereby declares that it would have
10 enacted the remaining articles, sections, subsections, pro-
11 visions, clauses and phrases of this chapter even if it had
12 known that any articles, sections, subsections, provisions,
13 clauses and phrases thereof would be declared to be
14 unconstitutional or invalid, and that it would have enacted
15 this chapter even if it had known that the application
16 thereof to any person or circumstance would be held to
17 be unconstitutional or invalid.

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

Russell H. Beall
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Roberson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

E. Hans McEwen
President of the Senate

Lewis M. McManne
Speaker House of Delegates

The within approved this the 27th
day of March, 1972.

Arka Prasad
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/72

Time 12:30pm