WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

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ENROLLED

HOUSE BILL No. 1382

(By Mr. Gallaway & Mr. Arnold)

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PASSED April 7, 1977

In Effect July 1, 1977 Passage
AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eight-a and eighteen-a, providing for a limitation on the issuance of any new permits for surface mining and requiring a special surface mining permit when coal is removed incidental to commercial, residential, industrial or civic construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-8a. Limitation on the issuance of new permits for surface mining.

1 On and after the effective date of this section, no new permits, including prospecting permits, may be issued under the provisions of article six of this chapter for the surface mining of coal in any county, unless the operator is required to perform the following:

6 (1) Insure to the satisfaction of the director that, when engaged in surface mining on slopes of twenty degrees or greater, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural
downslope below the initial bench or mining cut: *Provided,*
That soil or spoil material from the initial cut of earth in a
new surface-mining operation may be placed on a limited
specified area of the downslope below the initial cut if the
permittee can establish to the satisfaction of the director that
the soil or spoil will not slide and that the other requirements of
this section can still be met;

(2) Backfill, compact (where advisable to insure stability
or to prevent leaching of toxic materials) and grade to restore
the approximate original contour of the disturbed land with all
highwalls, spoil piles and depressions eliminated (unless small
depressions are needed in order to retain moisture to assist
revegetation or as otherwise authorized pursuant to this
article); and

(3) Comply with all other provisions of article six of this
chapter: *Provided,* That in the event of any inconsistency be-
tween the provisions of this section and other provisions of
article six of this chapter, the provisions of this section shall
govern and control.

This subdivision shall not be construed so as to abrogate
or limit in any way the authority of the director to modify
reclamation requirements to bring about more desirable land
uses or watershed control, including, but not limited to, moun-
tain top removal and valley fill techniques: *Provided,* That the
use of any such technique shall be subject to the prior written
approval of the director.

This subdivision shall not be construed so as to prohibit the
retention of a properly maintained haul road on the disturbed
land after reclamation has been completed or to prohibit the
installation of diversion ditches and other minor deviations
from the approximate original contour of the disturbed land:
*Provided,* That the director has given his prior written approval
for the haul road, diversion ditch or other minor deviation.

(4) Notwithstanding the provisions of sections nineteen
and thirty-one, section six of this article, all surface-mining
permits previously issued which are valid on the effective date
of this section and all applications for surface-mining permits
which have been received by the department of natural re-
§ 20-6-18a. Special permits for the removal of coal incidental to construction.

It shall hereafter be unlawful for any person to engage in surface mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the department of natural resources a surface-mine permit therefor as provided in section eight of this article, unless a special permit therefor shall have been first obtained from the department as provided in this section.

Application for a special permit to engage in surface mining as an incident to the development of land for commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the department and shall be signed and verified by the applicant. The application shall be accompanied by:

1. A site preparation plan prepared and certified by or under the supervision of a registered professional civil engineer or by a land surveyor approved by the director, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of the natural coal deposit to be mined and removed from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof, and such other information as prescribed by the director;

2. A development plan for the proposed commercial, residential, industrial or civic use of said land;

3. The owner or owners of the surface of the land to be developed;

4. The owner or owners of the mineral to be mined incident to the development of the land;

5. A reasonable estimate of the number of acres of mineral that would be mined as a result of the proposed development
of said land: *Provided*, That in no event may such number of
acres to be mined exceed five acres;

(6) Such other information as the director may require to
satisfy and assure the director that the surface mining under
the special permit is incidental or secondary to the proposed
commercial, residential, industrial or civic use of said land.

There shall be attached to the application for the special per-
mit a certificate of insurance certifying that the applicant has in
force a public liability insurance policy issued by an insurance
company authorized to do business in this state covering all
development operations of the applicant in this state and af-
fording personal injury protection in an amount not less than
one hundred thousand dollars and property damage, including
blasting damage, protection in an amount not less than three
hundred thousand dollars.

The application for the special permit shall also be accom-
panied by a bond, or cash or collateral securities or certificates
of the same type, in the form as prescribed by the director and
in the minimum amount of three thousand dollars per acre, for
a maximum disturbance of five acres. A special reclamation tax
of sixty dollars for each acre of land to be disturbed in the
mining operation, with the exception of roadway, storage areas
and processing plants shall be paid to the director before a
permit is issued.

The bond shall be payable to the state of West Virginia and
conditioned that the applicant shall complete the site prepara-
tion for the proposed commercial, residential, industrial or
civic use of said land. At the conclusion of the site prepara-
tion, in accordance with the site preparation plan submitted
with the application, the bond conditions shall be satisfied and
the bond released and any cash, securities or certificates fur-
nished with said bond shall be returned to the applicant.

The filing fee for the special permit shall be one thousand
dollars.

The special permit shall be valid until work permit is com-
pleted.

The purpose of this section is to vest jurisdiction in the de-
department of natural resources over the aspect of surface mining involved where the surface mining is incidental or secondary to preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, coal must be removed, such as the building and construction of highways, railroads, shopping malls, factory and industrial sites, residential and building sites, recreational areas etc. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that the same is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article shall not be applicable to the operator holding a special permit: Provided, That this section shall not apply to a landowner engaged in the construction of a single family dwelling which construction does not require the disturbance of more than one acre of privately owned land.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James P. Davis  
Chairman Senate Committee

Clarence L. Christie, Jr.  
Chairman House Committee

Originated in the House.  
Takes effect July 1, 1977.

J.C. Sill, Jr.  
Clerk of the Senate

C.A. Blakenship  
Clerk of the House of Delegates

W.J. Battle, Jr.  
President of the Senate

Donald L. Yeoppp  
Speaker House of Delegates

The within is approved this the 26th day of April, 1977.

 Governor