

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

— ● —

ENROLLED

HOUSE BILL No. 1382

(By Mr. Ballouy & Mr. Arnold)

— ● —

PASSED April 9, 1977

In Effect July 1, 1977 Passage

**ENROLLED**

**H. B. 1382**

(By MR. BALLOUZ and MR. ARNOLD)

---

[Passed April 9, 1977; in effect July 1, 1977.]

---

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 per-  
2 mits, including prospecting permits, may be issued under the  
3 provisions of article six of this chapter for the surface mining  
4 of coal in any county, unless the operator is required to perform  
5 the following:

6 (1) Insure to the satisfaction of the director that, when  
7 engaged in surface mining on slopes of twenty degrees or  
8 greater, no debris, abandoned or disabled equipment, spoil  
9 material or waste mineral matter will be placed on the natural

10 downslope below the initial bench or mining cut: *Provided*,  
11 That soil or spoil material from the initial cut of earth in a  
12 new surface-mining operation may be placed on a limited  
13 specified area of the downslope below the initial cut if the  
14 permittee can establish to the satisfaction of the director that  
15 the soil or spoil will not slide and that the other requirements of  
16 this section can still be met;

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

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

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

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

43 (4) Notwithstanding the provisions of sections nineteen  
44 and thirty-one, section six of this article, all surface-mining  
45 permits previously issued which are valid on the effective date  
46 of this section and all applications for surface-mining permits  
47 which have been received by the department of natural re-

48 sources on the effective date of this section and all surface-  
49 mining operations conducted or to be conducted thereunder  
50 are hereby exempted from the requirements of this section.

**§20-6-18a. Special permits for the removal of coal incidental to construction.**

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

9 Application for a special permit to engage in surface min-  
10 ing as an incident to the development of land for commercial,  
11 residential, industrial or civic use shall be made in writing on  
12 forms prescribed by the department and shall be signed and  
13 verified by the applicant. The application shall be accom-  
14 panied by:

15 (1) A site preparation plan prepared and certified by or  
16 under the supervision of a registered professional civil engineer  
17 or by a land surveyor approved by the director, showing the  
18 tract of land which the applicant proposes to develop for com-  
19 mercial, residential, industrial or civic use; the probable bound-  
20 aries and areas of the natural coal deposit to be mined and  
21 removed from said tract of land incident to the proposed com-  
22 mercial, residential, industrial or civic use thereof, and such  
23 other information as prescribed by the director;

24 (2) A development plan for the proposed commercial, resi-  
25 dential, industrial or civic use of said land;

26 (3) The owner or owners of the surface of the land to be  
27 developed;

28 (4) The owner or owners of the mineral to be mined inci-  
29 dent to the development of the land;

30 (5) A reasonable estimate of the number of acres of mineral  
31 that would be mined as a result of the proposed development

32 of said land: *Provided*, That in no event may such number of  
33 acres to be mined exceed five acres;

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

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

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

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

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

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

68 The purpose of this section is to vest jurisdiction in the de-

69 partment of natural resources over the aspect of surface min-  
70 ing involved where the surface mining is incidental or second-  
71 ary to preparation of land for commercial, residential, industrial  
72 or civic use and where, as an incident to such preparation of  
73 land, coal must be removed, such as the building and con-  
74 struction of highways, railroads, shopping malls, factory and  
75 industrial sites, residential and building sites, recreational areas  
76 etc. Anyone who has been issued a special permit shall not be  
77 issued an additional special permit on the same or adjacent  
78 tract of land unless satisfactory evidence has been submitted  
79 to the director that the same is necessary to subsequent de-  
80 velopment or construction. As long as the operator complies  
81 with the purpose and provisions of this section, the other  
82 sections of this article shall not be applicable to the operator  
83 holding a special permit: *Provided*, That this section shall not  
84 apply to a landowner engaged in the construction of a single  
85 family dwelling which construction does not require the dis-  
86 turbance 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 L. Davis*  
Chairman Senate Committee

*Clarence C. Chuston Jr*  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1977.

*J. Dillon, Jr.*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*W. T. Brathwaite Jr.*  
President of the Senate

*Donald L. Kopp*  
Speaker House of Delegates

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

*James I. Doyle*  
Governor



RECEIVED

APR 21 2 21 PM '77

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 26, 1977

Time 4:00 p.m.

RECEIVED

77 APR 27 P4:35

OFFICE  
SECY. OF STATE