

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-25-80

Time 1:00 P.M.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



ENROLLED

Committee Substitute for

HOUSE BILL No. 1529

(By Mr. Speaker, Mr. Bee, & Mr. Teets)



Passed March 8, 1980

In Effect  upon the proclamation of the Governor finding that the approval of the West Virginia state program under section 503 of the federal "Surface Mine Control and Reclamation Act of 1977" has been given by the Secretary of the U. S. Department of the Interior.

No: 1529

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1529

(By MR. SPEAKER, MR. SEE, and MR. TEETS)

(Originating in the House Committee on the Judiciary)

[Passed March 8, 1980; in effect upon the proclamation of the Governor finding that the approval of the West Virginia state program under section 503 of the federal "Surface Mine Control and Reclamation Act of 1977" has been given by the Secretary of the U. S. Department of the Interior.]

AN ACT to amend and reenact article six and six-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixty-three, article two, chapter twenty-two, of said code; to amend and reenact section two, article six of said chapter; and to amend and reenact section three, article six-a of said chapter, all relating to coal surface mining and the surface effects of deep mining of coal generally; establishing the West Virginia surface mining and reclamation act; short title; legislative findings and purpose; jurisdiction of the department of natural resources; authority of the director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation; promulgation of rules and regulations by reclamation commission; definitions; division of reclamation; authority, qualifications and compensation of division chief; duties and function of division; surface-mining reclamation supervisors and inspectors; appointment, qualifications and salary of supervisors and inspec-

tors; duties of surface-mining reclamation inspectors and inspectors in training; reclamation commission; duties, authority, functions and compensation of commission; petition for issuance, amendment or repeal of a rule of the commission; notice of intention to prospect and requirements therefor; bonding; authority of director to deny or limit prospecting; postponement of reclamation; prohibited acts; exceptions; prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; termination of permits; permit fees; permit application requirements and contents; reclamation plan requirements; performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of liability; general environmental protection performance standards for surface mining; variances from standards; additional general environmental protection performance standards for the surface effects of underground mining; application of article to surface effects of underground mining; inspection; monitoring; right-of-entry; inspection of records; identification signs; progress maps; limitation of liability; cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal; notice of violation; procedures and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; prosecution; injunctive relief; approval, denial, revision and prohibition of permit; permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; operator reassignments; public notice; written objections; public hearings; informal conferences; decision of director on permit application, and hearing thereon; designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable; appointment and organization of reclamation board of review; authority; compensation, expenses and removal of board members; appeals to the board; hearings before board; subpoena and subpoena duces tecum; records, findings and orders of the board; appeal from order of board; judicial review; temporary relief from order of board; release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release; water rights and replacement;

waiver of replacement; citizen suits; order of court; damages; surface-mining operations not subject to this article; leasing of lands owned by state for surface mining of coal; special permits for removal of coal incidental to development of land; application; bond; reclamation plan for existing abandoned coal processing waste piles; existing permits and performance bond conversion; exemption from design criteria; experimental practices; certification and training of blasters; certification of surface miners and surface-mine foreman; monthly report by operator; applicability and enforcement of laws safeguarding life and property; regulations pertaining to safety; authority of department of mines regarding safety laws; conflicting provisions; conflict of interest prohibited, and criminal penalties therefor; employee protection; severability; validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977; application of article to operations under permit issued hereunder; abandoned mine lands and reclamation act; short title; legislative findings, intent and purpose of article; jurisdiction and authority of director of department of natural resources; definitions; abandoned land reclamation fund; objectives of fund; lands eligible for reclamation; powers and duties of director; program plans and reclamation projects; acquisition and reclamation of land adversely affected by past coal surfacemining practices; liens against reclaimed land; petition by landowner; appeal; priority of liens; filling voids and sealing tunnels; general and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds; interagency cooperation; prior approval of director of department of mines for the opening or reopening of mines; approval fee; inspection by director of department of mines; definition of terms relating to certification of underground and surface coal miners; and definition of terms relating to the board of miner training; education and certification.

Be it enacted by the Legislature of West Virginia:

That article six and six-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixty-three, article two, chapter twenty-two of said code, be amended and reenacted; that section

two, article six of said chapter be amended and reenacted; and that section three, article six-a of said chapter be amended and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-1. Short Title.

1 This article shall be known and cited as the "West Virginia
2 Surface Coal Mining and Reclamation Act."

§20-6-2. Legislative findings and purpose; jurisdiction vested in department of natural resources; authority of director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation.

1 (a) The Legislature finds that it is essential to the economic
2 and social well-being of the citizens of the state of West Vir-
3 ginia to strike a careful balance between the protection of the
4 environment and the economical mining of coal needed to meet
5 energy requirements.

6 Further, the Legislature finds that there is great diversity
7 in terrain, climate, biological, chemical and other physical
8 conditions in parts of this nation where mining is conducted;
9 that the state of West Virginia in particular needs an environ-
10 mentally sound and economically healthy mining industry;
11 and by reason of the above it may be necessary for
12 the reclamation commission herein established to promul-
13 gate regulations which vary from federal regulations as is
14 provided for in sections 101 (f) and 201 (c) (9) of the Surface
15 Mining Control and Reclamation Act of 1977 "Public Law
16 95-87."

17 Further, the Legislature finds that unregulated surface coal
18 mining operations may result in disturbances of surface and
19 underground areas that burden and adversely affect commerce,
20 public welfare and safety by destroying or diminishing the
21 utility of land for commercial, industrial, residential, recrea-
22 tional, agricultural and forestry purposes; by causing erosion
23 and landslides; by contributing to floods; by polluting the water

24 and river and stream beds; by destroying fish, aquatic life and
25 wildlife habitats; by impairing natural beauty; by damaging the
26 property of citizens; by creating hazards dangerous to life and
27 property; and by degrading the quality of life in local commu-
28 nities, all where proper mining and reclamation is not practiced.

29 (b) Therefore, it is the purpose of this article to:

30 (1) Expand the established and effective statewide pro-
31 gram to protect the public and the environment from the ad-
32 verse effects of surface-mining operations;

33 (2) Assure that the rights of surface and mineral owners
34 and other persons with legal interest in the land or appurte-
35 nances to land are adequately protected from such operations;

36 (3) Assure that surface-mining operations are not conducted
37 where reclamation as required by this article is not feasible;

38 (4) Assure that surface mining operations are conducted
39 in a manner to adequately protect the environment;

40 (5) Assure that adequate procedures are undertaken to
41 reclaim surface areas as contemporaneously as possible with
42 the surface mining operations;

43 (6) Assure that adequate procedures are provided for pub-
44 lic participation where appropriate under this article;

45 (7) Assure the exercise of the full reach of state common
46 law, statutory and constitutional powers for the protection of
47 the public interest through effective control of surface mining
48 operations; and

49 (8) Assure that the coal production essential to the nation's
50 energy requirements and to the state's economic and social
51 well-being is provided.

52 (c) In recognition of these findings and purposes, the
53 Legislature hereby vests authority in the reclamation commis-
54 sion of the department of natural resources to:

55 (1) Administer and enforce the provisions of this article
56 as it relates to surface mining to accomplish the purposes of
57 this article;

58 (2) Conduct hearings and conferences or appoint persons
59 to conduct them in accordance with this article;

60 (3) Promulgate, administer and enforce regulations pursuant
61 to this article;

62 (4) Enter into a cooperative agreement with the secretary
63 of the United States department of the interior to provide for
64 state regulations of surface-mining operations on federal lands
65 within West Virginia consistent with section 523 of Public
66 Law 95-87; and

67 (5) Administer and enforce regulations promulgated pur-
68 suant to this chapter to accomplish the requirements of pro-
69 grams under Public Law 95-87.

70 (d) The director of the department of natural resources and
71 the director of the department of mines shall cooperate with
72 respect to departmental programs and records to effect an
73 orderly and harmonious administration of the provisions of
74 this article. The director of the department of natural resources
75 may avail himself of any services which may be provided by
76 other state agencies in this state and other states or by agen-
77 cies of the federal government, and may reasonably compen-
78 sate them for such services. Also, he may receive any federal
79 funds, state funds or any other funds, and enter into coopera-
80 tive agreements, for the reclamation of land affected by surface
81 mining.

§20-6-3. Definitions.

1 As used in this article, unless used in a context that clearly
2 requires a different meaning, the term:

3 (a) "Adequate treatment" means treatment of water by
4 physical, chemical or other approved methods in a manner so
5 that the treated water shall not lower the water quality
6 standards established for the river, stream or drainway into
7 which such water is released.

8 (b) "Affected area" means, when used in the context of
9 surface mining activities, all land and water resources within
10 the permit area which are disturbed or utilized during the
11 term of the permit in the course of surface mining and reclama-

12 tion activities. "Affected area" means, when used in the
13 context of underground mining activities, all surface land and
14 water resources affected during the term of the permit (1)
15 by surface operations or facilities incident to underground
16 mining activities or (2) by underground operations.

17 (c) "Adjacent areas" means, for the purpose of permit ap-
18 plication, renewal, revision, review and approval, those land
19 and water resources, contiguous to or near a permit area,
20 upon which surface-mining and reclamation operations con-
21 ducted within a permit area during the life of such operations
22 may have an impact. "Adjacent areas" means, for the
23 purpose of conducting surface-mining and reclamation oper-
24 ations, those land and water resources contiguous to
25 or near the affected area upon which surface-mining and
26 reclamation operations conducted within a permit area during
27 the life of such operations may have an impact.

28 (d) "Applicant" means any person who has or should have
29 applied for any permit pursuant to this article.

30 (e) "Approximate original contour" means that surface
31 configuration achieved by the backfilling and grading of the
32 disturbed areas so that the reclaimed area, including any
33 terracing or access roads, closely resembles the general
34 surface configuration of the land prior to mining and blends
35 into and complements the drainage pattern of the surrounding
36 terrain, with all highwalls and spoil piles eliminated:
37 *Provided*, That water impoundments may be permitted pur-
38 suant to subdivision (8), subsection (b), section thirteen of
39 this article: *Provided, however*, That minor deviations may be
40 permitted in order to minimize erosion and sedimentation,
41 retain moisture, to assist revegetation, or to direct surface
42 runoff.

43 (f) "Breakthrough" means the release of water which has
44 been trapped or impounded, or the release of air into any
45 underground cavity, pocket or area as a result of surface-
46 mining operations.

47 (g) "Coal processing wastes" means earth materials which
48 are or have been combustible, physically unstable, or acid-
49 forming or toxic-forming, which are wasted or otherwise

50 separated from product coal, and slurried or otherwise trans-
51 ported from coal processing plants after physical or chemical
52 processing, cleaning, or concentrating of coal.

53 (h) "Department" means the department of natural
54 resources.

55 (i) "Director" means the director of the department of
56 natural resources, deputy directors, the chief of the
57 division of reclamation, the assistant chiefs of the
58 division of reclamation and all duly authorized surface-
59 mining reclamation supervisors, or inspectors and inspectors
60 in training.

61 (j) "Disturbed area" means an area where vegetation,
62 topsoil, or overburden has been removed by surface-mining
63 operations, and reclamation is incomplete.

64 (k) "Imminent danger to the health or safety of the public"
65 means the existence of such condition or practice, or any
66 violation of a permit or other requirement of this article,
67 which condition, practice or violation could reasonably
68 be expected to cause substantial physical harm or death to any
69 person outside the permit area before such condition, practice
70 or violation can be abated. A reasonable expectation of death
71 or serious injury before abatement exists if a rational person,
72 subjected to the same conditions or practices giving rise to the
73 peril, would not expose himself to the danger during the time
74 necessary for the abatement.

75 (l) "Minerals" means clay, coal, flagstone, gravel, lime-
76 stone, manganese, sand, sandstone, shale, iron ore and any
77 other metal or metallurgical ore.

78 (m) "Operation" means those activities conducted by an
79 operator who is subject to the jurisdiction of this article.

80 (n) "Operator" means any person who is granted or who
81 should obtain a permit to engage in any activity covered by
82 this article.

83 (o) "Permit" means a permit to conduct surface-mining
84 operations pursuant to this article.

85 (p) "Permit area" means the area of land indicated on

86 the approved proposal map submitted by the operator as part
87 of his application showing the location of perimeter markers
88 and monuments and shall be readily identifiable by appropriate
89 markers on the site.

90 (q) "Permittee" means a person holding a permit issued
91 under this article.

92 (r) "Person" means any individual, partnership, firm,
93 society, association, trust, corporation, other business entity
94 or any agency, unit or instrumentality of federal, state or
95 local government.

96 (s) "Prime farmland" has the same meaning as that
97 prescribed by the United States secretary of agriculture on
98 the basis of such factors as moisture availability, tem-
99 perature regime, chemical balance, permeability, surface lay-
100 er composition, susceptibility to flooding and erosion
101 characteristics, and which historically have been used for
102 intensive agricultural purposes and as published in the
103 Federal Register.

104 (t) "Surface mine," "surface mining" or "surface-mining
105 operations" means:

106 (1) Activities conducted on the surface of lands for
107 the removal of coal, or, subject to the requirements of
108 section fourteen of this article, surface operations and
109 surface impacts incident to an underground coal mine,
110 including the drainage and discharge therefrom. Such
111 activities include excavation for the purpose of obtain-
112 ing coal, including, but not limited to, such common
113 methods as contour, strip, auger, mountaintop removal,
114 box cut, open pit and area mining; the uses of ex-
115 plosives and blasting; reclamation and in situ distillation
116 or retorting, leaching or other chemical or physical
117 processing; and the cleaning, concentrating, or other pro-
118 cessing or preparation, loading of coal for commercial
119 purposes at or near the mine site; and

120 (2) The areas upon which the above activities occur
121 or where such activities disturb the natural land sur-
122 face. Such areas shall also include any adjacent land,

123 the use of which is incidental to any such activities;
124 all lands affected by the construction of new roads or
125 the improvement or use of existing roads to gain access
126 to the site of such activities and for haulage; and ex-
127 cavations, workings, impoundments, dams, ventilation shafts,
128 entryways, refuse banks, dumps, stockpiles, overburden
129 piles, spoil banks, culm banks, tailings, holes or de-
130 pressions, repair areas, storage areas, processing areas,
131 shipping areas and other areas upon which are sited
132 structures, facilities, or other property or materials on the
133 surface, resulting from or incident to such activities: *Pro-*
134 *vided*, That such activities do not include the extraction of
135 coal incidental to the extraction of other minerals where coal
136 does not exceed sixteen and two-thirds percent of the tonnage
137 of minerals removed for purposes of commercial use or sale,
138 or coal prospecting subject to section eight of this article:
139 *Provided, however*, That permanent facilities not within the
140 area being mined and not directly involved in the excavation,
141 loading, storage, or processing of the coal shall not be subject
142 to the provisions of this article. Such facilities include, but
143 are not limited to, offices, garages, bathhouses, parking areas,
144 and maintenance and supply areas,

145 (u) "Underground mine" means the surface effects asso-
146 ciated with the shaft, slopes, drifts or inclines connected with
147 excavations penetrating coal seams or strata and the equipment
148 connected therewith which contribute directly or indirectly to
149 the mining, preparation or handling of coal.

150 (v) "Significant, imminent environmental harm to land,
151 air or water resources" means the existence of any condition
152 or practice, or any violation of a permit or other requirement
153 of this article, which condition, practice or violation could
154 reasonably be expected to cause significant and imminent en-
155 vironmental harm to land, air or water resources. The term
156 "environmental harm" means any adverse impact on land,
157 air or water resources, including, but not limited to, plant,
158 wildlife, and fish, and the environmental harm is imminent
159 if a condition or practice exists which is causing such harm
160 or may reasonably be expected to cause such harm at any
161 time before the end of the abatement time set by the director.

162 An environmental harm is significant if that harm is appre-
163 ciable and not immediately repairable.

§20-6-4. Division of reclamation; qualifications and compensation of division chief; duties and functions of division.

1 There is hereby created within the department of natural
2 resources a division of reclamation, and the director of natural
3 resources shall appoint and fix the compensation of the head
4 of said division who shall be known as the chief of the division
5 of reclamation. Said chief shall have graduated from an accredi-
6 tcd four-year college or university with a degree in the field of
7 engineering, agriculture, forestry or related resource field, and
8 shall have four years of full-time paid employment in some
9 phase of natural resources management, two years of which
10 must have been in a supervisory or administrative capacity.

11 Except as otherwise provided in this article, the division shall
12 administer the provisions of this article relating to surface
13 mining operations and subject to the approval of the director
14 shall exercise all of the powers and perform all of the duties
15 by law vested in and imposed upon said director in relation
16 to said operations. The division of reclamation shall have
17 within its jurisdiction and supervision all lands and areas of
18 the state, mined or susceptible of being mined, for the removal
19 of coal and all other lands and areas of the state deforested,
20 burned over, barren or otherwise denuded, unproductive and
21 subject to soil erosion and waste. Included within such lands
22 and areas shall be lands seared and denuded by chemical
23 operations and processes, abandoned coal mining areas,
24 swamplands, lands and areas subject to flowage easements
25 and backwaters from river locks and dams, and river, streams,
26 lake and pond shore areas subject to soil erosion and waste.
27 The jurisdiction and supervision excrcised by the division shall
28 be consistent with other provisions of this chapter. The divi-
29 sion shall cooperate with other offices and divisions of the
30 department.

§20-6-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

1 The director shall determine the number of surface-mining
2 reclamation supervisors and inspectors needed to carry out

3 the purposes of this article and appoint them as such. All
4 such appointees shall be qualified civil service employees, but
5 no person shall be eligible for such appointment until he
6 has served in a probationary status for a period of one year
7 to the satisfaction of the director of natural resources.

8 Every surface-mining reclamation supervisor or inspector
9 shall be paid not less than fifteen thousand dollars per year.

§20-6-6. Duties of surface-mining reclamation inspectors and inspectors in training.

1 Except as otherwise provided in this article, surface-mining
2 reclamation inspectors and inspectors-in-training shall make
3 all necessary surveys and inspections of surface-mining oper-
4 tions, shall administer and enforce all surface-mining laws,
5 rules and regulations, and shall perform such other duties and
6 services as may be prescribed by the director. Such inspectors
7 shall give particular attention to all conditions of each permit
8 to ensure complete compliance therewith. Such inspectors
9 shall note and describe all violations of this article and im-
10 mediately report such violations to the director in writing,
11 furnishing at the same time a copy of such report to the
12 operator concerned.

§20-6-7. Reclamation commission; duties, functions and compensation; petition for issuance, amendment or repeal of a rule.

1 (a) There is hereby created and established in the
2 department of natural resources a reclamation commission
3 which shall be composed of the director of natural re-
4 sources, serving as chairman, the chief of the division of
5 reclamation, the chief of the water resources division, and
6 the director of the department of mines. The members of the
7 commission shall receive no compensation for their services
8 on the commission, but shall be reimbursed for expenses
9 necessarily incurred in performing their functions. The
10 commission shall meet upon the call of any member. The
11 director shall request the attorney general to appoint one
12 or more assistant attorneys general who shall perform such
13 duties as may be required by the director. The attorney
14 general, in pursuance of such request, may select and ap-

15 point one or more assistant attorneys general, to serve at
16 the will and pleasure of the attorney general, and such
17 assistant or assistants, shall be paid out of any funds made
18 available for that purpose by the Legislature or by Public
19 Laws 95-87 to the department of natural resources.

20 (b) The commission shall have authority to:

21 (1) Promulgate rules and regulations, in accordance with
22 the provisions of chapter twenty-nine-a of this code, to
23 implement the provisions of this article: *Provided*, That the
24 commission shall give notice by publication of the public
25 hearing required in article three of chapter twenty-nine-a
26 of this code: *Provided, however*, That any forms, handbooks
27 or similar materials having the effect of a rule or regulation
28 as defined in article three of chapter twenty-nine-a of this
29 code, or issued, developed or distributed by the director
30 pursuant to or as a result of a rule or regulation, shall be
31 subject to the provisions of article three of chapter twenty-
32 nine-a of this code;

33 (2) Make investigations or inspections necessary to ensure
34 complete compliance with the provisions of this article;

35 (3) Conduct hearings or appoint persons to conduct hear-
36 ings under provisions of this article or rules and regulations
37 adopted by the commission; and for the purpose of any
38 investigation or hearing hereunder, the commission, any
39 member, or any appointee thereof may administer oaths or
40 affirmations, subpoena witnesses, compel their attendance,
41 take evidence and require production of any books, papers,
42 correspondence, memoranda, agreements, or other documents
43 or records relevant or material to the inquiry;

44 (4) Enforce, through the director, the provisions of this
45 article as provided herein; and

46 (5) Appoint such advisory committees as may be of assist-
47 ance to the commission in the development of programs and
48 policies: *Provided*, That such advisory committees shall, in
49 each instance, include members representative of the general
50 public.

51 (c) (1) After the commission has adopted the regulations

52 required by this article, any person may petition the com-
53 mission to initiate a proceeding for the issuance, amendment,
54 or repeal of a rule under this article.

55 (2) Such petitions shall be filed in the office of the com-
56 mission and shall set forth the facts which support the
57 issuance, amendment, or repeal of a rule under this article.

58 (3) The commission may hold a public hearing or may
59 conduct such investigation or proceeding as the commission
60 deems appropriate in order to determine whether or not such
61 petition should be granted.

62 (4) Within ninety days after filing of a petition described
63 in subdivision (1) of this subsection, the commission shall
64 either grant or deny the petition. If the commission grants the
65 petition, the commission shall promptly commence an ap-
66 propriate proceeding in accordance with the provisions of
67 chapter twenty-nine-a of this code. If the commission denies
68 such petition, the commission shall so notify the petitioner
69 in writing setting forth the reasons for such denial.

**§20-6-8. Notice of intention to prospect, requirements therefor;
bonding; director's authority to deny or limit; postpone-
ment of reclamation; prohibited acts; exceptions.**

1 (a) Any person intending to prospect for coal in an area
2 not covered by a surface mining permit, in order to determine
3 the location, quantity or quality of a natural coal deposit,
4 making feasibility studies or for any other purpose, shall file
5 with the director, at least fifteen days prior to commencement of
6 any disturbance associated with prospecting, a notice of inten-
7 tion to prospect, which notice shall include a description of the
8 prospecting area, the period of supposed prospecting and such
9 other information as required by rules or regulations promul-
10 gated pursuant to this section: *Provided*, That prior to the
11 commencement of such prospecting, the director may issue an
12 order denying or limiting permission to prospect where he
13 finds that prospecting operations will damage or destroy a
14 unique natural area, or will cause serious harm to water qual-
15 ity, or that the operator has failed to satisfactorily reclaim
16 other prospecting sites, or that there has been an abuse of
17 prospecting by previous prospecting operations in the area.

18 (b) Notice of intention to prospect shall be made in writing
19 on forms prescribed by the director and shall be signed and
20 verified by the applicant. The notice shall be accompanied by;
21 (1) a United States geological survey topographic map show-
22 ing by proper marking the crop line and the name, where
23 known, of the seam or seams to be prospected, and (2) a bond,
24 or cash, or collateral securities or certificates of the same type
25 and form and in the same manner as provided in section twelve
26 of this article, in the amount of five hundred dollars per acre
27 or fraction thereof for the total estimated disturbed area. If
28 such bond is used, it shall be payable to the state of West
29 Virginia and conditioned that the operator shall faithfully per-
30 form the requirements of this article as they relate to back-
31 filling and revegetation of the disturbed area.

32 (c) Any person prospecting under the provisions of this
33 section shall ensure that such prospecting operation is conduct-
34 ed in accordance with the performance standards in section
35 thirteen of this article for all lands disturbed in explorations,
36 including excavations, roads, drill holes, and the removal of
37 necessary facilities and equipment.

38 (d) Information submitted to the director pursuant to this
39 section as confidential, concerning trade secrets or privileged
40 commercial or financial information, which relates to the com-
41 petitive rights of the person or entity intended to prospect
42 the described area, shall not be available for public examina-
43 tion.

44 (e) Any person who conducts any prospecting activities
45 which substantially disturb the natural land surface in violation
46 of this section or regulations issued pursuant thereto shall be
47 subject to the provisions of sections sixteen and seventeen of
48 this article.

49 (f) No operator shall remove more than two hundred and
50 fifty tons of coal without the specific written approval of the
51 director.

52 (g) The bond accompanying said notice of intention to pro-
53 spect shall be released by the director when the operator dem-
54 onstrates that a permanent species of vegetative cover is es-
55 tablished.

56 (h) In the event an operator desires to mine the area cur-
57 rently being prospected, and has requested and received an
58 appropriate surface mine application (S.M.A.) number the
59 director may permit the postponement of the reclamation of
60 the area prospected. Any part of a prospecting operation,
61 where reclamation has not been postponed as provided above,
62 shall be reclaimed within a period of three months from
63 disturbance.

64 (i) For the purpose of this section, the word "prospect"
65 or "prospecting" does not include core drilling related solely
66 to taxation or highway construction.

§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations unless
2 such person has first obtained a permit from the director in
3 accordance with the following:

4 (a) Within two months after the secretary of the interior ap-
5 proves a permanent state program for West Virginia, all
6 surface-mining operators shall file an application for a per-
7 mit or modification of a valid existing permit or underground
8 opening approval relating to those lands to be mined eight
9 months after that approval.

10 (b) No later than eight months after the secretary's approval
11 of a permanent state program for West Virginia, no person may
12 engage in or carry out, on lands within this state, any
13 surface-mining operations unless such person has first
14 obtained a permit from the director: *Provided*, That those
15 persons conducting such operations under a permit or
16 underground opening approval issued in accordance with
17 section 502 (c) of Public Law 95-87, and in compliance
18 therewith, may conduct such operations beyond such period
19 if an application for a permit or modification of a valid
20 existing permit or underground opening approval was filed
21 within two months after the secretary's approval, and the
22 administrative decision pertaining to the granting or denying
23 of such permit has not been made by the director.

24 (c) All permits issued pursuant to the requirements of
25 this article shall be issued for a term not to exceed five
26 years: *Provided*, That if the applicant demonstrates that a
27 specified longer term is reasonably needed to allow the ap-
28 plicant to obtain necessary financing for equipment and
29 the opening of the operation, and if the application is full
30 and complete for such specified longer term, the director
31 may extend a permit for such longer term: *Provided, further*,
32 That subject to the prior approval of the director, a suc-
33 cessor in interest to a permittee who applies for a new
34 permit within thirty days of succeeding to such interest, and
35 who is able to obtain the bond coverage of the original
36 permittee, may continue surface-mining and reclamation oper-
37 ations according to the approved mining and reclamation
38 plan of the original permittee until such successor's applica-
39 tion is granted or denied.

40 (d) Proof of insurance shall be required on an annual
41 basis.

42 (e) A permit shall terminate if the permittee has not
43 commenced the surface-mining operations covered by such
44 permit within three years of the date the permit was issued:
45 *Provided*, That the director may grant reasonable extensions
46 of time upon a showing that such extensions are necessary by
47 reason of litigation precluding such commencement, or threat-
48 ening, substantial economic loss to the permittee, or by
49 reason of conditions beyond the control and without the
50 fault or negligence of the permittee: *Provided further*, That
51 with respect to coal to be mined for use in a synthetic fuel
52 facility or specific major electric generating facility, the per-
53 mittee shall be deemed to have commenced surface-mining
54 operations at such time as the construction of the synthetic
55 fuel or generating facility is initiated.

56 (f) Each application for a new surface-mining permit
57 filed pursuant to this article shall be accompanied by a fee
58 of five hundred dollars. All permit fees provided for in this
59 section or elsewhere in this article shall be collected by the
60 director and deposited with the treasurer of the state of West
61 Virginia to the credit of the operating permit fees fund and

62 shall be used, upon requisition of the director, for the ad-
63 ministration of this article.

§20-6-10. Permit application requirements and contents.

1 (a) The surface-mining permit application shall contain:

2 (1) The names and addresses of: (A) The permit
3 applicant; (B) the owner of record of the property, surface
4 and mineral, to be mined; (C) the holders of record of any
5 leasehold interest in the property; (D) any purchaser of
6 record of the property under a real estate contract; (E) the
7 operator, if he is a person different from the applicant; and
8 (F) if any of these are business entities other than a single
9 proprietor, the names and addresses of the principals, officers
10 and resident agent;

11 (2) The names and addresses of the owners of record of
12 all surface and subsurface areas contiguous to any part of the
13 proposed permit area: *Provided*, That all residents living on
14 property contiguous to the proposed permit area shall be noti-
15 fied by the applicant, by registered or certified mail, of such
16 application on or before the first day of publication of the not-
17 ice provided for in subdivision (6) of this subsection.

18 (3) A statement of any current surface-mining permits held
19 by the applicant in this state and the permit number and
20 each pending application;

21 (4) If the applicant is a partnership, corporation, as-
22 sociation or other business entity, the following where
23 applicable: The names and addresses of every officer,
24 partner, resident agent, director or person performing a
25 function similar to a director, together with the names and
26 addresses of any person owning of record ten percent or more
27 of any class of voting stock of the applicant; and a list of
28 all names under which the applicant, officer, director, partner
29 or principal shareholder previously operated a surface-mining
30 operation in the United States within the five-year period
31 preceding the date of submission of the application;

32 (5) A statement of whether the applicant, or any
33 officer, partner, director, principal shareholder of the ap-
34 plicant, any subsidiary, affiliate or persons controlled by

35 or under common control with the applicant, has ever been
36 an officer, partner, director or principal shareholder in a
37 company which has ever held a federal or state mining permit
38 which in the five-year period prior to the date of submis-
39 sion of the application has been permanently suspended or
40 revoked or has had a mining bond or similar security deposited
41 in lieu of bond forfeited and, if so, a brief explanation of the
42 facts involved;

43 (6) A copy of the applicant's advertisement to be
44 published in a newspaper of general circulation in the
45 locality of the proposed permit area at least once a week
46 for four successive weeks. The advertisement shall contain
47 in abbreviated form the information required by this section
48 including the ownership and map of the tract location and
49 boundaries of the proposed site so that the proposed operation
50 is readily locatable by local residents, the location of the office
51 of the department of natural resources where the application
52 is available for public inspection and stating that written pro-
53 tests will be accepted by the director until a certain date which
54 shall be at least thirty days after the last publication of the
55 applicant's advertisement;

56 (7) A description of the type and method of surface-
57 mining operation that exists or is proposed, the engineering
58 techniques used or proposed, and the equipment used or
59 proposed to be used;

60 (8) The anticipated starting and termination dates of each
61 phase of the surface-mining operation and the number of
62 acres of land to be affected;

63 (9) A description of the legal documents upon which
64 the applicant bases his legal right to enter and conduct
65 surface-mining operations on the proposed permit area and
66 whether that right is the subject of pending court litigation:
67 *Provided*, That nothing in this article may be construed as
68 vesting in the director the jurisdiction to adjudicate property-
69 rights disputes;

70 (10) The name of the watershed and location of the
71 surface stream or tributary into which surface and pit drainage
72 will be discharged;

73 (11) A determination of the probable hydrologic con-
74 sequences of the mining and reclamation operations, both
75 on and off the mine site, with respect to the hydrologic
76 regime, quantity and quality of water in surface and ground
77 water systems, including the dissolved and suspended solids
78 under seasonal flow conditions and the collection of
79 sufficient data for the mine site and surrounding areas so
80 that an assessment can be made by the director of the prob-
81 able cumulative impacts of all anticipated mining in the
82 area upon the hydrology of the area, and particularly upon
83 water availability: *Provided*, That this determination shall not
84 be required until such time as hydrologic information on the
85 general area prior to mining is made available from an ap-
86 propriate federal or state agency or, if existing and in the
87 possession of the applicant, from the applicant: *Provided*,
88 *however*, That the permit application shall not be approved
89 until such information is available and is incorporated into
90 the application.

91 (12) Accurate maps to an appropriate scale clearly show-
92 ing: (A) The land to be affected as of the date of application;
93 (B) the area of land within the permit area upon which the
94 applicant has the legal right to enter and conduct surfac-
95 mining operations; and (C) all types of information set forth
96 on enlarged topographical maps of the United States geological
97 survey of a scale of 1:24,000 or larger, including all man-
98 made features and significant known archaeological sites
99 existing on the date of application. In addition to other things
100 specified by the director, the map shall show the boundary
101 lines and names of present owners of record of all surface
102 areas abutting the proposed permit area and the location of
103 all structures within one thousand feet of the proposed permit
104 area;

105 (13) Cross-section maps or plans of the proposed affected
106 area, including the actual area to be mined, prepared by or
107 under the direction of and certified by a person approved by
108 the director, showing pertinent elevation and location of test
109 borings or core samplings, where required by the director, and
110 depicting the following information: (A) The nature and depth
111 of the various strata or overburden; (B) the location of sub-

112 surface water, if encountered, and its quality; (C) the nature
113 and thickness of any coal or rider seams above the seam to be
114 mined; (D) the nature of the stratum immediately beneath the
115 coal seam to be mined; (E) all mineral crop lines and the
116 strike and dip of the coal to be mined, within the area of land
117 to be affected; (F) existing or previous surface mining limits;
118 (G) the location and extent of known workings of any under-
119 ground mines, including mine openings to the surface; (H) the
120 location of any significant aquifers; (I) the estimated elevation
121 of the water table; (J) the location of spoil, waste or refuse
122 areas and topsoil preservation areas; (K) the location of all im-
123 poundments for waste or erosion control; (L) any settling or
124 water treatment facility or drainage system; (M) constructed
125 or natural drainways and the location of any discharges to
126 any surface body of water on the area of land to be affected
127 or adjacent thereto; and (N) adequate profiles at appropriate
128 cross sections of the anticipated final surface configuration
129 that will be achieved pursuant to the operator's proposed
130 reclamation plan;

131 (14) A statement of the result of test borings or core
132 samples from the permit area, including: (A) Logs of the
133 drill holes; (B) the thickness of the coal seam to be mined
134 and analysis of the chemical and physical properties of such
135 coal; (C) the sulfur content of any coal seam; (D) chemical
136 analysis of potentially acid or toxic forming sections of
137 the overburden; and (E) chemical analysis of the stratum
138 lying immediately underneath the coal to be mined: *Pro-*
139 *vided,* That the provisions of this subdivision may be waived
140 by the director with respect to the specific application by a
141 written determination that such requirements are unnecessary;

142 (15) For those lands in the permit application which a re-
143 connaissance inspection suggests may be prime farm lands, a
144 soil survey shall be made or obtained according to standards
145 established by the secretary of agriculture in order to confirm
146 the exact location of such prime farm lands;

147 (16) A reclamation plan as presented in section eleven of
148 this article;

149 (17) Information pertaining to coal seams, test borings,

150 core sampling,s or soil samples as required by this section
151 shall be made available to any person with an interest which
152 is or may be adversely affected: *Provided*, That information
153 which pertains only to the analysis of the chemical and phy-
154 sical properties of the coal, except information regarding such
155 mineral or elemental content which is potentially toxic to the
156 environment, shall be kept confidential and not made a matter
157 of public record;

158 (18) When requested by the director, the climatological
159 factors that are peculiar to the locality of the land to be
160 affected, including the average seasonal precipitation, the
161 average direction and velocity of prevailing winds, and the
162 seasonal temperature ranges; and

163 (19) Such other information that may be required by rules
164 and regulations reasonably necessary to effectuate the purposes
165 of this article.

166 (b) If the director finds that the probable total annual pro-
167 duction at all locations of any coal surface-mining operator
168 will not exceed one hundred thousand tons, the determination
169 of probable hydrologic consequences and the statement of the
170 result of test borings or core samplings shall, upon the written
171 request of the operator, be performed by a qualified public
172 or private laboratory designated by the director and a reason-
173 able cost of the preparation of such determination and state-
174 ment shall be assumed by the department from funds provided
175 by the United States department of the interior pursuant to
176 Public Law 95-87.

177 (c) Before the first publication of the applicant's adver-
178 tisement, each applicant for a surface-mining permit shall
179 file, except for that information pertaining to the coal seam
180 itself, a copy of the application for public inspection in the
181 nearest office of the department of natural resources as
182 specified in the applicant's advertisement.

183 (d) Each applicant for a permit shall be required to
184 submit to the director as a part of the permit application a
185 certificate issued by an insurance company authorized to do
186 business in this state covering the surface-mining operation
187 for which such permit is sought, or evidence that the

188 applicant has satisfied state self-insurance requirements. Such
189 policy shall provide for personal injury and property damage
190 protection in an amount adequate to compensate any persons
191 damaged as a result of surface coal mining and reclamation
192 operations, including use of explosives, and entitled to com-
193 pensation under the applicable provisions of state law. Such
194 policy shall be maintained in full force and effect during the
195 terms of the permit or any renewal, including the length of
196 all reclamation operations.

197 (e) Each applicant for a surface-mining permit shall sub-
198 mit to the director as part of the permit application a blasting
199 plan where explosives are to be used, which shall outline
200 the procedures and standards by which the operator will
201 meet the provisions of the blasting performance standards.

202 (f) The applicant shall file as a part of his permit appli-
203 cation a schedule listing all bond forfeitures, permit revoca-
204 tions, cessation orders or permanent, suspension orders result-
205 ing from a violation of Public Law 95-87, this article or any
206 law or regulation of the United States or any department or
207 agency of any state pertaining to air or environmental pro-
208 tection received by the applicant in connection with any sur-
209 face mining operation during the three year period prior to
210 the date of application and indicating the final resolution of
211 any such forfeiture, revocation, cessation or permanent sus-
212 pension.

213 (g) Within five working days of receipt of an application
214 for a permit, the director shall notify the operator in writing,
215 stating whether the application is complete and whether the
216 operator's advertisement may be published. If the application
217 is not complete, the director shall state in writing why the
218 application is incomplete.

§20-6-11. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a surface-
2 mining permit application shall include, in the degree of detail
3 necessary to demonstrate that reclamation required by this
4 article can be accomplished, a statement of:

5 (1) The identification of the lands subject to surface min-

6 ing over the estimated life of these operations and the size,
7 sequence and timing of the operations for which it is antici-
8 pated that individual permits for mining will be sought;

9 (2) The condition of the land to be covered by the permit
10 prior to any mining, including: (A) The uses existing at the
11 time of the application and, if such land has a history of
12 previous mining, the uses which preceded any mining; (B) the
13 capability of the land prior to any mining to support a variety
14 of uses, giving consideration to soil and foundation character-
15 istics, topography and vegetation cover and, if applicable, a
16 soil survey prepared pursuant to subdivision (15), subsection
17 (a), section ten of this article; and (C) the best information
18 available on the productivity of the land prior to mining, in-
19 cluding appropriate classification as prime farm lands, and the
20 average yield of food, fiber, forage or wood products from
21 such lands obtained under high levels of management;

22 (3) The use which is proposed to be made of the land
23 following reclamation, including a discussion of the utility
24 and capacity of the reclaimed land to support a variety of
25 alternative uses and the relationship of such use to existing
26 land use policies and plans, and the comments of any owner
27 of the surface, other state agencies and local governments,
28 which would have to initiate, implement, approve or authorize
29 the proposed use of the land following reclamation;

30 (4) A detailed description of how the proposed post-
32 mining land use is to be achieved and the necessary
33 support activities which may be needed to achieve the proposed
34 land use;

35 (5) The engineering techniques proposed to be used in min-
36 ing and reclamation and a description of the major equipment;
37 a plan for the control of surface water drainage and of water ac-
38 cumulation; a plan where appropriate, for backfilling, soil sta-
39 bilization and compacting, revegetation and a plan for
40 soil reconstruction, replacement and stabilization pursuant to the
41 performance standards in subdivision (7), subsection (b), section
42 thirteen of this article for those food, forage and forest lands
43 identified therein; and a statement as to how the operator plans

44 to comply with each of the applicable requirements set out in
45 sections thirteen or fourteen of this article;

46 (6) A detailed estimated timetable for the accomplishment
47 of each major step in the reclamation plan;

48 (7) The consideration which has been given to conducting
49 surface-mining operations in a manner consistent with sur-
50 face owner plans and applicable state and local land use plans
51 and programs;

52 (8) The steps to be taken to comply with applicable air
53 and water quality laws and regulations and any applicable
54 health and safety standards;

55 (9) The consideration which has been given to developing
56 the reclamation plan in a manner consistent with local phy-
57 sical environmental and climatological conditions;

58 (10) All lands, interests in lands or options on such inter-
59 ests held by the applicant or pending bids on interests in
60 lands by the applicant, which lands are contiguous to the area
61 to be covered by the permit;

62 (11) A detailed description of the measures to be taken
63 during the surface-mining and reclamation process to assure
64 the protection of: (A) The quality of surface and ground water
65 systems, both on- and off-site, from adverse effects of the
66 surface-mining operation; (B) the rights of present users to
67 such water; and (C) the quantity of surface and ground water
68 systems, both on- and off-site, from adverse effects of the
69 surface-mining operation or to provide alternative sources of
70 water where such protection of quantity cannot be assured;

71 (12) The results of test borings which the applicant has
72 made at the area to be covered by the permit, or other equiva-
73 lent information and data in a form satisfactory to the director,
74 including the location of subsurface water, and an analysis of the
75 chemical properties, including acid forming properties of the
76 mineral and overburden: *Provided*, That information which
77 pertains only to the analysis of the chemical and physical prop-
78 erties of the coal, except information regarding such mineral
79 or elemental contents which is potentially toxic in the en-

80 vironment, shall be kept confidential and not made a matter
81 of public record;

82 (13) The consideration which has been given to maximize
83 the utilization and conservation of the solid fuel resource
84 being recovered so that re-affecting the land in the future can
85 be minimized; and

86 (14) Such other requirements as the reclamation commis-
87 sion may prescribe by regulation.

88 (b) The reclamation plan shall be available to the public
89 for review except for those portions thereof specifically exempt-
90 ed in subsection (a) of this section.

**§20-6-12. Performance bonds; amount and method of bonding;
bonding requirements; special reclamation tax and
fund; prohibited acts; period of bond liability.**

1 (a) After a surface mining permit application has
2 been approved pursuant to this article, but before such
3 a permit has been issued, each operator shall furnish bond,
4 on a form to be prescribed and furnished by the director, pay-
5 able to the state of West Virginia and conditioned upon the
6 operator faithfully performing all of the requirements of this
7 article and of the permit. The amount of the bond shall be
8 one thousand dollars for each acre or fraction thereof. The
9 bond shall cover (1) the entire permit area, or (2) that
10 increment of land within the permit area upon which the
11 operator will initiate and conduct surface mining and re-
12 clamation operations within the initial term of the permit.
13 If the operator chooses to use incremental bonding, as suc-
14 ceeding increments of surface mining and reclamation opera-
15 tions are to be initiated and conducted within the permit area,
16 the operator shall file with the director an additional bond or
17 bonds to cover such increments in accordance with this section:
18 *Provided*, That once the operator has chosen to proceed
19 with bonding either the entire permit area or with incremental
20 bonding, he shall continue bonding in that manner for the term
21 of the permit: *Provided, however*, That the minimum amount
22 of bond furnished shall be ten thousand dollars.

23 (b) The period of liability for performance bond coverage

24 shall commence with issuance of a permit and continue for the
25 full term of the permit plus any additional period necessary to
26 achieve compliance with the requirements in the reclamation
27 plan of the permit.

28 (c) (1) The form of the performance bond shall be ap-
29 proved by the director and may include, at the option of the
30 operator, surety bonding, collateral bonding (including cash
31 and securities), establishment of an escrow account, self-
32 bonding or a combination of these methods. If collateral
33 bonding is used, the operator may elect to deposit cash, or
34 collateral securities or certificates as follows: Bonds of the
35 United States or its possessions, of the federal land bank, or
36 of the home owners' loan corporation; full faith and credit
37 general obligation bonds of the state of West Virginia, or other
38 states, and of any county district or municipality of the state
39 of West Virginia or other states; or certificates of deposit in
40 a bank in this state, which certificates shall be in favor of the
41 department. The cash deposit or market value of such securi-
42 ties or certificates shall be equal to or greater than the sum
43 of the bond. The director shall, upon receipt of any such
44 deposit of cash, securities or certificates, promptly place the
45 same with the treasurer of the state of West Virginia whose
46 duty it shall be to receive and hold the same in the name of the
47 state in trust for the purpose for which such deposit is made
48 when the permit is issued. The operator making the deposit
49 shall be entitled from time to time to receive from the state
50 treasurer, upon the written approval of the director, the whole
51 or any portion of any cash, securities or certificates so deposit-
52 ed, upon depositing with him in lieu thereof, cash or other
53 securities or certificates of the classes herein specified having
54 value equal to or greater than the sum of the bond.

55 (2) The reclamation commission may approve an alternative
56 bonding system if it will (A) reasonably assure that sufficient
57 funds will be available to complete the reclamation, restoration
58 and abatement provisions for all permit areas which may be in
59 default at any time, and (B) provide a substantial economic
60 incentive for the permittee to comply with all reclamation pro-
61 visions.

62 (d) The director may accept the bond of the applicant itself

63 without separate surety when the applicant demonstrates to
64 the satisfaction of the director the existence of a suitable
65 agent to receive service of process and a history of financial
66 solvency and continuous operation sufficient for authorization
67 to self-insure.

68 (e) It shall be unlawful for the owner of surface or mineral
69 rights to interfere with the present operator in the discharge of
70 his obligations to the state for the reclamation of lands
71 disturbed by him.

72 (f) The director may not release that portion of any bond
73 filed by any operator which is designated to assure faithful
74 performance of and compliance with the backfilling and
75 regarding requirements of the reclamation plan until all acid-
76 bearing or acid-producing spoil within the permit area has
77 been treated so that any untreated drainage or discharge
78 therefrom is not lower than the water quality of the receiving
79 stream.

80 (g) All bond releases shall be accomplished in accordance
81 with the provisions of section twenty-six of this article.

82 (h) All special reclamation taxes deposited by the director
83 with the treasurer or the state of West Virginia to the credit of
84 the special reclamation fund prior to the effective date of this
85 article shall be transferred to the special reclamation fund
86 created by this section and shall be expended pursuant to the
87 provisions of this subsection: *Provided*, That no monies trans-
88 ferred into the special reclamation fund created by this section
89 shall be subject to refund. The fund shall be administered
90 by the director, and he is authorized to expend the monies
91 in the fund for the reclamation and rehabilitation of lands
92 which were subjected to permitted surface mining operations
93 and abandoned after the third day of August, one thousand
94 nine hundred seventy-seven where the amount of the bond
95 posted and forfeited on such land is less than the actual cost
96 of reclamation. The directory may also expend such amounts
97 as are reasonably necessary to implement and administer
98 the provisions of this chapter.

99 Whenever the special reclamation fund established by this
100 subsection sinks below one million dollars at the end of any

101 given quarterly period, every person then conducting coal
 102 surface mining operations shall contribute into said fund a
 103 sum equal to one cent per ton of clean coal mined thereafter.
 104 This fee shall be collected by the state tax commissioner in
 105 the same manner as the West Virginia business and corpora-
 106 tion tax in accordance with the provisions of chapter eleven
 107 of this code and shall be deposited by him with the treasurer
 108 of the state of West Virginia to the credit of the special
 109 reclamation fund. At the beginning of each quarter, the
 110 director shall advise the state tax commissioner and the gov-
 111 ernor of the assets, excluding payments, expenditures and
 112 liabilities, in the fund. If such assets are below one million
 113 dollars, a notice of assessment shall be given to all operators
 114 by the state tax commissioner and such one cent per ton
 115 assessment shall be collected until the end of the quarter in
 116 which the fund's assets, excluding payments, expenditures and
 117 liabilities are in excess of two million dollars.

**§20-6-13. General environmental protection performance standards
 for surface mining; variances.**

1 (a) Any permit issued by the director pursuant to this
 2 article to conduct surface-mining operations shall re-
 3 quire that such surface-mining operations will meet all
 4 applicable performance standards of this article, and such
 5 other requirements as the reclamation commission shall
 6 promulgate.

7 (b) The following general performance standards shall
 8 be applicable to all surface mines and shall require the
 9 operation as a minimum to:

10 (1) Maximize the utilization and conservation of the
 11 solid fuel resource being recovered to minimize reffect-
 12 ing the land in the future through surface mining;

13 (2) Restore the land affected to a condition capable
 14 of supporting the uses which it was capable of support-
 15 ing prior to any mining, or higher or better uses of
 16 which there is reasonable likelihood so long as such use
 17 or uses do not present any actual or probable hazard
 18 to public health or safety or pose any actual or prob-
 19 able threat of water diminution or pollution, and the

20 permit applicants' declared proposed land use following
21 reclamation is not deemed to be impractical or unreas-
22 onable, inconsistent with applicable land use policies and
23 plans, involves unreasonable delay in implementation, or
24 is violative of federal, state, or local law;

25 (3) Except as provided in subsection (c) of this section,
26 with respect to all surface mines, backfill, compact where ad-
27 visable to ensure stability or to prevent leaching of toxic ma-
28 terials, and grade in order to restore the approximate original
29 contour: *Provided*, That in surface mining which is carried
30 out at the same location over a substantial period of time
31 where the operation transects the coal deposit, and the
32 thickness of the coal deposits relative to the volume of the
33 overburden is large and where the operator demonstrates that
34 the overburden and other spoil and waste materials at a par-
35 ticular point in the permit area or otherwise available from the
36 entire permit area is insufficient, giving due consideration to
37 volumetric expansion, to restore the approximate original con-
38 tour, the operator, at a minimum shall backfill, grade, and
39 compact, where advisable, using all available overburden and
40 other spoil and waste materials to attain the lowest practicable
41 grade but not more than the angle of repose, to provide ade-
42 quate drainage and to cover all acid-forming and other toxic
43 materials, in order to achieve an ecologically sound land use
44 compatible with the surrounding region: *Provided, however*,
45 That in surface mining where the volume of overburden is
46 large relative to the thickness of the coal deposit and where the
47 operator demonstrates that due to volumetric expansion the
48 amount of overburden and other spoil and waste materials re-
49 moved in the course of the mining operation is more than suffi-
50 cient to restore the approximate original contour, the operator
51 shall, after restoring the approximate contour, backfill, grade,
52 and compact, where advisable, the excess overburden and
53 other spoil and waste materials to attain the lowest grade but
54 not more than the angle of repose, and to cover all acid-form-
55 ing and other toxic materials, in order to achieve an ecological-
56 ly sound land use compatible with the surrounding region and,
57 such overburden or spoil shall be shaped and graded in such a
58 way as to prevent slides, erosion, and water pollution and is
59 revegetated in accordance with the requirements of this article;

60 *Provided further*, That the reclamation commission shall prom-
 61 ulgate rules and regulations governing variances to the re-
 62 quirements for return to approximate original contour or high-
 63 wall elimination and where adequate material is not available
 64 from surfacc-mining operations permitted after the effective
 65 date of this article for (A) underground mining operations
 66 existing prior to the third day of August, one thousand nine
 67 hundred seventy-seven, or (B) for areas upon which surface-
 68 mining prior to the first day of July, one thousand nine
 69 hundred seventy-seven, created highwalls; ~~*Provided further*, That~~
 70 ~~the operator shall backfill and reclaim the disturbed area to the~~
 71 ~~extent possible where there is a lack of sufficient material from~~
 72 ~~the operation to allow elimination of all highwalls if: (1) any~~
 73 ~~surface effects of underground mining operations have resulted~~
 74 ~~in the creation of highwalls, or (2) surface mining prior to the~~
 75 ~~third day of August, one thousand nine hundred seventy-seven,~~
 76 ~~has resulted in the creation of highwalls and a surface mining~~
 77 ~~permit is issued after the effective date of this article.~~

OK CAB E.N.

OK CAB E.N.

78 (4) Stabilize and protect all surface areas, including spoil
 79 piles, affected by the surface-mining operation to effectively
 80 control erosion and attendant air and water pollution;

81 (5) Remove the topsoil from the land in a separate layer,
 82 replace it on the backfill area, or if not utilized immediately,
 83 segregate it in a separate pile from other spoil and when the
 84 topsoil is not replaced on a backfill area within a time short
 85 enough to avoid deterioration of the topsoil, maintain a suc-
 86 cessful vegetative cover by quick growing plants or by other
 87 similar means in order to protect topsoil from wind and water
 88 erosion and keep it free of any contamination by other acid or
 89 toxic material: *Provided*, That if topsoil is of insufficient quan-
 90 tity or of poor quality for sustaining vegetation, or if other
 91 strata can be shown to be more suitable for vegetation require-
 92 ments, then the operator shall remove, segregate and preserve
 93 in a like manner such other strata which is best able to sup-
 94 port vegetation;

95 (6) Restore the topsoil or the best available subsoil which
 96 is best able to support vegetation;

97 (7) Ensure that all prime farm lands are mined and re-

98 claimed in accordance with the specifications for soil removal,
99 storage, replacement and reconstruction established by the
100 United States secretary of agriculture and the soil conservation
101 service pertaining thereto. The operator, as a minimum, shall
102 be required to: (A) Segregate the A horizon of the natural soil,
103 except where it can be shown that other available soil materials
104 will create a final soil having a greater productive capacity, and
105 if not utilized immediately, stockpile this material separately
106 from other spoil, and provide needed protection from wind and
107 water erosion or contamination by other acid or toxic material;
108 (B) segregate the B horizon of the natural soil, or underlying
109 C horizons or other strata, or a combination of such horizons
110 or other strata that are shown to be both texturally and chemi-
111 cally suitable for plant growth and that can be shown to be
112 equally or more favorable for plant growth than the B horizon,
113 in sufficient quantities to create in the regraded final soil a root
114 zone of comparable depth and quality to that which existed in
115 the natural soil, and if not utilized immediately, stockpile this
116 material separately from other spoil and provide needed pro-
117 tection from wind and water erosion or contamination by other
118 acid or toxic material; (C) replace and regrade the root zone
119 material described in subparagraph (B) above with proper
120 compaction and uniform depth over the regraded spoil mater-
121 ial; and (D) redistribute and grade in a uniform manner the
122 surface soil horizon described in subparagraph (A) above;

123 (8) Create, if authorized in the approved surface-mining and
124 reclamation plan and permit, permanent impoundments of water
125 on mining sites as part of reclamation activities in accordance
126 with regulations promulgated by the reclamation commission;

127 (9) Where augering is the method of recovery, seal all auger
128 holes with an impervious and noncombustible material in order
129 to prevent drainage except where the director determines that
130 the resulting impoundment of water in such auger holes may
131 create a hazard to the environment or the public welfare and
132 safety: *Provided*, That the director may prohibit augering if
133 necessary to maximize the utilization, recoverability or conser-
134 vation of the mineral resources or to protect against adverse
135 water quality impacts;

136 (10) Minimize the disturbances to the prevailing hydrologic

137 balance at the mine site and in associated off-site areas and to
138 the quality and quantity of water in surface and ground water
139 systems both during and after surface-mining operations and
140 during reclamation by: (A) Avoiding acid or other toxic mine
141 drainage; (B) conducting surface-mining operations so as to
142 prevent to the extent possible, using the best technology current-
143 ly available, additional contributions of suspended solids to
144 streamflow or runoff outside the permit area, but in no event
145 shall contributions be in excess of requirements set by applica-
146 ble state law; (C) constructing an approved drainage system
147 pursuant to subparagraph (B) of this subdivision prior to com-
148 mencement of surface-mining operations, such system to be cer-
149 tified by a person approved by the director to be constructed as
150 designed and as approved in the reclamation plan; (D) avoiding
151 channel deepening or enlargement in operations requiring the
152 discharge of water from mines; (E) unless otherwise authorized
153 by the director, cleaning out and removing temporary or large
154 settling ponds or other siltation structures after disturbed areas
155 are revegetated and stabilized, and depositing the silt and debris
156 at a site and in a manner approved by the director; (F) restoring
157 recharge capacity of the mined area to approximate premining
158 conditions; and (G) such other actions as the reclamation com-
159 mission may prescribe;

160 (11) With respect to surface disposal of mine wastes, tailings,
161 coal processing wastes and other wastes in areas other than the
162 mine working excavations, stabilize all wastepiles in designated
163 areas through construction in compacted layers, including the
164 use of noncombustible and impervious materials if necessary,
165 and assure the final contour of the waste pile will be compatible
166 with natural surroundings and that the site will be stabilized
167 and revegetated according to the provisions of this article;

168 (12) Design, locate, construct, operate, maintain, enlarge,
169 modify and remove or abandon, in accordance with the stand-
170 ards and criteria developed pursuant to subsection (f) of this
171 section, all existing and new coal mine waste piles consisting of
172 mine wastes, tailings, coal processing wastes or other liquid
173 and solid wastes, and used either temporarily or permanently
174 as dams or embankments;

175 (13) Refrain from surface mining within five hundred feet of

176 any active and abandoned underground mines in order to pre-
177 vent breakthroughs and to protect health or safety of miners:
178 *Provided*, That the director shall permit an operator to mine
179 near, through or partially through an abandoned underground
180 mine or closer to an active underground mine if: (A) The na-
181 ture, timing and sequencing of the approximate coincidence of
182 specific surface mine activities with specific underground mine
183 activities are coordinated jointly by the operators involved and
184 approved by the director of the department of mines, and (B)
185 such operations will result in improved resource recovery,
186 abatement of water pollution or elimination of hazards to the
187 health and safety of the public: *Provided*, That any break-
188 through which does occur shall be sealed;

189 (14) Ensure that all debris, acid-forming materials, toxic ma-
190 terials or materials constituting a fire hazard are treated or bur-
191 ied and compacted or otherwise disposed of in a manner design-
192 ed to prevent contamination of ground or surface water and that
193 contingency plans are developed to prevent sustained combus-
194 tion: *Provided*, That the operator shall remove or bury all met-
195 al, lumber, equipment and other debris resulting from the oper-
196 ation before grading release;

197 (15) Ensure that explosives are used only in accordance with
198 existing state and federal law and the regulations promulgated
199 by the reclamation commission, which shall include provisions
200 to: (A) Provide adequate advance written notice to local gov-
201 ernments and residents who might be affected by the use of such
202 explosives by publication of the planned blasting schedule in a
203 newspaper of general circulation in the locality and by mailing
204 a copy of the proposed blasting schedule to every resident living
205 within one-half mile of the proposed permit area excluding
206 drainage structures, haulroads and access roads unless there will
207 be blasting on or near such structures or roads: *Provided*, That
208 this notice shall suffice as daily notice to residents or occupants
209 of such areas; (B) maintain for a period of at least three years
210 and make available for public inspection, upon written request,
211 a log detailing the location of the blasts, the pattern and depth
212 of the drill holes, the amount of explosives used per hole and
213 the order and length of delay in the blasts; (C) limit the type of
214 explosives and detonating equipment, the size, the timing and

215 frequency of blasts based upon the physical conditions of the
216 site so as to prevent (i) injury to persons; (ii) damage to public
217 and private property outside the permit area; (iii) adverse im-
218 pacts on any underground mine; and (iv) change in the course,
219 channel or availability of ground or surface water outside the
220 permit area; (D) require that all blasting operations be conduct-
221 ed by persons certified by the director of the department of min-
222 es; and (E) provide that upon written request of a resident or
223 owner of a man-made dwelling or structure within one-half mile
224 of any portion of the area identified in subparagraph (A) of this
225 subdivision, the applicant or permittee shall conduct a preblast-
226 ing survey or other appropriate investigation of such structures
227 and submit the results to the director and a copy to the resi-
228 dent or owner making the request. The area of the survey shall
229 be determined by the director in accordance with regulations
230 promulgated by the reclamation commission;

231 (16) Ensure that all reclamation efforts proceed in an envir-
232 onmentally sound manner and as contemporaneously as practi-
233 cable with the surface-mining operations. Time limits shall be
234 established by the reclamation commission requiring backfill-
235 ing, grading and planting to be kept current: *Provided*, That
236 where surface-mining operations and underground mining oper-
237 ations are proposed on the same area, which operations must
238 be conducted under separate permits, the director may grant a
239 variance from the requirement that reclamation efforts pro-
240 ceed as contemporaneously as practicable to permit under-
241 ground mining operations prior to reclamation:

242 (A) If the director finds in writing that:

243 (i) The applicant has presented, as part of the permit ap-
244 plication, specific, feasible plans for the proposed underground
245 mining operations;

246 (ii) The proposed underground mining operations are neces-
247 sary or desirable to assure maximum practical recovery of the
248 mineral resource and will avoid multiple disturbance of the
249 surface;

250 (iii) The applicant has satisfactorily demonstrated that the
251 plan for the underground mining operations conforms to re-
252 quirements for underground mining in the jurisdiction and that

253 permits necessary for the underground mining operations have
254 been issued by the appropriate authority;

255 (iv) The areas proposed for the variance have been shown
256 by the applicant to be necessary for the implementing of the
257 proposed underground mining operations;

258 (v) No substantial adverse environmental damage, either on-
259 site or offsite, will result from the delay in completion of
260 reclamation as required by this article;

261 (vi) Provisions for the off-site storage of spoil will comply
262 with subdivision (22), subsection (b), section thirteen of this
263 article;

264 (B) If the reclamation commission has promulgated specific
265 regulations to govern the granting of such variances in accord-
266 ance with the provisions of ~~the~~ ^{the} subparagraph and has imposed
267 such additional requirements as he deems necessary;

268 (C) If variances granted under the provisions of this sub-
269 section are to be reviewed by the director not more than three
270 years from the date of issuance of the permit; and

271 (D) If liability under the bond filed by the applicant with
272 the director pursuant to subsection (b), section twelve of this
273 article shall be for the duration of the underground mining
274 operations and until the requirements of subsection (g), sec-
275 tion twelve and section twenty-six of this article, have been
276 fully complied with.

277 (17) Ensure that the construction, maintenance and post-
278 mining conditions of access and haulroads into and across the
279 site of operations will control or prevent erosion and siltation,
280 pollution of water, damage to fish or wildlife or their habitat,
281 or public or private property: *Provided*, That access roads
282 constructed for and used to provide infrequent service to sur-
283 face facilities, such as ventilators or monitoring devices, shall
284 be exempt from specific construction criteria provided that
285 adequate stabilization to control erosion is achieved through
286 alternative measures;

287 (18) Refrain from the construction of roads or other ac-
288 cess ways up a stream bed or drainage channel or in such

289 proximity to such channel so as to significantly alter the nor-
290 mal flow of water;

291 (19) Establish on the regraded areas, and all other lands
292 affected, a diverse, effective and permanent vegetative cover
293 of the same seasonal variety native to the area of land to be
294 affected and capable of self-regeneration and plant succession
295 at least equal in extent of cover to the natural vegetation of
296 the area, except that introduced species may be used in the
297 revegetation process where desirable or when necessary to
298 achieve the approved postmining land use plan;

299 (20) Assume the responsibility for successful revegetation,
300 as required by subdivision (19) of this subsection, for a period
301 of not less than five growing seasons, as defined by the direc-
302 tor, after the last year of augmented seeding, fertilizing, irri-
303 gation or other work in order to assure compliance with
304 subdivision (19) of this subsection: *Provided*, That when the
305 director issues a written finding approving a long-term agri-
306 cultural postmining land use as a part of the mining and
307 reclamation plan, the director may grant exception to the
308 provisions of subdivision (19) of this subsection: *Provided*,
309 *however*, That when the director approves an agricultural
310 postmining land use, the applicable five growing seasons of
311 responsibility for revegetation shall commence at the date of
312 initial planting for such agricultural postmining land use;

313 (21) Protect off-site areas from slides or damage occurring
314 during surface-mining operations and not deposit spoil ma-
315 terial or locate any part of the operations or waste accumu-
316 lations outside the permit area: *Provided, however*, That spoil
317 material may be placed outside the permit area, if approved
318 by the director, after a finding that environmental benefits
319 will result from such;

320 (22) Place all excess spoil material resulting from surface
321 mining activities in such a manner that: (A) Spoil is transport-
322 ed and placed in a controlled manner in position for con-
323 current compaction and in such a way to assure mass sta-
324 bility and to prevent mass movement; (B) the areas of disposal
325 are within the bonded permit areas and all organic matter shall
326 be removed immediately prior to spoil placements; (C) appro-

327 puate surface and internal drainage system or diversion ditches
328 are used to prevent spoil erosion and movement; (D) the dis-
329 posal area does not contain springs, natural water courses or
330 wet weather seeps, unless lateral drains are constructed from
331 the wet areas to the main underdrains in a manner that filtra-
332 tion of the water into the spoil pile will be prevented; (E) if
333 placed on a slope, the spoil is placed upon the most moderate
334 slope among those upon which, in the judgment of the director,
335 the spoil could be placed in compliance with all the require-
336 ments of this article, and shall be placed, where possible, upon,
337 or above, a natural terrace, bench, or berm, if such placment
338 provides additional stability and prevents mass movement;
339 (F) Where the toe of the spoil rests on a downslope, a rock
340 toe buttress, of sufficient size to prevent mass movement, is
341 constructed; (G) the final configuration is compatible with
342 the natural drainage pattern and surroundings and suitable
343 for intended uses; (H) design of the spoil disposal area is
344 certified by a qualified registered professional engineer in con-
345 formance with professional standards; and (I) all other pro-
346 visions of this article are met: *Provided*, That where the excess
347 spoil material consists of at least eighty percent, by volume,
348 sandstone, limestone, or other rocks that do not slake in water,
349 the director may approve alternate methods for disposal of
350 excess spoil material, including fill placement by dumping in
351 a single lift, on a site specific basis: *Provided, however*, That
352 the services of a qualified registered professional engineer ex-
353 pericned in the design and construction of earth and rockfill
354 embankment are utilized: *Provided further*, That such ap-
355 proval shall not be unreasonably withheld if the site is suitable;

356 (23) ~~Met~~ such other criteria as are necessary to achieve
357 reclamation in accordance with the purposes of this article,
358 taking into consideration the physical, climatological and other
359 characteristics of the site;

360 (24) To the extent possible, using the best technology cur-
361 rently available, minimize disturbances and adverse impacts of
362 the operation on fish, wildlife and related environmental val-
363 ues, and achieve enhancement of such resources where prac-
364 ticable; and

365 (25) Retain a natural barrier to inhibit slides and erosion

366 on permit areas where outcrop barriers are required: *Provided*,
367 That constructed barriers may be allowed where (A) natural
368 barriers do not provide adequate stability, (B) natural barriers
369 would result in potential future water quality deterioration and
370 (C) natural barriers would conflict with the goal of maximum
371 utilization of the mineral resource: *Provided, however*, That
372 at a minimum, the constructed barrier must be of sufficient
373 width and height to provide adequate stability and the sta-
374 bility factor must equal or exceed that of the natural out-
375 crop barrier: *Provided further*, That where water quality is
376 paramount, the constructed barrier must be composed of im-
377 pervious material with controlled discharge points;

378 (c) (1) The reclamation commission may prescribe proce-
379 dures pursuant to which the director may permit surface-
380 mining operations for the purposes set forth in subdivision (3)
381 of this subsection.

382 (2) Where an applicant meets the requirements of sub-
383 divisions (3) and (4) of this subsection, a permit without re-
384 gard to the requirement to restore to approximate original con-
385 tour set forth in subsection (b) or (d) of this section may be
386 granted for the surface mining of coal where the mining oper-
387 ation will remove an entire coal seam or seams running
388 through the upper fraction of a mountain, ridge or hill, except
389 as provided in subparagraph (A), subdivision (4) of this sub-
390 section, by removing all of the overburden and creating a level
391 plateau or a gently rolling contour with no highwalls remain-
392 ing, and capable of supporting postmining uses in accordance
393 with the requirements of this subsection.

394 (3) In cases where an industrial, commercial, woodland,
395 agricultural, residential or public use is proposed for the post-
396 mining use of the affected land, the director may grant a per-
397 mit for a surfacemining operation of the nature described in
398 subdivision (2), of this subsection where: (A) the proposed
399 postmining land use is deemed to constitute an equal or better
400 use of the affected land, as compared with the premining use;
401 (B) the applicant presents specific plans for the proposed post-
402 mining land use and appropriate assurances that such use
403 will be: (i) Compatible with adjacent land uses; (ii) practi-
404 cable with respect to achieving the proposed use; (iii) support-

405 cd by commitments from public agencies where appropriate;
406 (iv) practicable with respect to private financial capability for
407 completion of the proposed use; (v) planned pursuant to a
408 schedule attached to the reclamation plan so as to integrate the
409 mining operation and reclamation with the postmining land
410 use; and (vi) designed by a person approved by the director
411 in conformance with standards established to assure the sta-
412 bility, drainage and configuration necessary for the intended
413 use of the site; (C) the proposed use would be compatible with
414 adjacent land uses, and existing state and local land use plans
415 and programs; (D) the director provides the county commis-
416 sion of the county in which the land is located and any state or
417 federal agency which the director, in his discretion, determines
418 to have an interest in the proposed use, an opportunity of not
419 more than sixty days to review and comment on the proposed
420 use; and (E) all other requirements of this article will be met.

421 (4) In granting any permit pursuant to this subsection, the
422 director shall require that: (A) A natural barrier be retained to
423 inhibit slides and erosion on permit areas where outcrop bar-
424 riers are required: *Provided*, That constructed barriers may
425 be allowed where (i) natural barriers do not provide adequate
426 stability, (ii) natural barriers would result in potential future
427 water quality deterioration and (iii) natural barriers would
428 conflict with the goal of maximum utilization of the mineral
429 resources: *Provided, however*, That at a minimum, the con-
430 structed barrier must be of sufficient width and height to pro-
431 vide adequate stability and the stability factor must equal or
432 exceed that of the natural outcrop barrier: *Provided, further*,
433 That where water quality is paramount, the constructed bar-
434 rier must be composed of impervious material with controlled
435 discharge points; (B) the reclaimed area is stable; (C) the re-
436 sulting plateau or rolling contour drains inward from the out-
437 slopes except at specific points; (D) no damage will be done
438 to natural watercourses; (E) spoil will be placed on the moun-
439 taintop bench as is necessary to achieve the planned postmin-
440 ing land use: *Provided*, That all excess spoil material not re-
441 tained on the mountaintop shall be placed in accordance with
442 the provisions of subdivision (22), subsection (b) of this sec-
443 tion; and (F) ensure stability of the spoil retained on the
444 mountaintop and meet the other requirements of this article.

445 (5) All permits granted under the provisions of this sub-
446 section shall be reviewed not more than three years from the
447 date of issuance of the permit, unless the applicant affirmative-
448 ly demonstrates that the proposed development is proceeding
449 in accordance with the terms of the approved schedule and
450 reclamation plan.

451 (d) In addition to those general performance standards
452 required by this section, when surface mining occurs on slopes
453 of twenty degrees or greater, or on such lesser slopes as may
454 be defined by regulation after consideration of soil and cli-
455 mate, no debris, abandoned or disabled equipment, spoil mat-
456 erial or waste mineral matter will be placed on the natural
457 downslope below the initial bench or mining cut: *Provided,*
458 That soil or spoil material from the initial cut of earth in a
459 new surface mining operation may be placed on a limited speci-
460 fied area of the downslope below the initial cut if the per-
461 mittee can establish to the satisfaction of the director that
462 the soil or spoil will not slide and that the order requirements
463 of this section can still be met.

464 (e) The reclamation commission may promulgate regula-
465 tions pursuant to which the director may permit variances
466 from the requirements of this section: *Provided,* That the
467 watershed control of the area is improved: *Provided, however,*
468 That complete backfilling with spoil material shall be required
469 to completely cover the highwall, which material will maintain
470 stability following mining and reclamation.

471 (f) The reclamation commission shall promulgate regulations
472 for the design, location, construction, maintenance, operation,
473 enlargement, modification, removal and abandonment of new
474 and existing coal mine waste piles. In addition to engineering
475 and other technical specifications, the standards and criteria
476 developed pursuant to this subsection must include provisions
477 for review and approval of plans and specifications prior to
478 construction, enlargement, modification, removal or abandon-
479 ment; performance of periodic inspections during construction;
480 issuance of certificates of approval upon completion of con-
481 struction; performance of periodic safety inspections; and is-
482 suance of notices and orders for required remedial or main-
483 tenance work or affirmative action: *Provided,* That whenever

484 the director finds that any coal processing waste pile constitutes
485 an imminent danger to human life, he may, in addition to all
486 other remedies and without the necessity of obtaining the per-
487 mission of any person prior or present who operated or oper-
488 ates the pile or the landowners involved, enter upon the pre-
489 mises where any such coal processing waste piles exist and may
490 take or order to be taken such remedial action as may be nec-
491 essary or expedient to secure such coal processing waste pile
492 and to abate the conditions which cause the danger to human
493 life: *Provided, however,* That the cost reasonably incurred in
494 any remedial action taken by the director under this subsection
495 may be paid for initially by funds appropriated to the depart-
496 ment of natural resources for such purposes, and such sums so
497 expended shall be recovered from any responsible operator or
498 landowner, individually or jointly, by suit initiated by the at-
499 torney general at the request of the director. For purposes of
500 this subsection "operates" or "operated" means to enter upon
501 a coal processing waste pile, or part thereof, for the purpose of
502 disposing, depositing, dumping coal processing wastes thereon
503 or removing coal processing waste therefrom, or to employ
504 a coal processing waste pile for retarding the flow of or for
505 the impoundment of water.

**§20-6-14. General environmental protection performance standards
for the surface effects of underground mining; applica-
tion of other provisions of article to surface effects of
underground mining .**

1 (a) The reclamation commission shall promulgate separate
2 regulations directed toward the surface effects of under-
3 ground coal mining operations, embodying the requirements
4 in subsection (b) of this section: *Provided,* That in adopting
5 such regulations, the reclamation commission shall consider
6 the distinct difference between surface coal mines and under-
7 ground coal mines in West Virginia. Such regulations may
8 not conflict with or supersede any provision of the federal
9 on state coal mine health and safety laws or any regulation
10 issued pursuant thereto.

11 (b) Each permit issued by the director pursuant to this
12 article and relating to underground coal mining shall require
13 the operation as minimum to:

14 (1) Adopt measures consistent with known technology in
15 order to prevent subsidence and to the extent technologically
16 and economically feasible, maximize mine stability and main-
17 tain the value and reasonably foreseeable use of overlying
18 surface lands, except in those instances where the mining
19 technology used requires planned subsidence in a predictable
20 and controlled manner: *Provided*, That this subsection does
21 not prohibit the standard method of room and pillar mining;

22 (2) Seal all portals, entryways, drifts, shafts or other
23 openings that connect the earth's surface to the underground
24 mine workings when no longer needed for the conduct of the
25 mining operations in accordance with the requirements of all
26 applicable federal and state law and regulations promulgated
27 pursuant thereto;

28 (3) Fill or seal exploratory holes no longer necessary
29 for mining and maximize to the extent technologically and
30 economically feasible, if environmentally acceptable, return
31 of mine and processing waste, tailings and any other waste
32 incident to the mining operation to the mine workings or
33 excavations;

34 (4) With respect to surface disposal of mine wastes,
35 tailings, coal processing wastes and other wastes in areas
36 other than the mine workings or excavations, stabilize all
37 waste piles created by the operator from current operations
38 through construction in compacted layers, including the use
39 of incombustible and impervious materials, if necessary, and
40 assure that any leachate therefrom will not degrade surface
41 or ground waters below water quality standards established
42 pursuant to applicable federal and state law and that the
43 final contour of the waste accumulation will be compatible
44 with natural surroundings and that the site is stabilized and
45 revegetated according to the provisions of this section;

46 (5) Design, locate, construct, operate, maintain, enlarge,
47 modify and remove or abandon, in accordance with the
48 standards and criteria developed pursuant to subsection (f),
49 section thirteen of this article, all existing and new coal mine
50 waste piles consisting of mine wastes, tailings, coal processing

51 wastes and solid wastes and used either temporarily or perma-
52 nently as dams or embankments;

53 (6) Establish on regraded areas and all other disturbed
54 areas a diverse and permanent vegetative cover capable of
55 self-regeneration and plant succession and at least equal in
56 extent of cover to the natural vegetation of the area within
57 the time period prescribed in subdivision (20), subsection
58 (b), section thirteen of this article;

59 (7) Protect off-site areas from damages which may result
60 from such mining operations;

61 (8) Eliminate fire hazards and otherwise eliminate con-
62 ditions which constitute a hazard to health and safety of
63 the public;

64 (9) Minimize the disturbance of the prevailing hydrologic
65 balance at the mine site and in associated off-site areas
66 and to the quantity and the quality of water in surface and
67 ground water systems both during and after mining opera-
68 tions and during reclamation by: (A) Avoiding acid or
69 other toxic mine drainage by such measures as, but not
70 limited to: (i) Preventing or removing water from contact
71 with toxic producing deposits; (ii) treating drainage to re-
72 duce toxic content which adversely affects downstream water
73 before being released to water courses; and (iii) casing,
74 sealing or otherwise managing boreholes, shafts and wells
75 to keep acid or other toxic drainage from entering ground
76 and surface waters; and (B) conducting mining operations
77 so as to prevent, to the extent possible using the best tech-
78 nology currently available, additional contributions of sus-
79 pended solids to streamflow or runoff outside the permit area,
80 but in no event shall such contributions be in excess of re-
81 quirements set by applicable state law, and avoiding channel
82 deepening or enlargement in operations requiring the dis-
83 charge of water from mines: *Provided*, That in recognition
84 of the distinct differences between surface and underground
85 mining, the monitoring of water from underground coal mine
86 workings shall be in accordance with the provisions of the
87 Clean Water Act of 1977;

88 (10) With respect to other surface impacts of underground

89 mining not specified in this subsection, including the construc-
90 tion of new roads or the improvement or use of existing roads
91 to gain access to the site of such activities and for haulage, re-
92 pair areas, storage areas, processing areas, shipping areas,
93 and other areas upon which are sited structures, facilities or
94 other property or materials on the surface, resulting from or
95 incident to such activities, operate in accordance with the
96 standards established under section thirteen of this article
97 for such effects which result from surface-mining operations:
98 *Provided*, That the reclamation commission shall make such
99 modifications in the requirements imposed by this subdivision
100 as are necessary to accommodate the distinct difference
101 between surface and underground mining in West Virginia;

102 (11) To the extent possible, using the best technology
103 currently available, minimize disturbances and adverse im-
104 pacts of the operation on fish, aquatic life, wildlife and related
105 environmental values, and achieve enhancement of such re-
106 sources where practicable; and

107 (12) Unless otherwise permitted by the director after
108 consultation with the department of mines and in consideration
109 of the relevant safety and environmental factors, locate open-
110 ings for all new drift mines working in acid producing or iron
111 producing coal seams in such a manner as to prevent a gravity
112 discharge of water from the mine.

113 (c) In order to protect the stability of the land, the
114 director shall suspend underground mining under urbanized
115 areas, cities, towns and communities and adjacent to in-
116 dustrial or commercial buildings, major impoundments or
117 permanent streams if he finds imminent danger to inhabitants
118 of the urbanized areas, cities, towns or communities.

119 (d) The provisions of this article relating to permits,
120 bonds, insurance, inspections, reclamation and enforcement,
121 public review and administrative and judicial review shall
122 also be applicable to surface operations and surface impacts
123 incident to an underground mine with such modifications by
124 regulation to the permit application requirements, permit ap-
125 proval or denial procedures and bond requirements as are
126 necessary to accommodate the distinct difference between
127 surface mines and underground mines in West Virginia.

§20-6-15. Inspections; monitoring; right-of-entry; inspection of records; identification signs; progress maps.

1 (a) The director shall cause to be made such inspections
2 of surface-mining operations as are necessary to effectively
3 enforce the requirements of this article, and for such pur-
4 poses the director shall without advance notice and upon
5 presentation of appropriate credentials: (A) Have the right-
6 of-entry to, upon or through surface-mining operations or
7 any premises in which any records required to be maintained
8 under subdivision (1), subsection (b) of this section are
9 located; and (B) at reasonable times and without delay, have
10 access to and copy any records and inspect any monitoring
11 equipment or method of operation required under this article.

12 (b) For the purpose of enforcement under this article, in
13 the administration and enforcement of any permit under this
14 article, or for determining whether any person is in violation
15 of any requirement of this article:

16 (1) The director shall at a minimum require any operator
17 to: (A) Establish and maintain appropriate records; (B) make
18 monthly reports to the department; (C) install, use and main-
19 tain any necessary monitoring equipment or methods con-
20 sistent with subdivision (1), subsection (a), section ten of
21 this article; (D) evaluate results in accordance with such
22 methods, at such locations, intervals and in such manner
23 as the director shall prescribe; and (E) provide such other
24 information relative to surface-mining operations as the direc-
25 tor deems reasonable and necessary;

26 (2) For those surface-mining operations which remove or
27 disturb strata that serve as aquifers which significantly ensure
28 the hydrologic balance of water use either on or off the
29 mining site, the director shall require that: (A) Monitoring
30 sites be established to record the quantity and quality of sur-
31 face drainage above and below the mine site as well as in
32 the potential zone of influence; (B) monitoring sites be estab-
33 lished to record level, amount and samples of ground water
34 and aquifers potentially affected by the surface mining and
35 also below the lowermost mineral seam to be mined; (C)
36 records or well logs and borehole data be maintained; and (D)

37 monitoring sites be established to record precipitation. The
38 monitoring data collection and analysis required by this section
39 shall be conducted according to standards and procedures
40 set forth by the reclamation commission in order to assure
41 their reliability and validity.

42 (c) All surface mining operations shall be inspected at
43 least once every thirty days. Such inspections shall be made
44 on an irregular basis without prior notice to the operator
45 or his agents or employees, except for necessary on-site
46 meetings with the operator. The inspections shall include
47 the filing of inspection reports adequate to enforce the re-
48 quirements, terms and purposes of this article.

49 (d) Each permittee shall maintain at the entrances to the
50 surface-mining operations a clearly visible monument which
51 sets forth the name, business address and telephone number
52 of the permittee and the permit number of the surface-mining
53 operations.

54 (e) Copies of any records, reports, inspection materials or
55 information obtained under this article by the director shall
56 be made immediately available to the public at central and
57 sufficient locations in the county, multi-county or state area
58 of mining so that they are conveniently available to residents
59 in the areas of mining unless specifically exempted by this
60 article.

61 (f) Within thirty days after service of a copy of an order
62 of the director upon an operator by registered or certified
63 mail, the operator shall furnish to the director five copies of
64 a progress map prepared by or under the supervision of a
65 person approved by the director showing the disturbed area
66 to the date of such map. Such progress map shall contain
67 information identical to that required for both the proposed
68 and final maps required by this article, and shall show in
69 detail completed reclamation work as required by the director.
70 Such progress map shall include a geologic survey sketch
71 showing the location of the operation, shall be properly re-
72 ferenced to a permanent landmark, and shall be within
73 such reasonable degree of accuracy as may be prescribed
74 by the director. If no land has been disturbed by operations

75 during the preceding year, the operator shall notify the
76 director of that fact.

77 (g) Whenever on the basis of available information, in-
78 cluding reliable information from any person, the director
79 has cause to believe that any person is in violation of this
80 article, any permit condition or any regulation promulgated
81 under this article, the director shall immediately order state
82 inspection of the surface-mining operation at which the alleged
83 violation is occurring unless the information is available as
84 a result of a prior state inspection. The director shall notify
85 any person who supplied such reliable information when
86 the state inspection will be carried out. Such person may
87 accompany the inspector during the inspection: *Provided,*
88 That except for deliberate and willful acts, the permittee,
89 his authorized agent or employees, and the inspector whom
90 such person is accompanying, shall not be held civilly liable
91 for any injury to such person during the inspection trip.
92 Any such person accompanying an inspector on an inspection
93 shall be responsible for supplying any safety equipment re-
94 quired for his use.

**§20-6-16. Cessation of operation by order of inspector; informal
conference; imposition of affirmative obligations; ap-
peal.**

1 (a) Notwithstanding any other provisions of this article, a
2 surface mining reclamation inspector shall have the authority
3 to issue a cessation order for any portion of a surface mining
4 operation when an inspector determines that any condition
5 or practices exist, or that any permittee is in violation of
6 any requirements of this article or any permit condition
7 required by this article, which condition, practice, or violation
8 also creates an imminent danger to the health or safety of
9 the public, or is causing or can reasonably be expected to
10 cause significant, imminent environmental harm to land, air
11 or water resources. Such cessation order shall take effect
12 immediately. Unless waived in writing, an informal conference
13 shall be held at or near the site relevant to the violation set
14 forth in the cessation order within twenty-four hours after
15 such order becomes effective or such order shall expire.
16 Such conference shall be held before a surface mining reclama-

17 tion supervisor who shall, immediately upon conclusion of
 18 said hearing, determine when and if the operation or portion
 19 thereof may resume. Any operator who believes he is ag-
 20 grieved by the decision of the surface mining reclamation
 21 supervisor may immediately appeal to the director, setting
 22 forth reasons why the operation should not be halted. The
 23 director forthwith shall determine whether the operation or
 24 portion thereof may be resumed.

25 (b) Such cessation order shall remain in effect until the
 26 director determines that the condition, practice, or violation
 27 has been abated, or until modified, vacated, or released by
 28 the director. Where the director finds that the ordered cessa-
 29 tion of any portion of a surface coal mining operation will
 30 not completely abate the imminent danger to health or safety
 31 of the public or the significant imminent environmental harm
 32 to land, air, or water resources, the director shall, in addition
 33 to the cessation order, impose affirmative obligations on the
 34 operator requiring him to take whatever steps the director
 35 deems necessary to abate the imminent danger or the signifi-
 36 cant environmental harm.

37 (c) Any cessation order issued pursuant to this section or
 38 any other provision of this article may be released by any
 39 inspector. An inspector shall be readily available to vacate
 40 a cessation order upon abatement of the violation.

**§20-6-17. Notice of violation; procedure and actions; enforcement;
 permit revocation and bond forfeiture; civil and criminal
 penalties; prosecution; injunctive relief.**

1 (a) If any of the requirements of this article, rules and regula-
 2 tions promulgated pursuant thereto or permit conditions have
 3 not been complied with, the director may cause a notice of
 4 violation to be served upon the operator or his duly authorized
 5 agent. A copy of such notice shall be handed to the operator
 6 or his duly authorized agent in person or served by certified
 7 mail addressed to the operator at the permanent address
 8 shown on the application for a permit. The notice shall specify
 9 in what respects the operator has failed to comply with this
 10 article, rules and regulations or permit conditions and shall
 11 specify a reasonable time for abatement of the violation not to

12 exceed fifteen days. If the operator has not abated the viola-
13 tion within the time specified in the notice, or any reasonable
14 extension thereof, not to exceed seventy-five days, the director
15 shall order the cessation of the operation or the portion thereof
16 causing the violation, unless the operator affirmatively demon-
17 strates that compliance is unattainable due to conditions totally
18 beyond the control of the operator. If a violation is not abated
19 within the time specified or any extension thereof, or any
20 cessation order is issued, a mandatory civil penalty of not
21 less than one thousand dollars per day per violation shall be
22 assessed: *Provided*, That assessments of civil penalties under
23 this subsection shall continue until corrective steps have been
24 initiated by the operator to the satisfaction of the surface
25 mining reclamation inspector: *Provided, however*, That if a
26 cessation order is released or expires within twenty-four hours
27 after issuance no mandatory civil penalty shall be assessed.

28 (b) If the director determines that a pattern of violations of
29 any requirement of this article or any permit condition exists
30 or has existed as a result of the operator's lack of reasonable
31 care and diligence, or that such violations are willfully caused
32 by the operator, the director shall immediately issue an order
33 directing the operator to show cause why the permit should not
34 be suspended or revoked and giving the operator thirty days in
35 which to request a public hearing. If a hearing is requested, the
36 director shall inform all interested parties of the time and place
37 of the hearing. Any hearing under this section shall be recorded
38 and subject to the provisions of chapter twenty-nine-a of this
39 code. Within sixty days following the public hearing, the direc-
40 tor shall issue and furnish to the permittee and all other parties
41 to the hearing a written decision, and the reasons therefor, con-
42 cerning suspension or revocation of the permit. Upon the
43 operator's failure to show cause why the permit should not
44 be suspended or revoked, the director shall immediately re-
45 volve the operator's permit, forfeit the operator's bond or
46 other security posted pursuant to section twelve of this article
47 and give notice to the attorney general, who shall collect the
48 forfeiture without delay: *Provided*, That the entire proceeds
49 of such forfeiture shall be deposited with the treasurer of the
50 state of West Virginia to the credit of the special reclamation
51 fund. All forfeitures collected prior to the effective date of

52 this article shall be deposited in the special reclamation fund
53 and shall be expended back upon the areas for which the
54 bond was posted: *Provided, however,* That any excess there-
55 from shall remain in the special reclamation fund.

56 (c) Any person engaged in surface mining operations who
57 violates any permit condition or who violates any other pro-
58 vision of this article or rules and regulations promulgated pur-
59 suant thereto may also be assessed a civil penalty. Such penalty
60 shall not exceed five thousand dollars. Each day of continuing
61 violation may be deemed a separate violation for purposes
62 of penalty assessments. In determining the amount of the pen-
63 alty, consideration shall be given to the operator's history of
64 previous violations at the particular surface mining operation,
65 the seriousness of the violation, including any irreparable harm
66 to the environment and any hazard to the health or safety of
67 the public, whether the operator was negligent, and the demon-
68 strated good faith of the operator charged in attempting to
69 achieve rapid compliance after notifications of the violation.

70 (d) Notwithstanding the jurisdictional limitations contained
71 in article two of chapter fifty of this code, any such civil penalty
72 may be imposed and collected by the magistrate courts, which
73 shall have jurisdiction over all civil penalty actions brought by
74 the director. Civil penalties collected under this article shall be
75 deposited with the treasurer of the State of West Virginia to
76 the credit of the special reclamation fund established in section
77 twelve of this article.

78 (e) Any person who willfully and knowingly violates a
79 condition of a permit issued pursuant to this article or regula-
80 tions promulgated pursuant thereto, or fails or refuses to comply
81 with any order issued under said article and regulations or any
82 order incorporated in a final decision issued by the director
83 is guilty of a misdemeanor, and, upon conviction thereof,
84 shall be fined not less than one hundred dollars nor more than
85 ten thousand dollars, or imprisoned in the county jail not
86 more than one year, or both fined and imprisoned.

87 (f) Whenever a corporate operator violates a condition of
88 a permit issued pursuant to this article, regulations promulgated
89 pursuant thereto, or any order incorporated in a final decision

90 issued by the director, any director, officer or agent of such
91 corporation who willfully and knowingly, authorized, ordered,
92 or carried out such failure or refusal shall be subject to the same
93 civil penalties, fines and imprisonment that may be imposed
94 upon a person under subsections (c) and (e) of this section.

95 (g) Any person who knowingly makes any false statement,
96 representation or certification, or knowingly fails to make any
97 statement, representation or certification in any application,
98 petition, record, report, plan or other document filed or re-
99 quired to be maintained pursuant to this article or regulations
100 promulgated pursuant thereto is guilty of a misdemeanor, and,
101 upon conviction thereof, shall be fined not less than one
102 hundred dollars nor more than ten thousand dollars, or im-
103 prisoned in the county jail not more than one year, or both
104 fined and imprisoned.

105 (h) Whenever a permittee or his agent: (A) Violates or
106 fails or refuses to comply with any order or decision issued
107 by the director under this article; or (B) interferes with, hinders,
108 or delays the director in carrying out the provisions of this
109 article; or (C) refuses to admit the director to the mine; or
110 (D) refuses to permit inspection of the mine by the director;
111 or (E) refuses to furnish any reasonable information or report
112 requested by the director in furtherance of the provisions of
113 this article; or (F) refuses to permit access to, and copying of,
114 such records as the director determines necessary in carrying
115 out the provisions of this article; or (G) violates any other
116 provisions of this article, the regulations promulgated pur-
117 suant thereto, or the terms and conditions of any permit, the
118 director, the attorney general, or the prosecuting attorney of
119 the county in which the major portion of the permit area is
120 located, may institute a civil action for relief, including a
121 permanent or temporary injunction, restraining order or any
122 other appropriate order, in the circuit court of Kanawha
123 County or any court of competent jurisdiction to compel com-
124 pliance with and enjoin such violations, failures, or refusals.
125 The court or the judge thereof may issue a preliminary injunc-
126 tion in any case pending a decision on the merits of any appli-
127 cation filed without requiring the filing of a bond or other
128 equivalent security.

129 (i) Any person who shall, except as permitted by law, will-
130 fully resist, prevent, impede or interfere with the director
131 or any of his agents in the performance of duties pursuant to
132 this article is guilty of a misdemeanor, and, upon conviction
133 thereof, shall be punished by a fine of not more than five
134 thousand dollars or by imprisonment for not more than one
135 year, or both.

§20-6-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a surface mining application or
2 significant revision or renewal thereof, including public noti-
3 fication and an opportunity for a public hearing, the director
4 shall grant, require revision of, or deny the application for
5 a permit within sixty days and notify the applicant in writing
6 of his decision.

7 (b) No permit or significant revision of a permit may be
8 approved unless the applicant affirmatively demonstrates and
9 the director finds in writing on the basis of the information
10 set forth in the application or from information otherwise
11 available which shall be documented in the approval and made
12 available to the applicant that:

13 (1) The permit application is accurate and complete and
14 that all the requirements of this article and regulations there-
15 under have been complied with;

16 (2) The applicant has demonstrated that reclamation as
17 required by this article can be accomplished under the re-
18 clamation plan contained in the permit application;

19 (3) The assessment of the probable cumulative impact of
20 all anticipated mining in the area on the hydrologic balance,
21 as specified in section ten of this article, has been made by
22 the director and the proposed operation has been designed
23 to prevent material damage to the hydrologic balance outside
24 the permit area;

25 (4) The area proposed to be mined is not included within
26 an area designated unsuitable for surface mining pursuant to
27 section twenty-two of this article or is not within an area
28 under administrative study by the reclamation commission
29 such designation; and


OK
AB
E.N.

30 (5) In cases where the private mineral estate has been
31 severed from the private surface estate, the applicant has
32 submitted: (A) The written consent of the surface owner to
33 the extraction of coal by surface mining; or (B) a conveyance
34 that expressly grants or reserves the right to extract the coal
35 by surface mining; or (C) if the conveyance does not ex-
36 pressly grant the right to extract coal by surface mining, the
37 surface-subsurface legal relationship shall be determined in
38 accordance with applicable law: *Provided*, That nothing in
39 this article shall be construed to authorize the director to
40 adjudicate property rights disputes.

41 (c) Where information available to the department indi-
42 cates that any surface mining operation located in this state
43 of West Virginia, owned or controlled by the applicant, is
44 currently in violation of this article or other West Virginia
45 environmental laws or regulations, the permit shall not be
46 issued until the applicant submits proof that such violation has
47 been corrected or is in the process of being corrected to the
48 satisfaction of the director or the department or agency which
49 has jurisdiction over such violation, and no permit may be
50 issued to any applicant after a finding by the director, after an
51 opportunity for hearing, that the applicant or the operator
52 specified in the application controls or has controlled mining
53 operations with a demonstrated pattern of willful violations of
54 this article of such nature and duration with such irreparable
55 damage to the environment as to indicate an intent not to
56 comply with the provisions of this article: *Provided*, That if the
57 director finds that the applicant is or has been affiliated with,
58 or managed or controlled by, or is or has been under the
59 common control of, other than as an employee, a person who
60 has had a surface mining permit revoked or bond or other
61 security forfeited for failure to reclaim lands as required by
62 the laws of this state, he shall not issue a permit to the
63 applicant: *Provided, however*, That subject to the discretion of
64 the director and based upon a petition for reinstatement,
65 permits may be issued to any such applicant if, after such
66 revocation or forfeiture, the operator whose permit has been
67 revoked or bond forfeited shall have paid into the special
68 reclamation fund any additional sum of money determined by
69 the director to be adequate to reclaim the disturbed area, and

70 the director is satisfied that such petitioner will comply with
71 this article.

72 (d) (1) In addition to finding the application in compliance
73 with subsection (b) of this section, if the area proposed to
74 be mined contains prime farmland, the director may, pursuant
75 to regulations promulgated hereunder, grant a permit to mine
76 on prime farmland if the operator affirmatively demonstrates
77 that he has the technological capability to restore such mined
78 area, within a reasonable time, to equivalent or higher levels
79 of yield as nonmined prime farmland in the surrounding
80 area under equivalent levels of management, and can meet
81 the soil reconstruction standards in subdivision (7), subsection
82 (b), section thirteen of this article. Except for compliance
83 with subsection (b) of this section, the requirements of
84 subdivision (1) of this subsection, shall apply to all permits
85 issued after the third day of August, one thousand nine
86 hundred seventy-seven.

87 (2) Nothing in this subsection shall apply to any permit
88 issued prior to the third day of August, one thousand nine
89 hundred seventy-seven, or to any revisions or renewals there-
90 of, or to any existing surface-mining operations for which a
91 permit was issued prior to said date.

92 (e) If the director finds that the overburden on any part
93 of the area of land described in the application for a permit
94 is such that experience in the state with a similar type of
95 operation upon land with similar overburden shows that
96 one or more of the following conditions cannot feasibly be
97 prevented: (1) Substantial deposition of sediment in stream
98 beds, (2) landslides, or (3) acid-water pollution, the director
99 may delete such part of the land described in the application
100 upon which such overburden exists.

**§20-6-19. Permit revision and renewal requirements; requirements
for transfer; assignment and sale of permit rights; and
operator reassignment.**

1 (a) (1) Any valid permit issued pursuant to this article
2 shall carry with it the right of successive renewal upon
3 expiration with respect to areas within the boundaries of
4 the existing permit. The holders of the permit may apply

5 for renewal and such renewal shall be issued: *Provided*,
6 That on application for renewal, the burden shall be on the
7 opponents of renewal, unless it is established that and written
8 findings by the director are made that: (A) The terms and
9 conditions of the existing permit are not being satisfactorily
10 met: *Provided*, That if the permittee is required to modify
11 operations pursuant to mining or reclamation requirements
12 which become applicable after the original date of permit
13 issuance, the permittee shall be provided an opportunity to
14 submit a schedule allowing a reasonable period to comply
15 with such revised requirements; (B) the present surface-mining
16 operation is not in compliance with the applicable environ-
17 mental protection standards of this article; (C) the renewal
18 requested substantially jeopardizes the operator's continuing
19 responsibility on existing permit areas; (D) the operator has
20 not provided evidence that the performance bond in effect
21 for said operation will continue in effect for any renewal
22 requested as required pursuant to section twelve of this
23 article; or (E) any additional revised or updated infor-
24 mation as required pursuant to rules and regulations
25 promulgated by the reclamation commission has not been
26 provided.

27 (2) If an application for renewal of a valid permit in-
28 cludes a proposal to extend the surface-mining operation
29 beyond the boundaries authorized in the existing permit,
30 except incidental boundary revisions, the applicant shall apply
31 for a new permit. Incidental boundary revisions shall in-
32 clude, but not be limited to, additional areas of disturbance
33 ancillary to permitted surface effects of underground mining
34 operations, provided that the operator has submitted (A) ade-
35 quate bond, (B) a map showing the disturbed area and
36 facilities, and (C) a reclamation plan.

37 (3) Any permit renewal shall be for a term not to exceed
38 the period of time for which the original permit was issued.
39 Application for permit renewal shall be made at least one hun-
40 dred twenty days prior to the expiration of the valid permit.

41 (4) Any permit renewal application shall be on forms
42 prescribed by the director and shall contain such information
43 as the director requires pursuant to rule or regulation.

44 (b) (1) During the term of the permit, the permittee may
45 submit to the director an application for a revision of the
46 permit, together with a revised reclamation plan.

47 (2) An application for a significant revision of a permit
48 shall be subject to all requirements of this article and regula-
49 tions promulgated pursuant thereto.

50 (3) Any extension to an area already covered by the permit,
51 except incidental boundary revisions, shall be made by applica-
52 tion for another permit.

53 (c) The director shall review outstanding permits of a
54 five-year term before the end of the third year of the permit.
55 Other permits shall be reviewed once during their term. The
56 director may require reasonable revision or modification of
57 the permit following review: *Provided*, That such revision or
58 modification shall be based upon written findings and shall be
59 preceded by notice to the permittee and opportunity for
60 hearing.

61 (d) No transfer, assignment or sale of the rights granted
62 under any permit issued pursuant to this article shall be
63 made without the prior written approval of the director.

**§20-6-20. Public notice; written objections; public hearings; in-
formal conferences.**

1 (a) At the time of submission of an application for a
2 surface-mining permit or a significant revision of an existing
3 permit pursuant to the provisions of this article, the applicant
4 shall submit to the department a copy of the required ad-
5 vertisement. At the time of submission, the applicant shall
6 place the advertisement in a local newspaper of general circu-
7 lation in the county of the proposed surface-mining operation
8 at least once a week for four consecutive weeks. The director
9 shall notify various appropriate federal and state agencies
10 as well as local governmental bodies, planning agencies and
11 sewage and water treatment authorities or water companies
12 in the locality in which the proposed surface-mining operation
13 will take place, notifying them of the operator's intention to
14 mine on a particularly described tract of land and indicating
15 the application number and where a copy of the proposed

16 mining and reclamation plan may be inspected. These local
17 bodies, agencies, authorities or companies may submit written
18 comments within a reasonable period established by the
19 director on the mining application with respect to the effect
20 of the proposed operation on the environment which is
21 within their area of responsibility. Such comments shall be
22 immediately transmitted by the director to the applicant
23 and to the appropriate office of the department.

24 (b) Any person having an interest which is or may be
25 adversely affected, or the officer or head of any federal,
26 state or local governmental agency, shall have the right to
27 file written objections to the proposed initial or revised
28 permit application for a surface-mining operation with the
29 director within thirty days after the last publication of the
30 advertisement required in subsection (a) of this section.
31 Such objections shall be immediately transmitted to the
32 applicant by the director and shall be made available to the
33 public. If written objections are filed and an informal con-
34 ference requested within thirty days of the last publication
35 of the above notice, the director shall then hold a con-
36 ference in the locality of the proposed mining within three
37 weeks after the close of the public comment period. Those
38 requesting the conference shall be notified and the date,
39 time and location of the informal conference shall also
40 be advertised by the director in a newspaper of general
41 circulation in the locality at least two weeks prior to the
42 scheduled conference date. The director may arrange with
43 the applicant, upon request by any party to the conference
44 proceeding, access to the proposed mining area for the pur-
45 pose of gathering information relevant to the proceeding.
46 An electronic or stenographic record shall be made of the
47 conference proceeding unless waived by all parties. Such
48 record shall be maintained and shall be accessible to the parties
49 at their respective expense until final release of the applicant's
50 performance bond or other security posted in lieu thereof. The
51 director's authorized agent will preside over the conference.
52 In the event all parties requesting the informal conference
53 stipulate agreement prior to the conference and withdraw their
54 request, a conference need not be held.

§20-6-21. Decision of director on permit application; hearing thereon.

1 (a) If an informal conference has been held, the director
2 shall issue and furnish the applicant for a permit and persons
3 who were parties to the informal conference with the written
4 finding granting or denying the permit in whole or in part and
5 stating the reasons therefor within thirty days of the informal
6 conference, notwithstanding the requirements of subsection (a)
7 of section eighteen of this article.

8 (b) If the application is approved, the permit shall be issued.
9 If the application is disapproved, specific reasons therefor
10 must be set forth in the notification. Within thirty days after
11 the applicant is notified of the director's decision, the appli-
12 cant or any person with an interest which is or may be adverse-
13 ly affected may request a hearing before the reclamation board
14 of review as provided in section twenty-four of this article to
15 review the director's decision.

§20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

1 (a) The reclamation commission shall establish a planning
2 process to enable objective decisions based upon competent
3 and scientifically sound data and information as to which, if
4 any, land areas of this state are unsuitable for all or certain
5 types of surface-mining operations pursuant to the standards
6 set forth in subdivisions (1) and (2) of this subsection:
7 *Provided*, That such designation shall not prevent prospecting
8 pursuant to section eight of this article on any area so desig-
9 nated.

10 (1) Upon petition pursuant to subsection (b) of this sec-
11 tion, the reclamation commission shall designate an area as
12 unsuitable for all or certain types of surface-mining opera-
13 tions, if it determines that reclamation pursuant to the re-
14 quirements of this article is not technologically and economi-
15 cally feasible.

16 (2) Upon petition pursuant to subsection (b) of this sec-

17 tion, a surface area may be designated unsuitable for certain
18 types of surface-mining operations, if such operations: (A)
19 Be incompatible with existing state or local land use plans
20 or programs; (B) affect fragile or historic lands in which such
21 operations could result in significant damage to important his-
22 toric, cultural, scientific and aesthetic values and natural sy-
23 stems; (C) affect renewable resource lands including signifi-
24 cant aquifers and aquifer recharge areas, in which such oper-
25 ations could result in a substantial loss or reduction of long-
26 range productivity of water supply, food or fiber products; or
27 (D) affect natural hazard lands in which such operations could
28 substantially endanger life and property. Such lands to include
29 lands subject to frequent flooding and areas of unstable geo-
30 logy.

31 (3) The reclamation commission shall develop a process
32 which includes: (A) The review of surface-mining lands; (B)
33 a data base and an inventory system which will permit proper
34 evaluation of the capacity of different land areas of the state
35 to support and permit reclamation of surface-mining operat-
36 ions; (C) a method for implementing land use planning deci-
37 sions concerning surface-mining operations; and (D) proper
38 notice and opportunities for public participation, including a
39 public hearing prior to making any designation or redesign-
40 nation pursuant to this section.

41 (4) Determinations of the unsuitability of land for surface
42 mining, as provided for in this section, shall be integrated as
43 closely as possible with present and future land use planning
44 and regulation processes at federal, state and local levels.

45 (5) The requirements of this section shall not apply to
46 lands on which surface-mining operations were being con-
47 ducted on the third day of August, one thousand nine hundred
48 seventy-seven, or under a permit issued pursuant to this article,
49 or where substantial legal and financial commitments in such
50 operations were in existence prior to the fourth day of January,
51 one thousand nine hundred seventy-seven.

52 (b) The director, or any person having an interest which is
53 or may be adversely affected, shall have the right to pe-
54 tion the reclamation commission to have an area

55 designated as unsuitable for surface mining operations
56 or to have such a designation terminated. Such peti-
57 tion shall contain allegations of fact with supporting evi-
58 dence which would tend to establish the allegations. After
59 receipt of such petition, the reclamation commission shall im-
60 mediately begin an administrative study of the area specified
61 in the petition. Within ten months after receipt of the petition,
62 the reclamation commission shall hold a public hearing in the
63 locality of the affected area after appropriate notice and pub-
64 lication of the date, time and location of such hearing. After
65 the director or any person having an interest which is or may
66 be adversely affected has filed a petition and before the hearing
67 required by this subsection, any person may intervene by filing
68 allegations of fact with supporting evidence which would tend
69 to establish the allegations. Within sixty days after such hear-
70 ing, the reclamation commission shall issue and furnish to the
71 petitioner and any other party to the hearing, a written decision
72 regarding the petition and the reasons therefor. In the event
73 that all the petitioners stipulate agreement prior to the re-
74 quested hearing and withdraw their request, such hearing need
75 not be held.

76 (c) Prior to designating any land areas as unsuitable for
77 surface-mining operations, the reclamation commission shall
78 prepare a detailed statement on: (1) The potential coal re-
79 sources of the area; (2) the demand for the coal resources; and
80 (3) the impact of such designation on the environment, the
81 economy and the supply of coal.

82 (d) After the third day of August, one thousand nine hun-
83 dred seventy-seven, and subject to valid existing rights, no
84 surface-mining operations, except those which existed on that
85 date, shall be permitted:

86 (1) On any lands in this state within the boundaries of
87 units of the national park system, the national wildlife refuge
88 systems, the national system of trails, the national wilderness
89 preservation system, the wild and scenic rivers system, includ-
90 ing study rivers designated under section five-a of the Wild
91 and Scenic Rivers Act, and national recreation areas desig-
92 nated by act of Congress: *Provided*, That the director may
93 grant variances to this subdivision after an affirmative

94 finding that positive environmental benefits will result from
95 such.

96 (2) Which will adversely affect any publicly owned part or
97 places included in the national register of historic sites, or na-
98 tional register of natural landmarks unless approved jointly by
99 the director and the federal, state or local agency with jurisdic-
100 tion over the park, the historic site, or natural landmark;

101 (3) Within one hundred feet of the outside right-of-way line
102 on any public road, except where mine access road or haulage
103 roads join such right-of-way line, and except that the director
104 may permit such roads to be relocated or the area affected to
105 lie within one hundred feet of such road if, after public notice
106 and an opportunity for a public hearing in the locality, the
107 director makes a written finding that the interests of the public
108 and the landowners affected thereby will be protected;

109 (4) Within three hundred feet from any occupied dwelling,
110 unless waived by the owner thereof, or within three hundred
111 feet of any public building, school, church, community or in-
112 stitutional building, public park, or within one hundred feet of
113 a cemetery; or

114 (5) On any federal lands within the boundaries of any
115 national forest: *Provided*, That surface coal mining operations
116 may be permitted on such lands if the secretary of the interior
117 finds that there are no significant recreational, timber, eco-
118 nomic or other values which may be incompatible with such
119 surface-mining operations: *Provided, further*, That such surface
120 operations and impacts are incident to an underground coal
121 mine.

122 (e) Notwithstanding any other provision of this code, the
123 coal underlying any lands designated unsuitable for surface
124 mining operations under any provisions of this article or under-
125 lying any land upon which mining is prohibited by any provi-
126 sions of this article shall be assessed for taxation purposes ac-
127 cording to their value, and the Legislature hereby finds that
128 such coal has no value for the duration of such designation or
129 prohibition unless suitable for underground mining not in vio-
130 lation of this article: *Provided*, That the owner of such coal
131 shall forthwith notify the proper assessing authorities if such

132 designation or prohibition is removed so that such coal may
133 be reassessed.

**§20-6-23. Appointment and organization of reclamation board of
review; authority compensation, expenses and removal
of board members.**

1 (a) There is hereby created a reclamation board of review
2 consisting of five members to be appointed by the governor
3 with the advice and consent of the Senate for terms of
4 five years, except that the terms of the first five members
5 of said board shall be for one, two, three, four and
6 five years respectively, as designated by the governor at
7 the time of the appointment. Any vacancy in the office
8 of a member of said board shall be filled by appoint-
9 ment by the governor for the unexpired term of the
10 member whose office is vacant. Each vacancy occurring on
11 said board shall be filled by appointment within sixty days
12 after such vacancy occurs. One of the appointees to such
13 board shall be a person who, by reason of his previous
14 vocation, employment or affiliations, can be classed as one
15 capable and experienced in coal mining. One of the appointees
16 to such board shall be a person who, by reason of his previous
17 training and experience, can be classed as one capable and
18 experienced in the practice of agriculture and who represents
19 the general public interest. One of the appointees to such
20 board shall be a person who, by reason of his previous train-
21 ing and experience, can be classed as one capable and ex-
22 periented in the modern forestry practices and who represents
23 the general public interest. One of the appointees to such board
24 shall be a person who, by reason of his previous training
25 and experience, can be classed as one capable and ex-
26 periented in engineering. One of the appointees of such
27 board shall be a person who, by reason of his previous
28 training and experience, can be classed as one capable and
29 experienced in water pollution control or water conservation
30 problems. Not more than three members shall be members of
31 the same political party.

32 (h) The board may employ supporting staff including
33 hearings examiners to aid and assist in performing its respon-
34 sibilities under this article.

35 (c) Three members shall constitute a quorum and no
36 action of the board is valid unless it has the concurrence
37 of at least three members. The board shall keep a record of
38 its proceedings. Each member shall be paid as compensation
39 for his work as such member, from funds appropriated for
40 such purposes, seventy-five dollars per day when actually
41 engaged in the performance of his work as a board member.
42 In addition to such compensation, each member shall be
43 reimbursed for all reasonable and necessary expenses actual-
44 ly incurred in the performance of his duties, except that in
45 the event the expenses are paid, or are to be paid, by a third
46 party, the members shall not be reimbursed by the state.

47 (d) Annually, one member shall be elected as chairman
48 and another member shall be elected as vice chairman. Such
49 officers shall serve for terms of one year. The governor
50 may remove any member of the board from office for
51 inefficiency, neglect of duty, malfeasance or nonfeasance,
52 after delivery to such member the charges against him in
53 writing, together with at least ten days' written notice of
54 the time and place at which the governor will publicly hear
55 such member, either in person or by counsel, in defense of
56 the charges against him, and affording the member such
57 hearing. If such member is removed from office, the
58 governor shall file in the office of the secretary of state
59 a complete statement of the charges made against such member
60 and a complete report of the proceedings thereon. In such
61 case the action of the governor removing such member from
62 office shall be final.

**§20-6-24. Appeals to board; hearings before board; subpoena and
subpoena duces tecum; records; findings and orders
of board.**

1 (a) Any person having an interest which is or may be
2 adversely affected by any order of the reclamation com-
3 mission or any notice, order or final determination by the
4 director may appeal to the board for an order terminating,
5 vacating or modifying such notice, order or determination, or
6 may intervene in a timely manner in any such pending appeal.
7 The person so appealing to the board shall be known as
8 the appellant, and the commission or director shall be known

9 as appellees. The appellant and appellee are deemed to be
10 parties to the appeal. Any hearing shall be subject to the
11 requirements of chapter twenty-nine-a of this code.

12 (b) Such appeal shall be in writing and shall set forth
13 the action complained of and the specific grounds upon which
14 the appeal is based. Within thirty days after the appellant
15 is notified of the notice, order or final determination of
16 the director or the reclamation commission, the appellant or
17 any person with an interest which is or may be adversely
18 affected may request a hearing on the reasons for the final
19 determination, notice or order complained of. A notice of
20 the filing of such appeal shall be filed with the reclamation
21 commission or the director within three days after the ap-
22 peal is filed with the board.

23 (c) Upon the filing of such appeal, the board shall fix
24 the time and place at which the hearing on the appeal will
25 be held, which hearing shall be held within thirty days after
26 the notice of appeal is filed, and shall give the appellant,
27 the commission or the director at least twenty days written
28 notice thereof by certified mail. The board may postpone or
29 continue any hearing upon its own motion or motion of the
30 parties to the appeal.

31 (d) Not later than five days prior to the time fixed for
32 the hearing on the appeal, the reclamation commission or
33 director shall prepare and certify to the board a complete
34 record of the proceedings of the reclamation commission or
35 director out of which the appeal arises, including all docu-
36 ments and correspondence related to the matter.

37 (e) The filing of an appeal provided for in this section
38 shall not stay execution of the order appealed from. Pend-
39 ing completion of the investigation and hearing required by
40 this section, the applicant may file with the director a writ-
41 ten request that the director grant temporary relief from
42 any notice or order issued under section sixteen or seventeen
43 of this article, together with a detailed statement giving
44 reasons for granting such relief. The director shall issue
45 an order or decision granting or denying such relief ex-
46 peditiously: *Provided*, That where the applicant requests

47 relief from an order for cessation of surface mining and
48 reclamation operations, the decision on such a request shall
49 be issued within forty-eight hours of its receipt. The director
50 may grant such relief, under such conditions as he may
51 prescribe, if:

52 (1) All parties to the proceedings have been notified
53 and given an opportunity to be heard on a request for tem-
54 porary relief;

55 (2) The person requesting such relief shows that there
56 is a substantial likelihood that he will prevail on the merits
57 of the final determination of the proceedings;

58 (3) Such relief will not adversely affect the public health
59 or safety or cause significant imminent environmental harm
60 to land, air or water resources; and

61 (4) The relief sought is not the issuance of a permit
62 where a permit has been denied, in whole or in part, by the
63 director.

64 (f) The board shall hear the appeal de novo and any
65 party to the appeal may submit evidence. For the purpose of
66 conducting a hearing on an appeal, the board may require the
67 attendance of witnesses and the production of books, records
68 and papers, and it may, and at the request of any party it
69 shall, issue subpoenas for witnesses or subpoenas duces
70 tecum to compel the production of any books, records or
71 papers, directed to the sheriff of the county where such
72 witnesses, books, records or papers are found, which sub-
73 poenas and subpoenas duces tecum shall be served and re-
74 turned in the same manner as subpoenas and subpoenas duces
75 tecum in civil litigation are served and returned. The fees
76 and allowances for mileage of sheriffs and witnesses shall
77 be the same as those permitted in civil litigation in trial
78 courts. All fees and mileage expenses incurred and the
79 expense of preparing the record at the request of the appellant
80 shall be paid by the appellant.

81 (g) In case of disobedience or neglect of any subpoena
82 or subpoena duces tecum served on any person, or the refusal
83 of any witness to testify to any matter regarding which he

84 may be lawfully interrogated, the circuit court of the county
85 in which such disobedience, neglect or refusal occurs, on
86 application of the board or any member thereof, shall com-
87 pel obedience by attachment proceedings for contempt as
88 in the case of disobedience of the requirements of a sub-
89 poena or subpoena duces tecum issued from such court of
90 a refusal to testify therein. Witnesses at such hearings
91 shall testify under oath and any member of the board may
92 administer oaths or affirmations to persons who so testify.

93 (h) A stenographic record of the testimony and other
94 evidence submitted shall be made. Such record shall include
95 all of the testimony and other evidence and the rulings on
96 the admissibility of evidence, but any party may at the time
97 object to the admission of any evidence and except to the
98 rulings of the board thereon, and if the board refuses to admit
99 evidence the party offering the same may make a proffer
100 thereof, and such proffer shall be made a part of the record
101 of such hearing.

102 (i) If upon completion of the hearing the board finds
103 that the notice, order or final determination appealed from
104 was lawful and reasonable, it shall make a written order
105 affirming the same, or if the board finds that said notice,
106 order or final determination was not supported by substantial
107 evidence in the record considered as a whole, it shall make
108 a written order terminating, vacating or modifying the notice
109 or order appealed from. Every order made by the board shall
110 contain a written finding by the board of the facts upon which
111 the order is based. Notice of the making of such order shall be
112 given forthwith to each party to the appeal by mailing a
113 certified copy thereof to each such party by registered or
114 certified mail. The order of the board shall be final unless
115 vacated upon judicial review thereof.

§20-6-25. Appeal from order of board; judicial review; temporary relief.

1 (a) Within thirty days after receipt of an order from the
2 board, any applicant, any person with an interest which is
3 or may be adversely affected, or the appellee who has par-
4 ticipated in the administrative proceedings before the board

5 and who is aggrieved by the decision of the board may
6 obtain judicial review thereof by appealing to the circuit
7 court of Kanawha County or of the county in which the sur-
8 face-mining operations is located. Any party desiring to
9 so appeal shall file with the board a notice of appeal,
10 designating the order appealed from, stating whether the
11 appeal is taken on questions of law, questions of fact or
12 questions of law and fact, and stating specific grounds upon
13 which the appeal is based. A copy of such notice shall also
14 be filed by the appellant with the court and shall be mailed
15 or otherwise delivered to the appellee. Such notice and
16 copies thereof shall be filed and mailed or otherwise de-
17 livered within thirty days after the date upon which the
18 appellant received notice from the board by certified mail
19 of the making of the order appealed from. No appeal bond
20 may be required to make effective an appeal on questions of
21 law, questions of fact or questions of law and fact.

22 (b) The filing of a notice of appeal shall not, unless
23 specifically ordered by the court, operate as a stay of the
24 order of the board. The court may, under such conditions
25 as it may prescribe, grant such temporary relief as it deems
26 appropriate pending final determination of the proceedings
27 if:

28 (1) All parties to the proceedings have been notified and
29 given an opportunity to be heard on a request for temporary
30 relief;

31 (2) The person requesting such relief shows that there
32 is a substantial likelihood that he will prevail on the merits
33 of the final determination of the proceedings; and

34 (3) Such relief will not adversely affect the public health
35 or safety or cause significant imminent environmental harm
36 to land, air or water resources.

37 (c) Within thirty days after receipt of the notice of
38 appeal, the board shall prepare and file in the court the
39 complete record of the proceedings out of which the appeal
40 arises, including a transcript of the testimony and other
41 evidence which was submitted before the board. The expense
42 of preparing and transcribing such record shall be taxed as
43 a part of the costs of the appeal. The appellant shall pro-

44 vide security for costs satisfactory to the court. Upon demand
 45 by a party, the board shall furnish, at the cost of the party
 46 requesting the same, a copy of such record. In the event
 47 such complete record is not filed in the court within the time
 48 provided for in this section, either party may apply to the
 49 court to have the case docketed, and the court shall order
 50 such record filed.

51 (d) Appeals taken on questions of law, fact or both,
 52 shall be heard upon assignment of error filed in the case or
 53 set out in the briefs of the appellant. Errors not argued by
 54 brief may be disregarded. The court shall hear such appeal
 55 solely upon the record made before the board.

56 (e) The court may affirm, vacate, modify, set aside or
 57 remand any order of the board for such further action as the
 58 court may direct. Any order shall be affirmed if the court
 59 concludes that such order is supported by substantial evi-
 60 dence based on the record as a whole. The judgment of the
 61 court shall be final unless reversed, vacated or modified
 62 on appeal to the supreme court of appeals of West Virginia,
 63 and jurisdiction is hereby conferred upon such court to hear
 64 and entertain such appeals upon application made therefor
 65 in the manner and within the time provided for civil appeals
 66 generally.

67 (f) The availability of such review shall not be construed
 68 to limit the operation of the rights established in section
 69 twenty-eight of this article except as provided therein.

70 (g) Whenever an order is issued under this section, or
 71 as a result of any administrative or judicial proceeding under
 72 this article, at the request of any person, a sum equal to the
 73 aggregate amount of all costs and expenses, including at-
 74 torney fees, as determined by the board or the court to have
 75 been reasonably incurred by such person for or in connection
 76 with his participation in such proceedings, may be assessed
 77 against either party by the board or the court.

**§20-6-26. Release of performance bond or deposits; application;
 notice; duties of director; public hearings; final maps
 on grade release.**

1 (a) The permittee may file a request with the director for

2 the release of a performance bond or deposit. The permittee
3 shall publish an advertisement regarding such request for re-
4 lease in the same manner as is required of advertisements for
5 permit applications. A copy of such advertisement shall be sub-
6 mitted to the director as part of any bond release application
7 and shall contain a notification of the precise location of the
8 land affected, the number of acres, the permit and the date ap-
9 proved, the amount of the bond filed and the portion sought to
10 be released, the type and appropriate dates of reclamation work
11 performed and a description of the results achieved as they
12 relate to the permittee's approved reclamation plan. In addi-
13 tion, as part of any bond release application, the permittee
14 shall submit copies of letters which he has sent to adjoining
15 property owners, local government bodies, planning agencies,
16 sewage and water treatment authorities or water companies in
17 the locality in which the surface-mining operation is located,
18 notifying them of the permittee's intention to seek release from
19 the bond. Any request for grade release shall also be accom-
20 panied by final maps.

21 (b) Upon receipt of the application for bond release, the
22 director, within thirty days taking into consideration existing
23 weather conditions, shall conduct an inspection and evaluation
24 of the reclamation work involved. Such evaluation shall con-
25 sider, among other things, the degree of difficulty to com-
26 plete any remaining reclamation, whether pollution of surface
27 and subsurface water is occurring, the probability of contin-
28 uance or future occurrence of such pollution and the estimated
29 cost of abating such pollution. The director shall notify the
30 permittee in writing of his decision to release or not to re-
31 lease all or part of the performance bond or deposit within
32 sixty days from the date of the initial publication of the advcr-
33 tisement if no public hearing is requested. If a public hearing
34 is held, the director's decision shall be issued within thirty
35 days thereafter.

36 (c) If the director is satisfied that reclamation covered by
37 the bond or deposit or portion thereof has been accomplished
38 as required by this article, he may release said bond or de-
39 posit, in whole or in part, according to the following schedule:

40 (1) When the operator completes the backfilling, regrading
41 and drainage control of a bonded area in accordance with his
42 approved reclamation plan, the release of sixty percent of the
43 bond or collateral for the applicable bonded area: *Provided,*
44 That a minimum bond of ten thousand dollars shall be retain-
45 ed after grade release;

46 (2) Two years after the last augmented seeding, fer-
47 tilizing, irrigation or other work to insure compliance with
48 subdivision (19), subsection (b), section thirteen of this article,
49 the release of an additional twenty-five percent of the bond or
50 collateral for the applicable bonded area: *Provided,* That a
51 minimum bond of ten thousand dollars shall be retained after
52 the release provided for in this subdivision; and

53 (3) When the operator has completed successfully all sur-
54 face mining and reclamation activities, the release of the re-
55 maining portion of the bond, but not before the expiration of
56 the period specified in subdivision (20), subsection (b), sec-
57 tion thirteen of this article: *Provided,* That the revegetation
58 has been established on the regraded mined lands in accordance
59 with the approved reclamation plan. No part of the bond or
60 deposit may be released under this subsection so long as the
61 lands to which the release would be applicable are contribut-
62 ing additional suspended solids to streamflow or runoff out-
63 side the permit area in excess of the requirements set by sec-
64 tions thirteen or fourteen of this article, or until soil produc-
65 tivity for prime farmlands has returned to equivalent levels of
66 yield as nonmined land of the same soil type in the surround-
67 ing area under equivalent management practices as determined
68 from the soil survey performed pursuant to section ten of this
69 article. Where a sediment dam is to be retained as a perma-
70 nent impoundment pursuant to section thirteen of this article,
71 or where a road or where a minor deviation is to be retained
72 for sound future maintenance of the operation, the portion of
73 the bond may be released under this subsection so long as
74 provisions for sound future maintenance by the operator or the
75 landowner have been made with the director.

76 (d) If the director disapproves the application for release
77 of the bond or portion thereof, the director shall notify the
78 permittee, in writing, stating the reasons for disapproval and

79 recommending corrective actions necessary to secure said re-
80 lease and notifying the operator of his right to a hearing.

81 (e) When any application for total or partial bond release
82 is filed with the director, he shall notify the municipality in
83 which a surface-mining operation is located by registered or
84 certified mail at least thirty days prior to the release of all or
85 a portion of the bond.

86 (f) Any person with a valid legal interest which is or may
87 be adversely affected by release of the bond or the responsible
88 officer or head of any federal, state or local governmental
89 agency which has jurisdiction by law or special expertise
90 with respect to any environmental, social or economic im-
91 pact involved in the operation, or is authorized to develop
92 and enforce environmental standards with respect to such oper-
93 ations, has the right to file written objections to the proposed
94 bond release and request a hearing with the director within
95 thirty days after the last publication of the permittee's adver-
96 tisement. If written objections are filed and a hearing requested,
97 the director shall inform all of the interested parties of the
98 time and place of the hearing and shall hold a public hearing in
99 the locality of the surface-mining operation proposed for bond
100 release within three weeks after the close of the public com-
101 ment period. The date, time and location of such public hear-
102 ing shall also be advertised by the director in a newspaper of
103 general circulation in the same locality.

104 (g) Without prejudice to the rights of the objectors, the
105 applicant, or the responsibilities of the director pursuant to this
106 section, the director may hold an informal conference to re-
107 solve any written objections and satisfy the hearing require-
108 ments of this section thereby.

109 (h) For the purpose of such hearing, the director has the
110 authority and is hereby empowered to administer oaths, sub-
111 poena witnesses and written or printed materials, compel the
112 attendance of witnesses, or production of materials, and take
113 evidence including, but not limited to, inspections of the land
114 affected and other surface-mining operations carried on by the
115 applicant in the general vicinity. A verbatim record of each
116 public hearing required by this section shall be made and a

117 transcript made available on the motion of any party or by
118 order of the director at the cost of the person requesting the
119 transcript.

§20-6-27. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article shall be construed as affecting
2 in any way the rights of any person to enforce or protect,
3 under applicable law, his interest in water resources affected
4 by a surface-mining operation.

5 (b) Any operator shall replace the water supply of an
6 owner of interest in real property who obtains all or part of
7 his supply of water for domestic, agricultural, industrial
8 of other legitimate use from an underground or surface source,
9 where such supply has been affected by contamination, diminu-
10 tion or interruption proximately caused by such surface-mining
11 operation, unless waived by said owner.

§20-6-28. Citizen suits; order of court; damages.

1 (a) Except as provided in subsection (b) of this section,
2 any person having an interest which is or may be adversely
3 affected may commence a civil action in the circuit court
4 of the county to which the surface mining operation is located
5 on his own behalf to compel compliance with this article:

6 (1) Against the state of West Virginia or any other
7 governmental instrumentality or agency thereof, to the extent
8 permitted by the West Virginia constitution and by law,
9 which is alleged to be in violation of the provisions of
10 this article or any rule, regulation, order or permit issued
11 pursuant thereto, or against any other person who is alleged
12 to be in violation of any rule, regulation, order or permit
13 issued pursuant to this article; or

14 (2) Against the director, reclamation commission, recla-
15 mation board of review or appropriate department employees,
16 to the extent permitted by the West Virginia constitution
17 and by law, where there is alleged a failure of the above
18 to perform any act or duty under this article which is not
19 discretionary.

20 (b) No action may be commenced:

21 (1) Under subdivision (1), subsection (a) of this section:
22 (A) prior to sixty days after the plaintiff has given notice
23 in writing of the violation to the director or to any alleged
24 violator, or (B) if the director has commenced and is
25 diligently prosecuting a civil action in a circuit court to
26 require compliance with the provisions of this article or any
27 rule or regulation, order or permit issued pursuant to this
28 article; or

29 (2) Under subdivision (2), subsection (a) of this section
30 prior to sixty days after the plaintiff has given notice in
31 writing of such action to the director, except that such
32 action may be brought immediately after such notification
33 in the case where the violation or order complained of
34 constitutes an imminent threat to the health or safety of the
35 plaintiff or would immediately affect a legal interest of the
36 plaintiff.

37 (c) Any action respecting a violation of this article or
38 the regulations thereunder may be brought in any appropriate
39 circuit court. In such action under this section, the director,
40 if not a party, may intervene as a matter of right.

41 (d) The court in issuing any final order in any action
42 brought pursuant to subsection (a) of this section may award
43 costs of litigation, including reasonable attorney and expert
44 witness fees, to any party whenever the court determines such
45 award is appropriate. The court may, if a temporary re-
46 straining order or preliminary injunction is sought, require
47 the filing of a bond or equivalent security.

48 (e) Nothing in this section shall restrict any right which
49 any person or class of persons may have under any statute
50 or common law to seek enforcement of any of the provisions
51 of this article and the regulations thereunder or to seek any
52 other relief.

53 (f) Any person or property who is injured in his person
54 through the violation by any operator of any rule, regulation,
55 order or permit issued pursuant to this article may bring an ac-
56 tion for damages, including reasonable attorney and expert wit-
57 ness fees, in any court of competent jurisdiction. Nothing

58 in this subsection shall affect the rights established by or
59 limits imposed under state workmen's compensation laws.

60 (g) This section shall apply to violations of this article and
61 the regulations promulgated thereto, or orders or permits
62 issued pursuant to said article insofar as said violations,
63 regulations, orders and permits relate to surface-mining
64 operations.

§20-6-29. Surface-mining operations not subject to article.

1 The provisions of this article shall not apply to any of
2 the following activities:

3 (1) The extraction of coal by a landowner for his own
4 noncommercial use from land owned or leased by him.

5 (2) The extraction of coal by a landowner engaged in
6 construction, which construction does not require the dis-
7 turbance of more than one acre of privately owned land:
8 *Provided*, That prior to the extraction of coal by such land-
9 owner, he shall affirmatively demonstrate that such con-
10 struction will occur within a reasonable time after surface
11 disturbance.

12 (3) Notwithstanding any other provision of this article,
13 a person or operator shall not be subject to the reclamation
14 requirements of this article when engaged in the removal of
15 borrow and fill material for grading in federal and state
16 highway or other construction projects: *Provided*, That the
17 provisions of the construction contract require the furnishing
18 of a suitable bond which provides for reclamation, wherever
19 practicable, of the area affected by such recovery activity.

§20-6-30. Leasing of lands owned by state for surface mining of coal.

1 No land or interest in land owned by the state may be
2 leased, and no present lease may be renewed by the state,
3 nor any agency of the state, for the purpose of conducting
4 surface-mining operations thereon unless said lease or renewal
5 shall have been first authorized by an act of the Legislature:
6 *Provided*, That the provisions of this section shall not apply to
7 underground mining on such land.

§20-6-31. Special permits for removal of coal incidental to development of land; prohibited acts; application; bond; reclamation for existing abandoned coal processing waste piles.

1 (a) Except where exempted by section twenty-nine of this
2 article, it shall hereafter be unlawful for any person to engage
3 in surface mining as defined in this article as an incident to
4 the development of land for commercial, residential, industrial
5 or civic use without having first obtained from the director a
6 permit therefor as provided in section eight of this article,
7 unless a special permit therefor shall have been first obtained
8 from the director as provided in this section.

9 Application for a special permit to engage in surface mining
10 as an incident to the development of land for commercial, resi-
11 dential, industrial or civic use shall be made in writing on
12 forms prescribed by the director and shall be signed and veri-
13 fied by the applicant. The application shall be accompanied by:

14 (1) A site preparation plan, prepared and certified by or
15 under the supervision of a person approved by the director,
16 showing the tract of land which the applicant proposes to
17 develop for commercial, residential, industrial or civic use;
18 the probable boundaries and areas of the coal deposit to be
19 mined and removed from said tract of land incident to the
20 proposed commercial, residential, industrial or civic use there-
21 of; and such other information as prescribed by the director;

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

24 (3) The name of owner of the surface of the land to be de-
25 veloped;

26 (4) The name of owner of the coal to be mined incident to
27 the development of the land;

28 (5) A reasonable estimate of the number of acres of coal
29 that would be mined as a result of the proposed development
30 of said land: *Provided*, That in no event may such number of
31 acres to be mined, excluding roadways, exceed five acres;

32 (6) Such other information as the director may require to
33 satisfy and assure the director that the surface mining under

34 the special permit is incidental or secondary to the proposed
35 commercial, residential, industrial or civic use of said land.

36 (b) There shall be attached to the application for the special
37 permit a certificate of insurance certifying that the applicant
38 has in force a public liability insurance policy issued by an in-
39 surance company authorized to do business in this state af-
40 fording personal injury protection in accordance with subsec-
41 tion (d), section ten of this article.

42 The application for the special permit shall also be accom-
43 panied by a bond, or cash or collateral securities or certifi-
44 cates of the same type, in the form as prescribed by the di-
45 rector and in the minimum amount of two thousand dollars
46 per acre, for a maximum disturbance of five acres.

47 The bond shall be payable to the state of West Virginia and
48 conditioned that the applicant shall complete the site prepara-
49 tion for the proposed commercial, residential, industrial or
50 civic use of said land. At the conclusion of the site preparation,
51 in accordance with the site preparation plan submitted with
52 the application, the bond conditions shall be satisfied and the
53 bond and any cash, securities or certificates furnished with
54 said bond may be released and returned to the applicant. The
55 filing fee for the special permit shall be five hundred dollars.
56 The special permit shall be valid until work permitted is com-
57 pleted.

58 (c) The purpose of this section is to vest jurisdiction in the
59 director, where the surface mining is incidental or secondary to
60 the preparation of land for commercial, residential, indus-
61 trial or civic use and where, as an incident to such prepara-
62 tion of land, minerals must be removed, including, but not
63 limited to, the building and construction of railroads, shopping
64 malls, factory and industrial sites, residential and building
65 sites, and recreational areas. Anyone who has been issued a
66 special permit shall not be issued an additional special permit
67 on the same or adjacent tract of land unless satisfactory cvi-
68 dence has been submitted to the director that such permit is
69 necessary to subsequent development or construction. As long
70 as the operator complies with the purpose and provisions of this
71 section, the other sections of this article shall not be applic-

72 able to the operator holding a special permit: *Provided*, That
73 the reclamation commission shall promulgate regulations es-
74 tablishing applicable performance standards for operations
75 permitted under this section.

76 (d) The director may, in the exercise of his sound dis-
77 cretion, when not in conflict with the purposes and findings
78 of this article and to bring about a more desirable land use
79 or to protect the public and the environment, issue a special
80 permit solely for the reprocessing of existing abandoned coal
81 processing waste piles. The reclamation commission shall
82 promulgate specific regulations for such operations: *Provided*,
83 That a bond and a reclamation plan shall be required for
84 such operations.

OK
CAB
E.N.

**§20-6-32. Existing permits and performance bond conversion; ex-
emption from design criteria.**

1 (a) All surface disturbance reclamation bonds, submitted
2 pursuant to the requirements of chapter twenty-^{two}~~one~~ of this
3 code by the department of mines for operations which con-
4 tinue to operate eight months after the approval of the state
5 program shall be released upon notification by the director
6 of the department of natural resources that the disturbed
7 areas have been bonded in accordance with the provisions
8 of this article: *Provided*, That for those operations permitted
9 after the first day of July, one thousand nine hundred seventy
10 six, and which do not continue operation eight months after
11 the approval of the state program, the director shall notify
12 the director of the department of mines upon reclamation of
13 the site in accordance with the underground opening approval
14 reclamation plan, whereupon such bonds shall be released:
15 *Provided, further*, That forfeiture proceedings shall begin upon
16 failure of the operator to reclaim within a reasonable time the
17 disturbed area pursuant to a plan approved after the first day
18 of July, one thousand nine hundred seventy-six.

OK
CAB
E.N.

19 (b) With regard to existing structures and facilities, per-
20 sons need not comply with design criteria if such structure
21 and facilities meet the environmental performance standards
22 of this article.

§20-6-33. Experimental practices.

1 In order to encourage advances in surface mining and
 2 reclamation practices or to allow postmining land use for
 3 industrial, commercial, residential, agricultural or public use,
 4 including recreational facilities, the director may authorize de-
 5 partures, in individual cases and on an experimental basis, from
 6 the environmental protection performance standards promul-
 7 gated under this article. Such departures may be authorized
 8 if the experimental practices are potentially more or at least
 9 as environmentally protective during and after surface-mining
 10 operations as those required by promulgated standards; the
 11 surface-mining operations approved for particular land use
 12 or other purposes are not larger or more numerous than
 13 necessary to determine the effectiveness and economic feasi-
 14 bility of the experimental practices; and the experimental
 15 practices do not reduce the protection afforded health or
 16 safety of the public below that provided by promulgated
 17 standards.

§20-6-34. Certification and training of blasters.

1 The director of the department of mines shall be respon-
 2 sible for the training, examination and certification of persons
 3 engaging in or directly responsible for blasting or use of
 4 explosives in surface-mining operations.

§20-6-35. Surface miner certification required.

1 After the first day of July, one thousand nine hundred
 2 seventy-six, certification shall be required of all surface
 3 miners in accordance with the provisions of articles six and
 4 six-a, chapter twenty-two of this code and the regulations
 5 promulgated thereunder.

§20-6-36. Certification of surface-mine foremen.

1 (a) In every surface mine where five or more persons are
 2 employed in a period of twenty-four hours, the operator
 3 shall employ at least one person certified in accordance
 4 with the provisions of article six-a, chapter twenty-two of
 5 this code as a mine foreman. Each applicant for certifica-
 6 tion as a mine foreman shall, at the time he is issued a
 7 certificate of competency: (1) Be a resident or employed in

8 a mine in this state; (2) have had at least three years' ex-
9 perience in surface mining, which shall include at least
10 eighteen months experience on or at a working section of a
11 surface mine, or be a graduate of the School of Mincs at
12 West Virginia University or of another accredited mining
13 engineering school and have had at least two years' practical
14 experience in a surface mine, which shall include at least
15 eighteen months experience on or at a working section of
16 a surface mine; and (3) have demonstrated his knowledge
17 of mine safety, first aid, safety appliances, emergency pro-
18 ccdures relative to all equipment, state and federal mining
19 laws and rcgulations and other subjects, by completing such
20 training, education and examinations as may be required of
21 him under article six-a, chapter twenty-two of this code.

22 (b) In surface mines in which the operations are so
23 extensive that the duties devolving upon the mine foreman
24 cannot be discharged by one man, one or more assistant mine
25 foreman may be designated. Such persons shall act under the
26 instruction of the mine foreman who shall be responsible for
27 their conduct in the discharge of their duties. Each assistant
28 so designated shall be certified under the provisions of article
29 six-a, chapter twenty-two of this code. Each applicant for
30 certification as assistant mine foreman shall, at the time he
31 is issued a certificate of competency, possess all of the qualifi-
32 cations required of a mine foreman: *Provided*, That he shall, at
33 the time he is certified, be required to have at least two years'
34 experience in surface mining, which shall include eighteen
35 months on or at a working section of a surface mine or be a
36 graduate of the School of Mincs at West Virginia University or
37 of another accredited mining engineering school and have had
38 twelve months' practical experience in a surface mine, all
39 of which shall have been on or at a working section.

40 (c) The director of the department of mincs shall pro-
41 mulgate such rules and regulations as may be necessary to
42 carry out the provisions of this section.

§20-6-37. Monthly report by operator.

1 The operator of every surface mine shall, on or before
2 the end of each calendar month, file with the director of

3 the department of mines a report covering the preceding
4 calendar month on forms furnished by said director. Such
5 reports shall state the number of accidents which have oc-
6 curred, the number of persons employed, the days worked
7 and the actual tonnage of raw coal mined.

§20-6-38. Applicability and enforcement of laws safeguarding life and property; regulations; authority of department of mines regarding safety laws.

1 All provisions of the mining laws of this state intended to
2 safeguard life and property shall extend to all surface-mining
3 operations insofar as such laws are applicable thereto. The
4 director of the department of mines shall promulgate reason-
5 able regulations in accordance with the provisions of chapter
6 twenty-nine-a of this code to protect the safety of those em-
7 ployed in and around surface mines. The enforcement of all
8 laws and regulations relating to the safety of those employed
9 in and around surface mines is hereby vested in the department
10 of mines and shall be enforced according to the provisions of
11 chapter twentytwo of this code.

§20-6-39. Conflicting provisions.

1 In the event of any inconsistency or conflict between any
2 provision of this article and any provision of this chapter, the
3 provisions of this article shall control.

§20-6-40. Conflict of interest prohibited; and criminal penalties therefor; employee protection.

1 (a) No employee of the department or employee of the
2 reclamation board of review performing any function or duty
3 under this article shall have a direct or indirect financial inter-
4 est in any surface-mining operation. Whoever knowingly
5 violates the provisions of this subsection is guilty of a mis-
6 demcanor, and, upon conviction thereof, shall be fined not
7 more than two thousand five hundred dollars, or imprisoned
8 in the county jail not more than one year, or both fined and
9 imprisoned. The director shall establish methods by which the
10 provisions of this subsection will be monitored and enforced,
11 including appropriate provisions for the filing and the review

12 of statements and supplements thereto concerning any finan-
13 cial interest which may be affected by this subsection.

14 (b) No person shall discharge or in any other way dis-
15 criminate against, or cause to be fired or discriminated against,
16 any employee or any authorized representative of employees
17 by reason of the fact that such employee or representative has
18 filed or instituted, or caused to be filed or instituted, any pro-
19 ceeding under this article, or has testified or is about to testify
20 in any proceeding resulting from the administration or en-
21 forcement of the provisions of this article.

22 (c) Any employee or a representative of employees who
23 has reason to believe that he has been fired or otherwise dis-
24 criminated against by any person in violation of subsection (b)
25 of this section may, within thirty days after such alleged viola-
26 tion occurs, petition to the reclamation board of review for a
27 review of such firing or discrimination. The employee or repre-
28 sentative shall be known as the petitioner and shall serve a copy
29 of the petition upon the person or operator who will be the
30 respondent. The participants shall be given ten days' written
31 notice of the hearing before the board, which such hearing shall
32 be held within thirty days of the filing of the petition. The
33 board shall have the same powers and shall hear the petition in
34 the same manner as provided in subsections (c), (f) and (g) of
35 section twenty-four of this article.

36 (d) If the board finds that the alleged violation did occur,
37 it shall issue an order incorporating therein findings of fact and
38 conclusions requiring the participant committing the violation
39 to take such affirmative action to abate the violation by ap-
40 propriate action, including, but not limited to, the hiring or
41 reinstatement of the employee or representative to his former
42 position with compensation. If the board finds no violation it
43 shall issue a finding to that effect. Orders issued by the board
44 under this section shall be subject to judicial review in the
45 same manner as other orders of the board issued under this
46 article.

47 (e) Whenever an order is issued under this section to abate
48 any violation, at the request of the petitioner a sum equal to
49 the aggregate costs and expenses including attorneys' fees to

50 have been reasonably incurred by the petitioner for, or in con-
51 nection with, the institution and prosecution of such proceed-
52 ings, shall be assessed against the person committing the vio-
53 lation.

§20-6-41. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall
3 not affect other provisions or applications of this article, and
4 to this end the provisions of this article are declared to be
5 severable: *Provided*, That in promulgating rules pursuant to
6 the provisions of this article, the director and the reclamation
7 commission shall note relevant administrative and judicial de-
8 cisions from both state and federal systems and action by the
9 United States Congress or the United States department of the
10 interior.

**§20-6-42. Validity of regulations promulgated under section 502(c)
of the Surface Mining Control and Reclamation Act
of 1977.**

1 (a) All rules and regulations promulgated under section
2 502(c) of the federal Surface Mining Control and Reclama-
3 tion Act of 1977 (Public Law 95-87), pursuant to the provi-
4 sions of chapter sixty-three, Acts of the Legislature, regular
5 session, one thousand nine hundred seventy-nine, shall remain
6 in full force and effect until the expiration of eight months
7 after approval of the West Virginia state program under sec-
8 tion 503 of Public Law 95-87 upon proclamation of the gov-
9 ernor that such approval has been granted: *Provided*, That
10 those persons conducting operations under a permit or under-
11 ground opening approval issued in accordance with said sec-
12 tion 502(c), and in compliance therewith, shall be subject to
13 said regulations until the administrative decision pertaining to
14 the granting or denying of a permit under this article has been
15 made by the director.

16 (b) Permits granted under this article shall be subject to
17 rules and regulations promulgated hereunder.

ARTICLE 6C. ABANDONED MINE RECLAMATION ACT.

§20-6C-1. Short title.

1 This article shall be known and cited as the "Abandoned
2 Mine Lands and Reclamation Act."

§20-6C-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

1 The Legislature finds that there are a substantial number of
2 acres of land throughout the state that were disturbed by
3 surface-mining operations prior to the time of present day
4 effective control and regulation. There was little or no
5 reclamation conducted and the impacts from these unreclaimed
6 lands impose social and economic costs on residents in
7 nearby and adjoining areas as well as continue to impair
8 environmental quality, prevent or damage the beneficial use
9 of land or water resources, or endanger the health and safety
10 of the public.

11 Further the Legislature finds and declares that, due to the
12 passage of Public Law 95-87, certain areas within the boundaries of this state do not meet present day standards for
13 reclamation.
14

15 Further, the Legislature finds that Title IV of the Surface
16 Mining Control and Reclamation act of 1977 "Public Law
17 95-87" provides for the collection of thirty-five cents per
18 ton of coal produced from surface mine operations and fifteen
19 cents per ton of coal produced from underground mine
20 operations in West Virginia to be collected by the secretary
21 of the United States department of the interior for a period
22 of at least fifteen years. At least fifty percent of the funds
23 so collected are to be allocated directly to the state of West
24 Virginia to accomplish reclamation of abandoned coal mining
25 operations, once the state of West Virginia obtains an
26 approved abandoned mine reclamation plan in accordance
27 with sections 405 and 503 of Public Law 95-87.

28 Therefore, it is the intent of the Legislature by this article
29 to vest jurisdiction and authority in the director of the department of natural resources to allow for expedient program
30

31 approval by, and receipt of funds from, the United States de-
32 partment of the interior to accomplish the desired restoration
33 and reclamation of our land and water resources.

§20-6C-3. Definitions.

1 All definitions set forth in article six of this chapter shall
2 apply to those defined terms which also appear in this article.

**§20-6C-4. Abandoned land reclamation fund and objectives of
fund; lands eligible for reclamation.**

1 (a) All abandoned land reclamation funds available under
2 Title IV of Public Law 95-87, private donations received, any
3 state appropriated or transferred funds, or funds received from
4 the sale of land by the director, under this article shall be de-
5 posited with the treasurer of the state of West Virginia to the
6 credit of the abandoned land reclamation fund hereby created,
7 and expended pursuant to the requirements of this article.

8 (b) Moneys in the fund may be used by the director for
9 the following:

10 (1) Reclamation and restoration of land and water resourc-
11 es adversely affected by past coal surface-mining operations,
12 including, but not limited to, reclamation and restoration of
13 abandoned surface mine areas, abandoned coal processing areas
14 and abandoned coal processing waste areas; scaling and filling
15 abandoned deep mine entries and voids; planting of land ad-
16 versely affected by past coal surface-mining operations to pre-
17 vent erosion and sedimentation; prevention, abatement, treat-
18 ment and control of water pollution created by coal mine
19 drainage, including restoration of stream beds and construction
20 and operation of water treatment plants; prevention, abatement
21 and control of burning coal processing waste areas and burning
22 coal in situ; prevention, abatement and control of coal mine
23 subsidence; and payment of administrative expenses and all
24 other necessary expenses incurred to accomplish the purpose of
25 this article: *Provided*, That all expenditures from this fund shall
26 reflect the following priorities in the order stated:

27 (A) The protection of public health, safety, general wel-
28 fare and property from extreme danger of adverse effects of
29 past surface mining practices;

30 (B) The protection of public health, safety and general
31 welfare from adverse effects of past coal surface mining prac-
32 tices;

33 (C) The restoration of land and water resources and enviro-
34 nment previously degraded by adverse effects of past coal sur-
35 face mining practices, including measures for the conservation
36 and development of soil, water (excluding channelization),
37 woodland, fish and wildlife, recreation resources and agricul-
38 tural productivity;

39 (D) Research and demonstration projects relating to the
40 development of surface-mining reclamation and water quality
41 control program methods and techniques;

42 (E) The protection, repair, replacement, construction or
43 enhancement of public facilities such as utilities, roads, re-
44 creation and conservation facilities adversely affected by past
45 coal surface mining practices;

46 (F) The development of publicly owned land adversely
47 affected by past coal surface mining practices, including land
48 acquired as provided in this article for recreation and his-
49 toric purposes, conservation and reclamation purposes and
50 open space benefits.

51 (2) Lands and water eligible for reclamation or drainage
52 abatement expenditures under this article are those which were
53 mined for coal or which were affected by such mining, waste-
54 banks, coal processing or other coal mining processes, and
55 abandoned or left in an inadequate reclamation status prior
56 to the third day of August, nineteen hundred seventy-seven,
57 and for which there is no continuing reclamation responsi-
58 bility: *Provided*, That one purpose of this article is to pro-
59 vide additional and cumulative remedies to abate the pollu-
60 tion of the waters of the state and nothing herein contained
61 shall abridge or alter rights of action or remedies now or here-
62 after existing, nor shall any provisions in this article or any
63 act done by virtue of this article be construed as stopping the
64 state, municipalities, public health officers or persons as ripat-
65 ian owners or otherwise in the exercise of their rights to sup-
66 press nuisances or to abate any pollution now or hereafter
67 existing or to recover damages.

68 (C) Where the governor certifies that the above objectives
 69 of the fund have been achieved and there is a need for con-
 70 struction of specific public facilities in communities impacted
 71 by coal development, and other sources of federal funds are in-
 72 adequate and the secretary concurs, then the director may
 73 expend money from the fund for such construction.

**§20-6C-5. Powers and duties of director; program plans and reclama-
 tion projects.**

1 (a) The director shall submit to the secretary of the
 2 interior a state reclamation plan and annual projects to
 3 carry out the purposes of this article.

4 (b) That reclamation plan shall generally identify the areas
 5 to be reclaimed, the purposes for which the reclamation is
 6 proposed, the relationship of the lands to be reclaimed an
 7 the proposed reclamation to surrounding areas, the specific
 8 criteria for ranking and identifying projects to be funded
 9 and the legal authority and programmatic capability to per-
 10 form such work in conformance with the provisions of this
 11 article.

12 (c) On an annual basis, the director shall submit to the
 13 secretary of the interior an application for the support of
 14 the state program and implementation of specific reclamation
 15 projects. Such annual requests shall include information as
 16 may be requested by the secretary of the interior including:

17 (1) A general description of each proposed project;

18 (2) A priority evaluation of each proposed project; and

19 (3) A statement of the estimated benefits in such terms
 20 as number of acres restored, miles of stream improved, acres
 21 of surface lands protected from subsidence, population pro-
 22 tected from subsidence, air pollution and hazards of mine
 23 and coal refuse disposal area fires;

24 (4) An estimate of the cost for each proposed project;

25 (5) In the case of proposed research and demonstration
 26 projects, a description of the specific techniques to be evalu-
 27 ated or objective to be attained;

28 (6) An identification of lands or interest therein to be
29 acquired and the estimated cost; and

30 (7) In each year after the first in which a plan is filed
31 under this article, an inventory of each project funded under
32 the previous year's grant, which inventory shall include
33 details of financial expenditures on such project together
34 with a brief description of the project, including project
35 location, landowner's name, acreage and type of reclamation
36 performed.

37 (d) The costs for each proposed project under this section
38 shall include actual construction costs, actual operation and
39 maintenance costs of permanent facilities, planning and en-
40 gineering costs, construction inspection costs and other neces-
41 sary administrative expenses.

**§20-6C-6. Acquisition and reclamation of land adversely affected
by past coal surface mining practices.**

1 (a) If the director makes a finding of fact that:

2 (1) Land or water resources have been adversely affected
3 by past coal mining practices;

4 (2) The adverse effects are at a stage where, in the
5 public interest, action to restore, reclaim, abate, control or
6 prevent should be taken;

7 (3) The owners of the land or water resources where
8 entry must be made to restore, reclaim, abate, control or
9 prevent the adverse effects of past coal mining practices
10 are not known or readily available; or

11 (4) The owners will not give permission for the director,
12 his agents, employees or contractors to enter upon such
13 property to restore, reclaim, abate, control or prevent the
14 adverse effects of past coal mining practices, then, upon giving
15 notice by mail to the owners, if known, or if not known by
16 posting notice upon the premises and advertising once in a
17 newspaper of general circulation in the county in which
18 the land lies, the director, his agents, employees or contractors
19 shall have the right to enter upon the property adversely
20 affected by past coal mining practices and any other property

21 to have access to such property to do all things necessary or
22 expedient to restore, reclaim, abate, control or prevent the
23 adverse effects. Such entry shall be construed as an exercise
24 of the police power of the state for the protection of public
25 health, safety and general welfare and shall not be construed as
26 an act of condemnation of property nor of trespass thereon.
27 The moneys expended for such work and the benefits accruing
28 to any such premises so entered upon shall be chargeable
29 against such land and shall mitigate or offset any claim in or
30 any action brought by any owner of any interest in such prem-
31 ises for any alleged damages by virtue of such entry: *Provided,*
32 That this provision is not intended to create new rights of
33 action or eliminate existing immunities.

34 (b) The director, his agents, employers or contractors shall
35 have the right to enter upon any property for the purpose of
36 conducting studies or exploratory work to determine the
37 existence of adverse effects of past coal mining practices
38 and to determine the feasibility of restoration, reclamation,
39 abatement, control or prevention of such adverse effects.
40 Such entry shall be construed as an exercise of the police power
41 of the state for the protection of public health, safety and gen-
42 eral welfare and shall not be construed as an act of condem-
43 nation of property nor trespass thereon.

44 (c) The director may acquire any land by purchase, dona-
45 tion or condemnation, which is adversely affected by past
46 coal mining practices, if the director determines that acquisition
47 of such land is necessary to successful reclamation and
48 that:

49 (1) The acquired land, after restoration, reclamation,
50 abatement, control or prevention of the adverse effects of
51 past coal mining practices will serve recreation, historic,
52 conservation, or reclamation purposes or provide open space
53 benefits;

54 (2) Permanent facilities such as a treatment plant or a
55 relocated stream channel will be constructed on the land for
56 the restoration, reclamation, abatement, control or pre-
57 vention of the adverse effects of past coal mining
58 practices; or

59 (3) Acquisition of coal refuse disposal sites and all
60 coal refuse thereon will serve the purposes of this article
61 or that public ownership is desirable to meet emergency
62 situations and prevent recurrences of the adverse effects of
63 past coal mining practices.

64 (d) Title to all lands acquired pursuant to this section
65 shall be in the name of the West Virginia department of
66 natural resources. The price paid for land acquired under
67 this section shall reflect the fair market value of the land
68 as adversely affected by past coal mining practices.

69 (e) The director is hereby authorized to transfer land
70 obtained under subsection (c) of this section to the secre-
71 tary. The director may purchase such land from the secre-
72 tary after reclamation at the fair market value less the state's
73 original acquisition price.

74 (f) The director may accept and local political sub-
75 divisions may transfer to the director land belonging to them
76 to carry out the purposes set out in this article and in
77 such event they shall have a preferential right to pur-
78 chase said land after reclamation at the fair market
79 value less the political subdivision's cost of acquisition,
80 but at no time shall the director sell such land to a
81 political subdivision at a price less than the cost of the
82 acquisition and reclamation of said land: *Provided*, That if
83 any land sold to a political subdivision under this sub-
84 section is not used for a valid public purpose as speci-
85 fied by the director in the terms and conditions of the
86 sales agreement, then all rights, title and interest in such
87 land shall revert to the West Virginia department of natural
88 resources. Any moneys received from such sale shall be de-
89 posited in the abandoned land reclamation fund.

90 (g) Where land acquired pursuant to this section is deemed
91 to be suitable for industrial, commercial, residential or re-
92 creational development, the director may sell such land by
93 public sale under a system of competitive bidding at not less
94 than fair market value and pursuant to regulations promul-
95 gated to ensure that such lands are put to proper use consistent
96 with state and local land use plans.

97 (h) The director, if requested and after appropriate pub-
98 lice notice, shall hold a public hearing in the county in which
99 land acquired pursuant to this section is located. The hearing
100 shall be held at a time which shall afford local citizens and
101 government the maximum opportunity to participate in the
102 decision concerning the use and disposition of the land after
103 restoration, reclamation, abatement, control or prevention of
104 the adverse effects of past coal mining practices.

105 (i) In addition to the authority to acquire land under other
106 provisions of this section, the director is authorized to use
107 money in the fund to acquire land from any federal, state or
108 local government or from a political subdivision thereof, or
109 from any person, firm, association or corporation, if he de-
110 termines that such is an integral and necessary element of an
111 economically feasible plan for the project to construct or re-
112 habilitate housing for persons disabled as the result of em-
113 ployment in the mines or work incidental thereto, persons dis-
114 placed by acquisition of land pursuant to this section, or per-
115 sons dislocated as the result of adverse effects of coal mining
116 practices which constitute an emergency as provided in section
117 410 of Public Law 95-87, or persons dislocated as the
118 result of natural disasters or catastrophic failures from
119 any cause. Such activities shall be accomplished under such
120 terms and conditions as the director shall require, which may
121 include transfers of land with or without monetary consid-
122 eration: *Provided*, That to the extent that the consideration is
123 below the fair market value of the land transferred, no portion
124 of the difference between the fair market value and the con-
125 sideration shall accrue as a profit to such persons, firm, as-
126 sociation or corporation. No part of the funds provided under
127 this article may be used to pay the actual construction costs
128 of housing. The director may carry out the purposes of this
129 subsection directly or he may make grants and commitments
130 for grants, and may advance money under such terms and con-
131 ditions as he may require to any department, agency or politi-
132 cal subdivision of this state, or any public body or nonprofit
133 organization designated by the director.

§20-6C-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

1 (a) Within six months after the completion of a project
2 to restore, reclaim, abate, control or prevent adverse effects
3 of past coal mining practices on privately owned land, the
4 director shall itemize the moneys so expended and may file
5 a statement thereof in the office of the clerk of the county
6 commission in the county in which the land lies, together
7 with a notarized appraisal by an independent appraiser of
8 the value of the land before the restoration, reclamation,
9 abatement, control or prevention of adverse effects of past
10 surface mining practices, if the moneys so expended result
11 in a significant increase in property value. Such statement
12 shall constitute a lien upon the said land. The lien shall not
13 exceed the amount determined by the appraisal to be the
14 increase in the market value of the land as a result of the
15 restoration, reclamation, abatement, control or prevention
16 of the adverse effects of past surface mining practices. No
17 lien may be filed against the property of any person in
18 accordance with this subsection, who owned the surface prior
19 to the second day of May, one thousand nine hundred seventy-
20 seven, and who neither consented to, nor participated in, nor
21 exercised control over the mining operation which necessitated
22 the reclamation performed hereunder.

23 (b) The landowner may petition the director within sixty
24 days of the filing of the lien to determine the increase in
25 the market value of the land as a result of the restoration,
26 reclamation, abatement, control or prevention of the adverse
27 effects of past coal mining practices. The amount reported
28 to be the increase in value of the premises shall constitute
29 the amount of lien and shall be recorded with the statement
30 herein provided. Any party aggrieved by the decision may
31 appeal to the circuit court of the county in which the land is
32 located.

33 (c) The statement filed pursuant to subsection (a) of this
34 section, shall constitute a lien upon the said land as of the
35 date of the expenditure of the moneys and shall have priority
36 as a lien second only to the lien of real estate taxes imposed
37 upon said land.

§20-6C-8. Filling voids and sealing tunnels.

1 (a) The Legislature declares that voids, open and aban-
 2 doned tunnels, shafts and entryways and subsidence resulting
 3 from any previous coal surface-mining operation constitute
 4 a hazard to the public welfare and safety and that surface
 5 impacts of any underground or surface-mining operation may
 6 degrade the environment. The director is authorized to fill
 7 such voids, seal such abandoned tunnels, shafts and entry-
 8 ways, and reclaim surface impacts of underground or surface
 9 mines and remove water and other matter from mines which
 10 the director determines could endanger life and property,
 11 constitute a hazard to the public welfare and safety or degrade
 12 the environment.

13 (b) In those instances where coal mine waste piles are
 14 being reworked for conservation purposes, the incremental
 15 costs of disposing of the wastes from such operations by
 16 filling voids and sealing tunnels may be eligible for fund-
 17 ing, if the disposal of those wastes meets the purposes of this
 18 article.

19 (c) The director may acquire by purchase, donation, ease-
 20 ment or otherwise such interest in land as he determines
 21 necessary to carry out the provisions of this section.

§20-6C-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

1 (a) The director is authorized to engage in any work
 2 and to do all things necessary and proper, including promulga-
 3 tion of rules and regulations, to implement and administer
 4 the provisions of this article.

5 (b) The director is authorized to engage in coopera-
 6 tive projects under this article with any other agency of
 7 the United States of America, any state, county or municipal
 8 agency or subdivision thereof.

9 (c) The director may request the attorney general, who is
 10 hereby authorized to initiate, in addition to any other remedies
 11 provided for in this article, in any court of competent juris-

12 diction, an action in equity for an injunction to restrain any
13 interference with the exercise of the right to enter or to
14 conduct any work provided in this article.

15 (d) The director has the authority to construct and
16 operate a plant or any facilities for the control and treatment
17 of water pollution resulting from mine drainage. The extent
18 of this control and treatment may be dependent upon the
19 ultimate use of the water: *Provided*, That this subsection
20 shall not repeal or supersede any portion of the applicable
21 federal or state water pollution control laws and no control
22 or treatment under this section may be less than that required
23 under any applicable federal or state water pollution control
24 law. The construction of any such facilities may include
25 major interceptors and other facilities appurtenant to the
26 plant.

27 (e) All departments, boards, commissions and agencies of
28 the state shall cooperate with the director by providing
29 technical expertise, personnel, equipment, materials and sup-
30 plies to implement and administer the provisions of this article.

CHAPTER 22. MINES AND MINERALS.

ARTICLE 2. COAL MINES.

§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.

1 (a) After the effective date of this section, no mine shall
2 be opened or reopened unless prior approval has been ob-
3 tained from the director of the department of mines, which
4 approval shall not be unreasonably withheld. The operator
5 shall pay for such approval a fee of ten dollars, which payment
6 shall be tendered with the operator's application for such
7 approval: *Provided*, That mines producing coal solely for the
8 operator's use shall be issued a permit without charge if coal
9 production will be less than fifty tons a year.

10 (b) Within thirty days after the first day of January of each
11 year, the operator of each mine holding a certificate evidencing

12 approval of the director to open a mine shall apply for the ex-
 13 tension of such certificate of approval for an additional year.
 14 Such approval, evidenced by a certificate of the director, shall
 15 be granted as a matter of right and without charge if, at the
 16 time such application is made, the operator is in compliance
 17 with the provisions of section seventy-two of this article and has
 18 paid or otherwise appealed all coal mine assessments imposed
 19 under article one, chapter twenty-two of this code. Applications
 20 for extension of such certificates of approval not submitted
 21 within the time required shall be processed as an application
 22 to open or reopen a mine and shall be accompanied by a fee
 23 of ten dollars.

24 (c) Certificates of approval issued pursuant to this section
 25 shall not be transferable.

26 (d) The provisions of this section shall be printed on the
 27 reverse side of every certificate issued hereunder.

28 (e) The district mine inspector shall be contacted for a pre-
 29 inspection of the area proposed for underground mining prior
 30 to the issuance of any new opening approval.

**ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SURFACE
 COAL MINERS.**

§22-6-2. Definitions.

1 For purposes of this article, the term "surface miner" means
 2 a person employed at a "surface mine," as that term is defined
 3 in section three, article six, chapter twenty of this code, and in
 4 section two, article six-d of said chapter.

5 For purposes of this article, the term "underground miner"
 6 means an underground worker in a bituminous coal mine, ex-
 7 cept as hereinafter provided.

8 For the purposes of this article, the term "board of miner
 9 training, education and certification" means that board estab-
 10 lished in article six-a of this chapter.

**ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND
 CERTIFICATION.**

§22-6A-3. Definitions.

1 Unless the context in which a word or phrase appears clear-

2 ly requires a different meaning, the words defined in section
3 one, article one of this chapter shall have when used in this
4 article the meaning therein assigned to them. These words in-
5 clude but are not limited to the following: Department, di-
6 rector of the department of mines, mine inspector, operator,
7 miner, shot firer and certified electrician.

8 "Board" means the board of miner training, education and
9 certification established by section four of this article.

10 "Mine" means any mine, including a "surface mine," as that
11 term is defined in section three, article six, chapter twenty of
12 this code, and in section two, article six-d of said chapter; and
13 a "mine" as that term is defined in section one, article one,
14 chapter twenty-two of this code.

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

James L. Lewis
Chairman Senate Committee

Clarence L. Chestnut Jr
Chairman House Committee

Originated in the House.

Takes effect upon the proclamation of the Governor finding that the approval of the West Virginia state program under Section 503 of the federal "Surface Mine Control and Reclamation Act of 1977" has been given by the Secretary of the U. S. Department of the Interior.

Judd C. Mills
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. G. Berkeston Jr
President of the Senate

Clyde H. Lee Jr
Speaker House of Delegates

The within *is approved* this the *25*
day of *March*, 1980.

John D. Rowe W
Governor



RECEIVED

MAR 18 4 13 PM '80

OFFICE OF THE GOVERNOR

STATE
MAR 18 4 13 PM '80