WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED
Committee Substitute for

HOUSE BILL No. 1529

(By Mr. Speaker, Mr. Lee, and Mr. Teats)

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.
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COMMITEE 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 inspec tors 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 surface mining 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
1 department of natural resources; authority of director
2 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
and river and stream beds; by destroying fish, aquatic life and
wildlife habitats; by impairing natural beauty; by damaging the
property of citizens; by creating hazards dangerous to life and
property; and by degrading the quality of life in local commu-
nities, all where proper mining and reclamation is not practiced.

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

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

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

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

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

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

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

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

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

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

(1) Administer and enforce the provisions of this article
as it relates to surface mining to accomplish the purposes of
this article;
(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;
(3) Promulgate, administer and enforce regulations pursuant to this article;
(4) Enter into a cooperative agreement with the secretary of the United States department of the interior to provide for state regulations of surface-mining operations on federal lands within West Virginia consistent with section 523 of Public Law 95-87; and
(5) Administer and enforce regulations promulgated pursuant to this chapter to accomplish the requirements of programs under Public Law 95-87.

(d) The director of the department of natural resources and the director of the department of mines shall cooperate with respect to departmental programs and records to effect an orderly and harmonious administration of the provisions of this article. The director of the department of natural resources may avail himself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. Also, he may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

§20-6-3. Definitions.

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

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

(b) "Affected area" means, when used in the context of surface mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface mining and reclama-
tion activities. "Affected area" means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit (1) by surface operations or facilities incident to underground mining activities or (2) by underground operations.

(c) "Adjacent areas" means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact. "Adjacent areas" means, for the purpose of conducting surface-mining and reclamation operations, those land and water resources contiguous to or near the affected area upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact.

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

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

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

(g) "Coal processing wastes" means earth materials which are or have been combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise
separated from product coal, and slurried or otherwise trans-51
ported from coal processing plants after physical or chemical
processing, cleaning, or concentrating of coal.

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

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

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

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

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

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

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

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

(p) "Permit area" means the area of land indicated on
the approved proposal map submitted by the operator as part
of his application showing the location of perimeter markers
and monuments and shall be readily identifiable by appropriate
markers on the site.

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

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

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

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

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

(2) The areas upon which the above activities occur
or where such activities disturb the natural land sur-
face. Such areas shall also include any adjacent land,
the use of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities: Provided, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section eight of this article: Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas,

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

(v) "Significant, imminent environmental harm to land, air or water resources" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term "environmental harm" means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife, and fish, and the environmental harm is imminent if a condition or practice exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the abatement time set by the director.
§20-6-4. Division of reclamation; qualifications and compensation of division chief; duties and functions of division.

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

Except as otherwise provided in this article, the division shall administer the provisions of this article relating to surface mining operations and subject to the approval of the director shall exercise all of the powers and perform all of the duties by law vested in and imposed upon said director in relation to said operations. The division of reclamation shall have within its jurisdiction and supervision all lands and areas of the state, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, streams, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the division shall be consistent with other provisions of this chapter. The division shall cooperate with other offices and divisions of the department.

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

The director shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out
the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person shall be eligible for such appointment until he has served in a probationary status for a period of one year to the satisfaction of the director of natural resources.

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

Except as otherwise provided in this article, surface-mining reclamation inspectors and inspectors-in-training shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. Such inspectors shall note and describe all violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.

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

(a) There is hereby created and established in the department of natural resources a reclamation commission which shall be composed of the director of natural resources, serving as chairman, the chief of the division of reclamation, the chief of the water resources division, and the director of the department of mines. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for expenses necessarily incurred in performing their functions. The commission shall meet upon the call of any member. The director shall request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and ap-
point one or more assistant attorneys general, to serve at
the will and pleasure of the attorney general, and such
assistant or assistants, shall be paid out of any funds made
available for that purpose by the Legislature or by Public
Laws 95-87 to the department of natural resources.

(b) The commission shall have authority to:

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

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

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

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

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

(c) (1) After the commission has adopted the regulations
required by this article, any person may petition the com-
mission to initiate a proceeding for the issuance, amendment,
or repeal of a rule under this article.

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

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

(4) Within ninety days after filing of a petition described
in subdivision (1) of this subsection, the commission shall
either grant or deny the petition. If the commission grants the
petition, the commission shall promptly commence an ap-
propriate proceeding in accordance with the provisions of
chapter twenty-nine-a of this code. If the commission denies
such petition, the commission shall so notify the petitioner
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.

(a) Any person intending to prospect for coal in an area
not covered by a surface mining permit, in order to determine
the location, quantity or quality of a natural coal deposit,
making feasibility studies or for any other purpose, shall file
with the director, at least fifteen days prior to commencement of
any disturbance associated with prospecting, a notice of inten-
tion to prospect, which notice shall include a description of the
prospecting area, the period of supposed prospecting and such
other information as required by rules or regulations promul-
gated pursuant to this section: Provided, That prior to the
commencement of such prospecting, the director may issue an
order denying or limiting permission to prospect where he
finds that prospecting operations will damage or destroy a
unique natural area, or will cause serious harm to water qual-
ity, or that the operator has failed to satisfactorily reclaim
other prospecting sites, or that there has been an abuse of
prospecting by previous prospecting operations in the area.
(b) Notice of intention to prospect shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. The notice shall be accompanied by:

1. A United States geological survey topographic map showing by proper marking the crop line and the name, where known, of the seam or seams to be prospected, and
2. A bond, or cash, or collateral securities or certificates of the same type and form and in the same manner as provided in section twelve of this article, in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed area. If such bond is used, it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to backfilling and revegetation of the disturbed area.

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

(d) Information submitted to the director pursuant to this section as confidential, concerning trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to prospect the described area, shall not be available for public examination.

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

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

(g) The bond accompanying said notice of intention to prospect shall be released by the director when the operator demonstrates that a permanent species of vegetative cover is established.
(h) In the event an operator desires to mine the area currently being prospected, and has requested and received an appropriate surface mine application (S.M.A.) number the director may permit the postponement of the reclamation of the area prospected. Any part of a prospecting operation, where reclamation has not been postponed as provided above, shall be reclaimed within a period of three months from disturbance.

(i) For the purpose of this section, the word “prospect” or “prospecting” does not include core drilling related solely 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.

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

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

(b) No later than eight months after the secretary’s approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the director. Provided, That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502 (c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary’s approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the director.
(c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the director may extend a permit for such longer term: Provided, further, That subject to the prior approval of the director, a successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor’s application is granted or denied.

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

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

(f) Each application for a new surface-mining permit filed pursuant to this article shall be accompanied by a fee of five hundred dollars. All permit fees provided for in this section or elsewhere in this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and
§20-6-10. Permit application requirements and contents.

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

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

(2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: Provided, That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in subdivision (6) of this subsection.

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

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

(5) A statement of whether the applicant, or any officer, partner, director, principal shareholder of the applicant, any subsidiary, affiliate or persons controlled by
or under common control with the applicant, has ever been an officer, partner, director or principal shareholder in a company which has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been permanently suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

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

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

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

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

(10) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;
(11) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the director of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: Provided, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: Provided, however, That the permit application shall not be approved until such information is available and is incorporated into the application.

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

(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the director, showing pertinent elevation and location of test borings or core samplings, where required by the director, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of sub-
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surface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) the location of any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil, waste or refuse areas and topsoil preservation areas; (K) the location of all impoundments for waste or erosion control; (L) any settling or water treatment facility or drainage system; (M) constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator’s proposed reclamation plan;

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

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

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

(17) Information pertaining to coal scams, test borings,
core sampling, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: Provided. That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;

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

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

(b) If the director finds that the probable total annual production at all locations of any coal surface-mining operator will not exceed one hundred thousand tons, the determination of probable hydrologic consequences and the statement of the result of test borings or core samplings shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the director and a reasonable cost of the preparation of such determination and statement shall be assumed by the department from funds provided by the United States department of the interior pursuant to Public Law 95-87.

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

(d) Each applicant for a permit shall be required to submit to the director as a part of the permit application a certificate issued by an insurance company authorized to do business in this state covering the surface-mining operation for which such permit is sought, or evidence that the
applicant has satisfied state self-insurance requirements. Such
policy shall provide for personal injury and property damage
protection in an amount adequate to compensate any persons
damaged as a result of surface coal mining and reclamation
operations, including use of explosives, and entitled to com-
pensation under the applicable provisions of state law. Such
policy shall be maintained in full force and effect during the
terms of the permit or any renewal, including the length of
all reclamation operations.

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

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

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

§20-6-11. Reclamation plan requirements.

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

(1) The identification of the lands subject to surface min-
(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if such land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section ten of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farm lands, and the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management;

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

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

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section thirteen of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans
to comply with each of the applicable requirements set out in sections thirteen or fourteen of this article;

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

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

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

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

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

(12) The results of test borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water, and an analysis of the chemical properties, including acid forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental contents which is potentially toxic in the en-
(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Such other requirements as the reclamation commission may prescribe by regulation.

(b) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted 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.

(a) After a surface mining permit application has been approved pursuant to this article, but before such a permit has been issued, each operator shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The amount of the bond shall be one thousand dollars for each acre or fraction thereof. The bond shall cover (1) the entire permit area, or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, he shall continue bonding in that manner for the term of the permit: Provided, however, That the minimum amount of bond furnished shall be ten thousand dollars.

(b) The period of liability for performance bond coverage
shall commence with issuance of a permit and continue for the
full term of the permit plus any additional period necessary to
achieve compliance with the requirements in the reclamation
plan of the permit.

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

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

(d) The director may accept the bond of the applicant itself
without separate surety when the applicant demonstrates to
the satisfaction of the director the existence of a suitable
agent to receive service of process and a history of financial
solvency and continuous operation sufficient for authorization
to self-insure.

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

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

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

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

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

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

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

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

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

(2) Restore the land affected to a condition capable
of supporting the uses which it was capable of support-
ing prior to any mining, or higher or better uses of
which there is reasonable likelihood so long as such use
or uses do not present any actual or probable hazard
to public health or safety or pose any actual or prob-
able threat of water diminution or pollution, and the
permit applicants' declared proposed land use following
reclamation is not deemed to be impractical or unrea-
onable, inconsistent with applicable land use policies and
plans, involves unreasonable delay in implementation, or
is violative of federal, state, or local law;

(3) Except as provided in subsection (c) of this section,
with respect to all surface mines, backfill, compact where ad-
visable to ensure stability or to prevent leaching of toxic ma-
terials, and grade in order to restore the approximate original
contour: Provided, That in surface mining which is carried
out at the same location over a substantial period of time
where the operation transects the coal deposit, and the
thickness of the coal deposits relative to the volume of the
overburden is large and where the operator demonstrates that
the overburden and other spoil and waste materials at a par-
ticular point in the permit area or otherwise available from the
entire permit area is insufficient, giving due consideration to
volumetric expansion, to restore the approximate original con-
tour, the operator, at a minimum shall backfill, grade, and
compact, where advisable, using all available overburden and
other spoil and waste materials to attain the lowest practicable
grade but not more than the angle of repose, to provide ade-
quate drainage and to cover all acid-forming and other toxic
materials, in order to achieve an ecologically sound land use
compatible with the surrounding region: Provided, however,
That in surface mining where the volume of overburden is
large relative to the thickness of the coal deposit and where the
operator demonstrates that due to volumetric expansion the
amount of overburden and other spoil and waste materials re-
moved in the course of the mining operation is more than suffi-
cient to restore the approximate original contour, the operator
shall, after restoring the approximate contour, backfill, grade,
and compact, where advisable, the excess overburden and
other spoil and waste materials to attain the lowest grade but
not more than the angle of repose, and to cover all acid-form-
ing and other toxic materials, in order to achieve an ecological-
ly sound land use compatible with the surrounding region and,
such overburden or spoil shall be shaped and graded in such a
way as to prevent slides, erosion, and water pollution and is
revegetated in accordance with the requirements of this article:
Provided further, That the reclamation commission shall promulgate rules and regulations governing variances to the requirements for return to approximate original contour or high-wall elimination and where adequate material is not available from surface-mining operations permitted after the effective date of this article for (A) underground mining operations existing prior to the third day of August, one thousand nine hundred seventy-seven, or (B) for areas upon which surface-mining prior to the first day of July, one thousand nine hundred seventy-seven, created highwalls.

Provided further, That the operator shall backfill and reclaim the disturbed area to the extent possible where there is a lack of sufficient material from the operation to allow elimination of all highwalls if: (1) any surface effects of underground mining operations have resulted in the creation of highwalls, or (2) surface mining prior to the third day of August, one thousand nine hundred seventy-seven, has resulted in the creation of highwalls and a surface mining permit is issued after the effective date of this article.

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

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner such other strata which is best able to support vegetation;

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

(7) Ensure that all prime farm lands are mined and re-
claimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States secretary of agriculture and the soil conservation service pertaining thereto. The operator, as a minimum, shall be required to: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in subparagraph (B) above with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A) above;

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

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

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

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

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

(13) Refrain from surface mining within five hundred feet of
any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners:

Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director of the department of mines, and (B) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, That any breakthrough which does occur shall be scaled;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface water and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the reclamation commission, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed permit area excluding drainage structures, haulroads and access roads unless there will be blasting on or near such structures or roads: Provided, That this notice shall suffice as daily notice to residents or occupants of such areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and
frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons; (ii) damage to public and private property outside the permit area; (iii) adverse impacts on any underground mine; and (iv) change in the course, channel or availability of ground or surface water outside the permit area; (D) require that all blasting operations be conducted by persons certified by the director of the department of mines; and (E) provide that upon written request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the area identified in subparagraph (A) of this subdivision, the applicant or permittee shall conduct a preblasting survey or other appropriate investigation of such structures and submit the results to the director and a copy to the resident or owner making the request. The area of the survey shall be determined by the director in accordance with regulations promulgated by the reclamation commission;

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface-mining operations. Time limits shall be established by the reclamation commission requiring backfilling, grading and planting to be kept current: Provided, That where surface-mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that
permits necessary for the underground mining operations have been issued by the appropriate authority;

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

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

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

(B) If the reclamation commission has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of subparagraph and has imposed such additional requirements as he deems necessary;

(C) If variances granted under the provisions of this subsection are to be reviewed by the director not more than three years from the date of issuance of the permit, and

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

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

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such
proximity to such channel so as to significantly alter the normal flow of water;

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

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the director issues a written finding approving a long-term agricultural postmining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the director approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation shall commence at the date of initial planting for such agricultural postmining land use;

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

(22) Place all excess spoil material resulting from surface mining activities in such a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placements; (C) appro-
privately surface and internal drainage system or diversion ditches
are used to prevent spoil erosion and movement; (D) the dis-
posal area does not contain springs, natural water courses or
wet weather seeps, unless lateral drains are constructed from
the wet areas to the main underdrains in a manner that filtra-
tion of the water into the spoil pile will be prevented; (E) if
placed on a slope, the spoil is placed upon the most moderate
slope among those upon which, in the judgment of the director,
the spoil could be placed in compliance with all the require-
ments of this article, and shall be placed, where possible, upon,
or above, a natural terrace, bench, or berm, if such placement
provides additional stability and prevents mass movement;
(F) Where the toe of the spoil rests on a downslope, a rock
toe buttress, of sufficient size to prevent mass movement, is
constructed; (G) the final configuration is compatible with
the natural drainage pattern and surroundings and suitable
for intended uses; (H) design of the spoil disposal area is
certified by a qualified registered professional engineer in con-
formance with professional standards; and (I) all other pro-
visions of this article are met: Provided, That where the excess
spoil material consists of at least eighty percent, by volume,
sandstone, limestone, or other rocks that do not slake in water,
the director may approve alternate methods for disposal of
excess spoil material, including fill placement by dumping in
a single lift, on a site specific basis: Provided, however, That
the services of a qualified registered professional engineer ex-
erienced in the design and construction of earth and rockfill
combankment are utilized: Provided further, That such ap-
proval shall not be unreasonably withheld if the site is suitable;
(23) Meet such other criteria as are necessary to achieve
reclamation in accordance with the purposes of this article,
taking into consideration the physical, climatological and other
characteristics of the site;
(24) To the extent possible, using the best technology cur-
rently available, minimize disturbances and adverse impacts of
the operation on fish, wildlife and related environmental val-
ues, and achieve enhancement of such resources where prac-
ticable; and
(25) Retain a natural barrier to inhibit slides and erosion
on permit areas where outcrop barriers are required: Provided, that constructed barriers may be allowed where (A) natural barriers do not provide adequate stability, (B) natural barriers would result in potential future water quality deterioration and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, that at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, that where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points;

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

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, woodland, agricultural, residential or public use is proposed for the postmining use of the affected land, the director may grant a permit for a surface mining operation of the nature described in subdivision (2), of this subsection where: (A) the proposed postmining land use is deemed to constitute an equal or better use of the affected land, as compared with the premining use; (B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) support-
(iv) practicable with respect to private financial capability for completion of the proposed use; (v) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and (vi) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the director provides the county commission of the county in which the land is located and any state or federal agency which the director, in his discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the director shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where (i) natural barriers do not provide adequate stability, (ii) natural barriers would result in potential future water quality deterioration and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resources: Provided, however, That at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided, further, that where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the out-slopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: Provided, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.
(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on such lesser slopes as may be defined by regulation after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided, That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that the order requirements of this section can still be met.

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

(f) The reclamation commission shall promulgate regulations for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided. That whenever
the director finds that any coal processing waste pile constitutes an imminent danger to human life, he may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates the pile or the landowners involved, enter upon the premises where any such coal processing waste piles exist and may take or order to be taken such remedial action as may be necessary or expedient to secure such coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the department of natural resources for such purposes, and such sums so expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the director. For purposes of this subsection "operates" or "operated" means to enter upon a coal processing waste pile, or part thereof, for the purpose of disposing, depositing, dumping coal processing wastes thercon or removing coal processing waste therefrom, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

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

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

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation as minimum to:
(1) Adopt measures consistent with known technology in order to prevent subsidence and to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: Provided, That this subsection does not prohibit the standard method of room and pillar mining;

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

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

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

(5) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f), section thirteen of this article, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing
wastes and solid wastes and used either temporarily or perma-
nently as dams or embankments;

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

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

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

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

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

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

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

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

(d) The provisions of this article relating to permits,
bonds, insurance, inspections, reclamation and enforcement,
public review and administrative and judicial review shall
also be applicable to surface operations and surface impacts
incident to an underground mine with such modifications by
regulation to the permit application requirements, permit ap-
proval or denial procedures and bond requirements as are
necessary to accommodate the distinct difference between
surface mines and underground mines in West Virginia.
§20-6-15. Inspections; monitoring; right-of-entry; inspection of records; identification signs; progress maps.

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

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

(1) The director shall at a minimum require any operator to: (A) Establish and maintain appropriate records; (B) make monthly reports to the department; (C) install, use and maintain any necessary monitoring equipment or methods consistent with subdivision (11), subsection (a), section ten of this article; (D) evaluate results in accordance with such methods, at such locations, intervals and in such manner as the director shall prescribe; and (E) provide such other information relative to surface-mining operations as the director deems reasonable and necessary;

(2) For those surface-mining operations which remove or disturb strata that serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mining site, the director shall require that: (A) Monitoring sites be established to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence; (B) monitoring sites be established to record level, amount and samples of ground water and aquifers potentially affected by the surface mining and also below the lowest mineral seam to be mined; (C) records or well logs and borehole data be maintained; and (D)
monitoring sites be established to record precipitation. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the reclamation commission in order to assure their reliability and validity.

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

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

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

(f) Within thirty days after service of a copy of an order of the director upon an operator by registered or certified mail, the operator shall furnish to the director five copies of a progress map prepared by or under the supervision of a person approved by the director showing the disturbed area to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps required by this article, and shall show in detail completed reclamation work as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations
during the preceding year, the operator shall notify the
director of that fact.

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

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

(a) Notwithstanding any other provisions of this article, a
surface mining reclamation inspector shall have the authority
to issue a cessation order for any portion of a surface mining
operation when an inspector determines that any condition
or practices exist, or that any permittee is in violation of
any requirements of this article or any permit condition
required by this article, which condition, practice, or violation
also creates an imminent danger to the health or safety of
the public, or is causing or can reasonably be expected to
cause significant, imminent environmental harm to land, air
or water resources. Such cessation order shall take effect
immediately. Unless waived in writing, an informal conference
shall be held at or near the site relevant to the violation set
forth in the cessation order within twenty-four hours after
such order becomes effective or such order shall expire.
Such conference shall be held before a surface mining reclama-
tion supervisor who shall, immediately upon conclusion of said hearing, determine when and if the operation or portion thereof may resume. Any operator who believes he is aggrieved by the decision of the surface mining reclamation supervisor may immediately appeal to the director, setting forth reasons why the operation should not be halted. The director forthwith shall determine whether the operation or portion thereof may be resumed.

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

(c) Any cessation order issued pursuant to this section or any other provision of this article may be released by any inspector. An inspector shall be readily available to vacate 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.

(a) If any of the requirements of this article, rules and regulations promulgated pursuant thereto or permit conditions have not been complied with, the director may cause a notice of violation to be served upon the operator or his duty authorized agent. A copy of such notice shall be handed to the operator or his duly authorized agent in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this article, rules and regulations or permit conditions and shall specify a reasonable time for abatement of the violation not to
exceed fifteen days. If the operator has not abated the viola-
tion within the time specified in the notice, or any reasonable
extension thereof, not to exceed seventy-five days, the director
shall order the cessation of the operation or the portion thereof
causing the violation, unless the operator affirmatively demon-
strates that compliance is unattainable due to conditions totally
beyond the control of the operator. If a violation is not abated
within the time specified or any extension thereof, or any
cessation order is issued, a mandatory civil penalty of not
less than one thousand dollars per day per violation shall be
assessed: Provided, That assessments of civil penalties under
this subsection shall continue until corrective steps have been
initiated by the operator to the satisfaction of the surface
mining reclamation inspector: Provided, however, That if a
cessation order is released or expires within twenty-four hours
after issuance no mandatory civil penalty shall be assessed.

(b) If the director determines that a pattern of violations of
any requirement of this article or any permit condition exists
or has existed as a result of the operator's lack of reasonable
care and diligence, or that such violations are willfully caused
by the operator, the director shall immediately issue an order
directing the operator to show cause why the permit should not
be suspended or revoked and giving the operator thirty days in
which to request a public hearing. If a hearing is requested, the
director shall inform all interested parties of the time and place
of the hearing. Any hearing under this section shall be recorded
and subject to the provisions of chapter twenty-nine-a of this
code. Within sixty days following the public hearing, the direc-
tor shall issue and furnish to the permittee and all other parties
to the hearing a written decision, and the reasons therefor, con-
cerning suspension or revocation of the permit. Upon the
operator's failure to show cause why the permit should not
be suspended or revoked, the director shall immediately re-
vokc the operator's permit, forfeit the operator's bond or
other security posted pursuant to section twelve of this article
and give notice to the attroney general, who shall collect the
forfeiture without delay: Provided, That the entire proceeds
of such forfeiture shall be deposited with the treasurer of the
state of West Virginia to the credit of the special reclamation
fund. All forfeitures collected prior to the effective date of
this article shall be deposited in the special reclamation fund
and shall be expended back upon the areas for which the
bond was posted: Provided, however, That any excess there-
from shall remain in the special reclamation fund.

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

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

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

(f) Whenever a corporate operator violates a condition of
a permit issued pursuant to this article, regulations promulgated
pursuant thereto, or any order incorporated in a final decision
issued by the director, any director, officer or agent of such corporation who willfully and knowingly, authorized, ordered, or carried out such failure or refusal shall be subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under subsections (c) and (c) of this section.

(g) Any person who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, petition, record, report, plan or other document filed or required to be maintained pursuant to this article or regulations promulgated pursuant thereto is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(h) Whenever a permittee or his agent: (A) Violates or fails or refuses to comply with any order or decision issued by the director under this article; or (B) interferes with, hinders, or delays the director in carrying out the provisions of this article; or (C) refuses to admit the director to the mine; or (D) refuses to permit inspection of the mine by the director; or (E) refuses to furnish any reasonable information or report requested by the director in furtherance of the provisions of this article; or (F) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this article; or (G) violates any other provisions of this article, the regulations promulgated pursuant thereto, or the terms and conditions of any permit, the director, the attorney general, or the prosecuting attorney of the county in which the major portion of the permit area is located, may institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other appropriate order, in the circuit court of Kanawha County or any court of competent jurisdiction to compel compliance with and enjoin such violations, failures, or refusals. The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.
(i) Any person who shall, except as permitted by law, willfully resist, prevent, impede or interfere with the director or any of his agents in the performance of duties pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

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

(a) Upon the receipt of a surface mining application or significant revision or renewal thereof, including public notification and an opportunity for a public hearing, the director shall grant, require revision of, or deny the application for a permit within sixty days and notify the applicant in writing of his decision.

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

(1) The permit application is accurate and complete and that all the requirements of this article and regulations thereunder have been complied with;

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

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

(4) The area proposed to be mined is not included within an area designated unsuitable for surface mining pursuant to section twenty-two of this article or is not within an area under administrative study by the reclamation commission; and
(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted: (A) The written consent of the surface owner to the extraction of coal by surface mining; or (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining; or (C) if the conveyance does not expressly grant the right to extract coal by surface mining, the surface-subsurface legal relationship shall be determined in accordance with applicable law. Provided, That nothing in this article shall be construed to authorize the director to adjudicate property rights disputes.

(c) Where information available to the department indicates that any surface mining operation located in this state of West Virginia, owned or controlled by the applicant, is currently in violation of this article or other West Virginia environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the director or the department or agency which has jurisdiction over such violation, and no permit may be issued to any applicant after a finding by the director, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article. Provided, That if the director finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant. Provided, however, That subject to the discretion of the director and based upon a petition for reinstatement, permits may be issued to any such applicant if, after such revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the director to be adequate to reclaim the disturbed area, and
the director is satisfied that such petitioner will comply with this article.

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

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

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

(a) (1) Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply
for renewal and such renewal shall be issued: Provided, That on application for renewal, the burden shall be on the opponents of renewal, unless it is established that and written findings by the director are made that: (A) The terms and conditions of the existing permit are not being satisfactorily met: Provided, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface-mining operation is not in compliance with the applicable environmental protection standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the performance bond in effect for said operation will continue in effect for any renewal requested as required pursuant to section twelve of this article; or (E) any additional revised or updated information as required pursuant to rules and regulations promulgated by the reclamation commission has not been provided.

(2) If an application for renewal of a valid permit includes a proposal to extend the surface-mining operation beyond the boundaries authorized in the existing permit, except incidental boundary revisions, the applicant shall apply for a new permit. Incidental boundary revisions shall include, but not be limited to, additional areas of disturbance ancillary to permitted surface effects of underground mining operations, provided that the operator has submitted (A) adequate bond, (B) a map showing the disturbed area and facilities, and (C) a reclamation plan.

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

(4) Any permit renewal application shall be on forms prescribed by the director and shall contain such information as the director requires pursuant to rule or regulation.
(b) (1) During the term of the permit, the permittee may submit to the director an application for a revision of the permit, together with a revised reclamation plan.

(2) An application for a significant revision of a permit shall be subject to all requirements of this article and regulations promulgated pursuant thereto.

(3) Any extension to an area already covered by the permit, except incidental boundary revisions, shall be made by application for another permit.

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

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

§20-6-20. Public notice; written objections; public hearings; informal conferences.

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

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

(b) Any person having an interest which is or may be
adversely affected, or the officer or head of any federal,
state or local governmental agency, shall have the right to
file written objections to the proposed initial or revised
permit application for a surface-mining operation with the
director within thirty days after the last publication of the
advertisement required in subsection (a) of this section.
Such objections shall be immediately transmitted to the
applicant by the director and shall be made available to the
public. If written objections are filed and an informal con-
ference requested within thirty days of the last publication
of the above notice, the director shall then hold a con-
ference in the locality of the proposed mining within three
weeks after the close of the public comment period. Those
requesting the conference shall be notified and the date,
time and location of the informal conference shall also
be advertised by the director in a newspaper of general
circulation in the locality at least two weeks prior to the
scheduled conference date. The director may arrange with
the applicant, upon request by any party to the conference
proceeding, access to the proposed mining area for the pur-
pose of gathering information relevant to the proceeding.
An electronic or stenographic record shall be made of the
conference proceeding unless waived by all parties. Such
record shall be maintained and shall be accessible to the parties
at their respective expense until final release of the applicant’s
performance bond or other security posted in lieu thereof. The
director’s authorized agent will preside over the conference.
In the event all parties requesting the informal conference
stipulate agreement prior to the conference and withdraw their
request, a conference need not be held.
§20-6-21. Decision of director on permit application; hearing thereon.

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

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

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

(1) Upon petition pursuant to subsection (b) of this section, the reclamation commission shall designate an area as unsuitable for all or certain types of surface-mining operations, if it determines that reclamation pursuant to the requirements of this article is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) of this sec-
tion, a surface area may be designated unsuitable for certain
types of surface-mining operations, if such operations: (A)
Be incompatible with existing state or local land use plans
or programs; (B) affect fragile or historic lands in which such
operations could result in significant damage to important his-
toric, cultural, scientific and aesthetic values and natural sys-
tems; (C) affect renewable resource lands including signifi-
cant aquifers and aquifer recharge areas, in which such oper-
ations could result in a substantial loss or reduction of long-
range productivity of water supply, food or fiber products; or
(D) affect natural hazard lands in which such operations could
substantially endanger life and property. Such lands to include
lands subject to frequent flooding and areas of unstable geo-
logy.

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

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

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

(b) The director, or any person having an interest which is
or may be adversely affected, shall have the right to pe-
tion the reclamation commission to have an area
designated as unsuitable for surface mining operations or to have such a designation terminated. Such petition shall contain allegations of fact with supporting evidence which would tend to establish the allegations. After receipt of such petition, the reclamation commission shall immediately begin an administrative study of the area specified in the petition. Within ten months after receipt of the petition, the reclamation commission shall hold a public hearing in the locality of the affected area after appropriate notice and publication of the date, time and location of such hearing. After the director or any person having an interest which is or may be adversely affected has filed a petition and before the hearing required by this subsection, any person may intervene by filing allegations of fact with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the reclamation commission shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held.

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

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

(1) On any lands in this state within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section five-a of the Wild and Scenic Rivers Act, and national recreation areas designated by act of Congress: Provided, That the director may grant variances to this subdivision after an affirmative
finding that positive environmental benefits will result from such.

(2) Which will adversely affect any publicly owned part or places included in the national register of historic sites, or national register of natural landmarks unless approved jointly by the director and the federal, state or local agency with jurisdiction over the park, the historic site, or natural landmark;

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

(4) Within three hundred feet from any occupied dwelling, unless waived by the owner thereof, or within three hundred feet of any public building, school, church, community or institutional building, public park, or within one hundred feet of a cemetery; or

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

(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be assessed for taxation purposes according to their value, and the Legislature hereby finds that such coal has no value for the duration of such designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of such coal shall forthwith notify the proper assessing authorities if such
designated or prohibition is removed so that such coal may be reassessed.

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

(a) There is hereby created a reclamation board of review consisting of five members to be appointed by the governor with the advice and consent of the Senate for terms of five years, except that the terms of the first five members of said board shall be for one, two, three, four and five years respectively, as designated by the governor at the time of the appointment. Any vacancy in the office of a member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall he a person who, by reason of his previous training and experience, can be classed as one capable and experienced in the practice of agriculture and who represents the general public interest. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in the modern forestry practices and who represents the general public interest. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in engineering. One of the appointees of such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. Not more than three members shall be members of the same political party.

(h) The board may employ supporting staff including hearings examiners to aid and assist in performing its responsibilities under this article.
(c) Three members shall constitute a quorum and no action of the board is valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings. Each member shall be paid as compensation for his work as such member, from funds appropriated for such purposes, seventy-five dollars per day when actually engaged in the performance of his work as a board member. In addition to such compensation, each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state.

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

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

(a) Any person having an interest which is or may be adversely affected by any order of the reclamation commission or any notice, order or final determination by the director may appeal to the board for an order terminating, vacating or modifying such notice, order or determination, or may intervene in a timely manner in any such pending appeal. The person so appealing to the board shall be known as the appellant, and the commission or director shall be known
as appellees. The appellant and appellee are deemed to be parties to the appeal. Any hearing shall be subject to the requirements of chapter twenty-nine-a of this code.

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

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

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

(e) The filing of an appeal provided for in this section shall not stay execution of the order appealed from. Pending completion of the investigation and hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant requests
relief from an order for cessation of surface mining and reclamation operations, the decision on such a request shall be issued within forty-eight hours of its receipt. The director may grant such relief, under such conditions as he may prescribe, if:

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

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

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

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

(f) The board shall hear the appeal de novo and any party to the appeal may submit evidence. For the purpose of conducting a hearing on an appeal, the board may require the attendance of witnesses and the production of books, records and papers, and it may, and at the request of any party it shall, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records or papers, directed to the sheriff of the county where such witnesses, books, records or papers are found, which subpoenas and subpoenas duces tecum shall be served and returned in the same manner as subpoenas and subpoenas duces tecum in civil litigation are served and returned. The fees and allowances for mileage of sheriffs and witnesses shall be the same as those permitted in civil litigation in trial courts. All fees and mileage expenses incurred and the expense of preparing the record at the request of the appellant shall be paid by the appellant.

(g) In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he
may be lawfully interrogated, the circuit court of the county
in which such disobedience, neglect or refusal occurs, on
application of the board or any member thereof, shall com-
pel obedience by attachment proceedings for contempt as
in the case of disobedience of the requirements of a sub-
poena or subpoena duces tecum issued from such court of
a refusal to testify therein. Witnesses at such hearings
shall testify under oath and any member of the board may
administer oaths or affirmations to persons who so testify.

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

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

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

(a) Within thirty days after receipt of an order from the
board, any applicant, any person with an interest which is
or may be adversely affected, or the appellee who has par-
ticipated in the administrative proceedings before the board
and who is aggrieved by the decision of the board may obtain judicial review thereof by appealing to the circuit court of Kanawha County or of the county in which the surface-mining operations is located. Any party desiring to so appeal shall file with the board a notice of appeal, designating the order appealed from, stating whether the appeal is taken on questions of law, questions of fact or questions of law and fact, and stating specific grounds upon which the appeal is based. A copy of such notice shall also be filed by the appellant with the court and shall be mailed or otherwise delivered to the appellee. Such notice and copies thereof shall be filed and mailed or otherwise delivered within thirty days after the date upon which the appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond may be required to make effective an appeal on questions of law, questions of fact or questions of law and fact.

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

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

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

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

(c) Within thirty days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of the proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which was submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. The appellant shall pro-
vide security for costs satisfactory to the court. Upon demand by a party, the board shall furnish, at the cost of the party requesting the same, a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section, either party may apply to the court to have the case docketed, and the court shall order such record filed.

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

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

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

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

(a) The permittee may file a request with the director for
the release of a performance bond or deposit. The permittee shall publish an advertisement regarding such request for release in the same manner as is required of advertisements for permit applications. A copy of such advertisement shall be submitted to the director as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters which he has sent to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface-mining operation is located, notifying them of the permittee's intention to seek release from the bond. Any request for grade release shall also be accompanied by final maps.

(b) Upon receipt of the application for bond release, the director, within thirty days taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution and the estimated cost of abating such pollution. The director shall notify the permittee in writing of his decision to release or not to release all or part of the performance bond or deposit within sixty days from the date of the initial publication of the advertisement if no public hearing is requested. If a public hearing is held, the director's decision shall be issued within thirty days thereafter.

(c) If the director is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, he may release said bond or deposit, in whole or in part, according to the following schedule:
(1) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after grade release:

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

(3) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by sections thirteen or fourteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section ten of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or where a minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and
(e) When any application for total or partial bond release is filed with the director, he shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, has the right to file written objections to the proposed bond release and request a hearing with the director within thirty days after the last publication of the permittee’s advertisement. If written objections are filed and a hearing requested, the director shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of such public hearing shall also be advertised by the director in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the director pursuant to this section, the director may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of such hearing, the director has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a
transcript made available on the motion of any party or by order of the director at the cost of the person requesting the transcript.

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

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

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

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

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

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

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

(b) No action may be commenced:
(1) Under subdivision (1), subsection (a) of this section:

(A) prior to sixty days after the plaintiff has given notice in writing of the violation to the director or to any alleged violator, or (B) if the director has commenced and is diligently prosecuting a civil action in a circuit court to require compliance with the provisions of this article or any rule or regulation, order or permit issued pursuant to this article; or

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

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

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

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

(f) Any person or property who is injured in his person through the violation by any operator of any rule, regulation, order or permit issued pursuant to this article may bring an action for damages, including reasonable attorney and expert witness fees, in any court of competent jurisdiction. Nothing
in this subsection shall affect the rights established by or
limits imposed under state workmen's compensation laws.

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

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

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

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

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

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

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

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

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

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

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

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

(3) The name of owner of the surface of the land to be developed;

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

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

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

(b) There shall be attached to the application for the special permit a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section ten of this article.

The application for the special permit shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of two thousand dollars per acre, for a maximum disturbance of five acres.

The bond shall be payable to the state of West Virginia and conditioned that the applicant shall complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site preparation plan submitted with the application, the bond conditions shall be satisfied and the bond and any cash, securities or certificates furnished with said bond may be released and returned to the applicant. The filing fee for the special permit shall be five hundred dollars. The special permit shall be valid until work permitted is completed.

(c) The purpose of this section is to vest jurisdiction in the director, where the surface mining is incidental or secondary to the preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, minerals must be removed, including, but not limited to, the building and construction of railroads, shopping malls, factory and industrial sites, residential and building sites, and recreational areas. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that such permit is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article shall not be applic-
(d) The director may, in the exercise of his sound discretion, when not in conflict with the purposes and findings of this article and to bring about a more desirable land use or to protect the public and the environment, issue a special permit solely for the reprocessing of existing abandoned coal processing waste piles. The reclamation commission shall promulgate specific regulations for such operations: Provided, That a bond and a reclamation plan shall be required for such operations.

§20-6.32. Existing permits and performance bond conversion; exemption from design criteria.

(a) All surface disturbance reclamation bonds submitted pursuant to the requirements of chapter twenty-one of this code by the department of mines for operations which continue to operate eight months after the approval of the state program shall be released upon notification by the director of the department of natural resources that the disturbed areas have been bonded in accordance with the provisions of this article: Provided, That for those operations permitted after the first day of July, one thousand nine hundred seventy-six, and which do not continue operation eight months after the approval of the state program, the director shall notify the director of the department of mines upon reclamation of the site in accordance with the underground opening approval reclamation plan, wherupon such bonds shall be released: Provided, further, That forfeiture proceedings shall begin upon failure of the operator to reclaim within a reasonable time the disturbed area pursuant to a plan approved after the first day of July, one thousand nine hundred seventy-six.

(b) With regard to existing structures and facilities, persons need not comply with design criteria if such structure and facilities meet the environmental performance standards of this article.
§20-6-33. Experimental practices.

In order to encourage advances in surface mining and reclamation practices or to allow postmining land use for industrial, commercial, residential, agricultural or public use, including recreational facilities, the director may authorize departures, in individual cases and on an experimental basis, from the environmental protection performance standards promulgated under this article. Such departures may be authorized if the experimental practices are potentially more or at least as environmentally protective during and after surface-mining operations as those required by promulgated standards; the surface-mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and the experimental practices do not reduce the protection afforded health or safety of the public below that provided by promulgated standards.

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

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

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

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

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

(a) In every surface mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article six-a, chapter twenty-two of this code as a mine foreman. Each applicant for certification as a mine foreman shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in
a mine in this state; (2) have had at least three years' experience in surface mining, which shall include at least eighteen months experience on or at a working section of a surface mine, or be a graduate of the School of Mines at West Virginia University or of another accredited mining engineering school and have had at least two years' practical experience in a surface mine, which shall include at least eighteen months experience on or at a working section of a surface mine; and (3) have demonstrated his knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects, by completing such training, education and examinations as may be required of him under article six-a, chapter twenty-two of this code.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one man, one or more assistant mine foreman may be designated. Such persons shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article six-a, chapter twenty-two of this code. Each applicant for certification as assistant mine foreman shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman. Provided, That he shall, at the time he is certified, be required to have at least two years' experience in surface mining, which shall include eighteen months on or at a working section of a surface mine or be a graduate of the School of Mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The director of the department of mines shall promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

§20-6-37. Monthly report by operator.

The operator of every surface mine shall, on or before the end of each calendar month, file with the director of
§20-6-38. Applicability and enforcement of laws safeguarding life and property; regulations; authority of department of mines regarding safety laws.

All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface-mining operations insofar as such laws are applicable thereto. The director of the department of mines shall promulgate reasonable regulations in accordance with the provisions of chapter twenty-nine-a of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and regulations relating to the safety of those employed in and around surface mines is hereby vested in the department of mines and shall be enforced according to the provisions of chapter twenty-two of this code.


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

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

(a) No employee of the department or employee of the reclamation board of review performing any function or duty under this article shall have a direct or indirect financial interest in any surface-mining operation. Whoever knowingly violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned. The director shall establish methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing and the review
of statements and supplements thereto concerning any financial interest which may be affected by this subsection.

(b) No person shall discharge or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed or instituted, or caused to be filed or instituted, any proceeding under this article, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this article.

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

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

(e) Whenever an order is issued under this section to abate any violation, at the request of the petitioner a sum equal to the aggregate costs and expenses including attorneys' fees to
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have been reasonably incurred by the petitioner for, or in con-
nection with, the institution and prosecution of such proceed-
ings, shall be assessed against the person committing the vi-o-
lation.

§20-6-41. Severability.

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

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

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

(b) Permits granted under this article shall be subject to
rules and regulations promulgated hereunder.
ARTICLE 6C. ABANDONED MINE RECLAMATION ACT.

§20-6C-1. Short title.

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

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

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

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

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

Therefore, it is the intent of the Legislature by this article to vest jurisdiction and authority in the director of the department of natural resources to allow for expedient program
approval by, and receipt of funds from, the United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.

§20-6C-3. Definitions.

All definitions set forth in article six of this chapter shall 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.

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

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

(1) Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; scaling and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all other necessary expenses incurred to accomplish the purpose of this article: Provided, That all expenditures from this fund shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of past surface mining practices;
(B) The protection of public health, safety and general welfare from adverse effects of past coal surface mining practices;

(C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;

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

(E) The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal surface mining practices;

(F) The development of publicly owned land adversely affected by past coal surface mining practices, including land acquired as provided in this article for recreation and historic purposes, conservation and reclamation purposes and open space benefits.

(2) Lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by such mining, waste banks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the third day of August, nineteen hundred seventy-seven, and for which there is no continuing reclamation responsibility: Provided, That one purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article or any act done by virtue of this article be construed as stopping the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.
(C) Where the governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary concurs, then the director may expend money from the fund for such construction.

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

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

(b) That reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded and the legal authority and programmatic capability to perform such work in conformance with the provisions of this article.

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

(1) A general description of each proposed project;

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

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

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

(5) In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
(6) An identification of lands or interest therein to be acquired and the estimated cost; and

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

(d) The costs for each proposed project under this section shall include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs and other necessary administrative expenses.

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

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

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

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

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

(4) The owners will not give permission for the director, his agents, employees or contractors to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices, then, upon giving notice by mail to the owners, if known, or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director, his agents, employees or contractors shall have the right to enter upon the property adversely affected by past coal mining practices and any other property
to have access to such property to do all things necessary or
expedient to restore, reclaim, abate, control or prevent the
adverse effects. Such entry shall be construed as an exercise
of the police power of the state for the protection of public
health, safety and general welfare and shall not be construed as
an act of condemnation of property nor of trespass thereon.
The moneys expended for such work and the benefits accruing
to any such premises so entered upon shall be chargeable
against such land and shall mitigate or offset any claim in or
any action brought by any owner of any interest in such prem-
ises for any alleged damages by virtue of such entry: Provided,
That this provision is not intended to create new rights of
action or eliminate existing immunities.

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

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

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

(2) Permanent facilities such as a treatment plant or a
relocated stream channel will be constructed on the land for
the restoration, reclamation, abatement, control or pre-
vention of the adverse effects of past coal mining
practices; or
(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

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

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

(f) The director may accept and local political subdivisions may transfer to the director land belonging to them to carry out the purposes set out in this article and in such event they shall have a preferential right to purchase said land after reclamation at the fair market value less the political subdivision's cost of acquisition, but at no time shall the director sell such land to a political subdivision at a price less than the cost of the acquisition and reclamation of said land: Provided, That if any land sold to a political subdivision under this subsection is not used for a valid public purpose as specified by the director in the terms and conditions of the sales agreement, then all rights, title and interest in such land shall revert to the West Virginia department of natural resources. Any moneys received from such sale shall be deposited in the abandoned land reclamation fund.

(g) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential or recreational development, the director may sell such land by public sale under a system of competitive bidding at not less than fair market value and pursuant to regulations promulgated to ensure that such lands are put to proper use consistent with state and local land use plans.
(h) The director, if requested and after appropriate public notice, shall hold a public hearing in the county in which land acquired pursuant to this section is located. The hearing shall be held at a time which shall afford local citizens and government the maximum opportunity to participate in the decision concerning the use and disposition of the land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the director is authorized to use money in the fund to acquire land from any federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 410 of Public Law 95-87, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the director shall require, which may include transfers of land with or without monetary consideration: Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association or corporation. No part of the funds provided under this article may be used to pay the actual construction costs of housing. The director may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any department, agency or political subdivision of this state, or any public body or nonprofit organization designated by the director.
§20-6C-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

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

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

(c) The statement filed pursuant to subsection (a) of this section, shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.
§20-6C-8. Filling voids and sealing tunnels.

(a) The Legislature declares that voids, open and abandoned tunnels, shafts and entryways and subsidence resulting from any previous coal surface-mining operation constitute a hazard to the public welfare and safety and that surface impacts of any underground or surface-mining operation may degrade the environment. The director is authorized to fill such voids, seal such abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mines and remove water and other matter from mines which the director determines could endanger life and property, constitute a hazard to the public welfare and safety or degrade the environment.

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

(c) The director may acquire by purchase, donation, easement or otherwise such interest in land as he determines 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.

(a) The director is authorized to engage in any work and to do all things necessary and proper, including promulgation of rules and regulations, to implement and administer the provisions of this article.

(b) The director is authorized to engage in cooperative projects under this article with any other agency of the United States of America, any state, county or municipal agency or subdivision thereof.

(c) The director may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this article, in any court of competent juris-
diction, an action in equity for an injunction to restrain any
interference with the exercise of the right to enter or to
conduct any work provided in this article.

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

(e) All departments, boards, commissions and agencies of
the state shall cooperate with the director by providing
technical expertise, personnel, equipment, materials and sup-
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 approv-
al of director of department of mines; approval fee;
extension of certificate of approval; certificates not
transferable; section to be printed on certificates.

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

(b) Within thirty days after the first day of January of each
year, the operator of each mine holding a certificate evidencing
approval of the director to open a mine shall apply for the ex-
tension of such certificate of approval for an additional year.
Such approval, evidenced by a certificate of the director, shall
be granted as a matter of right and without charge if, at the
time such application is made, the operator is in compliance
with the provisions of section seventy-two of this article and has
paid or otherwise appealed all coal mine assessments imposed
under article one, chapter twenty-two of this code. Applications
for extension of such certificates of approval not submitted
within the time required shall be processed as an application
to open or reopen a mine and shall be accompanied by a fee
of ten dollars.
(c) Certificates of approval issued pursuant to this section
shall not be transferable.
(d) The provisions of this section shall be printed on the
reverse side of every certificate issued hereunder.
(e) The district mine inspector shall be contacted for a pre-
inspection of the area proposed for underground mining prior
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.
1 Unless the context in which a word or phrase appears clear-
ly requires a different meaning, the words defined in section one, article one of this chapter shall have when used in this article the meaning therein assigned to them. These words include but are not limited to the following: Department, director of the department of mines, mine inspector, operator, miner, shot firer and certified electrician.

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

"Mine" means any mine, including a "surface mine," as that term is defined in section three, article six, chapter twenty of this code, and in section two, article six-d of said chapter; and a "mine" as that term is defined in section one, article one, chapter twenty-two of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

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.

J. C. Wells  
Clerk of the Senate

W. Blankenship  
Clerk of the House of Delegates

A. D. Beltz, Jr.  
President of the Senate

Clyde N. Beck  
Speaker House of Delegates

The within is approved this the 25

day of March, 1980.

Governor
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OFFICE OF THE GOVERNOR