

APPROVED AND SIGNED BY THE GOVERNOR

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

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# ENROLLED

*Committee Substitute for*  
HOUSE BILL No. 1551

(By Mr. *Speaker, Mr. Lee, & Mr. Teets*)

— ● —

Passed March 8, 1980

In Effect



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

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 1551**

(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 chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-d, relating to surface-mining and reclamation of mineral other than coal; jurisdiction in department of natural resources; legislative purpose; apportionment of resources; legislative purpose; apportionment of responsibility; conflict of interest; penalty; definitions; division of reclamation; authority of division; duties and functions of surface-mining reclamation supervisors and inspectors; qualification and appointment; salary; enforcement, authority and duties of reclamation commission; surface-mine permits required; application, issuance and renewal of permits; permit fees and use of proceeds; preplans; drainage systems; alternative plans; limitations on surface mining; mandamus; blasting restriction formula; filing blasting preplan; penalties and notice; time limits on reclamation; authority of commission and director to promulgate rules and regulations; obligations of the operator; exceptions; cessation of operation by inspector; com-

pletion of planting; inspection and evaluation; performance bonds; exceptions from reclamation for highway construction; applicability of laws safeguarding life and property; monthly reports by operator; interdepartmental corporation; notice of noncompliance; adjudications, determinations or findings of director and commission; appeals to board; hearing; findings and orders of board; notice; hearing; subpoenas; judicial review; appeal from order of board; offenses; criminal penalties; prosecutions; treble damages; injunctive relief; validity and construction of existing surface-mining permits; certification of surface miners; and certification of surface mine foremen.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 6D. SURFACE MINING AND RECLAMATION OF MINERALS OTHER THAN COAL.**

**§20-6D-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.**

1 Except as otherwise provided in section eighteen of this  
2 article, the department of natural resources is hereby vested  
3 with jurisdiction over all aspects of surface mining and with  
4 jurisdiction and control over land, water and soil aspects  
5 pertaining to surface-mining operations, and the restoration  
6 and reclamation of lands surface mined and areas affected  
7 thereby.

8 The Legislature finds that, although surface mining pro-  
9 vides much needed employment and has produced good safety  
10 records, unregulated surface mining causes soil erosion, pyritic  
11 shales and materials landslides, noxious materials, stream  
12 pollution and accumulation of stagnant water, increases the  
13 likelihood of floods and slides, destroys the value of some  
14 lands for agricultural purposes and some lands for recreational  
15 purposes, destroys aesthetic values, counteracts efforts for  
16 the conservation of soil, water and other natural resources,  
17 and destroys or impairs the health, safety, welfare and  
18 property rights of the citizens of West Virginia, where proper  
19 mining and reclamation is not practiced.

20 The Legislature also finds that there are wide variations  
21 regarding location and terrain conditions surrounding and  
22 arising out of surface mining primarily in topographical and  
23 geological conditions, and by reason thereof, it is necessary to  
24 provide the most effective, beneficial and equitable solution  
25 to the problems involved.

26 The Legislature further finds that authority should be  
27 vested in the director of the department of natural resources  
28 to administer and enforce the provisions of this article.

29 The director of the department of natural resources and  
30 the director of the department of mines shall cooperate with  
31 respect to departmental programs and records so as to effect  
32 an orderly and harmonious administration of the provisions  
33 of this article. The director of natural resources may avail  
34 himself of any services which may be provided by other  
35 state agencies in this state and other states or by agencies  
36 of the federal government, and may reasonably compensate  
37 them for such services. He may also receive any federal funds,  
38 state funds or any other funds for the reclamation of land  
39 affected by surface mining.

40 No public officer or employee in the department of natural  
41 resources, the department of mines, or the office of attorney  
42 general, having any responsibility or duty either directly or  
43 of a supervisory nature with respect to the administration  
44 or enforcement of this article shall (1) engage in surface  
45 mining as a sole proprietor or as a partner or (2) be an officer,  
46 director, stockholder, owner or part owner of any corporation  
47 or other business entity engaged in surface mining or (3) be  
48 employed as an attorney, agent or in any other capacity by  
49 any person, partnership, firm, association, trust or corporation  
50 engaged in surface mining. Any violation of this paragraph  
51 by any such public officer or employee shall constitute grounds  
52 for his removal from office or dismissal from his employ-  
53 ment, as the case may be.

**§20-6D-2. Definitions.**

1 Unless the context in which used clearly requires a different  
2 meaning, as used in this article:

3 (a) "Adequate treatment" shall mean treatment of water  
4 by physical, chemical or other approved methods in a manner  
5 that will cause the analyzed pH level of the treated water  
6 to be 6.0 - 9.0 and analyzed content of iron of the treated  
7 water to be seven milligrams per liter or less, or approved  
8 treatment which will not lower the water quality standards  
9 established for the river, stream or drainway into which such  
10 water is released.

11 (b) "Breakthrough" shall mean the release of water which  
12 has been trapped or impounded underground, or the release  
13 of air into any underground cavity, pocket or area.

14 (c) "Director" shall mean the director of natural resources  
15 or his authorized agents.

16 (d) "Disturbed land" or "land disturbed" shall mean (1)  
17 the area from which the overburden has been removed in  
18 surface-mining operation, (2) the area covered by the spoil,  
19 and (3) any areas used in surface-mining operations which  
20 by virtue of their use are susceptible to excessive erosion  
21 including all lands disturbed by the construction or improve-  
22 ment of haulageways, roads or trails.

23 (e) "Minerals" shall mean clay, flagstone, gravel, lime-  
24 stone, manganese, sand, sandstone, shale, iron ore and any  
25 other metal or metallurgical ore: *Provided*, That the term  
26 minerals does not include coal.

27 (f) "Mulch" shall mean any natural or plant residue,  
28 organic or inorganic material, applied to the surface of the  
29 earth to retain moisture and curtail or limit soil erosion.

30 (g) "Operator" shall mean any individual, partnership,  
31 firm, association, trust or corporation who or which is granted  
32 or should obtain a permit to engage in any activity covered by  
33 this article.

34 (h) "Permit area" shall mean the area of land indicated  
35 on the approved map submitted by the operator with the  
36 reclamation plan as specified in section eight of this article  
37 showing the exact location of end strip markers, permit  
38 markers and monument.

39 (i) "Person" shall mean any individual, partnership, firm,  
40 association, trust or corporation.

41 (j) "Surface mine" shall mean all areas surface mined or  
42 being surface mined, as well as adjacent areas ancillary to  
43 the operation, together with preparation and processing plants,  
44 storage areas and haulageways, roads or trails.

45 (k) "Surface mining" shall mean all activity for the re-  
46 covery of minerals, and all plants and equipment used in  
47 processing said minerals: *Provided*, That the bonding and  
48 reclamation provisions of this article shall not apply to surface  
49 mining of limestone, sandstone and sand: *Provided, however*,  
50 That the surface mining of limestone, sandstone and sand  
51 shall be subject to separate rules and regulations to be pro-  
52 mulgated by the commission.

53 (1) "Surface of a regraded bench" shall mean the top  
54 portion or part of any regraded area.

**§20-6D-3. Division of reclamation; duties and functions.**

1 Except as otherwise provided in this article, the division  
2 of reclamation, created in article six of this chapter, shall  
3 administer all of the laws of this state relating to surface  
4 mining and subject to the approval of the director of natural  
5 resources shall exercise all of the powers and perform all  
6 of the duties by law vested in and imposed upon said director  
7 in relation to said operations. The jurisdiction, supervision  
8 and enforcement authority granted the division in this article  
9 shall be in addition to the jurisdiction, supervision and en-  
10 forcement authority granted in this chapter. The division shall  
11 cooperate with other offices and divisions of the department  
12 of natural resources.

**§20-6D-4. Surface-mining reclamation supervisors and inspectors,  
appointment and qualifications; salary.**

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

7 to the satisfaction of the director of natural resources:  
8 *Provided*, That the provisions of this section shall not affect  
9 the status of persons employed on the effective date of this  
10 article as reclamation inspectors under the former provisions  
11 of chapter twenty, if such persons are qualified civil service  
12 employees.

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

**§20-6D-5. Duties of surface-mining reclamation inspectors.**

1 The surface mining reclamation inspectors shall make all  
2 necessary surveys and inspections of surface-mining opera-  
3 tions, shall administer and enforce all surface-mining laws,  
4 rules and regulations, and shall perform such other duties  
5 and services as may be prescribed by the director. Such  
6 inspectors shall give particular attention to all conditions  
7 of each permit to ensure complete compliance therewith. The  
8 director shall cause inspections to be made of each active  
9 surface-mining operation in this state by a surface-mining  
10 reclamation inspector at least once every fifteen days. Said  
11 inspector shall note and describe violations of this article and  
12 immediately report such violations to the director in writing,  
13 furnishing at the same time a copy of such report to the  
14 operator concerned.

**§20-6D-6. Reclamation commission and authority.**

1 The reclamation commission created by article six of this  
2 chapter shall have authority to:

3 (a) Promulgate reasonable rules and regulations, in accord-  
4 dance with the provisions of chapter twenty-nine-a of this  
5 code, to implement the provisions of this article;

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

8 (c) Conduct hearings under provisions of this article or  
9 rules and regulations adopted by the commission and for the  
10 purpose of any investigation or hearing, hereunder, the  
11 commission or any member thereof may administer oaths or  
12 affirmations, subpoena witnesses, compel their attendance,

13 take evidence and require production of any books, papers,  
14 correspondence, memoranda, agreements, or other documents  
15 or records relevant or material to the inquiry;

16 (d) Order, through the director, the suspension or revoca-  
17 tion of any permit for failure to comply with any of the  
18 provisions of this article or any rules and regulations adopted  
19 pursuant thereto;

20 (e) Order, through the director, a cease and desist order  
21 of any operation that is started without a permit as required  
22 by law;

23 (f) Appoint such advisory committees as may be of assist-  
24 tance to the commission in the development of programs  
25 and policies: *Provided*, That such advisory committees shall,  
26 in each instance, include members representative of the  
27 general public; and

28 (g) Review orders and decisions of the director.

**§20-6D-7. Permit required; applications; issuance and renewals;  
fees and use of proceeds.**

1 It shall hereafter be unlawful for any person to engage in  
2 surface mining without having first obtained from the depart-  
3 ment of natural resources a permit therefor as provided in this  
4 section. Application for a surface-mining permit shall be made  
5 in writing on forms prescribed by the director of natural re-  
6 sources, and shall be signed and verified by the applicant.  
7 The application, in addition to such other information as may  
8 be reasonably required by the director, shall contain the fol-  
9 lowing information: (1) The common name and geologic title,  
10 where applicable, of the mineral or minerals to be extracted;  
11 (2) maps and plans as provided in section eight hereof; (3)  
12 the owner or owners of the surface of the land to be mined;  
13 (4) the owner or owners of the mineral to be mined; (5) the  
14 source of the operator's legal right to enter and conduct oper-  
15 ations on the land to be covered by the permit; (6) a reason-  
16 able estimate of the number of acres of land that will be dis-  
17 turbed by mining on the area to be covered by the permit;  
18 (7) the permanent and temporary post-office addresses of the  
19 applicant and of the owners of the surface and the mineral;

20 (8) whether any surface-mining permits are now held and the  
21 numbers thereof; (9) the names and post-office addresses of  
22 every officer, partner, director (or person performing a similar  
23 function), applicant, together with all persons, if any, owning  
24 of record or beneficially (alone or with associates), if known,  
25 ten percent or more of any class of stock of the applicant:  
26 *Provided*, That if such list be so large as to cause undue in-  
27 convenience, the director may waive the requirements that  
28 such list be made a part of such application, except the names  
29 and current addresses of every officer, partner, director and  
30 applicant must accompany such application; (10) if known,  
31 whether applicant, any subsidiary or affiliate or any person  
32 controlled by or under common control with applicant, or any  
33 person required to be identified by item (9) above, has ever  
34 had a surface-mining permit issued under the laws of  
35 this state revoked or has ever had a surface-mining bond,  
36 or security deposited in lieu of bond, forfeited; and (11) names  
37 and addresses of the reputed owner or owners of all surface  
38 area within five hundred feet of any part of proposed disturbed  
39 land, which such owners shall be notified by registered or cer-  
40 tified mail of such application and such owners shall be given  
41 ten days within which to file written objections thereto, if any,  
42 with the director. There shall be attached to the application a  
43 true copy of an original policy of insurance issued by an in-  
44 surance company authorized to do business in this state cover-  
45 ing all surface-mining operations of the applicant in this state  
46 and affording personal injury protection in an amount not  
47 less than one hundred thousand dollars and property damage,  
48 including blasting damage, protection in an amount of not less  
49 than three hundred thousand dollars.

50 The director shall upon receipt of the application for a per-  
51 mit cause to be published, as a Class III legal advertisement  
52 in accordance with the provisions of article three, chapter fifty-  
53 nine of this code, a notice of the application for the permit.  
54 Such notice shall contain in abbreviated form the information  
55 required by this section, together with the director's state-  
56 ment that written protests to such application will be re-  
57 ceived by him until a specified date, which date shall be at  
58 least thirty days after the first publication of the notice.

59 The publication area of the notices required by this section  
60 shall be the county or counties in which the proposed permit  
61 area is located. The cost of all publications required by this  
62 section shall be borne by the applicant.

63 Upon the filing of an application in proper form, accom-  
64 panied by the fees and bond required by this article and said  
65 true copy of the policy of insurance, and after consideration  
66 of the merits of the application and written protests, if any,  
67 the director may issue the permit applied for if the applicant  
68 has complied with all of the provisions of this article. If the  
69 director finds that the applicant is or has been affiliated with  
70 or managed or controlled by, or is or has been under the com-  
71 mon control of, other than as an employee, a person who  
72 or which has had a surface-mining permit revoked or bond  
73 or other security forfeited for failure to reclaim lands as re-  
74 quired by the laws of this state, he shall not issue a permit to  
75 the applicant: *Provided*, That no surface-mining permit shall  
76 be refused because of any past revocation of a permit and  
77 forfeiture of a bond or other security if such revocation and  
78 forfeiture occurred before July one, one thousand nine hundred  
79 seventy-one, and if, after such revocation and forfeiture, the  
80 operator whose permit has been revoked and bond forfeited  
81 shall have paid into the surface-mining reclamation fund the  
82 full amount of the bond so forfeited, and any additional sum  
83 of money determined by the director to be adequate to re-  
84 claim the land covered by such forfeited bond: *Provided*,  
85 *however*, That in no event shall such additional sum be less  
86 than sixty dollars per acre.

87 The permit shall be valid for one year from its date of  
88 issue. Upon verified application, containing such information  
89 as the director may reasonably require, accompanied by such  
90 fees and bond as are required by this article, and a true copy  
91 of the policy of insurance as aforesaid, the director shall from  
92 year to year renew the permit, if the operation is in com-  
93 pliance with the provisions of this article.

94 The registration fee for all permits for surface mining, shall  
95 be five hundred dollars. The annual renewal fee for permits  
96 for surface mining shall be one hundred dollars payable on the  
97 anniversary date of said permit upon renewal.

98 The permit of any operator who fails to pay any fees pro-  
99 vided for in this article shall be revoked.

100 All registration and renewal fees for surface mining shall  
101 be collected by the director and shall be deposited with the  
102 treasurer of the state of West Virginia to the credit of the oper-  
103 ating permit fees fund and shall be used, upon requisition of  
104 the director, for the administration of this article.

**§20-6D-8. Preplans.**

1 Under the provisions of this article, and rules and regula-  
2 tions adopted by the commission, the operator shall prepare  
3 a complete reclamation and mining plan for the area of land  
4 to be disturbed. Said reclamation and mining plan shall  
5 include a proposed method of operation, prepared by a regis-  
6 tered professional engineer or a person approved by the  
7 director, for grading, backfilling, soil preparation, mining  
8 and planting and such other proposals as may be necessary  
9 to develop the complete reclamation and mining plan con-  
10 templated by this article. In developing this complete recla-  
11 mation and mining plan all reasonable measures shall be  
12 taken to eliminate damages to members of the public, their  
13 real and personal property, public roads, streams and all  
14 other public property from soil erosion, rolling stones and  
15 overburden, water pollution and hazards dangerous to life  
16 and property. The plan shall be submitted to the director  
17 and the director shall notify the applicant by certified  
18 mail within thirty days after receipt of the plan and complete  
19 application if it is or is not acceptable. If the plan is not  
20 acceptable, the director shall set forth the reasons why the  
21 plan is not acceptable, and he may propose modifications,  
22 delete areas or reject the entire plan. Should the applicant  
23 disagree with the decision of the director, he may, by written  
24 notice, request a hearing before the commission. The com-  
25 mission shall hold such hearing within thirty days after  
26 receipt of this notice. When a hearing is held by the com-  
27 mission, it shall notify the applicant of its decision by certified  
28 mail within twenty days after the hearing. Any person  
29 aggrieved by a final order of the commission made after  
30 the hearing or without a hearing may appeal to the reclama-  
31 tion board of review.

32 The application for a permit shall be accompanied by  
33 copies of an enlarged United States geological survey  
34 topographic map meeting the requirements of the subdivisions  
35 below. Aerial photographs of the area shall be acceptable  
36 if the plan for reclamation can be shown to the satisfaction  
37 of the director. The maps shall:

38 (a) Be prepared and certified by or under the super-  
39 vision of a registered professional civil engineer, or a regis-  
40 tered professional mining engineer, or a registered land sur-  
41 veyor, who shall submit to the director a certificate of regis-  
42 tration as a qualified engineer or land surveyor;

43 (b) Identify the area to correspond with the application;

44 (c) Show probable limits of adjacent deep-mining opera-  
45 tions, probable limits of adjacent inactive or mined-out deep-  
46 mined areas and the boundaries of surface properties and  
47 names of surface and mineral owners of the surface area  
48 within five hundred feet of any part of the proposed disturbed  
49 area;

50 (d) Be of such scale as may be prescribed by the director;

51 (e) Show the names and locations of all streams, creeks  
52 or other bodies of public water, roads, buildings, cemeteries,  
53 active, abandoned or plugged oil and gas wells, and utility  
54 lines on the area of land to be disturbed and within five  
55 hundred feet of such area;

56 (f) Show by appropriate markings the boundaries of the  
57 area of land to be disturbed, the crop line of the seam to  
58 be mined, if any, and the total number of acres involved in  
59 the area of land to be disturbed;

60 (g) Show the date on which the map was prepared, the  
61 north point and the quadrangle sketch and exact location of  
62 the operation;

63 (h) Show the drainage plan on and away from the area of  
64 land to be disturbed. Such plan shall indicate the directional  
65 flow of water, constructed drainways, natural waterways  
66 used for drainage, and the streams or tributaries receiving  
67 or to receive this discharge. Upon receipt of such drainage

68 plan, the director may furnish to the chief of the division  
69 of water resources a copy of all information required by this  
70 subdivision, as well as the names and locations of all streams,  
71 creeks or other bodies of public water within five hundred  
72 feet of the area to be disturbed;

73 (i) Show the presence of any acid-producing materials  
74 which when present in the overburden, may cause spoil with  
75 a pH factor below 3.5, preventing effective revegetation.  
76 The presence of such materials, wherever occurring in sig-  
77 nificant quantity, shall be indicated on the map, filed with  
78 the application for permit. The operator shall also indicate the  
79 manner in which acid-bearing spoil will be suitably prepared  
80 for revegetation and stablization, whether by application  
81 of mulch or suitable soil material to the surface or by some  
82 other type of treatment, subject to approval of the director.

83 The operator shall also indicate the manner in which all  
84 permanent overburden disposal sites will be stabilized.

85 The certification of the maps shall read as follows: "I,  
86 the undersigned, hereby certify that this map is correct, and  
87 shows to the best of my knowledge and belief all the informa-  
88 tion required by the surface-mining laws of this state." The  
89 certification shall be signed and notarized. The director may  
90 reject any map as incomplete if its accuracy is not so  
91 attested.

92 In addition to the information and maps required above,  
93 each application for a permit shall be accompanied by a  
94 detailed reclamation plan as required by this article.

95 A monument as prescribed by the department of natural  
96 resources shall be placed in an approved location near the  
97 operation. If the operations under a single permit are not  
98 geographically continuous, the operator shall locate addi-  
99 tional monuments and submit additional maps before mining  
100 other areas.

101 Upon an order of the director, the operator shall, within  
102 thirty days after service of a copy of said order upon said  
103 operator by certified United States mail, furnish to the de-  
104 partment of natural resurces four copies of a progress map

105 prepared by or under the supervision of a registered pro-  
 106 fessional civil engineer or registered professional mining engi-  
 107 neer, or by a registered land surveyor, showing the area dis-  
 108 turbed by operations to the date of such map. Such progress  
 109 map shall contain information identical to that required for  
 110 both the proposed and final maps, required by this article, and  
 111 shall show in detail completed reclamation work, as required  
 112 by the director. Such progress map shall include a geologic  
 113 survey sketch showing the location of the operation, shall be  
 114 properly referenced to a permanent landmark, and shall be  
 115 within such reasonable degree of accuracy as may be pre-  
 116 scribed by the director. If no land has been disturbed by  
 117 operations during the preceding year, the operator shall notify  
 118 the director of this fact. A final map shall be submitted within  
 119 sixty days after completion of mining operations. Failure  
 120 to submit maps or aerial photographs or notices at specified  
 121 times shall cause the permit in question to be suspended.

**§20-6D-9. Installation of drainage system.**

1 Prior to the beginning of surface-mining operations, the  
 2 operator shall complete and shall thereafter maintain a drain-  
 3 age system including any necessary settling ponds in accordance  
 4 with the rules and regulations as established by the commis-  
 5 sion.

**§20-6D-10. Alternative plans; time.**

1 An operator may propose alternative plans not calling for  
 2 backfilling where a water impoundment is desired, if such re-  
 3 storation will be consistent with the purpose of this article.  
 4 Such plans shall be submitted to the director, and if such plans  
 5 are approved by the director and complied with within such  
 6 time limits as may be determined by him as being reasonable  
 7 for carrying out such plans, the backfilling requirements of  
 8 this article may be modified.

9 By regulations of the commission, time limits shall be es-  
 10 tablished requiring backfilling, grading and planting to be  
 11 kept current. All backfilling and grading shall be completed  
 12 before equipment necessary for such backfilling and grading is  
 13 moved from the operation.

14 If the operator or other person desires to conduct deep  
15 mining upon the premises or use a deep-mine opening for  
16 haulageways or other lawful purposes, the operator may desig-  
17 nate locations to be used for such purposes at which places  
18 it will not be necessary to backfill as herein provided for until  
19 such deep mining or other use is completed, during which  
20 time the bond on file for that portion of the operation shall  
21 not be released. Such locations shall be described and desig-  
22 nated on the map required by the provisions of section eight of  
23 this article.

24 Where applicable, suitable soil material shall be used to  
25 cover the surface of the regraded and backfilled area of oper-  
26 ation in an amount sufficient to support vegetation.

27 When the backfilling and grading have been completed and  
28 approved by the director, the director shall release that por-  
29 tion of the bond which was filed and designated to cover the  
30 backfilling and grading requirements of this article, the remain-  
31 ing portion of the bond in an amount equal to two hundred  
32 fifty dollars per acre, but not less than a total amount of five  
33 thousand dollars being retained by the treasurer until such  
34 time as the planting and revegetation is done according to law  
35 and is approved by the director, at which time the director  
36 shall release the remainder of the bond.

37 All fill and cut slopes shall be seeded during the first  
38 planting or seeding season after the construction of a haulage-  
39 way to the area. Upon abandonment of any haulageway, the  
40 haulageway shall be seeded and every effort made to prevent  
41 its erosion by means of culverts, waterbars or other devices  
42 required by the director. In proper season, all fill and cut  
43 slopes of the operation and haulageways shall be seeded and  
44 planted in a manner as prescribed by the director, as soil tests  
45 indicate soil suitability and in accordance with accepted agri-  
46 cultural and reforestation practices.

47 In any such area where surface mining is being conducted,  
48 mulch shall be required on all disturbed areas where the re-  
49 maining slope exceeds twenty degrees from horizontal as shown  
50 on the preplan map filed with the director as required by the  
51 provisions of section eight of this article.

52 After the operation has been backfilled, graded and ap-  
53 proved by the director, the operator shall prepare or cause to  
54 be prepared a final planting plan for the planting of trees,  
55 shrubs, vines, grasses or legumes upon the area of the land af-  
56 fected in order to provide a suitable vegetative cover. The  
57 seed or plant mixtures, quantities, method of planting, type  
58 and amount of lime, fertilizer, mulch, and any other measures  
59 necessary to provide a suitable vegetative cover shall be defined  
60 by the rules and regulations of the commission.

61 The planting called for by the final planting plan shall be  
62 carried out in a manner so as to establish a satisfactory cover  
63 of trees, shrubs, grasses, legumes or vines upon the disturbed  
64 area covered by the planting plan within a reasonable period  
65 of time. Such planting shall be done by the operator or such  
66 operator may contract in writing with the soil conservation  
67 district for the district in which the operation covered by such  
68 permit is located or with a private contractor approved by the  
69 director to have such planting done by such district or pri-  
70 vate contractor. The director shall not release the operator's  
71 bond until all haulageways, roads and trails within the permit  
72 area have been abandoned according to the provisions of this  
73 article and the rules and regulations promulgated thereunder or  
74 such operator or any other person has secured a permit to deep  
75 mine such area as required by chapter twenty-two of the code  
76 of West Virginia, one thousand nine hundred thirty-one, as  
77 amended.

78 The purpose of this section is to require restoration of land  
79 disturbed by surface mining to a desirable purpose and use.  
80 The director may, in the exercise of his sound discretion when  
81 not in conflict with such purpose, modify such requirements  
82 to bring about a more desirable land use, including, but not  
83 limited to, industrial sites, sanitary landfills, recreational areas,  
84 building sites: *Provided*, That the person or agency making  
85 such modifications will execute contracts, post bond or other-  
86 wise ensure full compliance with the provisions of this sec-  
87 tion in the event such modified program is not carried to com-  
88 pletion within a reasonable length of time.

**§20-6D-11. Limitations; mandamus.**

1 The Legislature finds that there are certain areas in the

2 state of West Virginia which are impossible to reclaim either  
3 by natural growth or by technological activity and that if sur-  
4 face mining is conducted in these certain areas such opera-  
5 tions may naturally cause stream pollution, landslides, the  
6 accumulation of stagnant water, flooding, the destruction of  
7 land for agricultural purposes, the destruction of aesthetic  
8 values, the destruction of recreational areas and future use  
9 of the area and surrounding areas, thereby destroying or im-  
10 pairing the health and property rights of others, and in general  
11 creating hazards dangerous to life and property so as to con-  
12 stitute an imminent and inordinate peril to the welfare of the  
13 state, and that such areas shall not be mined by the surface-  
14 mining process.

15 Therefore, authority is hereby vested in the director to de-  
16 lete certain areas from all surface-mining operations.

17 No application for a permit shall be approved by the direc-  
18 tor if there is found on the basis of the information set forth  
19 in the application or from information available to the director  
20 and made available to the applicant that the requirements of  
21 this article or rules and regulations hereafter adopted will  
22 not be observed or that there is not probable cause to believe  
23 that the proposed method of operation, backfilling, grading or  
24 reclamation of the affected area can be carried out consistent  
25 with the purpose of this article.

26 If the director finds that the overburden on any part of  
27 the area of land described in the application for a permit is  
28 such that experience in the state of West Virginia with a simi-  
29 lar type of operation upon land with similar overburden shows  
30 that one or more of the following conditions cannot feasibly  
31 be prevented: (1) Substantial deposition of sediment in stream  
32 beds, (2) landslides or (3) acid-water pollution, the director  
33 may delete such part of the land described in the application  
34 upon which such overburden exists.

35 If the director finds that the operation will constitute  
36 hazard to a dwelling house, public building, school, church,  
37 cemetery, commercial or institutional building, public road,  
38 stream, lake or other public property, then he shall delete

39 such areas from the permit application before it can be ap-  
40 proved.

41 The director shall not give approval to surface mine any  
42 area which is within one hundred feet of any public road,  
43 stream, lake or other public property, and shall not approve the  
44 application for a permit where the surface-mining operation  
45 will adversely affect a state, national or interstate park unless  
46 adequate screening and other measures approved by the com-  
47 mission are to be utilized and the permit application so pro-  
48 vides: *Provided*, That the one hundred foot restriction afore-  
49 said shall not include ways used for ingress and egress to and  
50 from the minerals as herein defined and the transportation of  
51 the removed minerals, nor shall it apply to the dredging and  
52 removal of minerals from the streams or watercourses of this  
53 state.

54 Whenever the director finds that ongoing surface-mining  
55 operations are causing or are likely to cause any of the con-  
56 ditions set forth in the first paragraph of this section, he may  
57 order immediate cessation of such operations and he shall  
58 take such other action or make such changes in the permit as  
59 he may deem necessary to avoid said described conditions.

60 The failure of the director to discharge the mandatory  
61 duty imposed on him by this section shall be subject to a writ  
62 of mandamus, in any court of competent jurisdiction by any  
63 private citizen affected thereby.

**§20-6D-11a. Blasting restriction; formula; filing preplan; penalties;  
notice.**

1 Where blasting of overburden or mineral is necessary, such  
2 blasting shall be done in accordance with established prin-  
3 ciples for preventing vibration damage to residences, buildings  
4 and communities. Such blasting shall be considered in com-  
5 pliance with provisions of this article if the following measures  
6 are followed:

7 (1) The weight in pounds of explosive charge detonated  
8 at any one time shall conform with the following scaled  
9 distance formula:  $W = (D/50)^2$  (to the second power). Where  
10  $W$  equals weight in pounds of explosives detonated at any

11 one instant time, then D equals distance in feet from nearest  
12 point of blast to nearest residence, building, or structure,  
13 other than operation facilities of the mined: *Provided*, That  
14 explosive charges shall be considered to be detonated at one  
15 time if their detonation occurs within eight milliseconds or  
16 less of each other.

17 (2) Where blast sizes would exceed the limits under  
18 subdivision (1) of this section, blasts shall be detonated by  
19 the use of delay detonators (either electric or nonelectric)  
20 to provide detonation times separated by nine milliseconds  
21 or more for each section of the blast complying with the  
22 scaled distance of the formula.

23 (3) A plan of each operation's methods for compliance  
24 with this section (blast delay design) for typical blasts  
25 which shall be adhered to in all blasting at each operation,  
26 shall be submitted to the department of natural resources  
27 with the application for a permit. It shall be accepted if  
28 it meets the scaled distance formula established in subdivision  
29 (1) of this section.

30 (4) Records of each blast shall be kept in a log to be  
31 maintained for at least three years, which will show for each  
32 blast other than secondary (boulder breaking) blasts the fol-  
33 lowing information:

- 34 (a) Date and time of blast,
- 35 (b) Number of holes,
- 36 (c) Typical explosive weight per delay period,
- 37 (d) Total explosives in blast at any one time,
- 38 (e) Number of delays used,
- 39 (f) Weather conditions, and
- 40 (g) Signature of operator employee in charge of the blast.

41 (5) Where inspection by the department of natural resources  
42 establishes that the scaled distance formula and the approved  
43 preplan are not being adhered to, the following penalties  
44 shall be imposed:

45 (a) For the first offense in any one permit year under  
46 this section, the permit holder shall be assessed not less than  
47 five hundred dollars nor more than one thousand dollars;

48 (b) For the second offense in any one permit year under  
49 this section, the permit holder shall be assessed not less than  
50 one thousand dollars nor more than five thousand dollars;

51 (c) For the third offense in any one permit year under  
52 this section or for the failure to pay any assessment here-  
53 inabove set forth within a reasonable time established by  
54 the director, the permit shall be revoked.

55 All such assessments as set forth in this section shall be  
56 assessed by the director, collected by him and deposited with  
57 the treasurer of the state of West Virginia, to the credit  
58 of the operating permit fees fund.

59 The director shall promulgate rules and regulations which  
60 shall provide for a warning of impending blasting to the  
61 owners, residents or other persons who may be present on  
62 property adjacent to the blasting area.

**§20-6D-12. Time in which reclamation shall be done.**

1 It shall be the duty of an operator to commence the  
2 reclamation of the area of land disturbed by his operation  
3 after the beginning of surface mining of that area in accord-  
4 ance with plans previously approved by the director and to  
5 complete such reclamation within twelve months after the  
6 permit has expired, except that such grading, backfilling  
7 and water-management practices as are approved in the plans  
8 shall be kept current with the operations as defined by rules  
9 and regulations of the commission and no permit or supple-  
10 ment to a permit shall be issued or renewed, if in the dis-  
11 cretion of the director, these practices are not current.

**§20-6D-13. Obligations of the operator.**

1 (a) In addition to the method of operation, grading, back-  
2 filling and reclamation requirements of this article and rules  
3 and regulations adopted pursuant thereto, the operator shall  
4 be required to perform the following:

5 (1) Cover the face of the coal and the disturbed area with  
6 material suitable to support vegetative cover and of such  
7 thickness as may be prescribed by the director, or with a per-  
8 manent water impoundment.

9 (2) Bury under adequate fill, all materials determined by  
10 the director to be acid-producing materials, toxic material or  
11 materials constituting a fire hazard.

12 (3) Seal off any breakthrough of acid water caused by the  
13 operator: *Provided*, That any breakthrough caused by the  
14 operator during the course of his operations shall be sealed  
15 immediately and reported immediately to the director. If the  
16 breakthrough is one that allows air to enter a mine, the seal  
17 shall either prevent any air from entering the mine by way  
18 of the breakthrough, or prevent any air from entering the  
19 breakthrough while allowing the water to flow from the break-  
20 through. If the breakthrough is one that allows acid water to  
21 escape, the seal shall prevent the acid water from flowing.  
22 Seals shall be constructed of stone, brick, block, earth or  
23 similar impervious materials which are acid resistant. Any  
24 cement or concrete employed in the construction of these  
25 seals shall also be of an acid resistant, impervious type.

26 (4) Impound, drain or treat all runoff water so as to reduce  
27 soil erosion, damage to agricultural lands and pollution of  
28 streams and other waters.

29 In the case of storm water accumulations or any break-  
30 through of water, adequate treatment shall be undertaken by  
31 the operator so as to prevent pollution occurring from the  
32 release of such water into the natural drainway or stream.  
33 Treatment may include check-dams, settling ponds and chemi-  
34 cal or physical treatment. In the case of a breakthrough of  
35 water, where it is possible, the water released shall be im-  
36 pounded immediately. All water so impounded shall receive  
37 adequate treatment by the operator before it is released into  
38 the natural drainway or stream.

39 Storm water or water which escapes, including that which  
40 escapes after construction of the seals, and is polluted as de-  
41 fined in this code, or as defined in the rules and regulations

42 promulgated under this code, shall be subject to the re-  
43 quirements of article five-a of this chapter.

44 (5) Remove or bury all metal, lumber, equipment and other  
45 refuse resulting from the operation. No operator shall throw,  
46 dump or pile; or permit the throwing, dumping, piling or  
47 otherwise placing of any overburden, stones, rocks, coal,  
48 mineral, earth, soil, dirt, debris, trees, wood, logs or other  
49 materials or substances of any kind or nature beyond or out-  
50 side the area of land which is under permit and for which  
51 bond has been posted; nor shall any operator place any of  
52 the foregoing listed materials in such a way that normal ero-  
53 sion or slides brought about by natural physical causes will  
54 permit the same to go beyond or outside the area of land which  
55 is under permit and for which bond has been posted.

56 (f) The operator shall show on the map, filed with the appli-  
57 cation for a permit, the percent of slope of original surface  
58 within each two hundred foot interval along the contour of  
59 the operation, the first measurement to be taken at the start-  
60 ing point of the operation. The flagged field measurement shall  
61 be made from the estimated crop line or proposed mineral  
62 seam down slope to the estimated toe of the outer spoil. All  
63 reasonable measures shall be taken so as not to overload  
64 the fill bench during the first cut. No overburden material in  
65 excess of the first cut shall be placed over the fill bench. With  
66 the exception of haulageways and auger-mining operations,  
67 trees and brush shall be removed from the upper one half of  
68 all fill sections prior to excavation, and no trees or brush re-  
69 moved from the cut section shall be placed therein or thereon.

70 (g) No fill bench shall be produced on slopes of more than  
71 sixty-five percent, except for construction of haulageways,  
72 and such haulageways shall not exceed thirty-five feet in width,  
73 with very scattered forty-five foot passing areas permitted.

74 Lateral drainage ditches connecting to natural or con-  
75 structed waterways shall be constructed to control water run-  
76 off and prevent erosion whenever required by the director.  
77 There shall be no depressions that will accumulate water ex-  
78 cept those the director may specify and approve. The depth  
79 and width of natural drainage ditches and any other diver-

80 sion ditches may vary depending on the length and degree  
81 of slope.

82 (h) With the exception of limestone, sandstone and sand,  
83 complete backfilling shall be required, not to exceed the ap-  
84 proximate original contour of the land. Such backfilling shall  
85 eliminate highwalls and spoil peaks. Whenever directed by  
86 the director, the operator shall construct, in the final grading,  
87 such diversion ditches or terraces as will control the water  
88 runoff. Additional restoration work may be required by the  
89 director, according to rules and regulations adopted by the  
90 commission.

**§20-6D-14. Cessation of operation by inspector.**

1 Notwithstanding any other provisions of this article, a  
2 surface-mining reclamation inspector shall have the authority  
3 to order the immediate cessation of any operation where  
4 (1) any of the requirements of this article or the rules and  
5 regulations promulgated pursuant thereto or the orders of  
6 the director or the commission have not been complied with  
7 or (2) the public welfare or safety calls for the immediate  
8 cessation of the operation. Such cessation of operation shall  
9 continue until corrective steps have been started by the  
10 operator to the satisfaction of the surface-mining reclamation  
11 inspector. Any operator who believes he is aggrieved by the  
12 actions of the surface-mining reclamation inspector may im-  
13 mediately appeal to the director, setting forth reasons why  
14 the operation should not be halted. The director shall deter-  
15 mine immediately when and if the operation may continue.

**§20-6D-15. Completion of planting; inspection and evaluation.**

1 When the planting of an area has been completed, the  
2 operator shall file or cause to be filed a planting report with  
3 the director on a form to be prescribed and furnished by the  
4 director, providing the following information: (1) Identifica-  
5 tion of the operation; (2) the type of planting or seeding,  
6 including mixtures and amounts; (3) the date of planting or  
7 seeding; (4) the area of land planted; and (5) such other  
8 relevant information as the director may require. All plant-  
9 ing reports shall be certified by the operator, or by the party

10 with whom the operator contracted for such planting, as  
11 aforesaid.

**§20-6D-16. Performance bonds.**

1 Each operator who shall make application for a permit  
2 under section seven of this article shall, at the time such  
3 permit is requested, furnish bond, on a form to be prescribed  
4 and furnished by the director, payable to the state of West  
5 Virginia and conditioned that the operator shall faithfully  
6 perform all of the requirements of this article. The amount  
7 of the bond shall be not less than six hundred dollars for  
8 each acre or fraction thereof of the land to be disturbed:  
9 *Provided*, That the director shall have the discretion to deter-  
10 mine the amount per acre of the bond that shall be required  
11 before a permit is issued, such amount to be based upon  
12 the estimated reclamation costs per acre, not to exceed a  
13 maximum of one thousand dollars per acre of fraction thereof.  
14 The minium amount of bond furnished shall be ten thousand  
15 dollars. Such bond shall be executed by the operator and  
16 a corporate surety licensed to do business in the state of  
17 West Virginia: *Provided, however*, That in lieu of corporate  
18 surety, the operator may elect to deposit with the director  
19 cash, or collateral securities or certificates as follows: Bonds  
20 of the United States or its possessions, of the federal land  
21 banks, or of the home owners' loan corporation; full faith  
22 and credit general obligation bonds of the state of West  
23 Virginia, or other states, and of any county, district or  
24 municipality of the state of West Virginia or other states; or  
25 certificates of deposit in a bank in this state, which certifica-  
26 tes shall be in favor of the commission. The cash deposit  
27 or market value of such securities or certificates shall be  
28 equal to or greater than the sum of the bond. The director  
29 shall, upon receipt of any such deposit of cash, securities or  
30 certificates, immediately place the same with the treasurer  
31 of the state of West Virginia whose duty it shall be to  
32 receive and hold the same in the name of the state in trust  
33 for the purpose for which such deposit is made. The opera-  
34 tor making the deposit shall be entitled from time to time  
35 to receive from the state treasurer, upon the written order  
36 of the director, the whole or any portion of any cash,

37 securities or certificates so deposited, upon depositing with  
38 him in lieu thereof, cash or other securities or certificates of  
39 the classes herein specified having value equal to or greater  
40 than the sum of the bond.

41 It shall be unlawful for the owner or owners of surface  
42 rights or the owner or owners of mineral rights to interfere  
43 with the operator in the discharge of his obligation to the  
44 state for the reclamation of lands disturbed by him. If the  
45 owner or owners of the surface rights or the owner or owners  
46 of the mineral rights desire another operator or other opera-  
47 tors to conduct mining operations on lands disturbed by  
48 the operator furnishing bond hereunder, it shall be the duty  
49 of said owner or owners to require the other operator or  
50 operators to secure the necessary mining permit and furnish  
51 suitable bond as herein provided. The director may then  
52 release an equivalent amount of the bond of the operator  
53 originally furnishing bond on the disturbed area.

54 The director shall not release that portion of any bond  
55 filed by any operator which is designated to assure faithful  
56 performance of, and compliance with, the backfilling and  
57 regrading requirements of the reclamation plan until all acid-  
58 bearing or acid-producing spoil within the permit area has  
59 received adequate treatment as specified in section ten of  
60 this article.

**§20-6D-17. Exception as to highway construction projects from reclamation requirements.**

1 Any provision of this article to the contrary notwithstand-  
2 ing, a person or operator shall not be subject to any duty or  
3 requirement whatever with respect to reclamation requirements  
4 when engaged in the removal for borrow and fill material for  
5 grading in federal and state highway construction projects:  
6 *Provided*, That the provisions of the highway construction  
7 contract requires the furnishing of a suitable bond which pro-  
8 vides for reclamation wherever practicable of the area affected  
9 by such recovery activity.

**§20-6D-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.**

1 All provisions of the mining laws of this state intended to

2 safeguard life and property shall extend to all surface-mining  
 3 operations insofar as such laws are applicable thereto. The  
 4 director of the department of mines shall promulgate reason-  
 5 able rules and regulations, in accordance with the provisions  
 6 of chapter twenty-nine-a of said code, to protect the safety of  
 7 those employed in and around surface mines. The enforce-  
 8 ment of all laws, and rules and regulations relating to the  
 9 safety of those employed in and around surface mines is here-  
 10 by vested in the department of mines and shall be enforced  
 11 according to the provisions of chapter twenty-two of this  
 12 code.

**§20-6D-19. Monthly report by operator.**

1 The operator of every surface mine shall, on or before the  
 2 end of each calendar month, file with the director of mines a  
 3 report covering the preceding calendar month on forms fur-  
 4 nished by the director. Such reports shall state the number of  
 5 accidents which have occurred, the number of persons em-  
 6 ployed, the days worked and the actual tonnage mined.

**§20-6D-20. Rules and regulations.**

1 The commission shall promulgate rules and regulations, in  
 2 accordance with the provisions of chapter twenty-nine-a of  
 3 said code, for the effective administration of this article.

**§20-6D-21. Noncompliance.**

1 If any of the requirements of this article or rules and regu-  
 2 lations promulgated pursuant thereto or the orders of the di-  
 3 rector and the commission have not been complied with within  
 4 the time limits set by the director or the commission or by this  
 5 article, the director shall cause a notice of noncompliance to  
 6 be served upon the operator, which notice shall order the oper-  
 7 ation to cease, or where found necessary, the director shall  
 8 order the suspension of a permit. A copy of such notice or  
 9 order shall be handed to the operator in person or served by  
 10 certified mail addressed to the operator at the permanent ad-  
 11 dress shown on the application for a permit. The notice of  
 12 noncompliance or order of suspension shall specify in what  
 13 respects the operator has failed to comply with this article  
 14 or the rules and regulations of the commission or orders of the

15 director and the commission. If the operator has not reached an  
16 agreement with the director or has not complied with the re-  
17 quirements set forth in the notice of noncompliance or order of  
18 suspension within the time limits set therein, the permit may  
19 be revoked by order of the director and the performance bond  
20 shall then be forfeited. If an agreement satisfactory to the  
21 director has not been reached within thirty days after sus-  
22 pension of any permit, any and all suspended permits shall  
23 then be declared revoked and the performance bonds with  
24 respect thereto forfeited.

25 When any bond is forfeited pursuant to the provisions of  
26 this article, the director shall give notice to the attorney general  
27 who shall collect the forfeiture without delay.

**§20-6D-22. Adjudications, findings, etc., to be by written order;  
contents; notice.**

1 Every adjudication, determination or finding by the com-  
2 mission or director affecting the rights, duties or privileges of  
3 any person subject to this article shall be made by written  
4 order and shall contain a written finding by the commission or  
5 director of the facts upon which the adjudication, determina-  
6 tion or finding is based. Notice of the making of such order  
7 shall be given to the person whose rights, duties or privileges  
8 are affected thereby by mailing a true copy thereof to such  
9 person by certified mail.

**§20-6D-23. Appeals to board; hearing; record; findings and orders  
of board.**

1 Any person claiming to be aggrieved or adversely affected  
2 by any rule and regulation or order of the reclamation com-  
3 mission or order of the director or by their or his failure to  
4 enter an order may appeal to the reclamation board of review  
5 for an order vacating or modifying such rule and regulation or  
6 order, or for such order as the commission or director should  
7 have entered.

8 The person so appealing to the board shall be known as the  
9 appellant and the commission and/or director shall be known  
10 as the appellee or appellees. The appellant and appellee or  
11 appellees shall be deemed to be parties to the appeal.

12 Such appeal shall be in writing and shall set forth the rule  
13 and regulations, order or omission complained of and the  
14 grounds upon which the appeal is based. Where the appellant  
15 claims to be aggrieved or adversely affected by an order, such  
16 appeal shall be filed with the board within thirty days after  
17 the date upon which the appellant received notice by certified  
18 mail of the making of the order complained of. Where the  
19 appellant claims to be aggrieved or adversely affected by any  
20 rule and regulation or omission, such appeal may be filed with  
21 the board at any time. A notice of the filing of such appeal  
22 shall be filed with the commission and director within three  
23 days after the appeal is filed with the board.

24 Within seven days after receipt of such notice of appeal,  
25 the commission or director shall prepare and certify to the  
26 board a complete record of the proceedings of the reclamation  
27 commission or director out of which the appeal arises, includ-  
28 ing all documents and correspondence relating to the matter.  
29 The expense of preparing the record shall be taxed as a part  
30 of the costs of the appeal.

31 Upon the filing of such appeal, the board shall fix the time  
32 and place at which the hearing on the appeal will be held,  
33 which hearing shall be held within twenty days after the notice  
34 of appeal is filed, and shall give the appellant and the commis-  
35 sion and director at least ten days' written notice thereof by  
36 certified mail. The board may postpone or continue any hear-  
37 ing upon its own motion or upon application of the appellant  
38 or of the commission or director.

39 The filing of an appeal provided for in this section shall not  
40 stay execution of the order appealed from.

41 The board shall hear the appeal de novo, and any party to  
42 the appeal may submit evidence.

43 For the purpose of conducting a hearing on an appeal, the  
44 board may require the attendance of witnesses and the produc-  
45 tion of books, records and papers, and it may, and at the re-  
46 quest of any party it shall, issue subpoenas for witnesses or  
47 subpoenas duces tecum to compel the production of any books,  
48 records or papers, directed to the sheriff of the county where  
49 such witnesses, books, records or papers are found, which sub-

50 poenas and subpoenas duces tecum shall be served and re-  
51 turned in the same manner as subpoenas and subpoenas duces  
52 tecum in civil litigation are served and returned. The fees and  
53 allowances for mileage of sheriffs and witnesses shall be the  
54 same as those permitted in civil litigation in trial courts. Such  
55 fees and mileage expenses incurred at the request of the ap-  
56 pellant shall be paid in advance by the appellant, and the re-  
57 mainder of such fees and expenses shall be paid out of funds  
58 appropriated for the expenses of the division of reclamation.

59 In case of disobedience or neglect of any subpoena or sub-  
60 poena duces tecum served on any person, or the refusal of any  
61 witness to testify to any matter regarding which he may be law-  
62 fully interrogated, the circuit court of the county in which such  
63 disobedience, neglect or refusal occurs, or any judge thereof in  
64 vacation, on application of the board or any member thereof,  
65 shall compel obedience by attachment proceedings for con-  
66 tempt as in the case of disobedience of the requirements of a  
67 subpoena or subpoena duces tecum issued from such court or  
68 a refusal to testify therein. Witnesses at such hearing shall  
69 testify under oath, and any member of the board may adminis-  
70 ter oaths or affirmations to persons who so testify.

71 At the request of any party to the appeal, a stenographic  
72 record of the testimony and other evidence submitted shall be  
73 taken by an official court shorthand reporter at the expense of  
74 the party making the request therefor. Such record shall in-  
75 clude all of the testimony and other evidence and the rulings on  
76 the admissibility of evidence, but any party may at the time  
77 object to the admission of any evidence and except to the rul-  
78 ings of the board thereon, and if the board refuses to admit  
79 evidence the party offering same may make a proffer thereof,  
80 and such proffer shall be made a part of the record of such  
81 hearing.

82 If upon completion of the hearing the boards finds that the  
83 rule and regulation or order appealed from was lawful and  
84 reasonable, it shall make a written order affirming the rule  
85 and regulation or order appealed from; if the board finds that  
86 such rule and regulation or order was unreasonable or unlaw-  
87 ful; it shall make a written order vacating or modifying the

88 rule and regulation or order appealed from; and if the board  
89 finds that the commission or director has unreasonably or un-  
90 lawfully failed to enter an order, it shall enter such order as  
91 it finds the commission or director should have made. Every  
92 order made by the board shall contain a written finding by the  
93 board of facts upon which the order is based. Notice of the  
94 making of such order shall be given forthwith to each party  
95 to the appeal by mailing a certified copy thereof to each such  
96 party by certified mail.

97 The order of the board shall be final unless vacated upon  
98 judicial review thereof.

**§20-6D-24. Appeal from order of board.**

1 Any party adversely affected by an order of the reclama-  
2 tion board of review, other than an order affirming, modifying,  
3 or vacating a rule and regulation of the commission, may  
4 obtain judicial review thereof by appealing therefrom either  
5 to the circuit court of Kanawha County or the circuit court  
6 of the county in which the surface-mining operation to which  
7 the order relates is or was conducted or is or was proposed  
8 to be conducted. Any party adversely affected by an order  
9 of the reclamation board of review, which order affirms,  
10 modifies or vacates a rule and regulation of the commission,  
11 may obtain judicial review thereof by appealing therefrom  
12 either to the circuit court of Kanawha County or the circuit  
13 court of the county in which the surface-mining operation  
14 to which the rule and regulation in question relates is or was  
15 conducted or is or was proposed to be conducted. Any  
16 party desiring to so appeal shall file with the board a notice  
17 of appeal designating the order appealed from and stating  
18 whether the appeal is taken on questions of law, questions  
19 of fact or questions of law and fact. A copy of such notice  
20 shall also be filed by the appellant with the court and shall  
21 be mailed or otherwise delivered to the appellee or appellees.  
22 Such notice and copies thereof shall be filed and mailed or  
23 otherwise delivered within thirty days after the date upon  
24 which the appellant received notice from the board by certi-  
25 fied mail of the making of the order appealed from. No appeal  
26 bond shall be required to make an appeal on questions of law,  
27 questions of fact or questions of law and fact effective.

28 The filing of a notice of appeal shall not automatically  
29 operate as a suspension of the order of the board. If it  
30 appears to the court that an unjust hardship to the appellant  
31 will result from the execution of the board's order pending  
32 determination of the appeal, the court may grant a suspension  
33 of such order and fix its terms.

34 Within fifteen days after receipt of the notice of appeal,  
35 the board shall prepare and file in the court the complete  
36 record of the proceedings out of which the appeal arises,  
37 including a transcript of the testimony and other evidence  
38 which was submitted before the board. The expense of pre-  
39 paring and transcribing such record shall be taxed as a part  
40 of the costs of the appeal. The appellant shall provide  
41 security for costs satisfactory to the court. Upon demand  
42 by a party, the board shall furnish, at the cost of the party  
43 requesting the same, a copy of such record. In the event such  
44 complete record is not filed in the court within the time  
45 provided for in this section, either party may apply to the  
46 court to have the case docketed, and the court shall order  
47 such record filed.

48 Appeals taken on questions of law, fact or both, shall  
49 be heard upon assignment of error filed in the case or set  
50 out in the briefs of the appellant. Errors not argued by  
51 brief may be disregarded, but the court may consider and  
52 decide errors which are not assigned or argued.

53 The hearing before the court shall be upon the record  
54 made before the reclamation board of review. The court may  
55 set aside any order of the reclamation board of review which  
56 is clearly erroneous in view of the reliable, probative and  
57 substantial evidence on the whole record, or which is deter-  
58 mined by the court to involve a clearly unwarranted exercise  
59 of discretion. The judgment of the court shall be final unless  
60 reversed, vacated or modified on appeal to the supreme  
61 court of appeals of West Virginia, and jurisdiction is hereby  
62 conferred upon such court to hear and entertain such appeals  
63 upon application made therefor in the manner and within  
64 the time provided for civil appeals generally.

**§20-6D-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.**

1 (a) Any person who shall conduct any surface-mining  
2 operation, or any part thereof, without a permit or without  
3 having furnished the required bond, or who shall carry on  
4 such operation or be a party thereto on land not covered by  
5 a permit, or who shall falsely represent any material fact  
6 in an application for a permit or in an application for the  
7 renewal of a permit, or who willfully violates any provision  
8 of this article, shall be guilty of a misdemeanor, and, upon  
9 conviction thereof, shall be punished by a fine of not less  
10 than one hundred nor more than one thousand dollars or by  
11 imprisonment not exceeding six months, or by both. Any  
12 person who deliberately violates any provision of this article  
13 or conducts surface-mining operations without a permit shall  
14 be guilty of a misdemeanor, and, upon conviction thereof,  
15 shall be punished by a fine of not less than one thousand nor  
16 more than ten thousand dollars or by imprisonment not  
17 exceeding six months, or by both. Each day of violation  
18 constitutes a separate offense. It shall be the duty of the  
19 director to institute prosecutions for violations of the pro-  
20 visions hereof. Any person convicted under the provisions  
21 of this section shall, in addition to any fine imposed, pay  
22 to the director for deposit in the surface-mining reclamation  
23 fund an amount sufficient to reclaim the area with respect  
24 to which such conviction relates. The director shall institute  
25 any suit or other legal action necessary for the effective  
26 administration of the provisions of this article.

27 (b) In addition to and notwithstanding any other penalties  
28 provided by law, any operator who directly causes damage  
29 to the property of others as a result of surface mining shall  
30 be liable to them, in an amount not in excess of three times  
31 the provable amount of such damage, if and only if such  
32 damage occurs before or within one year after such operator  
33 has completed all reclamation work with respect to the land  
34 on which such surface mining was carried out and all bonds  
35 of such operator with respect to such reclamation work are  
36 released. Such damages shall be recoverable in an action at  
37 law in any court of competent jurisdiction. The director

38 shall require, in addition to any other bonds and insurance  
39 required by other provisions of this article, that any person  
40 engaged in the business of surface mining shall file with the  
41 director a certificate of insurance, or other security in an  
42 amount of not less than ten thousand dollars, to cover possible  
43 damage to property for which a recovery may be sought under  
44 the provisions of this subsection.

45 (c) Upon application by the director, the attorney general,  
46 or the prosecuting attorney of the county in which the major  
47 portion of the permit area is located, any court of competent  
48 jurisdiction may by injunction compel compliance with and  
49 enjoin violations of the provisions of this article. The court  
50 or the judge thereof in vacation may issue a preliminary  
51 injunction in any case pending a decision on the merits of  
52 any application filed.

53 An application for an injunction under the provisions of  
54 this section may be filed and injunctive relief granted  
55 notwithstanding that all of the administrative remedies pro-  
56 vided for in this article have not been pursued or invoked  
57 against the person or persons against whom such relief is  
58 sought and notwithstanding that the person or persons against  
59 whom such relief is sought have not been prosecuted or  
60 convicted under the provisions of this article.

61 The judgment of the circuit court upon any application  
62 filed under the provisions of this article shall be final  
63 unless reversed, vacated or modified on appeal to the supreme  
64 court of appeals. Any such appeal shall be sought in the  
65 manner provided by law for appeals from circuit courts in  
66 other civil cases, except that the petition seeking such review  
67 must be filed with said supreme court of appeals within  
68 thirty days from the date of entry of the judgment of the  
69 circuit court.

**§20-6D-26. Validity and construction of existing surface-mining permits.**

1 Any valid surface mining permit existing on the effective  
2 date of this article shall remain in full force and effect until  
3 such permit expires under its terms or is otherwise terminated  
4 under the provisions of this article. The provisions of this

§20-6D-27. Certification of surface miners.

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.

5 section shall not be construed to require the regrading or  
6 replanting of any area on which such work was satisfactorily  
7 performed prior to the effective date of this article.

§20-6<sup>D</sup>-28. Certification of surface mine foremen.

1 (a) In every surface mine where five or more persons are  
2 employed in a period of twenty-four hours, the operator shall  
3 employ at least one person certified in accordance with the  
4 provisions of article six-a, chapter twenty-two of this code  
5 as a mine foreman. Each applicant for certification as a mine  
6 foreman shall, at the time he is issued a certificate of com-  
7 petency: (1) Be a resident or employed in a mine in this  
8 state; (2) have had at least three years' experience in surface  
9 mining, which shall include at least eighteen months' exper-  
10 ience on or at a working section of a surface mine or be a  
11 graduate of the school of mines at West Virginia University  
12 or of another accredited mining engineering school and have  
13 had at least two years' practical experience in a surface mine,  
14 which shall include at least eighteen months' experience on or  
15 at a working section of a surface mine; and (3) have demon-  
16 strated his knowledge of mine safety, first aid, safety appli-  
17 ances, emergency procedures relative to all equipment, state  
18 and federal mining laws and regulations and other subjects  
19 by completing such training, education and examinations as  
20 may be required of him under said article six-a.

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

*S.A. Blankenship*  
*B.M. B.*

Enr. Com. Sub. for H. B. 1551] 34

36 University or of another accredited mining engineering school  
37 and have had twelve months' practical experience in a surface  
38 mine, all of which shall have been on or at a working section.

39 (c) The director shall promulgate such rules and regula-  
40 tions as may be necessary to carry out the provisions of this  
41 section.

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

*James L. Davis*  
Chairman Senate Committee

*Lawrence C. Chestnut, Jr.*  
Chairman House Committee

Originated in the House.

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

*Fred C. Willis*  
Clerk of the Senate

*W. A. Blankenship*  
Clerk of the House of Delegates

*W. T. Brotherton*  
President of the Senate

*Clayton K. Lee, Jr.*  
Speaker House of Delegates

The within *is approved* this the *26*  
day of *March*, 1980.

*Don. R. Raley*  
Governor

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