WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED
Committee Substitute for
HOUSE BILL No. 1551

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

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

The Legislature finds that, although surface mining provides much needed employment and has produced good safety records, unregulated surface mining causes soil erosion, pyritic shales and materials landslides, noxious materials, stream pollution and accumulation of stagnant water, increases the likelihood of floods and slides, destroys the value of some lands for agricultural purposes and some lands for recreational purposes, destroys aesthetic values, counteracts efforts for the conservation of soil, water and other natural resources, and destroys or impairs the health, safety, welfare and property rights of the citizens of West Virginia, where proper mining and reclamation is not practiced.
The Legislature also finds that there are wide variations regarding location and terrain conditions surrounding and arising out of surface mining primarily in topographical and geological conditions, and by reason thereof, it is necessary to provide the most effective, beneficial and equitable solution to the problems involved.

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

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 so as to effect an orderly and harmonious administration of the provisions of this article. The director 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. He may also receive any federal funds, state funds or any other funds for the reclamation of land affected by surface mining.

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

§20-6D-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:
(a) "Adequate treatment" shall mean treatment of water by physical, chemical or other approved methods in a manner that will cause the analyzed pH level of the treated water to be 6.0 - 9.0 and analyzed content of iron of the treated water to be seven milligrams per liter or less, or approved treatment which will not lower the water quality standards established for the river, stream or drainway into which such water is released.

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

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

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

(e) "Minerals" shall mean clay, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore: Provided, That the term minerals does not include coal.

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

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

(h) "Permit area" shall mean the area of land indicated on the approved map submitted by the operator with the reclamation plan as specified in section eight of this article showing the exact location of end strip markers, permit markers and monument.
(i) "Person" shall mean any individual, partnership, firm, association, trust or corporation.

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

(k) "Surface mining" shall mean all activity for the recovery of minerals, and all plants and equipment used in processing said minerals: Provided, That the bonding and reclamation provisions of this article shall not apply to surface mining of limestone, sandstone and sand: Provided, however, That the surface mining of limestone, sandstone and sand shall be subject to separate rules and regulations to be promulgated by the commission.

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

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

Except as otherwise provided in this article, the division of reclamation, created in article six of this chapter, shall administer all of the laws of this state relating to surface mining and subject to the approval of the director of natural resources 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 jurisdiction, supervision and enforcement authority granted the division in this article shall be in addition to the jurisdiction, supervision and enforcement authority granted in this chapter. The division shall cooperate with other offices and divisions of the department of natural resources.

§20-6D-4. 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:

Provided, That the provisions of this section shall not affect the status of persons employed on the effective date of this article as reclamation inspectors under the former provisions of chapter twenty, if such persons are qualified civil service employees.

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

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

The surface mining reclamation inspectors 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. The director shall cause inspections to be made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days. Said inspector shall note and describe 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.

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

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

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

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

(c) Conduct hearings 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 or any member thereof may administer oaths or affirmations, subpoena witnesses, compel their attendance,
take evidence and require production of any books, papers, correspondences, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(d) Order, through the director, the suspension or revocation of any permit for failure to comply with any of the provisions of this article or any rules and regulations adopted pursuant thereto;

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

(f) Appoint such advisory committees as may be of assistance 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; and

(g) Review orders and decisions of the director.

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

It shall hereafter be unlawful for any person to engage in surface mining without having first obtained from the department of natural resources a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the director of natural resources, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the director, shall contain the following information: (1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section eight hereof; (3) the owner or owners of the surface of the land to be mined; (4) the owner or owners of the mineral to be mined; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit; (7) the permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral;
(8) whether any surface-mining permits are now held and the numbers thereof; (9) the names and post-office addresses of every officer, partner, director (or person performing a similar function), applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten percent or more of any class of stock of the applicant: 

Provided, That if such list be so large as to cause undue inconvenience, the director may waive the requirements that such list be made a part of such application, except the names and current addresses of every officer, partner, director and applicant must accompany such application; (10) if known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface-mining permit issued under the laws of this state revoked or has ever had a surface-mining bond, or security deposited in lieu of bond, forfeited; and (11) names and addresses of the reputed owner or owners of all surface area within five hundred feet of any part of proposed disturbed land, which such owners shall be notified by registered or certified mail of such application and such owners shall be given ten days within which to file written objections thereto, if any, with the director. There shall be attached to the application a true copy of an original policy of insurance issued by an insurance company authorized to do business in this state covering all surface-mining operations of the applicant in this state and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, protection in an amount of not less than three hundred thousand dollars.

The director shall upon receipt of the application for a permit cause to be published, as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of the application for the permit. Such notice shall contain in abbreviated form the information required by this section, together with the director's statement that written protests to such application will be received by him until a specified date, which date shall be at least thirty days after the first publication of the notice.
The publication area of the notices required by this section shall be the county or counties in which the proposed permit area is located. The cost of all publications required by this section shall be borne by the applicant.

Upon the filing of an application in proper form, accompanied by the fees and bond required by this article and said true copy of the policy of insurance, and after consideration of the merits of the application and written protests, if any, the director may issue the permit applied for if the applicant has complied with all of the provisions of this article. 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 or which 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, That no surface-mining permit shall be refused because of any past revocation of a permit and forfeiture of a bond or other security if such revocation and forfeiture occurred before July one, one thousand nine hundred seventy-one, and if, after such revocation and forfeiture, the operator whose permit has been revoked and bond forfeited shall have paid into the surface-mining reclamation fund the full amount of the bond so forfeited, and any additional sum of money determined by the director to be adequate to reclaim the land covered by such forfeited bond: Provided, however, That in no event shall such additional sum be less than sixty dollars per acre.

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

The registration fee for all permits for surface mining, shall be five hundred dollars. The annual renewal fee for permits for surface mining shall be one hundred dollars payable on the anniversary date of said permit upon renewal.
The permit of any operator who fails to pay any fees provided for in this article shall be revoked.

All registration and renewal fees for surface mining shall be collected by the director and shall be deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the director, for the administration of this article.


Under the provisions of this article, and rules and regulations adopted by the commission, the operator shall prepare a complete reclamation and mining plan for the area of land to be disturbed. Said reclamation and mining plan shall include a proposed method of operation, prepared by a registered professional engineer or a person approved by the director, for grading, backfilling, soil preparation, mining and planting and such other proposals as may be necessary to develop the complete reclamation and mining plan contemplated by this article. In developing this complete reclamation and mining plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the director shall set forth the reasons why the plan is not acceptable, and he may propose modifications, delete areas or reject the entire plan. Should the applicant disagree with the decision of the director, he may, by written notice, request a hearing before the commission. The commission shall hold such hearing within thirty days after receipt of this notice. When a hearing is held by the commission, it shall notify the applicant of its decision by certified mail within twenty days after the hearing. Any person aggrieved by a final order of the commission made after the hearing or without a hearing may appeal to the reclamation board of review.
The application for a permit shall be accompanied by copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area shall be acceptable if the plan for reclamation can be shown to the satisfaction of the director. The maps shall:

(a) Be prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a registered land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land surveyor;

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

(c) Show probable limits of adjacent deep-mining operations, probable limits of adjacent inactive or mined-out deep-mined areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

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

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

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

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

(h) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage
plan, the director may furnish to the chief of the division of water resources a copy of all information required by this subdivision, as well as the names and locations of all streams, creeks or other bodies of public water within five hundred feet of the area to be disturbed;

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

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

The certification of the maps shall read as follows: “I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the surface-mining laws of this state.” The certification shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

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

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

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the department of natural resources four copies of a progress map
preparation by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations 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 this fact. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended.

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

Prior to the beginning of surface-mining operations, the operator shall complete and shall thereafter maintain a drainage system including any necessary settling ponds in accordance with the rules and regulations as established by the commission.

§20-6D-10. Alternative plans; time.

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

By regulations of the commission, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such backfilling and grading is moved from the operation.
If the operator or other person desires to conduct deep mining upon the premises or use a deep-mine opening for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such deep mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. Such locations shall be described and designated on the map required by the provisions of section eight of this article.

Where applicable, suitable soil material shall be used to cover the surface of the regraded and backfilled area of operation in an amount sufficient to support vegetation.

When the backfilling and grading have been completed and approved by the director, the director shall release that portion of the bond which was filed and designated to cover the backfilling and grading requirements of this article, the remaining portion of the bond in an amount equal to two hundred fifty dollars per acre, but not less than a total amount of five thousand dollars being retained by the treasurer until such time as the planting and revegetation is done according to law and is approved by the director, at which time the director shall release the remainder of the bond.

All fill and cut slopes shall be seeded during the first planting or seeding season after the construction of a haulageway to the area. Upon abandonment of any haulageway, the haulageway shall be seeded and every effort made to prevent its erosion by means of culverts, waterbars or other devices required by the director. In proper season, all fill and cut slopes of the operation and haulageways shall be seeded and planted in a manner as prescribed by the director, as soil tests indicate soil suitability and in accordance with accepted agricultural and reforestation practices.

In any such area where surface mining is being conducted, mulch shall be required on all disturbed areas where the remaining slope exceeds twenty degrees from horizontal as shown on the preplan map filed with the director as required by the provisions of section eight of this article.
After the operation has been backfilled, graded and approved by the director, the operator shall prepare or cause to be prepared a final planting plan for the planting of trees, shrubs, vines, grasses or legumes upon the area of the land affected in order to provide a suitable vegetative cover. The seed or plant mixtures, quantities, method of planting, type and amount of lime, fertilizer, mulch, and any other measures necessary to provide a suitable vegetative cover shall be defined by the rules and regulations of the commission.

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

The purpose of this section is to require restoration of land disturbed by surface mining to a desirable purpose and use. The director may, in the exercise of his sound discretion when not in conflict with such purpose, modify such requirements to bring about a more desirable land use, including, but not limited to, industrial sites, sanitary landfills, recreational areas, building sites: Provided, That the person or agency making such modifications will execute contracts, post bond or otherwise ensure full compliance with the provisions of this section in the event such modified program is not carried to completion within a reasonable length of time.

§20-6D-11. Limitations; mandamus.

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

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

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

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 of West Virginia with a simi-
lar 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.

If the director finds that the operation will constitute
hazard to a dwelling house, public building, school, church,
cemetery, commercial or institutional building, public road,
stream, lake or other public property, then he shall delete
such areas from the permit application before it can be approved.

The director shall not give approval to surface mine any area which is within one hundred feet of any public road, stream, lake or other public property, and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, That the one hundred foot restriction aforesaid shall not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor shall it apply to the dredging and removal of minerals from the streams or watercourses of this state.

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

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

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

Where blasting of overburden or mineral is necessary, such blasting shall be done in accordance with established principles for preventing vibration damage to residences, buildings and communities. Such blasting shall be considered in compliance with provisions of this article if the following measures are followed:

(1) The weight in pounds of explosive charge detonated at any one time shall conform with the following scaled distance formula: \( W = \left( \frac{D}{50} \right)^2 \). Where \( W \) equals weight in pounds of explosives detonated at any
one instant time, then \( D \) equals distance in feet from nearest
point of blast to nearest residence, building, or structure,
other than operation facilities of the mined: \textit{Provided}, That
explosive charges shall be considered to be detonated at one
time if their detonation occurs within eight milliseconds or
less of each other.

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

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

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

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

(5) Where inspection by the department of natural resources
establishes that the scaled distance formula and the approved
preplan are not being adhered to, the following penalties
shall be imposed:
§20-6D-12. **Time in which reclamation shall be done.**

It shall be the duty of an operator to commence the reclamation of the area of land disturbed by his operation after the beginning of surface mining of that area in accordance with plans previously approved by the director and to complete such reclamation within twelve months after the permit has expired, except that such grading, backfilling and water-management practices as are approved in the plans shall be kept current with the operations as defined by rules and regulations of the commission and no permit or supplement to a permit shall be issued or renewed, if in the discretion of the director, these practices are not current.

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

(a) In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules and regulations adopted pursuant thereto, the operator shall be required to perform the following:
(1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the director, or with a permanent water impoundment.

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

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

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

In the case of storm water accumulations or any breakthrough of water, adequate treatment shall be undertaken by the operator so as to prevent pollution occurring from the release of such water into the natural drainway or stream. Treatment may include check-dams, settling ponds and chemical or physical treatment. In the case of a breakthrough of water, where it is possible, the water released shall be impounded immediately. All water so impounded shall receive adequate treatment by the operator before it is released into the natural drainway or stream.

Storm water or water which escapes, including that which escapes after construction of the seals, and is polluted as defined in this code, or as defined in the rules and regulations
promulgated under this code, shall be subject to the re-
requirements of article five-a of this chapter.

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

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

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

Lateral drainage ditches connecting to natural or con-
structed waterways shall be constructed to control water run-
off and prevent erosion whenever required by the director.
There shall be no depressions that will accumulate water ex-
cept those the director may specify and approve. The depth
and width of natural drainage ditches and any other diver-
sion ditches may vary depending on the length and degree of slope.

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

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

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

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

When the planting of an area has been completed, the operator shall file or cause to be filed a planting report with the director on a form to be prescribed and furnished by the director, providing the following information: (1) Identification of the operation; (2) the type of planting or seeding, including mixtures and amounts; (3) the date of planting or seeding; (4) the area of land planted; and (5) such other relevant information as the director may require. All planting reports shall be certified by the operator, or by the party
§20-6D-16. Performance bonds.

Each operator who shall make application for a permit under section seven of this article shall, at the time such permit is requested, furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned that the operator shall faithfully perform all of the requirements of this article. The amount of the bond shall be not less than six hundred dollars for each acre or fraction thereof of the land to be disturbed:

Provided, That the director shall have the discretion to determine the amount per acre of the bond that shall be required before a permit is issued, such amount to be based upon the estimated reclamation costs per acre, not to exceed a maximum of one thousand dollars per acre of fraction thereof. The minimum amount of bond furnished shall be ten thousand dollars. Such bond shall be executed by the operator and a corporate surety licensed to do business in the state of West Virginia: Provided, however, That in lieu of corporate surety, the operator may elect to deposit with the director cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land banks, 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 commission. The cash deposit or market value of such securities 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, immediately 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. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written order of the director, the whole or any portion of any cash,
It shall be unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligation to the state for the reclamation of lands disturbed by him. If the owner or owners of the surface rights or the owner or owners of the mineral rights desire another operator or other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it shall be the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The director may then release an equivalent amount of the bond of the operator originally furnishing bond on the disturbed area.

The director shall 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 regrading requirements of the reclamation plan until all acid-bearing or acid-producing spoil within the permit area has received adequate treatment as specified in section ten of this article.

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

Any provision of this article to the contrary notwithstanding, a person or operator shall not be subject to any duty or requirement whatever with respect to reclamation requirements when engaged in the removal for borrow and fill material for grading in federal and state highway construction projects: Provided, That the provisions of the highway construction contract requires the furnishing of a suitable bond which provides for reclamation wherever practicable of the area affected by such recovery activity.

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

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 rules and regulations, in accordance with the provisions of chapter twenty-nine-a of said code, to protect the safety of those employed in and around surface mines. The enforcement of all laws, and rules 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.


The operator of every surface mine shall, on or before the end of each calendar month, file with the director of mines a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

§20-6D-20. Rules and regulations.

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


If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the director and the commission have not been complied with within the time limits set by the director or the commission or by this article, the director shall cause a notice of noncompliance to be served upon the operator, which notice shall order the operation to cease, or where found necessary, the director shall order the suspension of a permit. A copy of such notice or order shall be handed to the operator in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this article or the rules and regulations of the commission or orders of the
director and the commission. If the operator has not reached an
agreement with the director or has not complied with the re-
quirements set forth in the notice of noncompliance or order of
suspension within the time limits set therein, the permit may
be revoked by order of the director and the performance bond
shall then be forfeited. If an agreement satisfactory to the
director has not been reached within thirty days after sus-
pension of any permit, any and all suspended permits shall
then be declared revoked and the performance bonds with
respect thereto forfeited.

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

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

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

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

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

The person so appealing to the board shall be known as the
appellant and the commission and/or director shall be known
as the appellee or appellees. The appellant and appellee or
appellees shall be deemed to be parties to the appeal.
Such appeal shall be in writing and shall set forth the rule and regulations, order or omission complained of and the grounds upon which the appeal is based. Where the appellant claims to be aggrieved or adversely affected by an order, such appeal shall be filed with the board within thirty days after the date upon which the appellant received notice by certified mail of the making of the order complained of. Where the appellant claims to be aggrieved or adversely affected by any rule and regulation or omission, such appeal may be filed with the board at any time. A notice of the filing of such appeal shall be filed with the commission and director within three days after the appeal is filed with the board.

Within seven days after receipt of such notice of appeal, the 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 relating to the matter. The expense of preparing the record shall be taxed as a part of the costs of the appeal.

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 twenty days after the notice of appeal is filed, and shall give the appellant and the commission and director at least ten days' written notice thereof by certified mail. The board may postpone or continue any hearing upon its own motion or upon application of the appellant or of the commission or director.

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

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 sub-
poenas and subpoenas duces tecum shall be served and re-
turned 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. Such
fees and mileage expenses incurred at the request of the ap-
pellant shall be paid in advance by the appellant, and the re-
mainder of such fees and expenses shall be paid out of funds
appropriated for the expenses of the division of reclamation.

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

At the request of any party to the appeal, a stenographic
record of the testimony and other evidence submitted shall be
taken by an official court shorthand reporter at the expense of
the party making the request therefor. Such record shall in-
clude 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 rul-
ings of the board thereon, and if the board refuses to admit
evidence the party offering same may make a proffer thereof,
and such proffer shall be made a part of the record of such
hearing.

If upon completion of the hearing the boards finds that the
rule and regulation or order appealed from was lawful and
reasonable, it shall make a written order affirming the rule
and regulation or order appealed from; if the board finds that
such rule and regulation or order was unreasonable or unlaw-
ful; it shall make a written order vacating or modifying the
rule and regulation or order appealed from; and if the board
finds that the commission or director has unreasonably or un-
lawfully failed to enter an order, it shall enter such order as
it finds the commission or director should have made. Every
order made by the board shall contain a written finding by the
board of 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 certified mail.

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


Any party adversely affected by an order of the reclama-
tion board of review, other than an order affirming, modifying,
or vacating a rule and regulation of the commission, may
obtain judicial review thereof by appealing therefrom either
to the circuit court of Kanawha County or the circuit court
of the county in which the surface-mining operation to which
the order relates is or was conducted or is or was proposed
to be conducted. Any party adversely affected by an order
of the reclamation board of review, which order affirms,
modifies or vacates a rule and regulation of the commission,
may obtain judicial review thereof by appealing therefrom
either to the circuit court of Kanawha County or the circuit
court of the county in which the surface-mining operation
to which the rule and regulation in question relates is or was
conducted or is or was proposed to be conducted. Any
party desiring to so appeal shall file with the board a notice
of appeal designated the order appealed from and stating
whether the appeal is taken on questions of law, questions
of fact or questions of law and fact. 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 or appellees.
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 certi-
fied mail of the making of the order appealed from. No appeal
bond shall be required to make an appeal on questions of law,
questions of fact or questions of law and fact effective.
The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of such order and fix its terms.

Within fifteen 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 provide 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.

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, but the court may consider and decide errors which are not assigned or argued.

The hearing before the court shall be upon the record made before the reclamation board of review. The court may set aside any order of the reclamation board of review which is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or which is determined by the court to involve a clearly unwarranted exercise of discretion. 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.
§20-6D-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.

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

(b) In addition to and notwithstanding any other penalties provided by law, any operator who directly causes damage to the property of others as a result of surface mining shall be liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one year after such operator has completed all reclamation work with respect to the land on which such surface mining was carried out and all bonds of such operator with respect to such reclamation work are released. Such damages shall be recoverable in an action at law in any court of competent jurisdiction. The director
shall require, in addition to any other bonds and insurance required by other provisions of this article, that any person engaged in the business of surface mining shall file with the director a certificate of insurance, or other security in an amount of not less than ten thousand dollars, to cover possible damage to property for which a recovery may be sought under the provisions of this subsection.

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

An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

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


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


(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 said article six-a.

(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 foremen 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 shall promulgate such rules and regulations as may be necessary to carry out the provisions of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence L. Christian  
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.

Jude E. Whitt  
Clerk of the Senate

V. Blankenship  
Clerk of the House of Delegates

W. T. Bransford  
President of the Senate

J. M. Bevill  
Speaker House of Delegates

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

John D. Rocker  
Governor