WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
SENATE BILL NO. 585

(By Mr. Staggers & Mr. Britton)

PASSED April 9, 1981
In Effect ninety days from Passage
ENROLLED

Senate Bill No. 585
(By Mr. Staggers and Mr. Boettner)

[Passed April 9, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact section thirteen, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general environmental protection performance standards for surface mining; variances; revegetation of reclaimed areas.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. SURFACE MINING AND RECLAMATION.


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) If the director finds in writing that:

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

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

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

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

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

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

(B) If the reclamation commission has promulgated
specific regulations to govern the granting of such variances
in accordance with the provisions of this subparagraph and
has imposed such additional requirements as he deems
necessary;
(C) If variances granted under the provisions of this subsection are to be reviewed by the director not more than three years from the date of issuance of the permit; and

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

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

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

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

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

That when the director approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation shall commence at the date of initial planting for such agricultural postmining and use;

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

(22) Place all excess spoil material resulting from surface mining activities in such a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and shall be placed, where possible, upon, or above, a natural terrace, bench or berm, if such placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: *Provided,* That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone, or other rocks that do not slake in water, the director may ap-
prove alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: Provided further, That such approval shall not be unreasonably withheld if the site is suitable;

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

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where (A) natural barriers do not provide adequate stability, (B) natural barriers would result in potential future water quality deterioration, and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points.

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

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

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

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

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

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

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

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within _______ approved _______ this the ______ day of _______ 1981.

Governor