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**WEST VIRGINIA LEGISLATURE**

**REGULAR SESSION, 1983**

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**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 116**

(By Mr. Colombo)

—•—

PASSED March 11, 1983

In Effect for Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 116**  
(MR. COLOMBO, *original sponsor*)

[Passed March 11, 1983; in effect from passage.]

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AN ACT to amend and reenact sections three, ten, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-four, twenty-five, twenty-six, forty and forty-two, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section forty-three, relating to revising the West Virginia Surface Coal Mining and Reclamation Act; pertaining to definitions; filing notices of violation with permit applications; bonds; compliance with federal environmental protection laws; decreasing the civil penalty for violations to seven hundred fifty dollars per day per violation; assessment of civil penalties; appeals; review of permits; designation of areas unsuitable for surface mining; prohibiting conflicts of interest by members of the reclamation commission; validity of regulations; and consolidating authority to issue permits, promulgate and enforce rules in article five-a, as they relate to surface mining in the director of the department of natural resources, providing for appeal of orders of the director.

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

That sections three, ten, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-four, twenty-five, twenty-six, forty and forty-two, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend article six, chapter twenty of the aforesaid code by adding thereto a new section, designated section forty-three, all to read as follows:

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

**§20-6-3. Definitions.**

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

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

9 (b) "Affected area" means, when used in the context of  
10 surface mining activities, all land and water resources  
11 within the permit area which are disturbed or utilized  
12 during the term of the permit in the course of surface mining  
13 and reclamation activities. "Affected area" means, when  
14 used in the context of underground mining activities, all  
15 surface land and water resources affected during the term  
16 of the permit (1) by surface operations or facilities incident  
17 to underground mining activities or (2) by underground  
18 operations.

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

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

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

46 (f) "Assessment officer" means an employee of the  
47 department, other than a surface-mining reclamation  
48 supervisor, inspector, or inspector-in-training, appointed  
49 by the director to issue proposed penalty assessments and to  
50 conduct informal conferences to review notices, orders and  
51 proposed penalty assessments.

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

56 (h) "Coal processing wastes" means earth materials  
57 which are or have been combustible, physically unstable, or  
58 acid-forming or toxic-forming, which are wasted or  
59 otherwise separated from product coal, and slurried or  
60 otherwise transported from coal processing plants after  
61 physical or chemical processing, cleaning, or concentrating  
62 of coal.

63 (i) "Department" means the department of natural  
64 resources.

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

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

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

86 (m) "Minerals" means clay, coal, flagstone, gravel,  
87 limestone, manganese, sand, sandstone, shale, iron ore and  
88 any other metal or metallurgical ore.

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

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

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

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

101 (r) "Permittee" means a person holding a permit issued  
102 under this article.

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

107 (t) "Prime farmland" has the same meaning as that  
108 prescribed by the United States secretary of agriculture on  
109 the basis of such factors as moisture availability,  
110 temperature regime, chemical balance, permeability,  
111 surface layer composition, susceptibility to flooding and  
112 erosion characteristics, and which historically have been  
113 used for intensive agricultural purposes and as published in  
114 the Federal Register.

115 (u) "Surface mine," "surface mining" or "surface-  
116 mining operations" means:

117 (1) Activities conducted on the surface of lands for the  
118 removal of coal, or, subject to the requirements of section  
119 fourteen of this article, surface operations and surface  
120 impacts incident to an underground coal mine, including  
121 the drainage and discharge therefrom. Such activities  
122 include excavation for the purpose of obtaining coal,  
123 including, but not limited to, such common methods as  
124 contour, strip, auger, mountaintop removal, box cut, open  
125 pit and area mining; the uses of explosives and blasting;  
126 reclamation and in situ distillation or retorting, leaching or  
127 other chemical or physical processing; and the cleaning,  
128 concentrating, or other processing or preparation, loading  
129 of coal for commercial purposes at or near the mine site; and

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

155 (v) "Underground mine" means the surface effects  
156 associated with the shaft, slopes, drifts or inclines  
157 connected with excavations penetrating coal seams or  
158 strata and the equipment connected therewith which

159 contribute directly or indirectly to the mining, preparation  
160 or handling of coal.

161 (w) "Significant, imminent environmental harm to  
162 land, air or water resources" means the existence of any  
163 condition or practice, or any violation of a permit or other  
164 requirement of this article, which condition, practice or  
165 violation could reasonably be expected to cause significant  
166 and imminent environmental harm to land, air or water  
167 resources. The term "environmental harm" means any  
168 adverse impact on land, air or water resources, including  
169 but not limited to, plant, wildlife, and fish, and the  
170 environmental harm is imminent if a condition or practice  
171 exists which is causing such harm or may reasonably be  
172 expected to cause such harm at any time before the end of  
173 the abatement time set by the director. An environmental  
174 harm is significant if that harm is appreciable and not  
175 immediately repairable.

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

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

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

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

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

23 (4) If the applicant is a partnership, corporation,  
24 association or other business entity, the following where

25 applicable: The names and addresses of every officer,  
26 partner, resident agent, director or person performing a  
27 function similar to a director, together with the names and  
28 addresses of any person owning of record ten percent or  
29 more of any class of voting stock of the applicant; and a list  
30 of all names under which the applicant, officer, director,  
31 partner or principal shareholder previously operated a  
32 surface-mining operation in the United States within the  
33 five-year period preceding the date of submission of the  
34 application;

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

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

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

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

66 (9) A description of the legal documents upon which the  
67 applicant bas<sup>y</sup> his legal right to enter and conduct surface-



68 mining operations on the proposed permit area and whether  
69 that right is the subject of pending court litigation:  
70 *Provided*, That nothing in this article may be construed as  
71 vesting in the director the jurisdiction to adjudicate  
72 property-rights disputes;

73 (10) The name of the watershed and location of the  
74 surface stream or tributary into which surface and pit  
75 drainage will be discharged;

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

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

108 (13) Cross-section maps or plans of the proposed  
109 affected area, including the actual area to be mined,

110 prepared by or under the direction of and certified by a  
111 person approved by the director, showing pertinent  
112 elevation and location of test borings or core samplings,  
113 where required by the director, and depicting the following  
114 information: (A) The nature and depth of the various strata  
115 or overburden; (B) the location of subsurface water, if  
116 encountered, and its quality; (C) the nature and thickness of  
117 any coal or rider seams above the seam to be mined; (D) the  
118 nature of the stratum immediately beneath the coal seam to  
119 be mined; (E) all mineral crop lines and the strike and dip of  
120 the coal to be mined, within the area of land to be affected;  
121 (F) existing or previous surface mining limits; (G) the  
122 location and extent of known workings of any underground  
123 mines, including mine openings to the surface; (H) the  
124 location of any significant aquifers; (I) the estimated  
125 elevation of the water table; (J) the location of spoil, waste  
126 or refuse areas and topsoil preservation areas; (K) the  
127 location of all impoundments for waste or erosion control;  
128 (L) any settling or water treatment facility or drainage  
129 system; (M) constructed or natural drainways and the  
130 location of any discharges to any surface body of water on  
131 the area of land to be affected or adjacent thereto; and (N)  
132 adequate profiles at appropriate cross sections of the  
133 anticipated final surface configuration that will be  
134 achieved pursuant to the operator's proposed reclamation  
135 plan;

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

148 (15) For those lands in the permit application which a  
149 reconnaissance inspection suggests may be prime  
150 farmlands, a soil survey shall be made or obtained  
151 according to standards established by the secretary of

152 agriculture in order to confirm the exact location of such  
153 prime farmlands;

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

156 (17) Information pertaining to coal seams, test borings,  
157 core samplings, or soil samples as required by this section  
158 shall be made available to any person with an interest  
159 which is or may be adversely affected: *Provided*, That  
160 information which pertains only to the analysis of the  
161 chemical and physical properties of the coal, except  
162 information regarding mineral or elemental content which  
163 is potentially toxic to the environment, shall be kept  
164 confidential and not made a matter of public record;

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

170 (19) Other information that may be required by rules  
171 and regulations reasonably necessary to effectuate the  
172 purposes of this article.

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

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

191 (d) Each applicant for a permit shall be required to  
192 submit to the director as a part of the permit application a  
193 certificate issued by an insurance company authorized to do

194 business in this state covering the surface-mining operation  
 195 for which the permit is sought, or evidence that the  
 196 applicant has satisfied state self-insurance requirements.  
 197 The policy shall provide for personal injury and property  
 198 damage protection in an amount adequate to compensate  
 199 any persons damaged as a result of surface coal mining and  
 200 reclamation operations, including use of explosives, and  
 201 entitled to compensation under the applicable provisions of  
 202 state law. The policy shall be maintained in full force and  
 203 effect during the terms of the permit or any renewal,  
 204 including the length of all reclamation operations.

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

211 (f) The applicant shall file as a part of his permit  
 212 application a schedule listing all notices of violation, bond  
 213 forfeitures, permit revocations, cessation orders or  
 214 permanent suspension orders resulting from a violation of  
 215 Public Law 95-87, this article or any law or regulation of the  
 216 United States or any department or agency of any state  
 217 pertaining to air or environmental protection received by  
 218 the applicant in connection with any surface-mining  
 219 operation during the three-year period prior to the date of  
 220 application, and indicating the final resolution of any  
 221 notice of violation, forfeiture, revocation, cessation or  
 222 permanent suspension.

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

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

1 (a) After a surface-mining permit application has been  
 2 approved pursuant to this article, but before a permit has  
 3 been issued, each operator shall furnish bond, on a form to  
 4 be prescribed and furnished by the director, payable to the

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

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

29 (c) (1) The form of the performance bond shall be  
30 approved by the director and may include, at the option of  
31 the operator, surety bonding, collateral bonding (including  
32 cash and securities), establishment of an escrow account,  
33 self-bonding or a combination of these methods. If  
34 collateral bonding is used, the operator may elect to deposit  
35 cash, or collateral securities or certificates as follows:  
36 Bonds of the United States or its possessions, of the federal  
37 land bank, or of the homeowners' loan corporation; full  
38 faith and credit general obligation bonds of the state of  
39 West Virginia, or other states, and of any county, district or  
40 municipality of the state of West Virginia or other states; or  
41 certificates of deposit in a bank in this state, which  
42 certificates shall be in favor of the department. The cash  
43 deposit or market value of such securities or certificates  
44 shall be equal to or greater than the sum of the bond. The  
45 director shall, upon receipt of any such deposit of cash,  
46 securities or certificates, promptly place the same with the

47 treasurer of the state of West Virginia whose duty it shall be  
48 to receive and hold the same in the name of the state in trust  
49 for the purpose for which the deposit is made when the  
50 permit is issued. The operator making the deposit shall be  
51 entitled from time to time to receive from the state  
52 treasurer, upon the written approval of the director, the  
53 whole or any portion of any cash, securities or certificates so  
54 deposited, upon depositing with him in lieu thereof, cash or  
55 other securities or certificates of the classes herein specified  
56 having value equal to or greater than the sum of the bond.

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

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

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

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

77 (g) All special reclamation taxes deposited by the  
78 director with the treasurer or the state of West Virginia to  
79 the credit of the special reclamation fund prior to the  
80 effective date of this article shall be transferred to the  
81 special reclamation fund created by this section and shall  
82 be expended pursuant to the provisions of this subsection:  
83 *Provided*, That no taxes transferred into the special  
84 reclamation fund created by this section shall be subject to  
85 refund. The fund shall be administered by the director, and  
86 he is authorized to expend the moneys in the fund for the  
87 reclamation and rehabilitation of lands which were  
88 subjected to permitted surface-mining operations and

89 abandoned after the third day of August, one thousand nine  
90 hundred seventy-seven, where the amount of the bond  
91 posted and forfeited on such land is less than the actual cost  
92 of reclamation. The director may also expend such amounts  
93 as are reasonably necessary to implement and administer  
94 the provisions of this chapter.

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

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

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

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

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

13 (2) Restore the land affected to a condition capable of  
14 supporting the uses which it was capable of supporting

15 prior to any mining, or higher or better uses of which there  
16 is reasonable likelihood so long as the use or uses do not  
17 present any actual or probable hazard to public health or  
18 safety or pose any actual or probable threat of water  
19 diminution or pollution, and the permit applicants'  
20 declared proposed land use following reclamation is not  
21 deemed to be impractical or unreasonable, inconsistent  
22 with applicable land use policies and plans, involves  
23 unreasonable delay in implementation, or is violative of  
24 federal, state, or local law;

25 (3) Except as provided in subsection (c) of this section,  
26 with respect to all surface mines, backfill, compact where  
27 advisable to ensure stability or to prevent leaching of toxic  
28 materials, and grade in order to restore the approximate  
29 original contour: *Provided*, That in surface mining which is  
30 carried out at the same location over a substantial period of  
31 time where the operation transects the coal deposit, and the  
32 thickness of the coal deposits relative to the volume of the  
33 overburden is large and where the operator demonstrates  
34 that the overburden and other spoil and waste materials at a  
35 particular point in the permit area or otherwise available  
36 from the entire permit area is insufficient, giving due  
37 consideration to volumetric expansion, to restore the  
38 approximate original contour, the operator, at a minimum  
39 shall backfill, grade, and compact, where advisable, using  
40 all available overburden and other spoil and waste  
41 materials to attain the lowest practicable grade but not  
42 more than the angle of repose, to provide adequate drainage  
43 and to cover all acid-forming and other toxic materials, in  
44 order to achieve an ecologically sound land use compatible  
45 with the surrounding region: *Provided, however*, That in  
46 surface mining where the volume of overburden is large  
47 relative to the thickness of the coal deposit and where the  
48 operator demonstrates that due to volumetric expansion  
49 the amount of overburden and other spoil and waste  
50 materials removed in the course of the mining operation is  
51 more than sufficient to restore the approximate original  
52 contour, the operator shall, after restoring the approximate  
53 contour, backfill, grade, and compact, where advisable, the  
54 excess overburden and other spoil and waste materials to  
55 attain the lowest grade but not more than the angle of  
56 repose, and to cover all acid-forming and other toxic



57 materials, in order to achieve an ecologically sound land use  
58 compatible with the surrounding region and, such  
59 overburden or spoil shall be shaped and graded in such a  
60 way as to prevent slides, erosion, and water pollution and is  
61 revegetated in accordance with the requirements of this  
62 article: *Provided further*, That the reclamation commission  
63 shall promulgate rules and regulations governing variances  
64 to the requirements for return to approximate original  
65 contour or highwall elimination and where adequate  
66 material is not available from surface-mining operations  
67 permitted after the effective date of this article for (A)  
68 underground mining operations existing prior to the third  
69 day of August, one thousand nine hundred seventy-seven,  
70 or (B) for areas upon which surface mining prior to the first  
71 day of July, one thousand nine hundred seventy-seven,  
72 created highwalls;

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

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

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

93 (7) Ensure that all prime farmlands are mined and  
94 reclaimed in accordance with the specifications for soil  
95 removal, storage, replacement and reconstruction  
96 established by the United States secretary of agriculture  
97 and the soil conservation service pertaining thereto. The  
98 operator, as a minimum, shall be required to: (A) Segregate

99 the A horizon of the natural soil, except where it can be  
100 shown that other available soil materials will create a final  
101 soil having a greater productive capacity, and if not utilized  
102 immediately, stockpile this material separately from other  
103 spoil, and provide needed protection from wind and water  
104 erosion or contamination by other acid or toxic material;  
105 (B) segregate the B horizon of the natural soil, or underlying  
106 C horizons or other strata, or a combination of such  
107 horizons or other strata that are shown to be both texturally  
108 and chemically suitable for plant growth and that can be  
109 shown to be equally or more favorable for plant growth  
110 than the B horizon, in sufficient quantities to create in the  
111 regraded final soil a root zone of comparable depth and  
112 quality to that which existed in the natural soil, and if not  
113 utilized immediately, stockpile this material separately  
114 from other spoil and provide needed protection from wind  
115 and water erosion or contamination by other acid or toxic  
116 material; (C) replace and regrade the root zone material  
117 described in subparagraph (B) above with proper  
118 compaction and uniform depth over the regraded spoil  
119 material; and (D) redistribute and grade in a uniform  
120 manner the surface soil horizon described in subparagraph  
121 (A) above;

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

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

137 (10) Minimize the disturbances to the prevailing  
138 hydrologic balance at the mine site and in associated off-  
139 site areas and to the quality and quantity of water in surface  
140 and ground water systems both during and after surface-

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

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

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

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

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

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

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

225 prevent (i) injury to persons; (ii) damage to public and  
226 private property outside the permit area; (iii) adverse  
227 impacts on any underground mine; and (iv) change in the  
228 course, channel or availability of ground or surface water  
229 outside the permit area; (D) require that all blasting  
230 operations be conducted by persons certified by the director  
231 of the department of mines; and (E) provide that upon  
232 written request of a resident or owner of a man-made  
233 dwelling or structure within one-half mile of any portion of  
234 the area identified in subparagraph (A) of this subdivision,  
235 the applicant or permittee shall conduct a preblasting  
236 survey or other appropriate investigation of the structures  
237 and submit the results to the director and a copy to the  
238 resident or owner making the request. The area of the  
239 survey shall be determined by the director in accordance  
240 with regulations promulgated by the reclamation  
241 commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

305 (19) Establish on the regraded areas, and all other lands  
306 affected, a diverse, effective and permanent vegetative  
307 cover of the same seasonal variety native to the area of land  
308 to be affected or of a fruit, grape or berry producing variety

309 suitable for human consumption and capable of self-  
310 regeneration and plant succession at least equal in extent of  
311 cover to the natural vegetation of the area, except that  
312 introduced species may be used in the revegetation process  
313 where desirable or when necessary to achieve the approved  
314 postmining land use plan;

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

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

337 (22) Place all excess spoil material resulting from  
338 surface mining activities in such a manner that: (A) Spoil is  
339 transported and placed in a controlled manner in position  
340 for concurrent compaction and in a way as to assure mass  
341 stability and to prevent mass movement; (B) the areas of  
342 disposal are within the bonded permit areas and all organic  
343 matter shall be removed immediately prior to spoil  
344 placements; (C) appropriate surface and internal drainage  
345 system or diversion ditches are used to prevent spoil erosion  
346 and movement; (D) the disposal area does not contain  
347 springs, natural water courses or wet weather seeps, unless  
348 lateral drains are constructed from the wet areas to the  
349 main underdrains in a manner that filtration of the water  
350 into the spoil pile will be prevented; (E) if placed on a slope,

351 the spoil is placed upon the most moderate slope among  
352 those upon which, in the judgment of the director, the spoil  
353 could be placed in compliance with all the requirements of  
354 this article, and shall be placed, where possible, upon, or  
355 above, a natural terrace, bench or berm, if placement  
356 provides additional stability and prevents mass movement;  
357 (F) where the toe of the spoil rests on a downslope, a rock toe  
358 buttress, of sufficient size to prevent mass movement, is  
359 constructed; (G) the final configuration is compatible with  
360 the natural drainage pattern and surroundings and suitable  
361 for intended uses; (H) design of the spoil disposal area is  
362 certified by a qualified registered professional engineer in  
363 conformance with professional standards; and (I) all other  
364 provisions of this article are met: *Provided*, That where the  
365 excess spoil material consists of at least eighty percent, by  
366 volume, sandstone, limestone, or other rocks that do not  
367 slake in water, the director may approve alternate methods  
368 for disposal of excess spoil material, including fill  
369 placement by dumping in a single lift, on a site specific  
370 basis: *Provided, however*, That the services of a qualified  
371 registered professional engineer experienced in the design  
372 and construction of earth and rockfill embankment are  
373 utilized: *Provided further*, That such approval shall not be  
374 unreasonably withheld if the site is suitable;

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

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

384 (25) Retain a natural barrier to inhibit slides and  
385 erosion on permit areas where outcrop barriers are  
386 required: *Provided*, That constructed barriers may be  
387 allowed where (A) natural barriers do not provide adequate  
388 stability, (B) natural barriers would result in potential  
389 future water quality deterioration, and (C) natural barriers  
390 would conflict with the goal of maximum utilization of the  
391 mineral resource: *Provided, however*, That at a minimum,  
392 the constructed barrier must be of sufficient width and



393 height to provide adequate stability and the stability factor  
394 must equal or exceed that of the natural outcrop barrier:  
395 *Provided further*, That where water quality is paramount,  
396 the constructed barrier must be composed of impervious  
397 material with controlled discharge points.

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

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

415 (3) In cases where an industrial, commercial, woodland,  
416 agricultural, residential or public use is proposed for the  
417 postmining use of the affected land, the director may grant  
418 a permit for a surface-mining operation of the nature  
419 described in subdivision (2) of this subsection where: (A)  
420 The proposed postmining land use is deemed to constitute  
421 an equal or better use of the affected land, as compared with  
422 premining use; (B) the applicant presents specific plans for  
423 the proposed postmining land use and appropriate  
424 assurances that the use will be: (i) Compatible with  
425 adjacent land uses; (ii) practicable with respect to achieving  
426 the proposed use; (iii) supported by commitments from  
427 public agencies where appropriate; (iv) practicable with  
428 respect to private financial capability for completion of the  
429 proposed use; (v) planned pursuant to a schedule attached  
430 to the reclamation plan so as to integrate the mining  
431 operation and reclamation with the postmining land use;  
432 and (vi) designed by a person approved by the director in  
433 conformance with standards established to assure the  
434 stability, drainage and configuration necessary for the

435 intended use of the site; (C) the proposed use would be  
436 compatible with adjacent land uses, and existing state and  
437 local land use plans and programs; (D) the director provides  
438 the county commission of the county in which the land is  
439 located and any state or federal agency which the director,  
440 in his discretion, determines to have an interest in the  
441 proposed use, an opportunity of not more than sixty days to  
442 review and comment on the proposed use; and (E) all other  
443 requirements of this article will be met.

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

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

476 (d) In addition to those general performance standards  
477 required by this section, when surface mining occurs on

478 slopes of twenty degrees or greater, or on such lesser slopes  
479 as may be defined by regulation after consideration of soil  
480 and climate, no debris, abandoned or disabled equipment,  
481 spoil material or waste mineral matter will be placed on the  
482 natural downslope below the initial bench or mining cut:  
483 *Provided*, That soil or spoil material from the initial cut of  
484 earth in a new surface-mining operation may be placed on a  
485 limited specified area of the downslope below the initial cut  
486 if the permittee can establish to the satisfaction of the  
487 director that the soil or spoil will not slide and that the order  
488 requirements of this section can still be met.

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

497 (f) The reclamation commission shall promulgate  
498 regulations for the design, location, construction,  
499 maintenance, operation, enlargement, modification,  
500 removal and abandonment of new and existing coal mine  
501 waste piles. In addition to engineering and other technical  
502 specifications, the standards and criteria developed  
503 pursuant to this subsection must include provisions for  
504 review and approval of plans and specifications prior to  
505 construction, enlargement, modification, removal or  
506 abandonment; performance of periodic inspections during  
507 construction; issuance of certificates of approval upon  
508 completion of construction; performance of periodic safety  
509 inspections; and issuance of notices and orders for required  
510 remedial or maintenance work or affirmative action:  
511 *Provided*, That whenever the director finds that any coal  
512 processing waste pile constitutes an imminent danger to  
513 human life, he may, in addition to all other remedies and  
514 without the necessity of obtaining the permission of any  
515 person prior or present who operated or operates the pile or  
516 the landowners involved, enter upon the premises where  
517 any such coal processing waste pile exists and may take or  
518 order to be taken such remedial action as may be necessary  
519 or expedient to secure the coal processing waste pile and to

520 abate the conditions which cause the danger to human life:  
 521 *Provided, however,* That the cost reasonably incurred in  
 522 any remedial action taken by the director under this  
 523 subsection may be paid for initially by funds appropriated  
 524 to the department of natural resources for these purposes,  
 525 and the sums so expended shall be recovered from any  
 526 responsible operator or landowner, individually or jointly,  
 527 by suit initiated by the attorney general at the request of the  
 528 director. For purposes of this subsection "operates" or  
 529 "operated" means to enter upon a coal processing waste  
 530 pile, or part thereof, for the purpose of disposing,  
 531 depositing, dumping coal processing wastes thereon or  
 532 removing coal processing waste therefrom, or to employ a  
 533 coal processing waste pile for retarding the flow of or for the  
 534 impoundment of water.

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

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

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

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

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

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

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

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

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

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

65 (8) Eliminate fire hazards and otherwise eliminate

66 conditions which constitute a hazard to health and safety of  
67 the public;

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

93 (10) With respect to other surface impacts of  
94 underground mining not specified in this subsection,  
95 including the construction of new roads or the improvement  
96 or use of existing roads to gain access to the site of such  
97 activities and for haulage, repair areas, storage areas,  
98 processing areas, shipping areas, and other areas upon  
99 which are sited structures, facilities or other property or  
100 materials on the surface, resulting from or incident to such  
101 activities, operate in accordance with the standards  
102 established under section thirteen of this article for such  
103 effects which result from surface-mining operations:  
104 *Provided*, That the reclamation commission shall make  
105 such modifications in the requirements imposed by this  
106 subdivision as are necessary to accommodate the distinct  
107 difference between surface and underground mining in  
108 West Virginia;

109 (11) To the extent possible using the best technology  
110 currently available, minimize disturbances and adverse  
111 impacts of the operation on fish, aquatic life, wildlife and  
112 related environmental values, and achieve enhancement of  
113 such resources where practicable; and

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

120 (c) In order to protect the stability of the land, the  
121 director shall suspend underground mining under  
122 urbanized areas, cities, towns and communities and  
123 adjacent to industrial or commercial buildings, major  
124 impoundments or permanent streams if he finds imminent  
125 danger to inhabitants of the urbanized areas, cities, towns  
126 or communities.

127 (d) The provisions of this article relating to permits,  
128 bonds, insurance, inspections, reclamation and  
129 enforcement, public review and administrative and judicial  
130 review shall also be applicable to surface operations and  
131 surface impacts incident to an underground mine with such  
132 modifications by regulation to the permit application  
133 requirements, permit approval or denial procedures and  
134 bond requirements as are necessary to accommodate the  
135 distinct difference between surface mines and underground  
136 mines in West Virginia.

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

1 (a) Notwithstanding any other provisions of this article,  
2 a surface-mining reclamation inspector shall have the  
3 authority to issue a cessation order for any portion of a  
4 surface-mining operation when an inspector determines  
5 that any condition or practices exist, or that any permittee  
6 is in violation of any requirements of this article or any  
7 permit condition required by this article, which condition,  
8 practice, or violation also creates an imminent danger to the  
9 health or safety of the public, or is causing or can

10 reasonably be expected to cause significant, imminent  
 11 environmental harm to land, air, or water resources. The  
 12 cessation order shall take effect immediately. Unless  
 13 waived in writing, an informal conference shall be held at or  
 14 near the site relevant to the violation set forth in the  
 15 cessation order within twenty-four hours after the order  
 16 becomes effective or such order shall expire. The conference  
 17 shall be held before a surface-mining reclamation  
 18 supervisor who shall, immediately upon conclusion of said  
 19 hearing, determine when and if the operation or portion  
 20 thereof may resume. Any operator who believes he is  
 21 aggrieved by the decision of the surface-mining  
 22 reclamation supervisor may immediately appeal to the  
 23 director, setting forth reasons why the operation should not  
 24 be halted. The director forthwith shall determine when the  
 25 operation or portion thereof may be resumed.

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

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

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

1 (a) If any of the requirements of this article, rules and  
 2 regulations promulgated pursuant thereto or permit  
 3 conditions have not been complied with, the director may  
 4 cause a notice of violation to be served upon the operator or



5 his duly authorized agent. A copy of the notice shall be  
6 handed to the operator or his duly authorized agent in  
7 person or served by certified mail addressed to the operator  
8 at the permanent address shown on the application for a  
9 permit. The notice shall specify in what respects the  
10 operator has failed to comply with this article, rules and  
11 regulations or permit conditions and shall specify a  
12 reasonable time for abatement of the violation not to exceed  
13 fifteen days. If the operator has not abated the violation  
14 within the time specified in the notice, or any reasonable  
15 extension thereof, not to exceed seventy-five days, the  
16 director shall order the cessation of the operation or the  
17 portion thereof causing the violation, unless the operator  
18 affirmatively demonstrates that compliance is unattainable  
19 due to conditions totally beyond the control of the operator.  
20 If a violation is not abated within the time specified or any  
21 extension thereof, or any cessation order is issued, a  
22 mandatory civil penalty of not less than seven hundred fifty  
23 dollars per day per violation shall be assessed: *Provided*,  
24 That if a cessation order is released or expires within  
25 twenty-four hours after issuance no mandatory civil  
26 penalty shall be assessed. A cessation order shall remain in  
27 effect until the director determines that the violation has  
28 been abated or until modified, vacated or terminated by the  
29 director or by a court. In any cessation order issued under  
30 this subsection the director shall determine the steps  
31 necessary to abate the violation in the most expeditious  
32 manner possible and shall include the necessary measures  
33 in the order.

34 (b) If the director determines that a pattern of violations  
35 of any requirement of this article or any permit condition  
36 exists or has existed, as a result of the operator's lack of  
37 reasonable care and diligence, or that the violations are  
38 willfully caused by the operator, the director shall  
39 immediately issue an order directing the operator to show  
40 cause why the permit should not be suspended or revoked  
41 and giving the operator thirty days in which to request a  
42 public hearing. If a hearing is requested, the director shall  
43 inform all interested parties of the time and place of the  
44 hearing. Any hearing under this section shall be recorded  
45 and subject to the provisions of chapter twenty-nine-a of  
46 this code. Within sixty days following the public hearing,

47 the director shall issue and furnish to the permittee and all  
48 other parties to the hearing a written decision, and the  
49 reasons therefor, concerning suspension or revocation of  
50 the permit. Upon the operator's failure to show cause why  
51 the permit should not be suspended or revoked, the director  
52 shall immediately revoke the operator's permit, forfeit the  
53 operator's bond, or other security posted pursuant to  
54 section twelve of this article and give notice to the attorney  
55 general, who shall collect the forfeiture without delay:  
56 *Provided*, That the entire proceeds of such forfeiture shall  
57 be deposited with the treasurer of the state of West Virginia  
58 to the credit of the special reclamation fund. All forfeitures  
59 collected prior to the effective date of this article shall be  
60 deposited in the special reclamation fund and shall be  
61 expended back upon the areas for which the bond was  
62 posted: *Provided, however*, That any excess therefrom shall  
63 remain in the special reclamation fund.

64 (c) Any person engaged in surface-mining operations  
65 who violates any permit condition or who violates any other  
66 provision of this article or rules and regulations  
67 promulgated pursuant thereto, may also be assessed a civil  
68 penalty. The penalty shall not exceed five thousand dollars.  
69 Each day of continuing violation may be deemed a separate  
70 violation for purposes of penalty assessments. In  
71 determining the amount of the penalty, consideration shall  
72 be given to the operator's history of previous violations at  
73 the particular surface-mining operation, the seriousness of  
74 the violation, including any irreparable harm to the  
75 environment and any hazard to the health or safety of the  
76 public, whether the operator was negligent, and the  
77 demonstrated good faith of the operator charged in  
78 attempting to achieve rapid compliance after notification  
79 of the violation.

80 (d) (1) Upon the issuance of a notice or order pursuant  
81 to this section, the assessment officer, shall, within thirty  
82 days, set a proposed penalty assessment and notify the  
83 operator in writing of such proposed penalty assessment.  
84 The proposed penalty assessment must be paid in full  
85 within thirty days of receipt or, if the operator wishes to  
86 contest either the amount of the penalty or the fact of  
87 violation, an informal conference with the assessment  
88 officer may be requested within fifteen days or a formal

89 hearing before the reclamation board of review may be  
90 requested within thirty days. The notice of proposed  
91 penalty assessment shall advise the operator of the right to  
92 an informal conference and a formal hearing pursuant to  
93 this section. When an informal conference is requested, the  
94 operator shall have fifteen days from receipt of the  
95 assessment officer's decision to request a formal hearing  
96 before the board. (A) When an informal conference is held,  
97 the assessment officer shall have authority to affirm,  
98 modify or vacate the notice, order or proposed penalty  
99 assessment. (B) When a formal hearing is requested, the  
100 amount of the proposed penalty assessment shall be  
101 forwarded to the director for placement in an escrow  
102 account. Formal hearings shall be of record and subject to  
103 the provisions of article five of chapter twenty-nine-a of the  
104 code of West Virginia, one thousand nine hundred thirty-  
105 one, as amended. Following the hearing the board shall  
106 affirm, modify or vacate the notice, order or proposed  
107 penalty assessment and, when appropriate, incorporate an  
108 assessment order requiring that the assessment be paid.

109 (2) Civil penalties owed under this section may be  
110 recovered by the director in the circuit court of Kanawha  
111 County. Civil penalties collected under this article shall be  
112 deposited with the treasurer of the state of West Virginia to  
113 the credit of the special reclamation fund established in  
114 section twelve of this article. If through the administrative  
115 or judicial review of the proposed penalty, it is determined  
116 that no violation occurred or that the amount of the penalty  
117 should be reduced; the director shall within thirty days  
118 remit the appropriate amount to the person, with interest at  
119 the rate of six percent or at the prevailing United States  
120 department of the treasury rate, whichever is greater.  
121 Failure to forward the money to the director within thirty  
122 days shall result in a waiver of all legal rights to contest the  
123 violation or the amount of the penalty.

124 (3) Any person having an interest which is or may be  
125 adversely affected by any order of the director or the board  
126 may file an appeal only in accordance with the provisions of  
127 section twenty-five of this article within thirty days after  
128 receipt of the order.

129 (4) The filing of an appeal provided for in this section  
130 shall not stay execution of the order appealed from.

131 Pending completion of the investigation and hearing  
132 required by this section, the applicant may file with the  
133 director a written request that the director grant temporary  
134 relief from any notice or order issued under section sixteen  
135 or seventeen of this article, together with a detailed  
136 statement giving reasons for granting such relief. The  
137 director shall issue an order or decision granting or denying  
138 such relief expeditiously: *Provided*, That where the  
139 applicant requests relief from an order for cessation of  
140 surface mining and reclamation operations, the decision on  
141 the request shall be issued within forty-eight hours of its  
142 receipt. The director may grant such relief, under such  
143 conditions as he may prescribe if:

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

147 (B) The person requesting the relief shows that there is a  
148 substantial likelihood that he will prevail on the merits in  
149 the final determination of the proceedings;

150 (C) The relief will not adversely affect the public health  
151 or safety or cause significant imminent environmental  
152 harm to land, air or water resources; and

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

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

166 (f) Whenever a corporate operator violates a condition  
167 of a permit issued pursuant to this article, regulations  
168 promulgated pursuant thereto, or any order incorporated in  
169 a final decision issued by the director, any director, officer  
170 or agent of the corporation who willfully and knowingly,  
171 authorized, ordered or carried out the failure or refusal,  
172 shall be subject to the same civil penalties, fines and

173 imprisonment that may be imposed upon a person under  
174 subsections (c) and (e) of this section.

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

185 (h) Whenever any person: (A) Violates or fails or refuses  
186 to comply with any order or decision issued by the director  
187 under this article; or (B) interferes with, hinders, or delays  
188 the director in carrying out the provisions of this article; or  
189 (C) refuses to admit the director to the mine; or (D) refuses  
190 to permit inspection of the mine by the director; or (E)  
191 refuses to furnish any reasonable information or report  
192 requested by the director in furtherance of the provisions of  
193 this article; or (F) refuses to permit access to, and copying  
194 of, such records as the director determines necessary in  
195 carrying out the provisions of this article; or (G) violates  
196 any other provisions of this article, the regulations  
197 promulgated pursuant thereto, or the terms and conditions  
198 of any permit, the director, the attorney general, or the  
199 prosecuting attorney of the county in which the major  
200 portion of the permit area is located, may institute a civil  
201 action for relief, including a permanent or temporary  
202 injunction, restraining order or any other appropriate  
203 order, in the circuit court of Kanawha County or any court  
204 of competent jurisdiction to compel compliance with and  
205 enjoin such violations, failures or refusals. The court or the  
206 judge thereof may issue a preliminary injunction in any case  
207 pending a decision on the merits of any application filed  
208 without requiring the filing of a bond or other equivalent  
209 security.

210 (i) Any person who shall, except as permitted by law,  
211 willfully resist, prevent, impede or interfere with the  
212 director or any of his agents in the performance of duties  
213 pursuant to this article is guilty of a misdemeanor, and,  
214 upon conviction thereof, shall be punished by a fine of not

215 more than five thousand dollars or by imprisonment for not  
216 more than one year, or both.

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

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

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

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

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

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

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

30 (5) In cases where the private mineral estate has been  
31 severed from the private surface estate, the applicant has  
32 submitted: (A) The written consent of the surface owner to  
33 the extraction of coal by surface mining; or (B) a  
34 conveyance that expressly grants or reserves the right to  
35 extract the coal by surface mining; or (C) if the conveyance  
36 does not expressly grant the right to extract coal by surface  
37 mining, the surface-subsurface legal relationship shall be  
38 determined in accordance with applicable law: *Provided,*

39 That nothing in this article shall be construed to authorize  
40 the director to adjudicate property rights disputes.

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

73 (d) (1) In addition to finding the application in  
74 compliance with subsection (b) of this section, if the area  
75 proposed to be mined contains prime farmland, the director  
76 may, pursuant to regulations promulgated hereunder, grant  
77 a permit to mine on prime farmland if the operator  
78 affirmatively demonstrates that he has the technological  
79 capability to restore such mined area, within a reasonable  
80 time, to equivalent or higher levels of yield as nonmined

81 prime farmland in the surrounding area under equivalent  
82 levels of management, and can meet the soil reconstruction  
83 standards in subdivision seven, subsection (b), section  
84 thirteen of this article. Except for compliance with  
85 subsection (b) of this section, the requirements of  
86 subdivision (1) of this subsection, shall apply to all permits  
87 issued after the third day of August, one thousand nine  
88 hundred seventy-seven.

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

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

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

1 (a) (1) Any valid permit issued pursuant to this article  
2 shall carry with it the right of successive renewal upon  
3 expiration with respect to areas within the boundaries of  
4 the existing permit. The holders of the permit may apply for  
5 renewal and the renewal shall be issued: *Provided*, That on  
6 application for renewal, the burden shall be on the  
7 opponents of renewal, unless it is established that and  
8 written findings by the director are made that: (A) The  
9 terms and conditions of the existing permit are not being  
10 satisfactorily met: *Provided*, That if the permittee is  
11 required to modify operations pursuant to mining or  
12 reclamation requirements which become applicable after  
13 the original date of permit issuance, the permittee shall be  
14 provided an opportunity to submit a schedule allowing a  
15 reasonable period to comply with such revised  
16 requirements; (B) the present surface-mining operation is  
17 not in compliance with the applicable environmental



18 protection standards of this article; (C) the renewal  
19 requested substantially jeopardizes the operator's  
20 continuing responsibility on existing permit areas; (D) the  
21 operator has not provided evidence that the performance  
22 bond in effect for said operation will continue in effect for  
23 any renewal requested as required pursuant to section  
24 twelve of this article; or (E) any additional revised or  
25 updated information as required pursuant to rules and  
26 regulations promulgated by the reclamation commission  
27 has not been provided.

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

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

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

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

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

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

56 (c) The director shall review outstanding permits of a  
57 five-year term before the end of the third year of the permit.  
58 Other permits shall be reviewed within the time established  
59 by regulations. The director may require reasonable

60 revision or modification of the permit following review:  
 61 *Provided*, That such revision or modification shall be based  
 62 upon written findings and shall be preceded by notice to the  
 63 permittee and opportunity for hearing.  
 64 (d) No transfer, assignment or sale of the rights granted  
 65 under any permit issued pursuant to this article shall be  
 66 made without the prior written approval of the director.

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

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

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

16 (2) Upon petition pursuant to subsection (b) of this  
 17 section, a surface area may be designated unsuitable for  
 18 certain types of surface-mining operations, if the  
 19 operations: (A) Conflict with existing state or local land use  
 20 plans or programs; (B) affect fragile or historic lands in  
 21 which the operations could result in significant damage to  
 22 important historic, cultural, scientific and aesthetic values  
 23 and natural systems; (C) affect renewable resource lands  
 24 including significant aquifers and aquifer recharge areas,  
 25 in which the operations could result in a substantial loss or  
 26 reduction of long-range productivity of water supply, food  
 27 or fiber products; or (D) affect natural hazard lands in  
 28 which the operations could substantially endanger life and  
 29 property. Such lands to include lands subject to frequent  
 30 flooding and areas of unstable geology.

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

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

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

54 (b) The director, or any person having an interest which  
55 is or may be adversely affected, shall have the right to  
56 petition the reclamation commission to have an area  
57 designated as unsuitable for surface-mining operations or  
58 to have such a designation terminated. The petition shall  
59 contain allegations of fact with supporting evidence which  
60 would tend to establish the allegations. After receipt of the  
61 petition, the reclamation commission shall immediately  
62 begin an administrative study of the area specified in the  
63 petition. Within ten months after receipt of the petition, the  
64 reclamation commission shall hold a public hearing in the  
65 locality of the affected area after appropriate notice and  
66 publication of the date, time and location of the hearing.  
67 After the director or any person having an interest which is  
68 or may be adversely affected has filed a petition and before  
69 the hearing required by this subsection, any person may  
70 intervene by filing allegations of fact with supporting  
71 evidence which would tend to establish the allegations.  
72 Within sixty days after the hearing, the reclamation

73 commission shall issue and furnish to the petitioner and any  
74 other party to the hearing, a written decision regarding the  
75 petition and the reasons therefor. In the event that all the  
76 petitioners stipulate agreement prior to the requested  
77 hearing and withdraw their request, the hearing need not be  
78 held.

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

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

89 (1) On any lands in this state within the boundaries of  
90 units of the national park system, the national wildlife  
91 refuge systems, the national system of trails, the national  
92 wilderness preservation system, the wild and scenic rivers  
93 system, including study rivers designated under section  
94 five-a of the Wild and Scenic Rivers Act, and national  
95 recreation areas designated by act of Congress;

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

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

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

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

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

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

1 (a) Any person having an interest which is or may be  
2 adversely affected by any order of the reclamation  
3 commission assessment officer or a decision of the director  
4 to grant, deny, modify, renew or significantly revise a  
5 permit, or a decision of the director concerning a bond  
6 release pursuant to section twenty-six of this article may  
7 appeal that decision to the board, or may intervene in a  
8 timely manner in any such pending appeal. The person so  
9 appealing to the board shall be known as the appellant, and  
10 the commissioner or director shall be known as the  
11 appellee. The appellant and appellee are deemed to be  
12 parties to the appeal. Any hearing shall be subject to the  
13 requirements of chapter twenty-nine-a of this code.

14 (b) The appeal shall be in writing and shall set forth the  
15 action complained of and the specific grounds upon which  
16 the appeal is based. Within thirty days after the appellant is  
17 notified of the decision of the director or the reclamation  
18 commission, or within fifteen days after the appellant is

19 notified of the decision of the assessment officer, the  
20 appellant or any person with an interest which is or may be  
21 adversely affected may request a hearing on the reasons for  
22 the decision complained of. A notice of the appeal shall be  
23 filed with the reclamation commission or the director  
24 within three days after the appeal is filed with the board.

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

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

39 (e) The board shall hear the appeal de novo and any  
40 party to the appeal may submit evidence. For the purpose of  
41 conducting a hearing on an appeal, the board may require  
42 the attendance of witnesses and the production of books,  
43 records and papers, and it may, and at the request of any  
44 party it shall, issue subpoenas for witnesses or subpoenas  
45 duces tecum to compel the production of any books, records  
46 or papers, directed to the sheriff of the county where  
47 witnesses, books, records or papers are found, which  
48 subpoenas and subpoenas duces tecum shall be served and  
49 returned in the same manner as subpoenas and subpoenas  
50 duces tecum in civil litigation are served and returned. The  
51 fees and allowances for mileage of sheriffs and witnesses  
52 shall be the same as those permitted in civil litigation in  
53 trial courts. All fees and mileage expenses incurred and the  
54 expense of preparing a copy of the record at the request of  
55 the appellant shall be paid by the appellant. The board may  
56 visit the site of the activity or proposed activity which is the  
57 subject of the hearing and take such additional evidence as  
58 it considers necessary provided that all parties and  
59 intervenors be given notice of the visit and are given an  
60 opportunity to accompany the board.

61 (f) In case of disobedience or neglect of any subpoena or  
62 subpoena duces tecum served on any person, or the refusal  
63 of any witness to testify to any matter regarding which he  
64 may be lawfully interrogated, the circuit court of the county  
65 in which the disobedience, neglect or refusal occurs, on  
66 application of the board or any member thereof, shall  
67 compel obedience by attachment proceedings for contempt  
68 as in the case of disobedience of the requirements of a  
69 subpoena or subpoena duces tecum issued from the court of  
70 a refusal to testify therein. Witnesses at the hearings shall  
71 testify under oath and any member of the board may  
72 administer oaths or affirmations to persons who so testify.

73 (g) A stenographic record of the testimony and other  
74 evidence submitted shall be made. The record shall include  
75 all of the testimony and other evidence and the rulings on  
76 the admissibility of evidence, but any party may at the time  
77 object to the admission of any evidence and except to the  
78 rulings of the board thereon, and if the board refuses to  
79 admit evidence the party offering the same may make a  
80 proffer thereof, and the proffer shall be made a part of the  
81 record of the hearing.

82 (h) If upon completion of the hearing the board finds  
83 that the decision appealed from was lawful and reasonable,  
84 it shall make a written order affirming the same, or if the  
85 board finds that the decision was not supported by  
86 substantial evidence in the record considered as a whole, it  
87 shall make a written order reversing or modifying the  
88 decision appealed from. Every order made by the board  
89 shall contain a written finding by the board of the facts  
90 upon which the order is based. On all appeals to the board,  
91 the board shall issue a final decision thirty days after the  
92 hearing or within thirty days after the testimony presented  
93 at the hearing has been transcribed and checked for  
94 accuracy. Notice of the making of such order shall be given  
95 forthwith to each party to the appeal by mailing a certified  
96 copy thereof to each party by registered or certified mail.  
97 The order of the board shall be final unless vacated upon  
98 judicial review thereof.

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

1 (a) Within thirty days after receipt of an order from the  
2 board, any applicant, any person with an interest which is

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

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

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

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

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

37 (c) Within thirty days after receipt of the notice of  
38 appeal, the board shall prepare and file in the court the  
39 complete record of the proceedings out of which the appeal  
40 arises, including a transcript of the testimony and other  
41 evidence which was submitted before the board. The  
42 expense of preparing a copy of the record shall be taxed as a  
43 part of the costs of the appeal. The appellant shall provide  
44 security for costs satisfactory to the court. Upon demand by



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

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

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

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

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

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

1 (a) The permittee may file a request with the director for  
2 the release of a performance bond or deposit. The permittee  
3 shall publish an advertisement regarding such request for  
4 release in the same manner as is required of advertisements  
5 for permit applications. A copy of such advertisements shall

6 be submitted to the director as part of any bond release  
7 application and shall contain a notification of the precise  
8 location of the land affected, the number of acres, the  
9 permit and the date approved, the amount of the bond filed  
10 and the portion sought to be released, the type and  
11 appropriate dates of reclamation work performed and a  
12 description of the results achieved as they relate to the  
13 permittee's approved reclamation plan. In addition, as part  
14 of any bond release application, the permittee shall submit  
15 copies of letters which he has sent to adjoining property  
16 owners, local government bodies, planning agencies,  
17 sewage and water treatment authorities or water  
18 companies in the locality in which the surface-mining  
19 operation is located, notifying them of the permittee's  
20 intention to seek release from the bond. Any request for  
21 grade release shall also be accompanied by final maps.

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

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

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

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

57 (3) When the operator has completed successfully all  
58 surface mining and reclamation activities, the release of the  
59 remaining portion of the bond, but not before the expiration  
60 of the period specified in subdivision (20), subsection (b),  
61 section thirteen of this article: *Provided*, That the  
62 revegetation has been established on the regraded mined  
63 lands in accordance with the approved reclamation plan:  
64 *And provided further*, That such a release may be made  
65 where the quality of the untreated post-mining water  
66 discharged is better than or equal to the premining water  
67 quality discharged from the mining site.

68 No part of the bond or deposit may be released under this  
69 subsection so long as the lands to which the release would  
70 be applicable are contributing additional suspended solids  
71 to streamflow or runoff outside the permit area in excess of  
72 the requirements set by sections thirteen or fourteen of this  
73 article, or until soil productivity for prime farmlands has  
74 returned to equivalent levels of yield as nonmined land of  
75 the same soil type in the surrounding area under equivalent  
76 management practices as determined from the soil survey  
77 performed pursuant to section ten of this article. Where a  
78 sediment dam is to be retained as a permanent  
79 impoundment pursuant to section thirteen of this article, or  
80 where a road or minor deviation is to be retained for sound  
81 future maintenance of the operation, the portion of the  
82 bond may be released under this subsection so long as  
83 provisions for sound future maintenance by the operator or  
84 the landowner have been made with the director.

85 (d) If the director disapproves the application for  
86 release of the bond or portion thereof, the director shall  
87 notify the permittee, in writing, stating the reasons for  
88 disapproval and recommending corrective actions

89 necessary to secure said release and notifying the operator  
90 of his right to a hearing.

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

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

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

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

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

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

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

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

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

51 (e) Whenever an order is issued under this section to  
52 abate any violation, at the request of the petitioner a sum  
53 equal to the aggregate costs and expenses including  
54 attorneys' fees to have been reasonably incurred by the  
55 petitioner for, or in connection with, the institution and  
56 prosecution of the proceedings, shall be assessed against the  
57 person committing the violation.

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

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

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

**§20-6-43. Consolidation of permitting, enforcement and rule-making authority for surface mining operations; National Pollutant Discharge Elimination System; effective date of section.**

1 (a) Notwithstanding any provisions of this chapter to  
2 the contrary, all powers, duties and responsibilities of the  
3 chief of the division of water resources under article five-a  
4 of this chapter with respect to all coal mines, preparation  
5 plants and all refuse and waste therefrom subject to said  
6 article five-a, are hereby transferred to the director. The  
7 director shall have sole authority to issue, amend, transfer,  
8 renew or revoke all permits required under article five-a of  
9 this chapter with respect to all coal mines, preparation  
10 plants and all refuse and waste therefrom subject to said  
11 article five-a. The procedures for issuance, amendment,  
12 transferral, renewal and revocation of such permits shall be  
13 governed by the provisions of this article. The director shall  
14 consolidate the various permit programs under articles  
15 five-a and six of this chapter applicable to all coal mines,  
16 preparation plants and all refuse and waste therefrom. All  
17 provisions of article five-a heretofore applicable to coal  
18 mines, preparation plants and all refuse and waste  
19 therefrom shall be continued under this section.

20 (b) Notwithstanding any provisions of this chapter to  
21 the contrary, the reclamation commission shall have sole  
22 authority to promulgate rules and regulations necessary or  
23 proper to implement the provisions of article five-a of this  
24 chapter with respect to all coal mines, preparation plants  
25 and all refuse and waste therefrom, except that the water  
26 resources board shall have the sole authority pursuant to  
27 section three-a of article five-a of this chapter to  
28 promulgate rules and regulations setting standards of  
29 water quality applicable to the waters of the state. To the  
30 extent feasible, the reclamation commission shall  
31 promulgate rules and regulations consolidating the various  
32 regulatory programs under this chapter applicable to all  
33 coal mines, preparation plants and all refuse and waste  
34 therefrom. The promulgation of such rules and regulations  
35 shall be governed by the provisions of this article.

36 (c) Notwithstanding any provisions of this chapter to  
37 the contrary, the director shall have the sole authority to  
38 enforce and shall enforce the rules and regulations of the

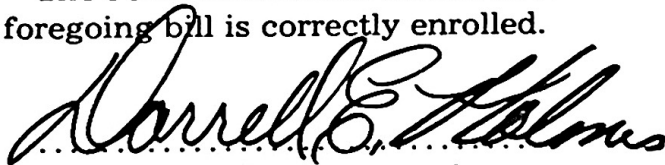
39 reclamation commission and the rules and regulations of  
40 the water resources board setting water quality standards  
41 for the waters of the state as they apply to all coal mines,  
42 preparation plants and all refuse and waste therefrom. The  
43 enforcement of such rules and regulations shall be governed  
44 by the provisions of this article.

45 (d) Notwithstanding any provisions of this chapter to  
46 the contrary, any order of the director issued pursuant to  
47 subsection (a) of this section, under article five-a of this  
48 chapter, or for the purposes of implementing the "National  
49 Pollutant Discharge Elimination System" established  
50 under the Federal Clean Water Act shall be appealable only  
51 to the state water resources board and such appeal shall be  
52 governed by the provisions of section fifteen of article five-a  
53 of this chapter.

54 (e) This section shall become effective upon a  
55 proclamation by the governor stating that final approval of  
56 the partial transfer of the National Pollutant Discharge  
57 Elimination System established under the Federal Clean  
58 Water Act contemplated by this section has been given by  
59 the Administrator of the United States Environmental  
60 Protection Agency.



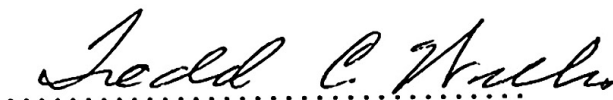
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

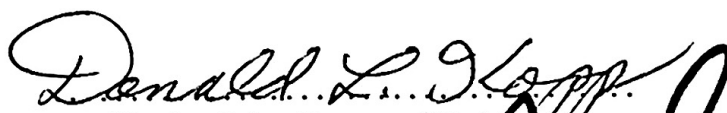
  
.....  
Chairman Senate Committee

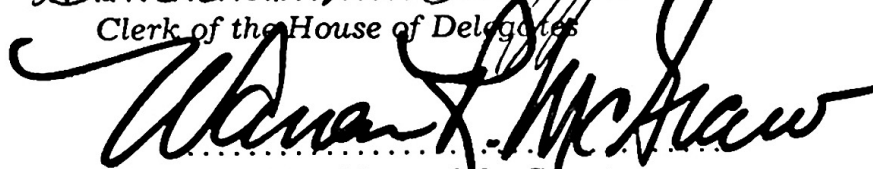
  
.....  
Chairman House Committee

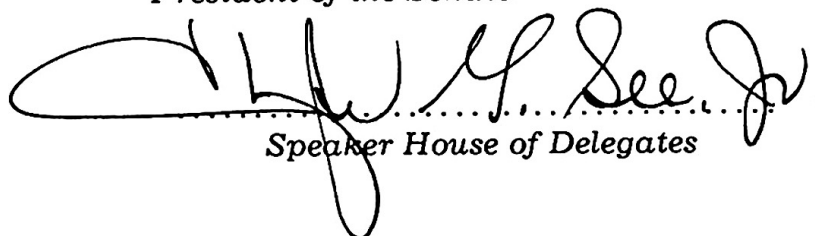
Originated in the Senate.

In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within... *is approved* ... this the... *29* ...  
day of... *March* ..., 1983.

  
.....  
Governor

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03 MAR 81 AID: 44

OFFICE  
SECY. OF STATE