WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Committee Substitute for
SENATE BILL NO. 1160

(By Mr. Calomino)

PASSED March 15, 1983
In Effect at Passage
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 clearly requires a different meaning, the term:

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

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

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

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

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

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

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

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

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

(k) "Disturbed area" means an area where vegetation, topsoil, or overburden has been removed or placed by surface-mining operations, and reclamation is incomplete.
(l) "Imminent danger to the health or safety of the public" means the existence of such condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) A description of the legal documents upon which the applicant bases his legal right to enter and conduct surface-
mining operations on the proposed permit area and whether that right is the subject of pending court litigation:

*Provided,* That nothing in this article may be construed as vesting in the director the jurisdiction to adjudicate property-rights disputes;

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

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

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

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

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

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the secretary of
agriculture in order to confirm the exact location of such prime farmlands;
(16) A reclamation plan as presented in section eleven of this article;
(17) Information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;
(18) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and
(19) Other information that may be required by rules and regulations reasonably necessary to effectuate the purposes of this article.
(b) If the director finds that the probable total annual production at all locations of any coal surface-mining operator will not exceed one hundred thousand tons, the determination of probable hydrologic consequences and the statement of the result of test borings or core samplings shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the director and a reasonable cost of the preparation of such determination and statement shall be assumed by the department from funds provided by the United States department of the interior pursuant to Public Law 95-87.
(c) Before the first publication of the applicant's advertisement, each applicant for a surface-mining permit shall file, except for that information pertaining to the coal seam itself, a copy of the application for public inspection in the nearest office of the department of natural resources as specified in the applicant's advertisement.
(d) Each applicant for a permit shall be required to submit to the director as a part of the permit application a certificate issued by an insurance company authorized to do
business in this state covering the surface-mining operation for which the permit is sought, or evidence that the applicant has satisfied state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

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

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

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

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

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

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

(c) (1) The form of the performance bond shall be approved by the director and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the
treasurer of the state of West Virginia whose duty it shall be
to receive and hold the same in the name of the state in trust
for the purpose for which the deposit is made when the
permit is issued. The operator making the deposit shall be
entitled from time to time to receive from the state
treasurer, upon the written approval of the director, the
whole or any portion of any cash, securities or certificates so
deposited, upon depositing with him in lieu thereof, cash or
other securities or certificates of the classes herein specified
having value equal to or greater than the sum of the bond.
(2) The reclamation commission may approve an
alternative bonding system if it will (A) reasonably assure
that sufficient funds will be available to complete the
reclamation, restoration and abatement provisions for all
permit areas which may be in default at any time, and (B)
provide a substantial economic incentive for the permittee
to comply with all reclamation provisions.
(d) The director may accept the bond of the applicant
itself without separate surety when the applicant
demonstrates to the satisfaction of the director the
existence of a suitable agent to receive service of process
and a history of financial solvency and continuous
operation sufficient for authorization to self-insure.
(e) It shall be unlawful for the owner of surface or
mineral rights to interfere with the present operator in the
discharge of his obligations to the state for the reclamation
of lands disturbed by him.
(f) All bond releases shall be accomplished in
accordance with the provisions of section twenty-six of this
article.
(g) All special reclamation taxes deposited by the
director with the treasurer or the state of West Virginia to
the credit of the special reclamation fund prior to the
effective date of this article shall be transferred to the
special reclamation fund created by this section and shall
be expended pursuant to the provisions of this subsection:
Provided, That no taxes transferred into the special
reclamation fund created by this section shall be subject to
refund. The fund shall be administered by the director, and
he is authorized to expend the moneys in the fund for the
reclamation and rehabilitation of lands which were
subjected to permitted surface-mining operations and
abandoned after the third day of August, one thousand nine
hundred seventy-seven, where the amount of the bond
posted and forfeited on such land is less than the actual cost
of reclamation. The director may also expend such amounts
as are reasonably necessary to implement and administer
the provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and ground water systems both during and after surface-
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
safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director of the department of mines, and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, That any breakthrough which does occur shall be sealed; (14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release; (15) Ensure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the reclamation commission, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed permit area excluding drainage structures, haulroads and access roads unless there will be blasting on or near such structures or roads: Provided, That this notice shall suffice as daily notice to residents or occupants of the areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to
prevent (i) injury to persons; (ii) damage to public and private property outside the permit area; (iii) adverse impacts on any underground mine; and (iv) change in the course, channel or availability of ground or surface water outside the permit area; (D) require that all blasting operations be conducted by persons certified by the director of the department of mines; and (E) provide that upon written request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the area identified in subparagraph (A) of this subdivision, the applicant or permittee shall conduct a preblasting survey or other appropriate investigation of the structures and submit the results to the director and a copy to the resident or owner making the request. The area of the survey shall be determined by the director in accordance with regulations promulgated by the reclamation commission;

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

(A) If the director finds in writing that:

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

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

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;
(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;
(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article;
(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b), section thirteen of this article;
(B) If the reclamation commission has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subparagraph and has imposed such additional requirements as he deems necessary;
(C) If variances granted under the provisions of this subsection are to be reviewed by the director not more than three years from the date of issuance of the permit; and
(D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section twelve of this article shall be for the duration of the underground mining operations and until the requirements of subsection (g), section twelve and section twenty-six of this article, have been fully complied with.
(17) Ensure that the construction, maintenance and postmining conditions of access and haulroads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, shall be exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;
(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;
(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety
suitable for human consumption and capable of self-
regeneration and plant succession at least equal in extent of
cover to the natural vegetation of the area, except that
introduced species may be used in the revegetation process
where desirable or when necessary to achieve the approved
postmining land use plan;
(20) Assume the responsibility for successful
revegetation, as required by subdivision (19) of this
subsection, for a period of not less than five growing
seasons, as defined by the director, after the last year of
augmented seeding, fertilizing, irrigation or other work in
order to assure compliance with subdivision (19) of this
subsection: Provided, That when the director issues a
written finding approving a long-term agricultural
postmining land use as a part of the mining and reclamation
plan, the director may grant exception to the provisions of
subdivision (19) of this subsection: Provided, however, That
when the director approves an agricultural postmining land
use, the applicable five growing seasons of responsibility
for revegetation shall commence at the date of initial
planting for such agricultural postmining land use;
(21) Protect off-site areas from slides or damage
occurring during surface-mining operations and not
deposit spoil material or locate any part of the operations or
waste accumulations outside the permit area: Provided,
however, That spoil material may be placed outside the
permit area, if approved by the director, after a finding that
environmental benefits will result from such;
(22) Place all excess spoil material resulting from
surface mining activities in such a manner that: (A) Spoil is
transported and placed in a controlled manner in position
for concurrent compaction and in a way as to assure mass
stability and to prevent mass movement; (B) the areas of
disposal are within the bonded permit areas and all organic
matter shall be removed immediately prior to spoil
placements; (C) appropriate surface and internal drainage
system or diversion ditches are used to prevent spoil erosion
and movement; (D) the disposal area does not contain
springs, natural water courses or wet weather seeps, unless
lateral drains are constructed from the wet areas to the
main underdrains in a manner that filtration of the water
into the spoil pile will be prevented; (E) if placed on a slope,
the spoil is placed upon the most moderate slope among
those upon which, in the judgment of the director, the spoil
could be placed in compliance with all the requirements of
this article, and shall be placed, where possible, upon, or
above, a natural terrace, bench or berm, if placement
provides additional stability and prevents mass movement;
(F) where the toe of the spoil rests on a downslope, a rock toe
buttress, of sufficient size to prevent mass movement, is
constructed; (G) the final configuration is compatible with
the natural drainage pattern and surroundings and suitable
for intended uses; (H) design of the spoil disposal area is
certified by a qualified registered professional engineer in
conformance with professional standards; and (I) all other
provisions of this article are met: Provided, That where the
excess spoil material consists of at least eighty percent, by
volume, sandstone, limestone, or other rocks that do not
slake in water, the director may approve alternate methods
for disposal of excess spoil material, including fill
placement by dumping in a single lift, on a site specific
basis: Provided, however, That the services of a qualified
registered professional engineer experienced in the design
and construction of earth and rockfill embankment are
utilized: Provided further, That such approval shall not be
unreasonably withheld if the site is suitable;
(23) Meet such other criteria as are necessary to achieve
reclamation in accordance with the purposes of this article,
taking into consideration the physical, climatological and
other characteristics of the site;
(24) To the extent possible, using the best technology
currently available, minimize disturbances and adverse
impacts of the operation on fish, wildlife and related
environmental values, and achieve enhancement of these
resources where practicable; and
(25) Retain a natural barrier to inhibit slides and
erosion on permit areas where outcrop barriers are
required: Provided, That constructed barriers may be
allowed where (A) natural barriers do not provide adequate
stability, (B) natural barriers would result in potential
future water quality deterioration, and (C) natural barriers
would conflict with the goal of maximum utilization of the
mineral resource: Provided, however, That at a minimum,
the constructed barrier must be of sufficient width and
height to provide adequate stability and the stability factor
must equal or exceed that of the natural outcrop barrier:
Provided further, That where water quality is paramount,
the constructed barrier must be composed of impervious
material with controlled discharge points.

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

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

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

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

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

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

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

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

_Provided, however_, That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the department of natural resources for these purposes, and the sums so expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the director. For purposes of this subsection "operates" or "operated" means to enter upon a coal processing waste pile, or part thereof, for the purpose of disposing, depositing, dumping coal processing wastes thereon or removing coal processing waste therefrom, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

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

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

1 (1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: _Provided, That this subsection does not prohibit the standard method of room and pillar mining;_
(2) Seal all portals, entryways, drifts, shafts or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and regulations promulgated pursuant thereto;

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

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

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

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

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

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

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

(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section thirteen of this article for such effects which result from surface-mining operations: Provided, That the reclamation commission shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;
(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and

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

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

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

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

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

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

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

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

(a) If any of the requirements of this article, rules and regulations promulgated pursuant thereto or permit conditions have not been complied with, the director may cause a notice of violation to be served upon the operator or
his duly authorized agent. A copy of the notice shall be
tended to the operator or his duly authorized agent in
person or served by certified mail addressed to the operator
at the permanent address shown on the application for a
permit. The notice shall specify in what respects the
operator has failed to comply with this article, rules and
regulations or permit conditions and shall specify a
reasonable time for abatement of the violation not to exceed
fifteen days. If the operator has not abated the violation
within the time specified in the notice, or any reasonable
extension thereof, not to exceed seventy-five days, the
director shall order the cessation of the operation or the
portion thereof causing the violation, unless the operator
affirmatively demonstrates that compliance is unattainable
due to conditions totally beyond the control of the operator.
If a violation is not abated within the time specified or any
extension thereof, or any cessation order is issued, a
mandatory civil penalty of not less than seven hundred fifty
dollars per day per violation shall be assessed: Provided,
That if a cessation order is released or expires within
twenty-four hours after issuance no mandatory civil
penalty shall be assessed. A cessation order shall remain in
effect until the director determines that the violation has
been abated or until modified, vacated or terminated by the
director or by a court. In any cessation order issued under
this subsection the director shall determine the steps
necessary to abate the violation in the most expeditious
manner possible and shall include the necessary measures
in the order.

(b) If the director determines that a pattern of violations
of any requirement of this article or any permit condition
exists or has existed, as a result of the operator's lack of
reasonable care and diligence, or that the violations are
willfully caused by the operator, the director shall
immediately issue an order directing the operator to show
cause why the permit should not be suspended or revoked
and giving the operator thirty days in which to request a
public hearing. If a hearing is requested, the director shall
inform all interested parties of the time and place of the
hearing. Any hearing under this section shall be recorded
and subject to the provisions of chapter twenty-nine-a of
this code. Within sixty days following the public hearing,
the director shall issue and furnish to the permittee and all
other parties to the hearing a written decision, and the
reasons therefor, concerning suspension or revocation of
the permit. Upon the operator's failure to show cause why
the permit should not be suspended or revoked, the director
shall immediately revoke the operator's permit, forfeit the
operator's bond, or other security posted pursuant to
section twelve of this article and give notice to the attorney
general, who shall collect the forfeiture without delay:

Provided, That the entire proceeds of such forfeiture shall
be deposited with the treasurer of the state of West Virginia
to the credit of the special reclamation fund. All forfeitures
collected prior to the effective date of this article shall be
deposited in the special reclamation fund and shall be
expended back upon the areas for which the bond was
posted: Provided, however, That any excess therefrom shall
remain in the special reclamation fund.

(c) Any person engaged in surface-mining operations
who violates any permit condition or who violates any other
provision of this article or rules and regulations
promulgated pursuant thereto, may also be assessed a civil
penalty. The penalty shall not exceed five thousand dollars.

Each day of continuing violation may be deemed a separate
violation for purposes of penalty assessments. In
determining the amount of the penalty, consideration shall
be given to the operator's history of previous violations at
the particular surface-mining operation, the seriousness of
the violation, including any irreparable harm to the
environment and any hazard to the health or safety of the
public, whether the operator was negligent, and the
demonstrated good faith of the operator charged in
attempting to achieve rapid compliance after notification
of the violation.

(d) (1) Upon the issuance of a notice or order pursuant
to this section, the assessment officer, shall, within thirty
days, set a proposed penalty assessment and notify the
operator in writing of such proposed penalty assessment.
The proposed penalty assessment must be paid in full
within thirty days of receipt or, if the operator wishes to
contest either the amount of the penalty or the fact of
violation, an informal conference with the assessment
officer may be requested within fifteen days or a formal
hearing before the reclamation board of review may be requested within thirty days. The notice of proposed penalty assessment shall advise the operator of the right to an informal conference and a formal hearing pursuant to this section. When an informal conference is requested, the operator shall have fifteen days from receipt of the assessment officer's decision to request a formal hearing before the board. (A) When an informal conference is held, the assessment officer shall have authority to affirm, modify or vacate the notice, order or proposed penalty assessment. (B) When a formal hearing is requested, the amount of the proposed penalty assessment shall be forwarded to the director for placement in an escrow account. Formal hearings shall be of record and subject to the provisions of article five of chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Following the hearing the board shall affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment be paid. (2) Civil penalties owed under this section may be recovered by the director in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund established in section twelve of this article. If through the administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced; the director shall within thirty days remit the appropriate amount to the person, with interest at the rate of six percent or at the prevailing United States department of the treasury rate, whichever is greater. Failure to forward the money to the director within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. (3) Any person having an interest which is or may be adversely affected by any order of the director or the board may file an appeal only in accordance with the provisions of section twenty-five of this article within thirty days after receipt of the order. (4) The filing of an appeal provided for in this section shall not stay execution of the order appealed from.
Pending completion of the investigation and hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant requests relief from an order for cessation of surface mining and reclamation operations, the decision on the request shall be issued within forty-eight hours of its receipt. The director may grant such relief, under such conditions as he may prescribe if:

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

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

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

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

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

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

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

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

(i) Any person who shall, except as permitted by law,
willfully resist, prevent, impede or interfere with the
director or any of his agents in the performance of duties
pursuant to this article is guilty of a misdemeanor, and,
upon conviction thereof, shall be punished by a fine of not
more than five thousand dollars or by imprisonment for not
more than one year, or both.

§20-6-18. Approval, denial, revision and prohibition of permit.
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
determined in accordance with applicable law: Provided,
That nothing in this article shall be construed to authorize the director to adjudicate property rights disputes.

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

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

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

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

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

(a) (1) Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and the renewal shall be issued: Provided, That on application for renewal, the burden shall be on the opponents of renewal, unless it is established that and written findings by the director are made that: (A) The terms and conditions of the existing permit are not being satisfactorily met: Provided, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface-mining operation is not in compliance with the applicable environmental
(2) If an application for renewal of a valid permit includes a proposal to extend the surface-mining operation beyond the boundaries authorized in the existing permit, except incidental boundary revisions, the applicant shall apply for a new permit. Incidental boundary revisions shall include, but not be limited to, additional areas of disturbance ancillary to permitted surface effects of underground mining operations, provided that the operator has submitted (A) adequate bond, (B) a map showing the disturbed area and facilities, and (C) a reclamation plan.

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

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

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

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

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

(c) The director shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed within the time established by regulations. The director may require reasonable
revision or modification of the permit following review:

Provided, That such revision or modification shall be based
upon written findings and shall be preceded by notice to the
permittee and opportunity for hearing.

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

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

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

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

(2) Upon petition pursuant to subsection (b) of this
section, a surface area may be designated unsuitable for
certain types of surface-mining operations, if the
operations: (A) Conflict with existing state or local land use
plans or programs; (B) affect fragile or historic lands in
which the operations could result in significant damage to
important historic, cultural, scientific and aesthetic values
and natural systems; (C) affect renewable resource lands
including significant aquifers and aquifer recharge areas,
in which the operations could result in a substantial loss or
reduction of long-range productivity of water supply, food
or fiber products; or (D) affect natural hazard lands in
which the operations could substantially endanger life and
property. Such lands to include lands subject to frequent
flooding and areas of unstable geology.
(3) The reclamation commission shall develop a process which includes: (A) The review of surface-mining lands; (B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface-mining operations; (C) a method for implementing land use planning decisions concerning surface-mining operations; and (D) proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation pursuant to this section.

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

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

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

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

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

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

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

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

(4) Within three hundred feet from any occupied dwelling, unless waived by the owner thereof, or within three hundred feet of any public building, school, church, community or institutional building, public park, or within one hundred feet of a cemetery; or
(5) On any federal lands within the boundaries of any national forest: Provided, That surface coal mining operations may be permitted on the lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface-mining operations: Provided, further, that the surface operations and impacts are incident to an underground coal mine.

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

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

(b) The appeal shall be in writing and shall set forth the action complained of and the specific grounds upon which the appeal is based. Within thirty days after the appellant is notified of the decision of the director or the reclamation commission, or within fifteen days after the appellant is
notified of the decision of the assessment officer, the
appellant or any person with an interest which is or may be
adversely affected may request a hearing on the reasons for
the decision complained of. A notice of the appeal shall be
filed with the reclamation commission or the director
within three days after the appeal is filed with the board.
(c) Upon the filing of the appeal, the board shall fix the
time and place at which the hearing on the appeal will be
held, which hearing shall be held within thirty days after
the notice of appeal is filed, and shall give the appellant, the
commission and the director at least twenty days' written
notice thereof by certified mail. The board may postpone or
continue any hearing upon its own motion or motion of the
parties to the appeal.
(d) Not later than five days prior to the time fixed for the
hearing on the appeal, the reclamation commission or
director shall prepare and certify to the board a complete
record of the proceedings of the reclamation commission or
director out of which the appeal arises, including all
documents and correspondence related to the matter.
(e) The board shall hear the appeal de novo and any
party to the appeal may submit evidence. For the purpose of
conducting a hearing on an appeal, the board may require
the attendance of witnesses and the production of books,
records and papers, and it may, and at the request of any
party it shall, issue subpoenas for witnesses or subpoenas
duces tecum to compel the production of any books, records
or papers, directed to the sheriff of the county where
witnesses, books, records or papers are found, which
subpoenas and subpoenas duces tecum shall be served and
returned in the same manner as subpoenas and subpoenas
duces tecum in civil litigation are served and returned. The
fees and allowances for mileage of sheriffs and witnesses
shall be the same as those permitted in civil litigation in
trial courts. All fees and mileage expenses incurred and the
expense of preparing a copy of the record at the request of
the appellant shall be paid by the appellant. The board may
visit the site of the activity or proposed activity which is the
subject of the hearing and take such additional evidence as
it considers necessary provided that all parties and
intervenors be given notice of the visit and are given an
opportunity to accompany the board.
In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the disobedience, neglect or refusal occurs, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the court of a refusal to testify therein. Witnesses at the hearings shall testify under oath and any member of the board may administer oaths or affirmations to persons who so testify.

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

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

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

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

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

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
(2) The person requesting relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and
(3) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

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

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

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

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

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

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

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

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

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

(1) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;
(2) Two years after the last augmented seeding, fertilizing, irrigation or other work to insure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional twenty-five percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and

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

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

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions
necessary to secure said release and notifying the operator
of his right to a hearing.

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

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

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

(h) For the purpose of such hearing, the director has the
authority and is hereby empowered to administer oaths,
subpoena witnesses and written or printed materials,
compel the attendance of witnesses, or production of
materials, and take evidence including, but not limited to,
inspections of the land affected and other surface-mining
operations carried on by the applicant in the general
vicinity. A verbatim record of each public hearing required
by this section shall be made and a transcript made
available on the motion of any party or by order of the
director at the cost of the person requesting the transcript.
§20-6-40. Conflict of interest prohibited; criminal penalties therefor; employee protection.

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

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

3. (c) Any employee or a representative of employees who has reason to believe that he has been fired or otherwise discriminated against by any person in violation of subsection (b) of this section may, within thirty days after the alleged violation occurs, petition to the reclamation board of review for a review of the firing or discrimination. The employee or representative shall be known as the petitioner and shall serve a copy of the petition upon the person or operator who will be the respondent. The participants shall be given ten days' written notice of the hearing before the board and the hearing shall be held within thirty days of the filing of the petition. The board shall have the same powers and shall hear the petition in the same manner as provided in subsections (e) and (f) of section twenty-four of this article.
(d) If the board finds that the alleged violation did occur, it shall issue an order incorporating therein findings of fact and conclusions requiring the participant committing the violation to take such affirmative action to abate the violation by appropriate action, including, but not limited to, the hiring or reinstatement of the employee or representative to his former position with compensation. If the board finds no violation it shall issue a finding to that effect. Orders issued by the board under this section shall be subject to judicial review in the same manner as other orders of the board issued under this article.

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

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

(b) Permits granted under this article shall be subject to rules and regulations promulgated hereunder.
§20-6-43. Consolidation of permitting, enforcement and rule-making authority for surface mining operations; National Pollutant Discharge Elimination System; effective date of section.

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

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

(c) Notwithstanding any provisions of this chapter to the contrary, the director shall have the sole authority to enforce and shall enforce the rules and regulations of the
reclamation commission and the rules and regulations of
the water resources board setting water quality standards
for the waters of the state as they apply to all coal mines,
preparation plants and all refuse and waste therefrom. The
enforcement of such rules and regulations shall be governed
by the provisions of this article.

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

(e) This section shall become effective upon a
proclamation by the governor stating that final approval of
the partial transfer of the National Pollutant Discharge
Elimination System established under the Federal Clean
Water Act contemplated by this section has been given by
the Administrator of the United States Environmental
Protection Agency.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signatures]

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