WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED
Comm. Sub. for
HOUSE BILL No. 1850

(By Speaker, Mr. Allwright, and Dal Swann)
(By request of the Executive)

Passed

April 12, 1985

In Effect 90 Days From Passage
AN ACT to repeal articles six, six-b, six-c and six-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal chapter twenty-two of said code and to enact in lieu thereof a new chapter twenty-two; and to further amend said code by adding thereto two new chapters, designated chapters twenty-two-a and twenty-two-b, all relating to providing for the consolidation of the administration and regulation of exploration for and development, production, utilization and conservation of coal, oil and gas, and other mineral resources of this state; providing for the creation of a new state department of energy charged generally with the administration of power and duties relating to the exploration for and development, production, utilization and conservation of all minerals; to create within the department of energy a division of mines and minerals to administer such laws and matters as relate to coal and other hard minerals; creating a division of oil and gas responsible for administration of such laws and matters as relate to oil and gas; providing that the act may be cited as The West Virginia Energy Act; specifying the legislative findings and policy; defining terms; providing for the commissioner and deputy commissioner of the department of energy, the director of the division of mines and minerals and the director of the division of oil and gas, their appointment, qualifications,
removal, salary, expenses, oath, bond, powers and duties; providing for the creation of sections within the divisions, qualifications of deputy directors thereof, and generally for the ability of the commissioner to delegate authority to such directors and deputy directors and others as he considers appropriate and to create such sections as are necessary for the effective administration of this act; providing for the transfer of funds, supplies, equipment, records and appropriations formerly held with the department of mines or department of natural resources to the department of energy; providing for the commissioner’s authority to adopt rules and regulations; providing for the jurisdiction of the department of energy and cooperation with other governments and agencies; all permits, certifications, waivers, bonds, orders or authorizations heretofore issued to continue in effect; providing for hearings before the department of energy; providing for construction of the act; providing for the effective date of the act and operative dates for transfer of powers to the department of energy; providing for continuation of employment, tenure and civil service coverage of employees; relating to the continuation of the interstate mining compact, findings and purposes therefore, definitions, formulation of state programs for the conservation and use of mined land, powers conferred upon the interstate mining commission, the composition, duties and purposes thereof; providing for advisory, technical and regional committees; providing for budget recommendations to be made by the commission to the governor and manner of payment of the commission expenses; providing for the effective date of the act, effect on other laws, and construction and severability of the act; providing for the bylaws of the commission and withdrawal from the compact; providing for the continuation of the abandoned mine reclamation act, the title thereof, the legislative findings, intent and purpose of the act, the jurisdiction and authority of the commissioner to accomplish the purpose of said act to restore and reclaim land and water resources disturbed by coal surface mining operations, and defining terms; providing for the abandoned land reclamation fund and the objectives of the fund; specifying lands eligible for reclamation; providing for the powers and duties of the commissioner, the program plans and reclamation projects under the act; providing for the acquisition and reclamation
of the land adversely affected by past coal surface mining practices; providing for liens against reclaimed land, and a procedure for petition and appeal; providing for the priority of such liens; providing for filling voids and sealing tunnels existing from previous coal surface mining operations; providing for the general and miscellaneous powers and duties of the commissioner, cooperative agreements, injunctive relief, water treatment plants and facilities, the transfer of funds and interagency cooperation; continuing a reclamation board of review, and providing for the appointment, organization, authority, compensation, expenses and removal of the members thereof, appeals to the board, hearings before the board, subpoenas and subpoenas duces tecum, powers, records, findings and orders of the board, appeals from orders of the board, judicial review and temporary relief; continuing a board of appeals to hear appeals and make determinations on questions of miners’ entitlements; providing for the composition and powers of said board and the compensation and terms of members; providing for the continuation of the board of coal mine health and safety, and providing for the membership thereof, method of nomination and appointment, meetings, vacancies, quorum, powers, duties, compensation and expenses of members, definitions, findings and purposes; providing for a health and safety administrator, his qualifications, duties, employees and compensation; promulgation of rules and regulations and reports of the board; continuing a shallow gas well review board and providing for policy and findings, definitions, applications of the article and exclusions therefrom; board membership, method of appointment, vacancies, compensation, expenses, staff, general powers and duties, rules and regulations and other requirements; meetings and notice requirements therefor, objections to proposed drilling, conferences, agreed locations and changes on plats, hearings, orders, distance limitations between wells, application for and establishment of a drilling unit and notice thereof and, hearings and orders pursuant thereto, pooling of interests in drilling units and limitations thereon; the effects of orders establishing drilling unit or pooling of interests, and recording procedures, judicial review, appeal to the supreme court of appeals and legal representation for the board, operation on drilling units, unit agreements, injunctive relief, criminal penalties for violations, and construction of article;
promulgated rules and regulations and orders and permits to remain in effect, though subject to review; continuing the oil and gas conservation commission and office of commissioner, and in conjunction therewith providing for public policy and legislative findings, definitions, applications and exclusions, commission membership, qualifications for members, terms, vacancies, meetings, compensation and expenses of members, appointment and qualifications of the commissioner and his general powers and duties, rules and regulations and notice requirements therefor, prohibition against waste, drilling units and pooling for deep oil and gas wells, procedures for secondary recovery of oil and unit operations, validity of unit agreements, hearing procedures, judicial review, appeal to supreme court of appeals, legal representation for commissioner, procedures for obtaining injunctive relief, oil and gas conservation tax, criminal penalties for violation, construction and severability; promulgated rules and regulations and orders and permits to remain in effect, though subject to review; continuing the board of miner training, education and certification and in conjunction therewith providing for legislative findings and policies, definitions; appointment of board and chairman, terms, vacancies and compensation, powers and duties of board, duties of commissioner and the department; providing for the certification of underground and surface coal miners, competency and qualification requirements therefor and certificates, definitions, apprenticeship permits for underground and surface miners, supervision of apprentices, refusal to issue certificates, appeals, limitations and application of article, and criminal penalties for violations thereof; continuing the mine inspectors examining board, its composition and general powers and duties; continuing provisions for emergency medical personnel in coal mines and requirements for first-aid training for coal mine employees; continuing the oil and gas inspector's examining board and providing for its composition, appointment, term compensation of the members, meetings, and general powers and duties; appointment tenure, qualifications, salary, expenses and removal of oil and gas inspectors and supervising inspectors; providing for the formation of the division of mines and minerals and a director thereof, his term appointment, qualifications, salary, oath and bond, purpose, administration and enforcement powers of the division, definition of terms,
rules and regulations, the commissioner's and director's powers and duties; providing for mine inspectors, their districts and divisions, employment, tenure, oath and bond; providing for mine safety instructors, their qualifications, employment, compensation, tenure, oath and bond, the appointment of mine inspectors in the case of a vacancies and their tenure; providing for electrical inspectors, their qualifications, salary, expenses, tenure, oath and bond; providing for eligibility and qualifications of mine inspectors, their salary, expenses, removal from office; providing for eligibility and qualifications for surface mine inspectors, their salary, expenses and removal from office; providing for authority and duties of the commissioner, director and authorized representatives to enter mines without notice and inspect mines and issue reports after fatal accidents, and findings, orders and notices with respect to dangerous conditions or violations of law; authorized representative of mines may accompany authorized representatives of commissioner on an inspection; providing for powers and duties of electrical inspectors with regard to inspections, findings and orders; review of orders and notices by the commissioner, posting of notices, orders and decisions and delivery to agent of operator, and requiring that names and addresses be filed by operators; providing for judicial review, injunctions, civil and criminal penalties, discriminations, and records and reports; providing for appointment and salary of mine foreman examiner for mine foreman-fire bosses and assistant mine foreman-fire bosses, duties of the mine foreman examiner; preparation and administration examinations notice of intent to take examination and investigation of applicants, certificates of qualification of examinees, certificate of mine foreman examiner, record of examinations, withdrawal of certification, certification of mine foreman or assistant mine foreman with regards to licensing when similar activities were suspended in another state; purchase of mine rescue stations and their equipment; employment of mine rescue crews and rescue teams; requiring mandatory safety programs; and providing criminal penalties for violating severability of provisions; providing for coal mines generally, mining maps, professional supervision thereof, seals and certifications, contents, extensions, repositories, availability, traversing, copies, archives, surveys and maps, and criminal penalties for violations; providing for mine ventilation generally, including
plans and approval thereof, fans, and ventilation of unused and abandoned mine areas, providing for the movement of mining equipment generally; providing for requiring underground mine foreman-fire bosses, their assistants, certification and duties with respect to ventilation loose coal, slate or rocks, props, drainage of water, mandoors and instruction of apprentice miners, providing for regulation of slopes, incline planes and haulage roads; providing for signals on haulways, lights at mouth and at bottom of shaft, operation of cages and boreholes; providing for instruction of employees and supervision of apprentices, annual examinations of persons using flame safety lamps, records of such examinations and maintenance of methane detectors, etc.; providing daily inspection of working places and records; providing for safety inspections, removal of gas, sealing off dangerous places, examination of reports of fire bosses, ascertaining, recording and removal of dangers; providing for duty to notify operators when unable to comply with law and duty of operation; providing for the death or resignation of the mine foreman and a successor; providing for the duties of fire bosses to prepare danger signals and maintain open records; providing that fire bosses shall have no superior officers, prohibiting entry of mine prior to fire boss report of safety and general authority of fire bosses; providing for the control of coal dust, rock dusting, roof control programs and plans, refusal to work under unsupported roof, roof support, examination and testing, correction of dangerous conditions, roof bolt recovery, canopies or cabs and electric face equipment; providing for roof equipment to conform to seam; providing generally for the use of authorized explosives, storage and use of unauthorized explosives; providing for separate surface magazines for explosives, transportation of explosives, the underground storage thereof, and preparation for shots and blasting practices, setting forth procedures for misfires of explosives and other blasting devices; providing for hoisting machinery, telephones, safety devices, hoisting engineers and drum runners; providing for transportation generally, including haulage roads and equipment; shelter holes, prohibited practices, signals and inspections; providing for transportation of miners by cars, self propelled equipment and belts; providing for flame resistant conveyor belts, their installation and maintenance; providing for general electrical provisions.
the use of bonding tract as power conductor; providing for telephone service and communication facilities; providing for conditions for electrical equipment in mines, for hand drills, rotating tools and trailing cables, and installation of lighting; providing for conditions for welding and cutting, responsibility for care and maintenance of face equipment and requirements for respiratory equipment and control of dust; providing for safeguards for mechanical equipment; providing for procurements of dust tight electrical equipment, fireproof construction, dust control, repairs, welding, handrails and toeboards, protection of personnel on conveyors, back guards on ladders, walkways or safety devices around thickeners; providing for housekeeping and storage of flammable liquids and lamp-houses; providing for smoking restrictions; providing for miscellaneous safety provisions and requirements including railroad cars and dumping areas; rules, regulations and duties of operators; protective equipment and clothing, safety helmet and checking systems, prohibiting endangering security of mines, search for intoxicants, matches, etc.; providing for fire protection; first-aid equipment; accessible outlets, safe roadways for emergencies, accessibility of first-aid equipment, use of special capsule for removal of personnel; providing for coal storage bins, recovery tunnels and coal storage piles, thermal coal dryers and plants; prohibiting opening or reopening any mine without prior approval of the commissioner, establishing approval fees, and extensions of certificates of approval; providing that certificates are not transferable, and that section is to be printed on certificates; providing for the sealing and permanent closing of abandoned mines, mining close to abandoned workings, and explosions or accidents, notices, investigations by department, written reports of accidents, and preservation of evidence following accident or disaster; providing for fires in and about mines and notification of the director and mine inspector; providing for shafts and slopes generally; requiring that mine examiner be employed during the sinking of a shaft or a driving of a slope to a coal bed, and the qualifications for such examiner; providing for the rights of miners to refuse to operate on unsafe equipment, the procedures therefor and discrimination policies; providing for methods of long wall and short wall mining; providing for the construction of shafts, slopes, surface facilities and the safety hazards therewith, duties of the board

of coal mine health and safety to promulgate rules and regulations, and time limits therefor; providing for the control of respirable dust; providing for procedures prior to operating near oil and gas wells, setting forth general provisions relating to opening of old or abandoned mines, monthly reports by mine operators, examinations to determine compliance with permits, and providing for severability of provisions of article; providing for the West Virginia surface coal mining and reclamation act, title thereto, legislative findings and purpose, authority, jurisdiction, duties and functions of commissioner, apportionment of responsibility, interdepartmental cooperation, definitions, reclamation supervisors and inspectors, their appointment, qualifications, salary and duties; providing for notice of intention to prospect and requirements therefor, bonding, commissioner's authority to deny or limit such prospecting, postponement of reclamation, prohibited acts and exceptions; prohibiting surface mining without a permit and providing for permit requirements, successors, duration, insurance, termination, fees, application requirements and contents; providing for reclamation plan requirements, performance bonds, amount and method of bonding, bonding requirements, special reclamation tax and fund, prohibited acts, and period of bonding liability; providing for general environmental protection performance standards for surface mining and variances; providing for a pilot program for growing grapes on reclaimed areas; providing for surface effects of underground mining and application of other provisions to surface of underground mining; providing for inspections, monitoring, right of entry, inspection of records, identification signs, and progress maps; providing for cessation of operation by order of inspector, informal conference, imposition of affirmative obligations, and appeals; providing for notices of violations, procedure and actions, enforcement, permit revocation and bond forfeiture, civil criminal penalties, appeals to the board, prosecution and injunctive relief, providing for approval, denial, revision and prohibition of permit, providing for permit revision, renewal, transfer, assignment, sale and reassignment; providing for public notice, written objections, and informal conferences; providing for decision of director on permit application and hearing thereon; providing for the designation of areas unsuitable for surface mining, petition for removal of such designation, prohibition
of surface mining on certain areas, exceptions, taxation of minerals underlying land designated as unsuitable; providing for release of performance bonds or deposits, application therefor, notice, duties of director in this regard, public hearings, and final maps on grade release; providing for water rights and replacement and waiver of replacement; providing for citizens suits, orders of court and damages; providing for those surface mining operations not subject to article; providing for leasing of lands owned by state for surface mining of coal; providing for special permits for removal of coal incidental to land development; prohibited acts, application, bond, and reclamation for existing abandoned coal processing waste piles; providing for existing permits and performance bond conversion and exemption from design criteria; providing for experimental practices; providing for certification and training of blasters; providing for certification of surface miners and surface mine foremen; providing for monthly reports by operators; providing for the applicability and enforcement of laws safeguarding life and property, regulations, and authority of department of energy regarding such safety laws; providing for conflicting provisions; prohibiting conflicts of interest, criminal penalties therefor, and employee protection; providing for severability of provisions of article, providing for validity of regulations promulgated under section 502(c) of the surface mining control and reclamation act of 1977, and providing for the consolidation of permitting, enforcement and rule making authority for surface mining operations, National Pollutant Discharge Elimination System, and the effective date thereof; providing for surface mining and reclamation of minerals other than coal, jurisdiction and duties in connection therewith, legislative purpose and apportionment of responsibility, definitions, reclamation supervisors and inspectors, their appointment, qualifications, salaries, and duties; providing for surface mining permits, applications, issuance, renewals, fees and use of proceeds; providing for preplans for reclamation and surface mining; providing for the installation of a drainage system and alternate plans for not calling for backfilling where a water impoundment is desired, and its time limits; providing for limitations of areas for surface mining, and mandamus; providing for blasting restrictions, formulas, filing preplans, civil penalties and notices; providing for the time limits for
reclamation work, obligations of the operator, cessation of
operation by inspector, completion of planning, inspection and
evaluation, performance bonds, exceptions as to highway
construction projects, applicability of law safeguarding life and
property, rules and regulations therefor, and supervision of
operations thereof, monthly reports by the operators, general
rules and regulations, noncompliance procedures, adjudica­
tions, findings, etc., by written order, contents thereof and
notices, providing for appeals, hearings, records, findings and
orders, providing for offenses, criminal penalties, prosecutions,
treble damages and injunctive relief; providing for the validity
and construction of existing surface mining permits, and
certification of surface miners and surface mine foreman;
providing for underground clay mines; definitions, mine
foreman and assistants and the employment and qualifications
thereof, and providing for regulations for protection of health
and safety of employees of such mines; providing for open pit
mines, cement manufacturing plants and underground
limestone and sandstone mines, definitions, applicability of
mining law to such mines and plants, rules and regulations,
monthly reports by operators, inspectors and criminal
penalties; providing for a division of oil and gas and a director
thereof, oil and gas wells generally, and administration and
enforcement of laws in connection therewith, definitions, rules
and regulations, appointments, powers and duties of director,
and public records; providing for oil and gas inspectors, their
eligibility, qualifications, salary, expenses and removal;
providing for findings and orders of such inspectors, time for
abatement, extensions of such time, special inspections, and
notice of findings and orders; providing for review of such
findings and orders, special inspections, annulments, revisions,
etc., of order and notice; providing for requirements for such
findings, orders and notices and the posting thereof; providing
for judicial review; providing for permits for well work, fees,
applications, and soil erosion control plans; providing water
pollution conditions, powers and duties of directors, prohibi­
tions, criminal and civil penalties and appeals to state water
resources board; providing for special conditions for permits
on flat well royalty leases and legislative findings and
declarations in this regard; providing for notice to property
owners, providing for procedures for filing comments and
notices, providing for review of application, issuance of
permits in the absence of objections and comments, copy of such permits to county assessor; providing for permits to drill or fracture wells, plats, notices, bonds or other securities and forfeiture thereof, all in connection with such permits; providing for permits to fracture certain wells, and notices in connection therewith; providing for permits to introduce liquids or wastes into wells, and in connection therewith the plats, notices and bonds or security and the preparation and contents thereof; providing for objections to proposed drilling of deep wells and to fracturing, notices and hearings, agreed location or conditions, indication of changes on plats, etc., and issuance of permits; providing for objections to proposed drilling or converting for introducing liquids or wastes into wells, notices and hearings, agreed locations or conditions, indication of changes on plats, etc., issuance of permits, and docket of proceedings; providing for objections to proposed drilling of shallow gas wells, notice to chairman of review board, indication of changes on plats, and issuance of permits, providing for the applicability of certain provisions of law, to appeals from orders issuing or refusing permits and procedure therefor; providing for appeals from orders issuing or refusing permits for drilling location for introduction of liquids or waste or from conditions of converting procedure; providing for protective devices when well penetrates workable coal beds, when gas is found beneath or between workable coal beds, continuance of such devices during life of well, and plugging method when well is dry or abandoned; providing for protective devices when well is drilled through horizon of coal bed from which coal has been removed, and installation of fresh water casings; providing for filing of well logs; contents thereof, and authority to promulgate regulations in connection therewith; providing for plugging, abandonment and reclamation of wells, notice of intention therefor, performance bonds or securities, and affidavits showing time and manner thereof; providing for methods of plugging wells; providing for the introduction of liquid pressure into producing strata to recover oil contained therein; providing for performance bonds, corporate surety or other security; providing a cause of action for damages caused by explosions; providing for oil and gas conservation commissioner as acting administrator and administrative assistants; providing for supervision by department of energy over drilling, mining and reclamation,
operations, complaints, hearings and appeals; providing for reclamation fund and fees; providing for reclamation requirements; providing for rules and regulations and hearings before department of energy and appeals; providing for prevention of waste of gas, plans of operation required for wasting gas in process of producing oil, and rejection thereof; providing for rights of adjacent owners or operators to prevent waste of gas and recovery of costs; providing for restraining of waste, providing for offenses and criminal penalties, providing for injunctive relief and appeals; providing for civil actions for contamination or deprivation of fresh water sources or supplies and presumptions in connection therewith; providing for declarations of oil and gas notice by owners and lessees of coal seams; providing for causes of action for damages caused by explosions; providing for reorganizations and required reports; providing that rules, regulations, orders and permits in existence will remain valid but will be subject to review; providing for damages and compensation to surface owners resulting from oil and gas drilling and production, legislative findings and purpose, definitions, items of compensation and damage, preservation of common law rights of action and offsets, notification of claim, agreements, offers of settlement, rejection, legal action, arbitration, fees, costs and application and severability of these provisions; providing for transportation of oils, duty of pipeline companies, inspection grading and measurement, receipt, deduction for waste of oil of 35° Baume at 60° Fahrenheit, providing for the inspection, measurement and loss of oil over 35° Baume at 60° Fahrenheit, providing a lien for charges; providing for accepted orders, certificates for oil, and negotiability; providing for dealing in oil without consent of owner, monthly statements, statements of amount of oil, providing criminal penalties for wrongful issuance, sale or alteration of receipts, orders, etc., and dealing in oil without consent of owner in interest; providing for forfeitures for failure to make report and statements; providing for underground gas storage reservoirs; definitions; filing of maps and data by persons operating or proposing to operate gas storage reservoirs; filing of maps and data by persons operating coal mines; notice by persons operating coal mines; obligations to be performed by persons operating storage reservoirs; inspection of facilities and records; reliance on maps; burden of proof; exemptions;
alternate methods; powers and duties of director; conferences; hearings; appeals; enforcement and criminal penalties for violations; and providing that orders in effect remain effective but are subject to review.

Be it enacted by the Legislature of West Virginia:

That articles six, six-b, six-c and six-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter twenty-two of said code be repealed and that a new chapter twenty-two of said code be enacted in lieu thereof; and that said code be further amended by adding thereto two new chapters, designated chapters twenty-two-a and twenty-two-b, all to read as follows:

CHAPTER 22. ENERGY.

ARTICLE 1. TITLE; PURPOSES; DEPARTMENT OF ENERGY.

§22-1-1. Short Title.

This act, which includes the provisions of this chapter and chapters twenty-two-a and twenty-two-b, may be cited as “The West Virginia Energy Act.”

§22-1-2. Declaration of legislative findings and policy.

The Legislature hereby finds and declares that the mineral development industry is vital to the state’s economy and the employment of many of its citizens, that there exists a need for comprehensive regulation of this industry and the consolidation of regulatory power and statutes in a single act and under a single department of state government with related boards and commissions, that such consolidation will result in more efficient administration, avoid unnecessary delays in permitting and other matters, provide better and more expeditious enforcement and application of environmental and safety laws as herein provided, result in better cooperation between agencies, provide for uniform policies and consistent treatment of entities engaged in mineral development, and that such efficient and uniform administration and regulation will make this state’s industry more competitive with that in other energy producing states.

Accordingly, it is hereby declared the public policy of this state and the purpose of this act:
(a) To foster, encourage and promote the exploration for and the development, production, utilization and conservation of coal, oil and gas and other mineral resources of the state through the fullest practical means, and at the same time promote economic development in the state, protect the environment and enhance safety and health in these vital industries;

(b) To provide a comprehensive program for the exploration, conservation, development, protection, enjoyment, recovery and use of coal, oil and gas, and other mineral resources in this state;

(c) To aid in such a comprehensive program by creating a single department, designated the department of energy, to have the regulatory powers with respect to this industry and to have the general duties and responsibilities heretofore existing in the department of natural resources and department of mines, and that the department will perform such duties and functions in conjunction with the respective boards and commissions which are herein continued in effect;

(d) To expedite and facilitate the issuance of permits for mines, surface mining operations, oil and gas wells and other well work; to avoid conflicting permitting requirements and regulations in this state or with federal agencies; and to provide uniform policies with respect to this industry;

(e) To provide for a single agency of this state to implement requirements and programs of federal law affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state;

(f) To provide for an agency of this state which can be consulted with by other agencies of this state prior to the adoption or implementation of rules, regulations, standards, programs or requirements affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state.

§22-1-3. Definitions.

(a) Unless the context, in which used, clearly requires a different meaning, the following definitions shall apply in this chapter:
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(1) "Commissioner" means the commissioner of the
department of energy;
(2) "Department" means the state department of energy;
(3) "Division of Mines and Minerals" means the division of
mines and minerals of the department of energy; and
(4) "Division of Oil and Gas" means the division of oil and
gas of the department of energy.
(b) Unless the context clearly indicates otherwise, the use
of the word "and" and the word "or" shall be interchangeable,
as, for example, "oil and gas" shall mean oil or gas or both.

§22-1-4. Department of energy created.

There is hereby created in state government a department
to be known as the department of energy. It shall be the
purpose of the department, by and through the commissioner,
the director of the division of mines and minerals and the
director of the division of oil and gas to carry out the energy
policy of the state as set forth in this chapter and in chapters
twenty-two-a and twenty-two-b of this code.

§22-1-5. Commissioner of energy; appointment; duties; qualification; removal; salary; expenses, oath and bond.

The Commissioner shall be the chief executive officer of the
department. Subject to provisions of law, he shall organize the
department into such offices, divisions, agencies and other
units of activity as may be found by the commissioner to be
desirable for the orderly, efficient and economical administra-
tion of the department and for the accomplishment of its
objects and purposes. The commissioner may appoint
assistants, hearing officers, clerks, stenographers, and other
officers and employees needed for the operation of the
department and may prescribe their powers and duties and fix
their compensation within amounts appropriated therefor.

The commissioner shall have the power to and may
designate the deputy commissioner or other officers or
employees of the department to substitute for him on any
board or commission established under this chapter or to sit
in his place in any hearings, appeals, meetings or other
activities with such substitute having the same powers, duties,
authority and responsibility as the commissioner. Additionally,
the commissioner shall have the power to delegate to the
deputy commissioner, division directors, section deputies or
other personnel, his powers, duties, authority and responsibil-
ity relating to issuing permits, hiring and training inspectors
and other employees of the department, conducting hearings
and appeals and such other duties and functions set forth in
this chapter or chapters twenty-two-a and twenty-two-b as he
considers appropriate.

The commissioner shall be appointed by the governor with
the advice and consent of the senate, and shall serve at the
will and pleasure of the governor.

At the time of his initial appointment, the commissioner
shall be at least thirty years old and shall be selected with
special reference and consideration given to his administrative
experience and ability, to his demonstrated interest in the
energy resources industry and to his experience in the energy
resource field. The commissioner shall not be a candidate for
or hold any other public office, shall not be a member of any
political party committee and shall immediately forfeit and
vacate his office as commissioner in the event he becomes a
candidate for or accepts appointment to any other public office
or political party committee.

The commissioner shall receive an annual salary of $65,000
and shall be allowed and paid necessary expenses incident to
the performance of his official duties. Prior to the assumption
of the duties of his office, the commissioner shall take and
subscribe to the oath required of public officers prescribed by
section 5, article IV of the constitution of West Virginia and
shall execute a bond, with surety approved by the governor,
in the penal sum of ten thousand dollars, which executed oath
and bond shall be filed in the office of the secretary of state.

Premiums on the bond shall be paid from the department
funds.

§22-1-6. Deputy Commissioner—Appointment; eligibility; salary;
duties; oath; bond.

There shall be a deputy commissioner of the department
who shall be appointed by and serve at the will and pleasure
of the governor. The salary of the deputy commissioner shall
be set by the governor and be paid with department funds.
The commissioner or governor shall prescribe the duties and
responsibilities of the deputy commissioner.

Prior to the assumption of the duties of his office, the deputy commissioner shall take and subscribe to the oath required of public officers prescribed by section 5, article IV of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of two thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premium on the bond shall be paid from department funds.

§22-1-7. Divisions within department; sections within divisions.

(a) Divisions of mines and minerals, and oil and gas are hereby created and established within the department. Subject to provisions of law, the commissioner shall allocate the functions and services of the department to the divisions, offices and activities thereof and may from time to time establish and abolish other divisions, offices and activities within the department in order to carry out fully and in an orderly manner the powers, duties and responsibilities of his office as commissioner. The commissioner shall select and designate a competent and qualified person to be director of each division. The director of a division shall be the principal administrative officer of that division and shall be accountable and responsible for the orderly and efficient performance of the duties, functions and services thereof.

(b) There shall be within the division of mines and minerals a permit section, an inspection and enforcement section and a safety, health and training section, and such other sections and units of activity as may be found by the commissioner to be necessary and desirable for the orderly, efficient and economical administration of the department for the accomplishment of its purposes. Each section shall be headed by a deputy director appointed by the commissioner. The deputy director of the safety, health and training section shall be a citizen of this state, shall be a competent person of good repute and temperate habits and shall have had at least fifteen years' experience underground in coal mines, at least ten of which shall have been underground in coal mines in this state. Such deputy director of the safety, health and training section shall possess practical knowledge of the different systems for the working, ventilating and draining of coal mines, and a
practical and scientific knowledge of all noxious and
dangerous gases found in such mines. A diploma in mining
ing engineering from the West Virginia University school of mines
or any similarly accredited engineering school shall be counted
as two years’ working experience. Such deputy director shall
devote all of his time to the duties of the office and shall not
be directly or indirectly interested financially in any mine in
this state. The deputy director of any other section of the
division of mines and minerals shall possess such qualifications
as shall be prescribed by the commissioner.

(c) There shall be within the division of oil and gas a permit
section, an inspection and enforcement section and a safety,
health and training section, and such other sections and units
of activity as may be found by the commissioner to be
necessary and desirable for the orderly, efficient and
economical administration of the department for the accompl-
ishment of its purposes. Each such section shall be headed
by a deputy director appointed by the commissioner. The
deputy director of each section of the division of oil and gas
shall possess such qualifications as shall be prescribed by the
commissioner.

§22-1-8. Director of the division of mines and minerals—
Appointment; eligibility; salary.

(a) There shall be a director of the division of mines and
minerals who shall be appointed by the commissioner to serve
at the will and pleasure of the commissioner and whose salary
shall be set by the commissioner. The director of the division
of mines and minerals shall have full charge of the adminis-
tration of the division of mines and minerals and of such other
matters as are delegated and assigned to the director of the
division of mines and minerals by the commissioner relating
to such mines and minerals matters set out in this chapter and
in chapter twenty-two-a of this code, subject always to the
direct supervision and control of the commissioner.

(b) The director of the division of mines and minerals shall
be a citizen of West Virginia, shall be a competent person of
good repute and temperate habits with demonstrated interest
and experience in coal mining. The director of the division of
mines and minerals shall devote all of his time to his duties
and shall not be directly or indirectly interested financially in

The director of the division of mines and minerals shall, before entering upon the discharge of his duties, take the oath of office prescribed by section five, article four of the Constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

§22-1-10. General powers and duties of the director of the division of mines and minerals.

The director of the division of mines and minerals is hereby empowered and it shall be his duty to execute and carry out, administer and enforce such provisions of this chapter and chapter twenty-two-a of the code as are expressly conferred upon him by such provisions or delegated to him by the commissioner relating to mines and minerals.

§22-1-11. Director of the division of oil and gas—Appointment; eligibility; salary.

(a) There shall be a director of the division of oil and gas who shall be appointed by the commissioner to serve at the will and pleasure of the commissioner and whose salary shall be set by the commissioner. The director of the division of oil and gas shall have full charge of the oil and gas matters set out in this chapter and in chapter twenty-two-b, of this code, subject always to the direct supervision and control of the commissioner.

(b) The director of the division of oil and gas shall be a citizen of West Virginia, shall be a competent person of good reputation and temperate habits and shall be a registered professional engineer and shall have had at least ten years’ practical experience in the oil and gas industry. A degree in mining, petroleum engineering or geology shall be counted as two years’ practical experience. The director of the division of oil and gas shall devote all of his time to his duties and shall not be directly or indirectly interested financially in any oil or gas production or drilling or in any coal mine in this state.
§22-1-12. Same—Oath and bond.

The director of the division of oil and gas shall, before entering upon the discharge of his duties, take the oath of office prescribed by section five, article four of the constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.

§22-1-13. General powers and duties of director of the division of oil and gas and commissioner.

(a) Except for the authority of the shallow gas well review board under article seven of this chapter and of the oil and gas conservation commission under article eight of this chapter and of the oil and gas inspectors examining board under article thirteen of this chapter, and subject to the rule review provisions of subsection (b) of this section and the appellate review provisions of section fourteen of this article, the director of the division of oil and gas is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this chapter and chapter twenty-two-b of the code in the manner provided therein as they relate to oil and gas. Subject to the provisions of this chapter and chapter twenty-two-b of the code, the director of the division of oil and gas shall have jurisdiction and authority over all persons and property necessary therefor.

(b) The director of the division of oil and gas is authorized to propose or promulgate such rules and regulations as are necessary to carry out and implement the provisions of this chapter and chapter twenty-two-b of this code as are specifically authorized in said chapter twenty-two-b of this code. Except where specifically exempted in chapter twenty-two-b of this code, the provisions of chapter twenty-nine-a of this code shall apply to the proposal or promulgation of any such rules and regulations. No rules and regulations shall be finally proposed or promulgated by the director of the division of oil and gas for purposes of chapter twenty-nine-a of this code, unless and until the commissioner has approved such rules and regulations as provided herein. To the extent that the commissioner approves only a portion thereof, only that
portion so approved may be finally proposed or promulgated
by the director of the division of oil and gas. The commis-
sioner shall determine whether he will review the rules and
regulations within thirty days from the date the same are filed
with the commissioner by the director of the division of oil
and gas. If the commissioner decides to make such a review,
he shall file a notice of review with the director of the division
of oil and gas within the thirty day time period. Failure by
the commissioner to file a notice of review shall be considered
to be commissioner approval of such rules and regulations, or
parts thereof. If the commissioner files a notice of review, he
shall act to approve, disapprove or rewrite such rules and
regulations or parts thereof within sixty days from the filing
of the notice of review. Failure by the commissioner to act
within the sixty day time period shall be considered to be
commissioner approval of such rules and regulations, or part
thereof. Those rules and regulations specifically approved,
approved by failure to act, or rewritten shall be proposed or
promulgated under the provisions of chapter twenty-nine-a of
this code.

§22-1-14. Transfer of funds, supplies, equipment, records, appro-
priations, etc.

(a) Any appropriation made to, and all funds, credits or
other assets, including special funds and accounts which,
immediately prior to the effective date of this chapter, were
held in connection with the operation of the department of
mines or department of natural resources in connection with
any other agency for the purpose of carrying out the powers,
duties and functions vested in the department of energy, shall
be transferred and credited as of the effective date of this act
to the department of energy created by this chapter. All
reports, records, surveys, files and other materials concerning
the purposes of this chapter in the possession of the
department of mines or department of natural resources or any
other agency with respect to powers, duties and functions
vested in the department of energy shall be transferred and
delivered to the commissioner as of the effective date of this
chapter.

(b) Whenever any questions arise as to the transfer to the
department of energy of any appropriations, funds, credits,
other assets, books, documents, records, surveys, papers, files,
equipment or any other tangible property or material used or
held in the exercise of the powers and the performances of
the duties and functions vested in any agency immediately
prior to the effective date of this act, the commissioner of
finance and administration shall make a determination thereon
and certify the same to the state agencies concerned.

§22-1-15. Commissioner's authority to promulgate rules and
regulations.

The commissioner shall have the power and authority to
propose or promulgate rules and regulations to organize the
department and to carry out and implement the provisions of
this chapter and chapter twenty-two-a of this code. With
respect to chapter twenty-two-b of this code, the commissi-
oner's rulemaking powers and authority shall be as described in
section thirteen of this article. All rules and regulations in
effect on the effective date of this act which pertain to the
provisions of this chapter, chapter twenty-two-a and twenty-
two-b of this code shall remain in effect until changed or
superseded by the commissioner, or as appropriate, the
director of the division of oil and gas. Except when specifically
exempted by the provisions of this chapter, or chapters twenty-
two-a or twenty-two-b of this code, all rules and regulations
or changes thereto shall be proposed or promulgated by the
commissioner in accordance with the provisions of chapter
twenty-nine-a of this code.

§22-1-16. Jurisdiction vested in department; cooperation with other
governments and agencies; continuation of
permits, etc.

Except as otherwise expressly provided in this chapter or
in chapters twenty-two-a or twenty-two-b of this code,
jurisdiction over the issuance of regulations, or any and all
permits and other governmental authorizations required or to
be required in all matters pertaining to the exploration,
development, production, storage and recovery of coal, oil and
gas, and other mineral resources in this state including all
safety, conservation, land, water, waste disposal, reclamation,
and environmental regulations, permits and authorizations of
such activities called for pursuant to articles five, five-a, five-
d and five-f, chapter twenty of this code, and the enforcement
and implementation thereof is vested exclusively in the
department of energy. The department of energy is hereby
designated as the lead regulatory agency for this state for all
purposes of federal legislation relating to such activities.

The department of energy shall exercise all power and duties
vested in the director of the department of natural resources
pursuant to subsection (g), section seven, article five-e, chapter
twenty of this code, and in the administrator of the office of
oil and gas, and shallow gas-well review board pursuant to
subsection (h), section seven, article five-e, chapter twenty of
this code.

All permits, certifications, waivers, bonds, orders or
authorizations heretofore issued by the department of mines,
department of natural resources, or any of the boards or
commissions continued in effect by this chapter shall be
continued in effect but become subject to the provisions of this
chapter, chapter twenty-two-a and chapter twenty-two-b of
this code. All permits, certifications, waivers, bonds, orders or
authorizations heretofore issued by the department of mines
or department of natural resources shall become subject to the
jurisdiction of the department of energy. All permits,
certifications, waivers, bonds, orders or authorizations
heretofore issued by any of the boards or commissions
continued in effect by the provisions of this chapter shall
remain subject to the jurisdiction of those boards or
commissions.

§22-1-17. Hearings before department of energy.

Any hearing or proceeding before the department on any
matter other than rulemaking shall be conducted and heard
by the commissioner or a representative designated by him and
shall be in accordance with the provisions of article five,
chapter twenty-nine-a of this code, except where such
provisions are inconsistent with this chapter or chapters
twenty-two-a or twenty-two-b of this code.


This chapter shall be liberally construed so as to effectuate
the declaration of public policy set forth in section two, article
one of this chapter.

§22-1-19. Effective date of act.
This act shall become effective ninety days after passage.

§22-1-20. Operative dates and transfer of functions.

(a) The transfer of powers, duties, functions and responsibilities to the department of energy shall occur at the earliest practical date consistent with the purposes and intent set forth in section two, article one of this chapter.

(b) The Legislature recognizes that certain of the powers, duties, functions and responsibilities transferred under the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code involve the implementation of federal regulatory programs by the state and that the transfer of such powers, duties, functions and responsibilities to the department of energy may require approval of certain federal agencies or officials in order to avoid disruption of the federal-state relationship under which such regulatory programs are implemented. Therefore, the transfer to the department of the powers, duties, functions and responsibilities referred to in this chapter and chapters twenty-two-a and twenty-two-b of this code shall become effective upon a proclamation by the governor stating either that final approval of the transfer has been given by the appropriate federal agency or official or that final approval of the transfer is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

(c) The powers, duties, functions and responsibilities referred to in this chapter and chapters twenty-two-a and twenty-two-b of this code are declared to be severable, and the governor’s proclamation, or lack thereof, with respect to the transfer of a portion of such powers, duties, functions and responsibilities shall not affect the transfer of other such powers, duties, functions and responsibilities.

§22-1-21. Continuation of employment, tenure, civil service coverage.

All employees of the department of natural resources and department of mines as of the date of the passage of this chapter, whose functions and duties are transferred to the department of energy, shall be employed in a comparable position within the department of energy. Those positions within the departments of mines or natural resources which,
prior to the reenactment of this chapter, were afforded tenure
or civil service protection and coverage which are transferred
to the department of energy pursuant to such reenactment,
shall continue to be tenured or subject to civil service
protection and coverage, as the case may be, to the same
extent as of this chapter had not been reenacted.

Personnel of the department of energy who are appointed
by the governor or commissioner under the provisions of this
chapter shall be excluded from civil service protection and
coverage. The commissioner and deputy commissioner are
each authorized to hire a personal secretary to serve at their
will and pleasure and such secretary also shall be excluded
from civil service protection and coverage. The commissioner
is authorized to hire a personal assistant, in addition to a
personal secretary, who shall serve at the will and pleasure of
the commissioner and who also shall be excluded from civil
service protection and coverage.

ARTICLE 2. INTERSTATE MINING COMPACT.

§22-2-1. Enactment of compact.

The "Interstate Mining Compact" is hereby continued in law
and continued in effect with all other jurisdictions legally
joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes.

(a) The party states find that:

(1) Mining and the contributions thereof to the economy
and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water
and other resources for other uses present special problems
which properly can be approached only with due consideration
for the rights and interests of those engaged in mining, those
using or proposing to use these resources for other purposes
and the public.

(3) Measures for the reduction of the adverse effects of
mining on land, water and other resources may be costly and
the devising of means to deal with them are of both public
and private concern.

(4) Such variables as soil structure and composition,
physiography, climatic conditions and the needs of the public make impracticable to all mining areas of a single standard for the conservation, adaption or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The continuing purposes of this compact are to:

(1) Advance the protection and restoration of land, water and other resources affected by mining.

(2) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

(3) Encourage, with due recognition of relevant regional, physical and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

(5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II. Definitions.

As used in this compact, the term:

(a) “Mining” means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores or other solid matter, any activity or process
constituting all or part of a process for the extraction or removal of minerals, ores and other solid matter from its original location, and the preparation, washing, cleaning or other treatment of minerals, ores or other solid matter so as to make them suitable for commercial, industrial or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or possesion of the United States.

Article III. State Programs.

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws or the continuing of the same in force, to accomplish:

(a) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

(b) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

(c) The institution and maintenance of suitable programs for adaption, restoration and rehabilitation of mined lands.

(d) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

Article IV. Powers.

In addition to any other powers conferred upon the interstate mining commission, established by Article V of this compact, such commission shall have power to:

(a) Study mining operations, processes and techniques for
the purpose of gaining knowledge concerning the effects of
such operations, processes and techniques on land, soil, water,
air, plant and animal life, recreation and patterns of
community or regional development or change.

(b) Study the conservation, adaptation, improvement and
restoration of land and related resources affected by mining.

(c) Make recommendations concerning any aspect or
aspects of law or practice and governmental administration
dealing with matters within the purview of this compact.

(d) Gather and disseminate information relating to any of
the matters within the purview of this compact.

(e) Cooperate with the federal government and any public
or private entities having interests in any subject coming within
the purview of this compact.

(f) Consult, upon the request of a party state and within
resources available therefor, with the officials of such state in
respect to any problem within the purview of this compact.

(g) Study and make recommendations with respect to any
practice, process, technique or course of action that may
improve the efficiency of mining or the economic yield from
mining operations.

(h) Study and make recommendations relating to the
safeguarding of access to resources which are or may become
the subject of mining operations to the end that the needs of
the economy for the products of mining may not be adversely
affected by unplanned or inappropriate use of land and other
resources containing minerals or otherwise connected with
actual or potential mining sites.

Article V. The Commission

(a) There is hereby created an agency of the party states to
be known as the “Interstate Mining Commission,” hereinafter
called “the commission.” The commission shall be composed
of one commissioner from each party state who shall be the
governor thereof. Pursuant to the laws of his party state, each
governor shall have the assistance of an advisory body
(including membership from mining industries, conservation
interests and such other public and private interests as may
be appropriate) in considering problems relating to mining and
in discharging his responsibilities as the commissioner of his
state on the commission. In any instance where a governor is
unable to attend a meeting of the commission or perform any
other function in connection with the business of the
commission, he shall designate an alternate from among the
members of the advisory body required by this paragraph, who
shall represent him and act in his place and stead. The
designation of an alternate shall be communicated by the
governor to the commission in such manner as its bylaws may
provide.

(b) The commissioners shall be entitled to one vote each on
the commission. No action of the commission making a
recommendation pursuant to Articles IV (c), IV (g) and IV
(h) or requesting, accepting or disposing of funds, services or
other property pursuant to this paragraph, Article V (g), V
(h) or VII shall be valid unless taken at a meeting at which
a majority of the total number of votes on the commission
is cast in favor thereof. All other action shall be by a majority
of those present and voting: Provided, That action of the
commission shall be only at a meeting at which a majority of
the commissioners, or their alternates, is present. The
commission may establish and maintain such facilities as may
be necessary for the transacting of its business. The
commission may acquire, hold and convey real and personal
property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its
members, a chairman, a vice chairman, and a treasurer. The
commission shall appoint an executive director and fix his
duties and compensation. Such executive director shall serve
at the pleasure of the commission. The executive director, the
treasurer and such other personnel as the commission shall
designate shall be bonded. The amount or amounts of such
bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other merit
system laws of any of the party states, the executive director
with the approval of the commission, shall appoint, remove
or discharge such personnel as may be necessary for the
performance of the commission's functions, and shall fix the
duties and compensation of such personnel.
(f) The commission may establish and maintain, independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance: Provided, That the commission take such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any state, the United States or any other governmental agency, or from any person, firm, association or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, Legislature and advisory body required by Article V (a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.
Article VI. Advisory, Technical and Regional Committees.

The commission shall establish such advisory, technical and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems relating to reclamation, development or use of mined land or any other matters of concern to the commission.

Article VII. Finance.

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such periods as may be required by the laws of that party state for presentation to the Legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One half in equal shares, and the remainder in proportion to the value of minerals, ores and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V (h) of this compact: Provided, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met whole or in part in such manner. Except where the commission makes use of funds available to it under
Article V (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Entry Into Force and Withdrawal.

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Effect on Other Laws.

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party state.

Article X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be
severable and if any phrase, clause, sentence or provision of
this compact is declared to be contrary to the constitution of
any state or of the United States or the applicability thereof
to any government, agency, person or circumstance is held
invalid, the validity of the remainder of this compact and the
applicability thereof to any government, agency, person or
circumstance shall not be affected thereby. If this compact
shall be held contrary to the constitution of any state
participating herein, the compact shall remain in full force and
effect as to the remaining party states and in full force and
effect as to the state affected as to all severable matters.


In accordance with Article V (i) of the interstate mining
compact, the commission shall file copies of its bylaws and any
amendments thereto in the office of the secretary of state of
West Virginia.

§22-2-3. Effective date.

This article is effective as of the first day of July, one
thousand nine hundred seventy-two.

ARTICLE 3. ABANDONED MINE RECLAMATION ACT.

§22-3-1. Short title.

This article shall be known and cited as the “Abandoned
Mine Lands and Reclamation Act.”

§22-3-2. Legislative findings; intent and purpose of article;
jurisdiction and authority of commissioner.

The Legislature finds that there are a substantial number of
acres of land throughout the state that were disturbed by
surface-mining operations prior to the time of present day
effective control and regulation. There was little or no
reclamation conducted and the impacts from these unre-
claimed lands impose social and economic costs on residents
in nearby and adjoining areas as well as continue to impair
environmental quality, prevent or damage the beneficial use
of land or water resources, or endanger the health and safety
of the public.

Further, the Legislature finds and declares that, due to the
passage of Public Law 95-87, certain areas within the
boundaries of this state do not meet present day standards for reclamation.

Further, the Legislature finds that Title IV of the Surface Mining Control and Reclamation Act of 1977 “Public Law 95-87” provides for the collection of thirty-five cents per ton of coal produced from surface mine operations and fifteen cents per ton of coal produced from underground mine operations in West Virginia to be collected by the secretary of the United States department of the interior for a period of at least fifteen years. At least fifty percent of the funds so collected are to be allocated directly to the state of West Virginia to accomplish reclamation of abandoned coal mining operations, as of the date the state of West Virginia obtained an approved abandoned mine reclamation plan in accordance with sections 405 and 503 of Public Law 95-87.

Therefore, it is the intent of the Legislature by this article to vest jurisdiction and authority in the commissioner of the department of energy to maintain program approval by, and receipt of funds from, the United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.

§22-3-3. Definitions.

All definitions set forth in article three of chapter twenty-two-a of this code shall apply to those defined terms which also appear in this article, if applicable.

§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

(a) All abandoned land reclamation funds available under Title IV of Public Law 95-87, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the director, under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the commissioner for the following:

(1) Reclamation and restoration of land and water resources
adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all other necessary expenses incurred to accomplish the purpose of this article: Provided, That all expenditures from this fund shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of past surface mining practices;

(B) The protection of public health, safety and general welfare from adverse effects of past coal surface mining practices;

(C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;

(D) Research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques;

(E) The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal surface mining practices;

(F) The development of publicly owned land adversely affected by past coal surface mining practices, including land acquired as provided in this article for recreation and historic
purposes, conservation and reclamation purposes and open
space benefits.

(2) Lands and water eligible for reclamation or drainage
abatement expenditures under this article are those which were
mined for coal or which were affected by such mining,
wastebanks, coal processing or other coal mining processes,
and abandoned or left in an inadequate reclamation status
prior to the third day of August, nineteen hundred seventy-
seven, and for which there is no continuing reclamation
responsibility: Provided, That one purpose of this article is to
provide additional and cumulative remedies to abate the
pollution of the waters of the state and nothing herein
contained shall abridge or alter rights of action or remedies
now or hereafter existing, nor shall any provisions in this
article or any act done by virtue of this article be construed
as estopping the state, municipalities, public health officers or
persons as riparian owners or otherwise in the exercise of their
rights to suppress nuisances or to abate any pollution now or
hereafter existing or to recover damages.

(c) Where the governor certifies that the above objectives
of the fund have been achieved and there is a need for
construction of specific public facilities in communities
impacted by coal development, and other sources of federal
funds are inadequate and the secretary concur, then the
commissioner may expend money from the fund for such
construction.

§22-3-5. Powers and duties of commissioner; program plans and
reclamation projects.

(a) The commissioner shall submit to the secretary of the
interior a state reclamation plan and annual projects to carry
out the purposes of this article.

(b) That reclamation plan shall generally identify the areas
to be reclaimed, the purposes for which the reclamation is
proposed, the relationship of the lands to be reclaimed in the
proposed reclamation to surrounding areas, the specific criteria
for ranking and identifying projects to be funded and the legal
authority and programmatic capability to perform such work
in conformance with the provisions of this article.

(c) On an annual basis, the commissioner shall submit to
the secretary of the interior an application for the support of
the state program and implementation of specific reclamation
projects. Such annual requests shall include information as
may be requested by the secretary of the interior including:

(1) A general description of each proposed project;
(2) A priority evaluation of each proposed project;
(3) A statement of the estimated benefits in such terms as
number of acres restored, miles of stream improved, acres of
surface lands protected from subsidence, population protected
from subsidence, air pollution and hazards of mine and coal
refuse disposal area fires;
(4) An estimate of the cost for each proposed project;
(5) In the case of proposed research and demonstration
projects, a description of the specific techniques to be
evaluated or objective to be attained;
(6) An identification of lands or interest therein to be
acquired and the estimated cost; and
(7) In each year after the first in which a plan is filed under
this article, an inventory of each project funded under the
previous year's grant, which inventory shall include details of
financial expenditures on such project together with a brief
description of the project, including project location,
landowner's name, acreage and type of reclamation performed.

(d) The costs for each proposed project under this section
shall include actual construction costs, actual operation and
maintenance costs of permanent facilities, planning and
engineering costs, construction inspection costs and other
necessary administrative expenses.

§22-3-6. Acquisition and reclamation of land adversely affected by
past coal surface-mining practices.

(a) If the commissioner makes a finding of fact that:
(1) Land or water resources have been adversely affected by
past coal mining practices;
(2) The adverse effects are at a stage where, in the public
interest, action to restore, reclaim, abate, control or prevent
should be taken;
(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices are not known or readily available; or

(4) The owners will not give permission for the commissioner, his agents, employees or contractors to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices, then, upon giving notice by mail to the owners, if known, or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the commissioner, his agents, employees or contractors shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power of the State for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: Provided, That this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The commissioner, his agents, employees or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility or restoration, reclamation, abatement, control or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power of the State for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

(c) The commissioner may acquire any land by purchase, donation or condemnation, which is adversely affected by past coal mining practices, if the commissioner determines that acquisition of such land is necessary to successful reclamation.
and that:

(1) The acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices will serve recreation, historic, conservation, or reclamation purposes or provide open space benefits;

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(d) Title to all lands acquired pursuant to this section shall be in the name of the state of West Virginia, by the West Virginia department of energy. The price paid for land acquired under this section shall reflect the fair market value of the land as adversely affected by past coal mining practices.

(e) The commissioner is hereby authorized to transfer land obtained under subsection (c) of this section to the secretary. The commissioner may purchase such land from the secretary after reclamation at the fair market value less the state’s original acquisition price.

(f) The commissioner may accept and local political subdivisions may transfer to the commissioner land belonging to them to carry out the purposes set out in this article and in such event they shall have a preferential right to purchase said land after reclamation at the fair market value less the political subdivision’s cost of acquisition, but at no time shall the commissioner sell such land to a political subdivision at a price less than the cost of the acquisition and reclamation of said land: Provided, That if any land sold to a political subdivision under this subsection is not used for a valid public purpose as specified by the commissioner in the terms and conditions of the sales agreement, then all rights, title and interest in such land shall revert to the West Virginia department of energy. Any moneys received from such sale shall be deposited in the abandoned land reclamation fund.
(g) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential or recreational development, the commissioner may sell such land by public sale under a system of competitive bidding at not less than fair market value and pursuant to regulations promulgated to ensure that such lands are put to proper use consistent with State and local land use plans.

(h) The commissioner, if requested and after appropriate public notice, shall hold a public hearing in the county in which land acquired pursuant to this section is located. The hearing shall be held at a time which shall afford local citizens and government the maximum opportunity to participate in the decision concerning the use and disposition of the land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the commissioner is authorized to use money in the fund to acquire land from any federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 410 of Public Law 95-87, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the commissioner shall require, which may include transfers of land with or without monetary consideration: Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such person, firm, association or corporation. No part of the funds provided under this article may be used to pay the actual construction costs of housing. The commissioner may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such
terms and conditions as he may require to any department, agency or political subdivision of this State, or any public body or nonprofit organization designated by the commissioner.

§22-3-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

(a) Within six months after the completion of a project to restore, reclaim, abate, control or prevent adverse effects of past coal mining practices on a privately owned land, the commissioner shall itemize the moneys so expended and may file a statement thereof in the office of the clerk of the county commission in the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past surface-mining practices, if the moneys so expended result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past surface mining practices. No lien may be filed against the property of any person in accordance with this subsection, who owned the surface prior to the second day of May, one thousand nine hundred seventy-seven, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

(b) The land owner may petition the commissioner within sixty days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal to the circuit court of the county in which the land is located.

(c) The statement filed pursuant to subsection (a) of this section, shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority
§22-3-8. Filling voids and sealing tunnels.

(a) The Legislature declares that voids, open and abandoned tunnels, shafts and entryways and subsidence resulting from any previous coal surface-mining operation constitute a hazard to the public welfare and safety and that surface impacts of any underground or surface-mining operation may degrade the environment. The commissioner is authorized to fill such voids, seal such abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mines and remove water and other matter from mines which the commissioner determines could endanger life and property, constitute a hazard to the public welfare and safety or degrade the environment.

(b) In those instances where coal mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding, if the disposal of those wastes meets the purposes of this article.

(c) The commissioner may acquire by purchase, donation, easement or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

§22-3-9. General and miscellaneous powers and duties of commissioner; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

(a) The commissioner is authorized to engage in any work and to do all things necessary and proper, including promulgation of rules and regulations, to implement and administer the provisions of this article.

(b) The commissioner is authorized to engage in cooperative projects under this article with any other agency of the United States of America, any state, county or municipal agency or subdivision thereof.

(c) The commissioner may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this article, in any court of competent
jurisdiction, an action in equity for an injunction to restrain
any interference with the exercise of the right to enter or to
conduct any work provided in this article.

(d) The commissioner has the authority to construct and
operate a plant or any facilities for the control and treatment
of water pollution resulting from mine drainage. The extent
of this control and treatment may be dependent upon the
ultimate use of the water: Provided, That this subsection shall
not repeal or supersede any portion of the applicable federal
or state water pollution control laws and no control or
treatment under this section may be less than that required
under any applicable federal or state water pollution control
law. The construction of any such facilities may include major
interceptors and other facilities appurtenant to the plant.

(e) All departments, boards, commissions and agencies of
the state shall cooperate with the commissioner by providing
technical expertise, personnel, equipment, materials and
supplies to implement and administer the provisions of this
article.

ARTICLE 4. RECLAMATION BOARD OF REVIEW.

§22-4-1. Appointment and organization of reclamation board of
review; authority, compensation, expenses and removal
of board members.

(a) There is hereby continued a reclamation board of review
consisting of five members to be appointed by the governor
with the advice and consent of the Senate for terms of five
years, except that the terms of the first five members of said
board shall be for one, two, three, four and five years
respectively, as designated by the governor at the time of the
appointment. Any vacancy in the office of a member of said
board shall be filled by appointment by the governor for the
unexpired term of the member whose office is vacant. Each
vacancy occurring on said board shall be filled by appointment
within sixty days after such vacancy occurs. One of the
appointees to such board shall be a person who, by reason
of his previous vocation, employment or affiliations, can be
classed as one capable and experienced in coal mining. One
cf the appointees to such board shall be a person who, by
reason of his previous training and experience, can be classed
as one capable and experienced in the practice of agriculture
and who represents the general public interest. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in the modern forestry practices and who represents the general public interest. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in engineering. One of the appointees of such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. Not more than three members shall be members of the same political party.

(b) The board may employ supporting staff including hearings examiners to aid and assist in performing its responsibilities under this article.

(c) Three members shall constitute a quorum and no action of the board is valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings. Each member shall be paid as compensation for his work as such member, from funds appropriated for such purposes, seventy-five dollars per day when actually engaged in the performance of his work as a board member. In addition to such compensation, each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the State.

(d) Annually, one member shall be elected as chairman and another member shall be elected as vice chairman. Such officers shall serve for terms of one year. The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance or nonfeasance, after delivery to such member the charges against him in writing, together with at least ten days' written notice of the time and place at which the governor will publicly hear such member, either in person or by counsel, in defense of the charges against him, and affording the member such hearing. If such member is removed from office, the governor shall file in the office of the secretary of state a complete statement of the charges made against such member and a complete report of the proceedings.
thereon. In such case the action of the governor removing such
member from office shall be final.

§22-4-2. 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 commissioner’s
assessment officer or a decision of the commissioner to grant,
deny, modify, renew or significantly revise a permit, or a
decision of the commissioner concerning a bond release
pursuant to section twenty-three of article three, chapter
twenty-two-a, may appeal that decision to the board or may
intervene in a timely manner in any such pending appeal. The
person so appealing to the board shall be known as the
appellant, and the commissioner 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 commissioner, 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 commissioner 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, and the
commissioner 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 commissioner shall prepare and
certify to the board a complete record of the proceedings of
the commissioner 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.

(f) 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.

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

§22-4-3. Appeal from order of board; judicial review; temporary relief.

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

21 (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.

(d) 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.

(e) 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.

(f) The availability of the review shall not be construed to limit the operation of the rights established in section twenty-five of article three, chapter twenty-two-a of this code except as provided therein.

(g) 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.

ARTICLE 5. BOARD OF APPEALS.

§22-5-1. Board of appeals.

There is hereby continued a board of appeals, consisting of three members. Two members of the board shall be appointed by the governor, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who shall be chairman of the board, and who must not have had any connection at any time with the coal industry or an organization representing miners, shall be selected by the two members appointed by the governor. The term of office of members of the board shall be five years.

The function and duties of the board shall be to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

The chairman of the board shall have the power to administer oaths and subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the appeal inquiry.

Each member of the board shall receive one hundred dollars
per diem while actually engaged in the performance of the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties. Each member shall receive mileage expense reimbursement at the rate established by rule and regulation of the commissioner of the department of finance and administration for in-state travel of public employees. No reimbursement for expenses shall be made except upon an itemized account, properly certified by such members of the board. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor.

Board members, before performing any duty, shall take and subscribe to the oath required by article IV, section five of the constitution of West Virginia.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-6-1. Declaration of legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) The Legislature concurs with the congressional declaration made in the "Federal Coal Mine Health and Safety Act of 1969" that "the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner";

(2) Coal mining is highly specialized, technical and complex and it requires frequent review, refinement and improvement of standards to protect the health and safety of miners;

(3) During each session of the Legislature, coal mine health and safety standards are proposed which require knowledge and comprehension of scientific and technical data related to coal mining;

(4) The formulation of appropriate regulations and practices to improve health and safety and provide increased protection of miners can be accomplished more effectively by persons who have experience and competence in coal mining and coal mine health and safety.

(b) In view of the foregoing findings, it is the purpose of this article to:

(1) Continue the board of coal mine health and safety;
(2) Require such board to continue as standard rules and regulations the coal mine health and safety provisions of this code;

(3) Compel the board to review such standard rules and regulations and, when deemed appropriate to improve or enhance coal mine health and safety, to revise the same or develop and promulgate new rules and regulations dealing with coal mine health and safety; and

(4) Authorize such board to conduct such other activities as it deems necessary to implement the provisions of this chapter.

§22-6-2. Definitions.

Unless the context in which a word or phrase appears clearly requires a different meaning, the words and phrases defined in section one, article one-a of chapter twenty-two-a of this code shall have, when used in this article, the meaning therein assigned to them. For the purpose of this article "board" means the board of coal mine health and safety continued by section three of this article.

§22-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) The board of coal mine health and safety, heretofore established, is continued as provided by this article. The board shall consist of seven members who shall be residents of this state, and who shall be appointed as hereinafter specified in this section:

(1) The governor shall appoint one member to represent the viewpoint of those operators in this state whose individual aggregate production exceeds one million tons annually and one member to represent the viewpoint of those operators in this state whose individual aggregate production is less than one million tons annually, which tonnage shall include tonnage produced by affiliated, parent and subsidiary companies and tonnage produced by companies which have a common director or directors, shareholder or shareholders, owner or owners. When such members are to be appointed, the governor may request from the major trade association representing operators in this state a list of three nominees for each such position of the board. All such nominees shall be persons with

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special experience and competence in coal mine health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this state shall be deemed to be that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The governor shall appoint two members who can reasonably be expected to represent the viewpoint of the working miners of this state. If the major employee organization representing coal miners in this state is divided into administrative districts, such members shall not be from the same administrative district. The highest ranking official within the major employee organization representing coal miners within this state shall, upon request by the governor, submit a list of three nominees for each such position on the board: Provided, That if the major employee organization representing coal miners in this state is divided into administrative districts, and if there are two vacancies to be filled in accordance with the provisions of this subdivision, not more than two persons on each list of three nominees shall be from the same administrative district and at least three districts shall be represented on the two lists submitted, and if there is one vacancy to be filled, no names shall be submitted of persons from the same administrative district already represented on the board. Said nominees shall have a background in coal mine health and safety, and shall at the time of their appointment be employed in a position which involves the protection of health and safety of miners. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated.

(3) The governor shall appoint one public member who is professionally qualified in the field of occupational health and safety and who shall be (A) an employee of the institute of
labor studies at West Virginia University or (B) a person who
is engaged in or who has broad experience in occupational
health and safety from the perspective of the worker. Such
nominee shall have technical experience in occupational health
and safety or education and experience in such field: Provided,
That the nominee shall not have been, prior to his appoint-
ment to the board, employed by a mining or industrial
business entity in a managerial or supervisory position, or shall
not have been employed by the major employee organization
representing coal miners in this state, or shall not have been
a miner.

(4) The governor shall appoint one public member who is
professionally qualified in the field of occupational health and
safety and who shall have a degree in engineering or industrial
safety and a minimum of five years' experience in the field of
industrial safety engaged in constructing, designing, developing
or administering safety programs: Provided, That the nominee
shall not have been, prior to his appointment to the board,
employed by a mining business entity in a managerial or
supervisory position or shall 'not have been employed by the
major employee organization representing coal miners in this
state, or shall not have been a miner.

(5) All appointments made by the governor under the
provisions of subdivisions (1), (2), (3) and (4) of this subsection
shall be with the advice and consent of the Senate.

(6) The seventh member of the board shall be the commis-
sioner of the department of energy who shall serve as chairman
of the board. The commissioner shall furnish to the board such
secretarial, clerical, technical, research and other services as are
deemed necessary to the conduct of the business of the board,
not otherwise furnished by the board.

(b) Any unexpired term of members of the board under
prior enactments of this section shall end upon the appoint-
ment of members in accordance with the provisions of this
section. Upon the initial appointment of members, the
governor shall specify the length of the beginning term which
each member shall serve, pursuant to the following formula:

(1) With regard to the two members appointed in accor-
dance with the provisions of subdivision (1), subsection (a) of
this section, one member shall serve a beginning term of one
(2) With regard to the two members appointed in accordance with the provisions of subdivision (2), subsection (a) of this section, one member shall serve a beginning term of one year and one member shall serve a beginning term of two years.

(3) The members appointed in accordance with the provisions of subdivisions (3) and (4), subsection (a) of this section shall each be appointed to serve a beginning term of three years.

(4) Following the beginning terms provided for in this subsection, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members shall be eligible for reappointment.

(c) The governor shall appoint a health and safety administrator in accordance with the provisions of section four-b of this article, who shall certify all official records of the board. The health and safety administrator shall be a full-time officer of the board in the development of rules and regulations governing mine health and safety. The governor shall appoint as health and safety administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The health and safety administrator shall be a person who has not been, during the two years immediately preceding his appointment, and is not during his term, an officer, trustee, director, substantial shareholder or employee of any coal operator, or an employee or officer of an employee organization, or a spouse of any such person. The health and safety administrator shall have the expertise to draft proposed rules and regulations and shall prepare such rules and regulations as are required by this code and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chairman, or upon the request of any three
members of the board. Under the direction of the board, the health and safety administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules and regulations as may be required from time to time by this code, and as may be required to improve coal mine health and safety. The health and safety administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the chairman, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the chairman: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules and regulations are to be finally adopted by the board, copies of such proposed rules and regulations shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules and regulations shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules and regulations. When a member shall fail to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the health and safety administrator shall notify the member and the governor of such fact. Such member shall be removed by the governor unless good cause for absences is shown.

(e) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which

nominated the person whose seat on the board is vacant. The vacancy shall be filled by the governor within thirty days of his receipt of the list of nominations.

(f) A quorum of the board shall be five members which shall include the commissioner, at least one member representing the viewpoint of operators and at least one member representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present.

§22-6-4. Board powers and duties.

(a) At the organizational meeting of the board required by subsection (c), section three of this article, the board shall adopt as standard rules and regulations the “coal mine health and safety provisions of chapter twenty-two-a of this code.” Such standard rules and regulations and any other rules and regulations shall be adopted by the board without regard to the provisions of chapter twenty-nine-a of this code. The board of coal mine health and safety shall devote its time toward promulgating rules and regulations in those areas specifically directed by chapter twenty-two-a of this code and those necessary to prevent fatal accidents and injuries.

(b) The board shall review such standard rules and regulations and, when deemed appropriate to improve or enhance coal mine health and safety, revise the same or develop and promulgate new rules and regulations dealing with coal mine health and safety.

(c) The board shall develop, promulgate and revise, as may be appropriate, rules and regulations as are necessary and proper to effectuate the purposes of article two, chapter twenty-two-a of this code and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code.

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules and regulations may expand protections afforded by chapter twenty-two-a of this code notwithstanding specific language therein, and such rules and regulations may deal with subject areas not covered by chapter twenty-two-a of this code to the end of affording the maximum possible protection to
the health and safety of miners.

(2) No rules or regulations promulgated by the board of mines shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by chapter twenty-two-a of this code.

(3) Any miner or representative of any miner, or any coal operator shall have the power to petition the circuit court of Kanawha County for a determination as to whether any rule or regulation promulgated or revised reduces the protection afforded miners below that provided by chapter twenty-two-a of this code, or is otherwise contrary to law: Provided, That any rule or regulation properly promulgated by the board pursuant to the terms and conditions of chapter twenty-two-a of this code shall create a rebuttable presumption that said rule or regulation does not reduce the protection afforded miners below that provided by chapter twenty-two-a of this code.

(4) The commissioner shall cause proposed rules and regulations and a notice thereof to be posted in section sixteen, article one-a, chapter twenty-two-a of this code. The commissioner shall deliver a copy of such proposed rules and regulations and accompanying notice to each operator affected. A copy of such proposed rules and regulations shall be provided to any individual by the commissioner upon request. The notice of proposed rules and regulations shall contain a summary in plain language explaining the effect of the proposed rules and regulations.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules and regulations to submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules and regulations with such modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule or regulation, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing
such objections has expired, the board shall release a notice
specifying the proposed rules or regulations to which
objections have been filed and a hearing requested.

(7) Promptly after any such notice is released by the board
under subdivision (6) of this section, the board shall issue
notice of, and hold a public hearing for the purpose of
receiving relevant evidence. Within sixty days after completion
of the hearings, the board shall make findings of fact which
shall be public, and may promulgate such rules and regulations
with such modifications as it deems appropriate. In the event
the board determines that a proposed rule or regulation should
not be promulgated or should be modified, it shall within a
reasonable time publish the reasons for its determination.

(8) All rules and regulations promulgated by the board shall
be published in the state register and shall continue in effect
until modified or superseded in accordance with the provisions
of this chapter.

(d) To carry out its duties and responsibilities, the board is
authorized to employ such personnel, including legal counsel,
experts and consultants as it deems necessary. In addition, the
board, within the appropriations provided for by the
Legislature, may conduct or contract for research and studies
and shall be entitled to the use of the services, facilities and
personnel of any agency, institution, school, college or
university of this state.

(e) The commissioner shall within sixty days of a coal
mining fatality or fatalities provide the board with all available
reports regarding such fatality or fatalities.

The board shall view all such reports, receive any additional
information, and may, on its own initiative, ascertain the cause
or causes of such coal mining fatality or fatalities. Within one
hundred twenty days of such review of each such fatality, the
board shall promulgate such rules and regulations as are
necessary to prevent the recurrence of such fatality, unless a
majority of the quorum present determines that no rules and
regulations shall assist in the prevention of the specific type
of fatality. Likewise, the board shall annually, not later than
the first day of July, review the major causes of coal mining
injuries during the previous calendar year, reviewing the causes
in detail, and shall promulgate such rules and regulations as
may be necessary to prevent the recurrence of such injuries.

Further, the board shall, on or before the tenth day of January of each year, submit a report to the governor, president of the Senate and speaker of the House, which report shall include but not be limited to:

1. The number of fatalities during the previous calendar year, the apparent reason for each fatality as determined by the department of energy and the action, if any, taken by the board to prevent such fatality;
2. Any rules and regulations promulgated by the board during the last year;
3. What rules and regulations the board intends to promulgate during the current calendar year;
4. Any problem the board is having in its effort to promulgate rules and regulations to enhance health and safety in the mining industry;
5. Recommendations, if any, for the enactment, repeal or amendment of any statute which would cause the enhancement of health and safety in the mining industry;
6. Any other information the board deems appropriate;
7. In addition to the report by the board, as herein contained, each individual member of said board shall have the right to submit a separate report, setting forth any views contrary to the report of the board, and the separate report, if any, shall be appended to the report of the board and be considered a part thereof.

§22-6-4a. Preliminary procedures for promulgation of rules and regulations.

(a) Prior to the posting of proposed rules and regulations as provided for in subsection (c), section four of this article, the board shall observe the preliminary procedure for the development of rules and regulations set forth in this section:

1. During a board meeting or at any time when the board is not meeting, any board member may suggest to the health and safety administrator, or such administrator on his own initiative may develop, subjects for investigation and possible regulation;
(2) Upon receipt of a suggestion for investigation, the health and safety administrator shall prepare a report, to be given at the next scheduled board meeting, of the technical evidence available which relates to such suggestion, the staff time required to develop the subject matter, the legal authority of the board to act on the subject matter, including a description of findings of fact and conclusions of law which will be necessary to support any proposed rules and regulations;

(3) The board shall by majority vote of those members who are present determine whether the health and safety administrator shall prepare a draft regulation concerning the suggested subject matter;

(4) After reviewing the draft regulation, the board shall determine whether the proposed rules and regulations should be posted and made available for comment as provided for in section four of this article;

(5) The board shall receive and consider those comments to the proposed rules and regulations as provided for in section four of this article;

(6) The board shall direct the health and safety administrator to prepare for the next scheduled board meeting findings of fact and conclusions of law for the proposed rules and regulations, which may incorporate comments received and technical evidence developed, and which are consistent with section four of this article;

(7) The board shall adopt or reject or modify the proposed findings of fact and conclusions of law; and

(8) The board shall make a final adoption or rejection of the rules and regulations.

(b) By the concurrence of at least four members of the board, the board may dispense with the procedure set out in (a) above or any other procedural rule established, except that the board shall in all instances when adopting rules and regulations prepare findings of fact and conclusions of law consistent with this section and section four of this article.

(c) Without undue delay, the board shall adopt an order of business for the conduct of meetings which will promote the orderly and efficient consideration of proposed rules and
§22-6-4b. Health and safety administrator; qualifications; duties; employees; compensation.

(a) The governor shall appoint the health and safety administrator of the board for a term of employment of one year. The health and safety administrator shall be entitled to have his contract of employment renewed on an annual basis except where such renewal is denied for cause: Provided, That the governor shall have the power at any time to remove the health and safety administrator for misfeasance, malfeasance or nonfeasance: Provided, however, That the board shall have the power to remove the health and safety administrator without cause upon the concurrence of five members of the board.

(b) The health and safety administrator shall work at the direction of the board, independently of the commissioner of the department of energy, and shall have such authority and perform such duties as may be required or necessary to effectuate this article.

(c) In addition to the health and safety administrator, there shall be such other research employees hired by the health and safety administrator as the board determines to be necessary. The health and safety administrator shall provide supervision and direction to the other research employees of the board in the performance of their duties.

(d) The employees of the board shall be compensated at rates determined by the board. The salary of the health and safety administrator shall be fixed by the governor: Provided, That the salary of the health and safety administrator shall not be reduced during his annual term of employment or upon the renewal of his contract for an additional term. Such salary shall be fixed for any renewed term at least ninety days before the commencement thereof.

(e) The health and safety administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident.

(f) At the direction of the board, the administrator shall also

37 conduct an annual study of occupational health issues relating
38 to employment in and around coal mines of this state and
39 submit a report to the board with findings and proposals to
40 address the issues raised in such study. The administrator shall
41 be responsible for preparing the annual reports required by
42 subsection (e), section four of this article and section six of
43 this article.

§22-6-5. Effect of rules and regulations.

1 The standard rules and regulations and any rules and
2 regulations promulgated by the board shall have the same
3 force and effect of law as if enacted by the Legislature as a
4 part of article two, chapter twenty-two-a of this code and any
5 violation of any such rule and regulation shall be deemed to
6 be a violation of law or of a health or safety standard within
7 the meaning of this chapter.

§22-6-6. Reports.

1 Prior to each regular session of the legislature, the board
2 shall submit to the legislature an annual report upon the
3 subject matter of this article, the progress concerning the
4 achievement of its purpose and any other relevant information,
5 including any recommendations it deems appropriate.

§22-6-7. Compensation and expenses of board members.

1 Each member of the board not otherwise employed by the
2 state shall receive one hundred ten dollars per diem while
3 actually engaged in the performance of the duties of the board.
4 Each member shall be reimbursed for all reasonable and
5 necessary expenses actually incurred during the performance
6 of his duties, except that in the event the expenses are paid
7 by a third party, the member shall not be reimbursed by the
8 state. Each member shall receive meals, lodging and mileage
9 expense reimbursements at the rates established by rule and
10 regulation of the commissioner of the department of finance
11 and administration for in-state travel of public employees. The
12 reimbursement shall be paid out of the state treasury upon a
13 requisition upon the state auditor, properly certified by the
14 commissioner of the department of energy. No employer shall
15 prohibit a member of the board from exercising leave of
16 absence from his place of employment in order to attend a
17 meeting of the board or a meeting of a subcommittee of the
ARTICLE 7. SHALLOW GAS WELL REVIEW BOARD.

§22-7-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Ensure the safe recovery of coal and gas;

(2) Foster, encourage and promote the fullest practical exploration, development, production, recovery and utilization of this state's coal and gas, where both are produced from beneath the same surface lands, by establishing procedures, including procedures for the establishment of drilling units, for the location of shallow gas wells without substantially affecting the right of the gas operator proposing to drill a shallow gas well to explore for and produce gas; and

(3) Safeguard, protect and enforce the correlative rights of gas operators and royalty owners in a pool of gas to the end that each such gas operator and royalty owner may obtain his just and equitable share of production from such pool of gas.

(b) The Legislature hereby determines and finds that gas found in West Virginia in shallow sands or strata has been produced continuously for more than one hundred years; that the placing of shallow wells has heretofore been regulated by the state for the purpose of ensuring the safe recovery of coal and gas, but that regulation should also be directed toward encouraging the fullest practical recovery of both coal and gas because modern extraction technologies indicate the desirability of such change in existing regulation and because the energy needs of this state and the United States require encouragement of the fullest practical recovery of both coal and gas; that in order to encourage and ensure the fullest practical recovery of coal and gas in this state and to further ensure the safe recovery of such natural resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall have the authority to regulate and determine the appropriate placing of shallow wells when gas well operators and owners of coal seams fail to agree on the placing of such wells, and establishing specific
considerations, including minimum distances to be allowed
between certain shallow gas wells, to be utilized by the shallow
gas well review board in regulating the placing of shallow
wells; that in order to encourage and ensure the fullest
practical recovery of coal and gas in this state and to protect
and enforce the correlative rights of gas operators and royalty
owners of gas resources, it is in the public interest to enact
new statutory provisions establishing a shallow gas well review
board which shall also have authority to establish drilling units
and order the pooling of interests therein to provide all gas
operators and royalty owners with an opportunity to recover
their just and equitable share of production.

§22-7-2. Definitions.

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

3 (1) “Board” means the West Virginia shallow gas well
4 review board provided for in section four of this article;
5 (2) “Chairman” means the chairman of the West Virginia
6 shallow gas well review board provided for in section four of
7 this article;
8 (3) “Coal operator” means any person who proposes to or
9 does operate a coal mine;
10 (4) “Coal seam” and “workable coal bed” are interchange-
11 able terms and mean any seam of coal twenty inches or more
12 in thickness, unless a seam of less thickness is being
13 commercially worked, or can in the judgment of the
14 department foreseeably be commercially worked and will
15 require protection if wells are drilled through it;
16 (5) “Commission” means the oil and gas conservation
17 commission provided for in section four, article eight of this
18 chapter;
19 (6) “Commissioner” means the oil and gas conservation
20 commissioner provided for in section four, article eight of this
21 chapter;
22 (7) “Correlative rights” means the reasonable opportunity of
23 each person entitled thereto to recover and receive without
waste the gas in and under a tract or tracts, or the equivalent thereof;

(8) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(9) "Department" means the state department of energy provided for in chapter twenty-two of this code;

(10) "Director" means the director for the division of oil and gas provided for in section eleven, article one, chapter twenty-two of this code;

(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten of this article;

(12) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for himself or for himself and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein shall be considered a "gas operator" to the extent of seven eighths of the gas in that portion of the pool underlying the tract owned by such person, and a "royalty owner" to the extent of one eighth of such gas;

(14) "Just and equitable share of production" means, as to each person, an amount of gas in the same proportion to the total gas production from a well as that person's acreage bears to the total acreage in the drilling unit;

(15) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(16) "Owner" when used with reference to any coal seam,
shall include any person or persons who own, lease or operate such coal seam;

(17) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(18) "Plat" means a map, drawing or print showing the location of one or more wells or a drilling unit;

(19) "Pool" means an underground accumulation of gas in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of gas from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formation, so that it is effectively separated from any other pools which may be present in the same district or in the same geologic structure;

(20) "Royalty owner" means any owner of gas in place, or gas rights, to the extent that such owner is not a gas operator as defined in subdivision (13) of this section;

(21) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(22) "Tracts comprising a drilling unit" means all separately owned tracts or portions thereof which are included within the boundary of a drilling unit;

(23) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and
"Well operator" means any person who proposes to or does locate, drill, operate or abandon any well.

§22-7-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, under which a coal seam as defined in section two of this article and section one, article one, chapter twenty-two-b of this code, one thousand nine hundred thirty-one, as amended, is located, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of this chapter or chapter twenty-two-b of this code.

(b) This article shall not apply to or affect:

(1) Deep wells;

(2) Oil wells and enhanced oil recovery wells associated with oil wells;

(3) Any shallow well permitted under article four of this chapter prior to 12:01 a.m., the first day of August, one thousand nine hundred seventy-eight, unless such well is, after completion (whether such completion is prior or subsequent to the ninth day of June, one thousand nine hundred seventy-eight, deepened subsequent to the ninth day of June, one thousand nine hundred seventy-eight), through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less than six thousand feet, whichever is shallower;

(4) Any shallow well as to which no objection is made under section seventeen, article one, chapter twenty-two-b of this code;

(5) Wells as defined in subdivision (4), section one, article four, chapter twenty-two-b of this code; or


(c) The provisions of this article affecting applications for permits to drill shallow gas wells shall only apply to such
applications filed after 12:01 a.m. the first day of August, one thousand nine hundred seventy-eight, and the provisions of article four of former chapter twenty-two affecting such applications which were in effect immediately prior to the ninth day of June, one thousand nine hundred seventy-eight shall apply to all such applications filed prior to 12:01 a.m., the first day of August, one thousand nine hundred seventy-eight, with like effect as if this article had not been enacted.

§22-7-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

(a) There is hereby continued the “West Virginia Shallow Gas Well Review Board” which shall be composed of three members, two of whom shall be the commissioner and the director. The remaining member of the board shall be a registered professional mining engineer with at least ten years practical experience in the coal mining industry and shall be appointed by the governor, by and with the advice and consent of the senate: Provided, That any person so appointed while the senate of this state is not in session shall be permitted to serve in an acting capacity for one year from his appointment or until the next session of the legislature, whichever is less. As soon as practical after appointment and qualification of the member appointed by the governor, the governor shall convene a meeting of the board for the purpose of organizing and electing a chairman, who shall serve as such until his successor is elected by the board.

(b) A vacancy in the membership appointed by the governor shall be filled by appointment by the governor within sixty days after the occurrence of such vacancy. Before performing any duty hereunder, each member of the board shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia, and shall serve thereafter until his successor has been appointed and qualified.

(c) The member of the board appointed by the governor shall receive not less than seventy-five dollars per diem while actually engaged in the performance of his duties as a member of the board. Each member of the board shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the
board.

(d) The division of oil and gas shall furnish office and clerical staff and supplies and services, including reporters for hearings, as required by the board.

§22-7-5. Same—Meetings; notice; general powers and duties.

(a) The board shall meet and hold conferences and hearings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the board at any time. The chairman shall call a meeting of the board (1) upon receipt of a notice from the director that an objection to the proposed drilling or deepening of a shallow well has been filed by a coal seam owner pursuant to section seventeen, article one, chapter twenty-two-b of this code or that an objection has been made by the director, (2) upon receipt of an application to establish a drilling unit filed with the board pursuant to section nine of this article, or (3) within twenty days upon the written request by another member of the board. Meetings called pursuant to subdivisions (1) and (2) of this subsection shall be scheduled not less than ten days nor more than twenty days from receipt by the chairman of the notice of objection or the application to establish a drilling unit. Notice of all meetings shall be given to each member of the board by the chairman at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of subdivisions (1) and (2), subsection (a) of this section, the chairman shall also notify (1) in the case of a notice of objection, the well operator and all objecting coal seam owners, and (2) in the case of an application to establish a drilling unit, the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of subsection (d), section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of subsection (c), section nine of this article.

(c) A majority of the members of the board shall constitute a quorum for the transaction of any business. A majority of the members of the board shall be required to determine any issue brought before it.
(d) The board is hereby empowered and it shall be its duty
38 to execute and carry out, administer and enforce the provisions
39 of this article in the manner provided herein. Subject to the
40 provisions of section three of this article, the board shall have
41 jurisdiction and authority over all persons and property
necessary therefor: Provided, That the provisions of this article
42 shall not be construed to grant to the board authority or power
43 to (1) limit production or output from or prorate production
44 of any gas well, or (2) fix prices of gas.

(e) The board shall have specific authority to:

(1) Take evidence and issue orders concerning applications
49 for drilling permits and drilling units in accordance with the
50 provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter
51 twenty-nine-a of this code, and enforce reasonable rules and
52 regulations necessary to govern the practice and procedure
53 before the board;

(3) Make such relevant investigations of records and
54 facilities as it deems proper; and

(4) Issue subpoenas for the attendance of and sworn
55 testimony by witnesses and subpoenas duces tecum for the
56 production of any books, records, maps, charts, diagrams and
57 other pertinent documents, and administer oaths and
58 affirmations to such witnesses, whenever, in the judgment of
59 the board, it is necessary to do so for the effective discharge
60 of its duties under the provisions of this article.

§22-7-6. Rules and regulations; notice requirements.

(a) The board may promulgate, pursuant to the provisions
64 of chapter twenty-nine-a of this code, such reasonable rules
65 and regulations as are deemed necessary or desirable to
66 implement and make effective the provisions of this article.

(b) Notwithstanding the provisions of section two, article
69 seven, chapter twenty-nine-a of this code, any notice required
70 under the provisions of this article shall be given at the
71 direction of the chairman by (1) personal or substituted service
72 and if such cannot be had then by (2) certified United States
73 mail, addressed, postage and certification fee prepaid, to the
74 last known mailing address, if any, of the person being served,
with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by the order of the board is situate. The chairman shall also mail a copy of such notice to all other persons who have specified to the chairman an address to which all such notices may be mailed. All notices shall issue in the name of the state, shall be signed by the chairman, shall specify the style and number of the proceeding, the date, time and place of any meeting, conference or hearing, and shall briefly state the purpose of the proceeding. Proof of service or publication of such notice shall be made to the board promptly and in any event within the time during which the person served must respond to the notice. If service is made by a person other than the sheriff or the chairman, he shall make proof thereof by affidavit. Failure to make proof of service or publication within the time required shall not affect the validity of the service of the notice.

§22-7-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.

(a) At the time and place fixed by the chairman for the meeting of the board and for consideration of the objections to proposed drilling filed by coal seam owners pursuant to section seventeen, article one, chapter twenty-two-b of this code, the well operator and the objecting coal seam owners present or represented, shall hold a conference with the board to consider the objections. Such persons present or represented at the conference may agree upon either the drilling location as proposed by the well operator or an alternate location. Any change in the drilling location from the drilling location proposed by the well operator shall be indicated on the plat enclosed with the notice of objection filed with the chairman by the director in accordance with the provisions of section seventeen, article one of chapter twenty-two-b of this code, and the distance and direction to the new drilling location from the proposed drilling location shall also be shown on such plat. If agreement is reached at the conference by the well operator
and such objecting coal seam owners present or represented at the conference, the board shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the director to grant the well operator a drilling permit for the location agreed upon. The original of such order shall be filed with the division within five days after the conference of the board at which the drilling location was agreed upon and copies thereof shall be mailed by registered or certified mail to the well operator and the objecting coal seam owners present or represented at such conference.

(b) If the well operator and the objecting coal seam owners present or represented at the conference with the board are unable to agree upon a drilling location, then, unless they otherwise agree, the board shall, without recess for more than one business day, hold a hearing to consider the application for a drilling permit. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing. Within twenty days after the close of a hearing, the board shall issue and file with the director a written order directing him, subject to other matters requiring approval of the director to:

(1) Refuse a drilling permit; or

(2) Issue a drilling permit for the proposed drilling location; or

(3) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or

(4) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

(c) The written order of the board shall contain findings of fact and conclusions based thereon concerning the following safety aspects, and no drilling permit shall be issued for any drilling location where the board finds from the evidence that such drilling location will be unsafe:

(1) Whether the drilling location is above or in close proximity to any mine opening, or shaft, entry, travelway,
(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal and gas.

The written order of the board shall also contain findings of fact and conclusions based thereon concerning the following:

(5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article three, chapter twenty-two-a of this code;

(6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

(7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and gas;

(9) The distance limitations established in section eight of this article;

(10) The practicality of locating the well on a uniform pattern with other wells;

(11) The surface topography and use; and

(12) Whether the order of the board will substantially affect the right of the gas operator to explore for and produce gas.

(d) Any member of the board may file a separate opinion.
Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22-7-8. Distance limitations.

(a) If the well operator and the objecting coal seam owners present or represented at the time and place fixed by the chairman for consideration of the objections to the proposed drilling location are unable to agree upon a drilling location, then the written order of the board shall direct the director to refuse to issue a drilling permit unless the following distance limitations are observed:

(1) For all shallow wells with a depth less than three thousand feet, there shall be a minimum distance of one thousand feet from the drilling location to the nearest existing well as defined in subsection (b) of this section; and

(2) For all shallow wells with a depth of three thousand feet or more, there shall be a minimum distance of one thousand five hundred feet from the drilling location to the nearest existing well as defined in subsection (b) of this section, except that where the distance from the drilling location to such nearest existing well is less than two thousand feet but more than one thousand five hundred feet and a coal seam owner has objected, the gas operator shall have the burden of establishing the need for the drilling location less than two thousand feet from such nearest existing well. Where the distance from the drilling location proposed by the operator or designated by the board to the nearest existing well as defined in subsection (b) of this section is greater than two thousand feet, distance criterion will not be a ground for objection by a coal seam owner.

(b) The words “existing well” as used in this section shall mean (i) any well not plugged within nine months after being drilled to its total depth and either completed in the same target formation or drilled for the purpose of producing from the same target formation, and (ii) any unexpired, permitted drilling location for a well to the same target formation.

(c) The minimum distance limitations established by this section shall not apply if the proposed well will be drilled through an existing or planned pillar of coal required for
protection of a preexisting oil or gas well and the proposed
well will neither require enlargement of such pillar nor
otherwise have an adverse effect on existing or planned coal
mining operations.

(d) Nothing in this article shall be construed to empower
the board to order the director to issue a drilling permit to
any person other than the well operator filing the application
which is the subject of the proceedings.

§22-7-9. Application to establish a drilling unit; contents; notice.

(a) Whenever the board has issued an order directing the
director to refuse a drilling permit, the gas operator may apply
to the board for the establishment of a drilling unit
encompassing a contiguous tract or tracts if such gas operator
believes that such a drilling unit will afford one well location
for the production of gas from under the tract on which the
drilling permit was sought, and will be agreeable to the coal
seam owners.

(b) An application to establish a drilling unit shall be filed
with the board and shall contain:

(1) The name and address of the applicant;

(2) A plat prepared by a licensed land surveyor or registered
professional engineer showing the boundary of the proposed
drilling unit, the district and county in which such unit is
located, the acreage of the proposed drilling unit, the boundary
of the tracts which comprise the proposed drilling unit, the
names of the owners of record of each such tract, the proposed
well location on the proposed drilling unit, and the proposed
well location for which the department refused to issue a
drilling permit;

(3) The names and addresses of the royalty owners of the
gas underlying the tracts which comprise the proposed drilling
unit;

(4) The names and addresses of the gas operators of the
tracts which comprise the proposed drilling unit;

(5) The approximate depth and target formation to which
the well for the proposed drilling unit is to be drilled;

(6) A statement indicating whether a voluntary pooling
agreement has been reached among any or all of the royalty
owners of the gas underlying the tracts which comprise the
proposed drilling unit and the gas operators of such tracts;

(7) An affidavit of publication of the notice of intent to
file an application to establish a drilling unit as required in
subsection (c) of this section; and

(8) Such other pertinent and relevant information as the
board may prescribe by reasonable rules and regulations
promulgated in accordance with the provisions of section six
of this article.

(c) Prior to the filing of an application to establish a drilling
unit, the applicant shall cause to be published, as a Class II
legal advertisement in accordance with the provisions of
article three, chapter fifty-nine of this code, a notice of intent
to file an application to establish a drilling unit. Such notice
shall contain the information required by subdivisions (1), (4)
and (5), subsection (b) of this section, the name of the royalty
owner of the gas underlying the proposed well location on the
proposed drilling unit, plus an abbreviated description, or, at
the applicant's option, a plat of the drilling unit, disclosing the
county and district wherein the proposed drilling unit is to be
located, the post office closest to the proposed drilling unit,
a statement that the applicant will deliver a copy of the plat
required by subdivision (2) of subsection (b) to any person
desiring the same, the date upon which the applicant intends
to file the application to establish a drilling unit, and a
statement that written protests and objections to such
application may be filed with the board until a specified date,
which date shall be at least ten days after the date upon which
the applicant intends to file the application to establish a
drilling unit. The publication area of the notice required by
this subsection shall be the county or counties in which the
proposed drilling unit is to be located.

(d) At the time an application to establish a drilling unit
is filed, the applicant shall forward a copy thereof by registered
or certified mail to each and every person whose name and
address were included on the application in accordance with
the provisions of subdivisions (3) and (4), subsection (b) of this
section. With each such application there shall be enclosed a
notice (the form for which shall be furnished by the board on
request) addressed to each such person to whom a copy of
the application is required to be sent, informing him that such
application is being mailed to him respectively by registered
or certified mail, pursuant to the requirements of this article:
Provided, That the application and notice need not be
forwarded to those royalty owners or gas operators within the
boundary of the proposed drilling unit who have previously
agreed to voluntary pooling by separately stated document or
documents empowering the gas operator, by assignment or
otherwise, unilaterally to declare a unit.

§22-7-10. Establishment of drilling units; hearings; orders.

(a) At the time and place fixed by the chairman for the
meeting of the board and for consideration of an application
to establish a drilling unit, the applicant shall present proof
that the drilling location on the proposed drilling unit has been
agreed to by all of the owners of the coal seams underlying
such drilling location; and thereafter the applicant, the royalty
owners of the gas underlying the tracts comprising the unit,
and the gas operators of the tracts comprising the unit, or such
of them as are present or represented, shall hold a conference
with the board to consider the application. Such persons
present or represented at the conference may agree upon the
boundary of the drilling unit as proposed by the applicant or
as changed to satisfy all valid objections of those persons
present or represented. Any change in the boundary of the
drilling unit from the boundary proposed by the applicant
shall be shown on the plat filed with the board as part of the
application. If agreement is reached at the conference upon the
boundary of the drilling unit among the applicants, the royalty
owners of the gas underlying the tracts comprising the drilling
unit and the gas operators of the tracts comprising such unit,
or such of them as are present or represented, and if such
agreement is approved by the board, the board shall issue a
written order establishing and specifying the boundary of the
drilling unit.

(b) If the applicant, the royalty owners of the gas underlying
the tracts comprising the drilling unit and the gas operators
of the tracts comprising such unit, or such of them as are
present or represented at the time and place fixed by the
chairman for consideration of the application, are unable to
agree upon the boundary of the drilling unit, then the board
shall hold a hearing without recess of more than one business
day to consider the application to establish a drilling unit. All
of the pertinent provisions of article five, chapter twenty-nine-
a of this code shall apply to and govern such hearing. Within
twenty days after the close of the hearing, the board shall issue
a written order either establishing a drilling unit or dismissing
the application. If the board determines to establish a drilling
unit, the order shall specify the boundary of such drilling unit.
In determining whether to grant or deny an application to
establish a drilling unit, the board shall consider:
(1) The surface topography and property lines of the lands
comprising the drilling unit;
(2) The correlative rights of all gas operators and royalty
owners therein;
(3) The just and equitable share of production of each gas
operator and royalty owner therein;
(4) Whether a gas operator or royalty owner objecting to
the drilling unit has proved by clear and convincing evidence
that the drilling unit is substantially smaller than the area that
will be produced by the proposed well; and
(5) Other evidence relevant to the establishment of the
boundary of a drilling unit.
(c) The board shall not grant an application to establish a
drilling unit, nor shall it approve any drilling unit, unless the
board finds that:
(1) The applicant has proved that the drilling location on
the drilling unit has been agreed to by all of the owners of
the coal seams underlying such drilling location;
(2) The director has previously refused to issue a drilling
permit on one of the tracts comprising the drilling unit because
of an order of the board;
(3) The drilling unit includes all acreage within the
minimum distance limitations provided by section eight of this
article, unless the gas operators and royalty owners of any
excluded acreage have agreed to such exclusion; and
(4) The drilling unit includes a portion of the acreage from
under which the well operator intended to produce gas under
the drilling permit which was refused.

d) All orders issued by the board under this section shall contain findings of fact and conclusions based thereon as required by section three, article five, chapter twenty-nine-a of this code and shall be filed with the director within twenty days after the hearing. Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22-7-11. Pooling of interests in a drilling unit; limitations.

(a) Whenever the board establishes a drilling unit pursuant to the provisions of sections nine and ten of this article, the order establishing such drilling unit shall include an order pooling the separately owned interests in the gas to be produced from such drilling unit.

(b) If a voluntary pooling agreement has been reached between all persons owning separate operating interests in the tracts comprising the drilling unit, the order of the board shall approve such agreement.

(c) If no voluntary pooling agreement is reached prior to or during the hearing held pursuant to subsection (b), section ten of this article, then at such hearing the board shall also determine the pooling of interests in the drilling unit.

(d) Any order of the board pooling the separately owned interests in the gas to be produced from the drilling unit shall be upon terms and conditions which are just and equitable and shall authorize the production of gas from the drilling unit; shall designate the applicant as the operator to drill and operate such gas well; shall prescribe the procedure by which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, abandoning and reclaiming such well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including all reasonable charges for supervision and for interest on past-due accounts, by all those
who elect to participate therein.

(e) Upon request, any such pooling order shall provide an owner of an operating interest an election to be made within ten days from the date of the pooling order, (i) to participate in the risks and costs of the drilling of the well, or (ii) to participate in the drilling of the well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the board to be just and equitable. If the election is not made within the ten-day period, such owner shall be conclusively presumed to have elected the limited or carried basis. Thereafter, if an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a well for the benefit of such nonparticipating owner as provided in the order of the board, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved with respect to such tracts or portions thereof, or exclusive of one-eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one-eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(f) In no event shall drilling be initiated or completed on any tract, where the gas underlying such tract has not been severed from the surface thereof by deed, lease or other title document, without the written consent of the person who owns such tract.

(g) All disputes which may arise as to the costs of drilling and operating a well under a pooling order issued pursuant to this section shall be resolved by the board within ninety days from the date of written notification to the board of the existence of such dispute.

§22-7-12. Effect of order establishing drilling unit or pooling of interest; recordation.

(a) An order issued by the board establishing a drilling unit and ordering the pooling of interests therein shall not entitle the gas operator designated in such order to drill a well on
such drilling unit until such gas operator shall have received a drilling permit in accordance with the provisions applicable to alternative drilling locations set out in section seventeen, article one, chapter twenty-two-b of this code. All orders issued by the board establishing a drilling unit shall be filed with the director and shall also direct the director to issue a drilling permit for the drilling location agreed to by all of the owners of the coal seams underlying such drilling location.

(b) A certified copy of any order of the board establishing a drilling unit or a pooling of interests shall be mailed by the board to the clerk of the county commission of each county wherein all or any portion of the drilling unit is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recordation from the time noted thereon by such clerk shall be notice of the order to all persons.

§22-7-13. Judicial review; appeal to supreme court of appeals; legal representation for board.

(a) Any person adversely affected by an order of the board shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The board, with the written approval of the attorney general, may employ special counsel to represent the board at any such appeal proceedings.

§22-7-14. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for
which a pooling order as been entered, shall be deemed for
all purposes the conduct of such operations upon each
separately owned tract in the drilling unit by the several
owners thereof. That portion of the production allocated to
a separately owned tract included in a drilling unit shall, when
produced, be deemed for all purposes to have been actually
produced from such tract by a well drilled thereon.

§22-7-15. Validity of unit agreements.

No agreement between or among gas operators, lessees or
other owners of gas rights in gas properties, entered into
pursuant to the provisions of this article or with a view to or
for the purpose of bringing about the unitized development
or operation of such properties, shall be held to violate the
statutory or common law of this state prohibiting monopolies
or acts, arrangements, contracts, combinations or conspiracies
in restraint of trade or commerce.

§22-7-16. Injunctive relief.

(a) Whenever it appears to the board that any person has
been or is violating or is about to violate any provision of this
article, any rule and regulation promulgated by the board
hereunder or any order or final decision of the board, the
board may apply in the name of the state to the circuit court
of the county in which the violations or any part thereof has
occurred, is occurring or is about to occur, or to the judge
thereof in vacation, for an injunction against such person and
any other persons who have been, are or are about to be,
involved in any practices, acts or omissions, so in violation,
enjoining such person or persons from any such violation or
violations. Such application may be made and prosecuted to
conclusion whether or not any such violation or violations
have resulted or shall result in prosecution or conviction under
the provisions of section seventeen of this article.

(b) Upon application by the board, the circuit courts of this
state may by mandatory or prohibitory injunction compel
compliance with the provisions of this article, the rules and
regulations promulgated by the board hereunder and all orders
of the board. The court may issue a temporary injunction in
any case pending a decision on the merits of any application
filed. Any other section of this code to the contrary
notwithstanding, the state shall not be required to furnish
bond or other undertaking as a prerequisite to obtaining
mandatory, prohibitory or temporary injunctive relief under
the provisions of this article.

(c) The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals. Any such appeal shall be sought in the manner
and within the time provided by law for appeals from circuit
courts in other civil actions.

(d) The board shall be represented in all such proceedings
by the attorney general or his assistants and in such
proceedings in the circuit courts by the prosecuting attorneys
of the several counties as well, all without additional
compensation. The board, with the written approval of the
attorney general, may employ special counsel to represent the
board in any such proceedings.

(e) If the board shall refuse or fail to apply for an injunction
to enjoin a violation or threatened violation of any provision
of this article, any rule and regulation promulgated by the
board hereunder or any order or final decision of the board,
within ten days after receipt of a written request to do so by
any person who is or will be adversely affected by such
violation or threatened violation, the person making such
request may apply in his own behalf for an injunction to enjoin
such violation or threatened violation in any court in which
the board might have brought suit. The board shall be made
a party defendant in such application in addition to the person
or persons violating or threatening to violate any provision of
this article, any rule and regulation promulgated by the board
hereunder or any order of the board. The application shall
proceed and injunctive relief may be granted without bond or
other undertaking in the same manner as if the application had
been made by the chairman.

§22-7-17. Penalties.

(a) Any person who violates any provision of this article,
any of the rules and regulations promulgated by the board
hereunder or any order of the board other than a violation
governed by the provisions of subsection (b) of this section,
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not more than one thousand dollars.
(b) Any person who, with the intention of evading any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board shall make or cause to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order or final decision of the board, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.

§22-7-18. Construction.
This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

§22-7-19. Rules, regulations, orders and permits remain in effect.
The rules and regulations promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article four-b, of former chapter twenty-two of this code, shall remain in full force and effect as if such rules, regulations, orders and permits were adopted by the board continued in this article but all such rules, regulations, orders and permits shall be subject to review by the board to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two-b of this code.

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-1. Declaration of public policy; legislative findings.
(a) It is hereby declared to be the public policy of this state and in the public interest to:

(l) Foster, encourage and promote exploration for development, production, utilization and conservation of oil and gas resources;
(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas; and

(4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.

(b) The legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than one hundred years; that oil and gas deposits in such shallow sands or strata have geological and other characteristics different than those found in deeper formations; and that in order to encourage the maximum recovery of oil and gas from all productive formations in this state, it is not in the public interest, with the exception of shallow wells utilized in a secondary recovery program, to enact statutory provisions relating to the exploration for or production from oil and gas from shallow wells, as defined in section two of this article, but that it is in the public interest to enact statutory provisions establishing regulatory procedures and principles to be applied to the exploration for or production of oil and gas from deep wells, as defined in said section two.

§22-8-2. Definitions.

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

(1) "Commission" means the oil and gas conservation commission and "commissioner" means the oil and gas conservation commissioner as provided for in section four of this article;

(2) "Director" means the director for the division of oil and gas provided for in section eleven, article one, chapter twenty-two of this code;

(3) "Person" means any natural person, corporation, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any
agency thereof;

(4) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

(5) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subdivision (4) of this section;

(6) "Independent producer" means a person who is actively engaged in the production of oil and gas in West Virginia, but whose gross revenue from such production in West Virginia does not exceed five hundred thousand dollars per year.

(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (7) of this section;

(9) "Pool" means an underground accumulation of petroleum in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be presented in the same district or on the same geologic structure;

(10) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

(11) "Shallow well" means any well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(12) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(13) "Drilling unit" means the acreage on which one well may be drilled;

(14) "Waste" means and includes: (a) Physical waste, as that term is generally understood in the oil and gas industry; (b) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or (c) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool;

(15) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof; and

(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts.

§22-8-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or admin-
istered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of article one of chapter twenty-two-b of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than those utilized in secondary recovery program as set forth in section eight of this article;

(2) Any well commenced or completed prior to the ninth day of March, one thousand nine hundred seventy-two, unless such well is, after completion (whether such completion is prior or subsequent to that date), (i) deepened subsequent to that date to a formation at or below the top of the uppermost member of the “Onondaga Group” or at a depth of or greater than six thousand feet, whichever is shallower or (ii) involved in secondary recovery operations for oil under an order of the commissioner entered pursuant to section eight of this article;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to grant to the commissioner authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in subdivision (6), subsection (a), section seven of this article; or

(2) Fix prices of oil or gas.

§22-8-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

(a) There is hereby continued, as provided for in subsection (h) of this section, the “West Virginia Oil and Gas Conservation Commission” which shall be composed of five members.
The commissioner of the department of energy and the director for the division of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the Senate. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in full-time employment in an activity under the jurisdiction of the public service commission or the federal energy regulatory commission. As soon as practical after appointment of the members of the commission, the governor shall call a meeting of the commission to be convened at the state capitol for the purpose of organizing and electing a chairman.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until his successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by him for the unexpired term of the member whose office shall be vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner. Notification of each meeting shall be given in writing to each member by the chairman at least five days in advance of the meeting. Any three members, one of which may be the chairman, shall constitute a quorum for
the transaction of any business as herein provided for. A
majority of the commission shall be required to determine any
issue brought before it.

(d) Each member of the commission appointed by the
governor shall receive thirty-five dollars per diem not to exceed
one hundred days per calendar year while actually engaged in
the performance of his duties as a member of the commission.
Each member of the commission shall also be reimbursed for
all reasonable and necessary expenses actually incurred in the
performance of his duties as a member of the commission.

(e) The commission shall appoint the oil and gas conserva-
tion commissioner, fix his salary within available funds, and
advise him regarding his duties and authority under this article
and consult with him prior to his reaching any final decisions
and entering orders hereunder. However, the commissioner has
full and final authority under this article with the commission
serving in an advisory capacity to him. The commissioner shall
possess a degree from an accredited college or university in
petroleum engineering or geology and must be a registered
professional engineer with particular knowledge and expe-
rience in the oil and gas industry.

(f) The oil and gas commissioner is hereby empowered and
it shall be his duty to execute and carry out, administer and
enforce the provisions of this article in the manner provided
herein. Subject to the provisions of section three of this article,
the commissioner shall have jurisdiction and authority over all
persons and property necessary therefor. The commissioner is
authorized to make such investigation of records and facilities
as he deems proper. In the event of a conflict between the duty
to prevent waste and the duty to protect correlative rights, the
commissioner's duty to prevent waste shall be paramount. He
shall serve as secretary of the oil and gas conservation
commission.

(g) Without limiting his general authority, the commissioner
shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and regulations and
orders reasonably necessary to prevent waste, protect
correlative rights, govern the practice and procedure before the
commissioner and otherwise administer the provisions of this article;

(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commissioner it is necessary to do so for the effective discharge of his duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the director for the division of oil and gas, to the department of energy and to any other agency of state government having responsibility related to the oil and gas industry.

(h) After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the oil and gas conservation commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the oil and gas conservation commission shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

§22-8-5. Rules and regulations; notice requirements.

(a) The commissioner may promulgate such reasonable rules and regulations as he may deem necessary or desirable to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon him under the provisions of this article and for securing uniformity or procedure in the administration of the provisions of article three, chapter twenty-nine-a of this code.

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the commissioner by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage prepaid, to the last known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return
receipt requested, and if there be no known mailing address
or if the notice is not so delivered then by (3) publication of
such notices as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall be
the county or counties wherein any land which may be affected
by such order is situate. In addition, the commissioner shall
mail a copy of such notice to all other persons who have
specified to the commissioner an address to which all such
notices may be mailed. The notice shall issue in the name of
the state, shall be signed by the commissioner, shall specify
the style and number of the proceeding, the time and place
of any hearing, and shall briefly state the purpose of the
proceeding. Personal or substituted service and proof thereof
may be made by an officer authorized to serve process or by
an agent of the commissioner in the same manner as is now
provided by the “West Virginia Rules of Civil Procedure for
Trial Courts of Record” for service of process in civil actions
in the various courts of this state. A certified copy of any
pooling order entered under the provisions of this article shall
be presented by the commissioner to the clerk of the county
commission of each county wherein all or any portion of the
pooled tract is located, for recordation in the record book of
such county in which oil and gas leases are normally recorded.
Such recording of such order from the time noted thereon by
such clerk shall be notice of the order to all persons.

§22-8-6. Waste of oil or gas prohibited.

Waste of oil or gas is hereby prohibited.

§22-8-7. Drilling units and pooling of interests in drilling units in
connection with deep oil or gas wells.

(a) Drilling units.

(1) After one deep well has been drilled establishing a pool,
an application to establish drilling units may be filed with the
commissioner by the operator of such discovery deep well or
by the operator of any lands directly and immediately affected
by the drilling of such discovery deep well, or subsequent deep
wells in said pool, and the commissioner shall promptly
schedule a hearing on said application. Each application shall
contain such information as the commissioner may prescribe
by reasonable rules and regulations promulgated by him in
accordance with the provisions of section five of this article.

Upon the filing of an application to establish drilling units, notice of the hearing shall be given by the commissioner. Each notice shall specify the date, time and place of hearing, describe the area for which a spacing order is to be entered, and contain such other information as is essential to the giving of proper notice.

(3) On the date specified in such notice, the commissioner shall hold a public hearing to determine the area to be included in his spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. At such hearing the commissioner shall consider:

(i) The surface topography and property lines of the lands underlaid by the pool to be included in such order;
(ii) The plan of deep well spacing then being employed or proposed in such pool for such lands;
(iii) The depth at which production from said pool has been found;
(iv) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil;
(v) The maximum area which may be drained efficiently and economically by one deep well; and
(vi) Any other available geological or scientific data pertaining to said pool which may be of probative value to the commissioner in determining the proper deep well drilling units therefor.

To carry out the purposes of this article, the commissioner shall, upon proper application, notice and hearing as herein provided, and if satisfied after such hearing that drilling units should be established, enter an order establishing drilling units of a specified and approximately uniform size and shape for each pool subject to the provisions of this section.

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the
commissioner shall include in his order all lands determined
or believed to be underlaid by such pool and exclude all other
lands.

(5) No drilling unit established by the commissioner shall
be smaller than the maximum area which can be drained
efficiently and economically by one deep well: Provided, That
if at the time of a hearing to establish drilling units, there is
not sufficient evidence from which to determine the area which
can be drained efficiently and economically by one deep well,
the commissioner may enter an order establishing temporary
drilling units for the orderly development of the pool pending
the obtaining of information necessary to determine the
ultimate spacing for such pool.

(6) An order establishing drilling units shall specify the
minimum distance from the nearest outside boundary of the
drilling unit at which a deep well may be drilled. The minimum
distance provided shall be the same in all drilling units
established under said order with necessary exceptions for deep
wells drilled or being drilled at the time of the filing of the
application. If the commissioner finds that a deep well to be
drilled at or more than the specified minimum distance from
the boundary of a drilling unit would not be likely to produce
in paying quantities or will encounter surface conditions which
would substantially add to the burden or hazard of drilling
such deep well, or that a location within the area permitted
by the order is prohibited by the lawful order of any state
agency or court, the commissioner is authorized after notice
and hearing to make an order permitting the deep well to be
drilled at a location within the minimum distance prescribed
by the spacing order. In granting exceptions to the spacing
order, the commissioner may restrict the production from any
such deep well so that each person entitled thereto in such
drilling unit shall not produce or receive more than his just
and equitable share of the production.

(7) An order establishing drilling units for a pool shall cover
all lands determined or believed to be underlaid by such pool,
and may be modified by the commissioner from time to time,
to include additional lands determined to be underlaid by such
pool or to exclude lands determined not to be underlaid by
such pool. An order establishing drilling units may be modified
by the commissioner to permit the drilling of additional deep
wells on a reasonably uniform pattern at a uniform minimum
distance from the nearest unit boundary as provided above.
Any order modifying a proper order shall be made only after
application by an interested operator and notice and hearing
as prescribed herein for the original order. However, drilling
units established by order shall not exceed one hundred sixty
acres for an oil well or six hundred forty acres for a gas well.

(8) After the date of the notice of hearing called to establish
drilling units, no additional deep well shall be commenced for
production from the pool until the order establishing drilling
units has been made, unless the commencement of the deep
well is authorized by order of the commissioner.

(9) The commissioner shall, within forty-five days after the
filing of an application to establish drilling units for a pool
subject to the provisions of this section, either enter an order
establishing such drilling units or dismiss the application.

(10) As part of the order establishing a drilling unit, the
commissioner shall prescribe just and reasonable terms and
conditions upon which the royalty interests in the unit shall,
in the absence of voluntary agreement, be deemed to be
integrated without the necessity of a subsequent order
integrating the royalty interests.

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are embraced
within a drilling unit, or when there are separately owned
interests in all or a part of a drilling unit, the interested persons
may pool their tracts or interests for the development and
operation of the drilling unit. In the absence of voluntary
pooling and upon application of any operator having an
interest in the drilling unit, and after notice and hearing, the
commissioner shall enter an order pooling all tracts or interests
in the drilling unit for the development and operation thereof
and for sharing production therefrom. Each such pooling
order shall be upon terms and conditions which are just and
reasonable. In no event shall drilling be initiated on the tract
of an unleased royalty owner without his written consent.

(2) All operations, including, but not limited to, the
commencement, drilling or operation of a deep well, upon any
portion of a drilling unit for which a pooling order has been
entered, shall be deemed for all purposes the conduct of such
operations upon each separately owned tract in the drilling
unit by the several owners thereof. That portion of the
production allocated to a separately owned tract included in
a drilling unit shall, when produced, be deemed for all
purposes to have been actually produced from such tract by
a deep well drilled thereon.

(3) Any pooling order under the provisions of this
subsection (b) shall authorize the drilling and operation of a
deep well for the production of oil or gas from the pooled
acreage; shall designate the operator to drill and operate such
deep well; shall prescribe the time and manner in which all
owners of operating interests in the pooled tracts or portions
of tracts may elect to participate therein; shall provide that
all reasonable costs and expenses of drilling, completing,
equipping, operating, plugging and abandoning such deep well
shall be borne, and all production therefrom shared, by all
owners of operating interests in proportion to the net oil or
gas acreage in the pooled tracts owned or under lease to each
owner; and shall make provisions for payment of all
reasonable costs thereof, including a reasonable charge for
supervision and for interest on past-due accounts, by all those
who elect to participate therein.

(4) No drilling or operation of a deep well for the
production of oil or gas shall be permitted upon or within any
tract of land unless the operator shall have first obtained the
written consent and easement therefor, duly acknowledged and
placed of record in the office of the county clerk, for valuable
consideration of all owners of the surface of such tract of land,
which consent shall describe with reasonable certainty, the
location upon such tract, of the location of such proposed deep
well, a certified copy which consent and easement shall be
submitted by the operator to the commissioner.

(5) Upon request, any such pooling order shall provide just
and equitable alternatives whereby an owner of an operating
interest who does not elect to participate in the risk and cost
of the drilling of a deep well may elect:

(i) Option I. To surrender his interest or a portion thereof
to the participating owners on a reasonable basis and for a
reasonable consideration, which, if not agreed upon, shall be
determined by the commissioner; or

(ii) Option 2. To participate in the drilling of the deep well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the commissioner to be just and reasonable.

(6) In the event a nonparticipating owner elects Option 2, and an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a deep well for the benefit of such nonparticipating owner as provided in the pooling order, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling and operating a deep well, the commissioner shall determine and apportion the costs, within ninety days from the date of written notification to the commissioner of the existence of such dispute.

§22-8-8. Secondary recovery of oil; unit operations.

Upon the application of any operator in a pool productive of oil and after notice and hearing, the commissioner may enter an order requiring the unit operation of such pool in connection with a program of secondary recovery of oil, and providing for the unitization of separately owned tracts and interests within such pool, but only after finding that: (1) The order is reasonably necessary for the prevention of waste and the drilling of unnecessary deep wells; (2) the proposed plan of secondary recovery will increase the ultimate recovery of oil from the pool to such an extent that the proposed secondary recovery operation will be economically feasible; (3) the production of oil from the unitized pool can be allocated
in such a manner as to insure the recovery by all operators
of their just and equitable share of such production; and (4)
the operators of at least three fourths of the acreage
(calculating partial interests on a pro rata basis for operator
interests on any parcel owned in common) and the royalty
owners of at least three fourths of the acreage (calculating
partial interests on a pro rata basis for royalty interests on
any parcel owned in common) in such pool have approved the
plan and terms of unit operation to be specified by the
commissioner in its order, such approval to be evidenced by
a written contract setting forth the terms of the unit operation
and executed by said operators and said royalty owners, and
filed with the commissioner on or before the day set for
hearing. The order requiring such unit operation shall
designate one operator in the pool as unit operator and shall
also make provision for the proportionate allocation to all
operators of the costs and expenses of the unit operation,
including reasonable charges for supervision and interest on
past-due accounts, which allocation shall be in the same
proportion that the separately owned tracts share in the
production of oil from the unit. In the absence of an agreement
entered into by the operators and filed with the commissioner
providing for sharing the costs of capital investment in wells
and physical equipment, and intangible drilling costs, the
commissioner shall provide by order for the sharing of such
costs in the same proportion as the costs and expenses of the
unit operation: Provided, That any operator who has not
consented to the unitization shall not be required to contribute
to the costs or expenses of the unit operation, or to the cost
of capital investment in wells and physical equipment, and
intangible drilling costs, except out of the proceeds from the
sale of the production accruing to the interest of such operator:
Provided, however, That no credit to the well costs shall be
adjusted on the basis of less than the average well costs within
the unitized area: Provided further, That no order entered
under the provisions of this section requiring unit operation
shall vary or alter any of the terms of any contract entered
into by operators and royalty owners under the provisions of
this section.

§22-8-9. Validity of unit agreements.

No agreement between or among operators, lessees or other
owners of oil or gas rights in oil and gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

§22-8-10. Hearing procedures.

(a) Upon receipt of an application for an order of the commissioner for which a hearing is required by the provisions of this article, the commissioner shall set a time and place for such hearing not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the commissioner upon his own motion or for good cause shown by any party to the hearing. All interested parties shall be entitled to be heard at any hearing conducted under the provisions of this article.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection.

(c) Any such hearing shall be conducted by the commissioner. For the purpose of conducting any such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) At any such hearing any interested person may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the commissioner, he shall be represented at such hearing by the attorney general or his assistants without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner at any such hearing.
(e) After any such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall render his decision in writing. The written decision of the commissioner shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon all interested persons and their attorney of record, if any.

The decision of the commissioner shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section eleven of this article.

§22-8-11. Judicial review; appeal to supreme court of appeals; legal representation for commissioner.

(a) Any person adversely affected by a decision of the commissioner rendered after a hearing held in accordance with the provisions of section ten of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code, shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner at any such appeal proceedings.

§22-8-12. Injunctive relief.
(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner, the commissioner may apply in the name of the State to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section fourteen of this article.

(b) Upon application by the commissioner, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated by the commissioner hereunder and all orders and final decisions of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The commissioner shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner in any such proceedings.
(e) If the commissioner shall refuse or fail to apply for an
injunction to enjoin a violation or threatened violation of any
provision of this article, any reasonable rule and regulation
promulgated by the commissioner hereunder or any order or
final decision of the commissioner, within ten days after receipt
of a written request to do so by any person who is or will
be adversely affected by such violation or threatened violation,
the person making such request may apply in his own behalf
for an injunction to enjoin such violation or threatened
violation in any court in which the commissioner might have
brought suit. The commissioner shall be made a party
defendant in such application in addition to the person or
persons violating or threatening to violate any provision of this
article, any reasonable rule and regulation promulgated by the
commissioner hereunder or any order or final decision of the
commissioner. The application shall proceed and injunctive
relief may be granted without bond or other undertaking in
the same manner as if the application had been made by the
commissioner.

§22-8-13. Special oil and gas conservation tax.

Owners of leases on oil and gas for the exploration,
development or production of oil or natural gas shall pay to
the commission a special oil and gas conservation tax of three
cents for each acre under lease, excluding from the tax the
first twenty-five thousand acres. The commission shall deposit
with the treasurer of the state of West Virginia, to the credit
of the special oil and gas conservation fund, all taxes collected
hereunder. The special oil and gas conservation fund shall be
a special fund and shall be administered by the commission
for the sole purpose of carrying out all costs necessary to carry
out the provisions of this article. This tax shall be paid as
provided herein annually on or before the first day of July,
one thousand nine hundred seventy-two, and on or before the
first day of July in each succeeding year.

§22-8-14. Penalties.

(a) Any person who violates any provision of this article,
any of the reasonable rules and regulations promulgated by
the commissioner hereunder or any order or any final decision
of the commissioner, other than a violation covered by the
provisions of subsection (b) of this section, shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and each day that a violation continues shall constitute a new and separate violation.

(b) Any person who, for the purpose of evading any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, shall make or cause to be made any false entry or statement in a report required under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, or shall make or cause to be made any false entry in any record, account or memorandum required under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or any final decision of the commissioner, or who shall omit, or cause to be omitted, from any such record, account or memorandum, full, true and correct entries, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order of final decision of the commissioner, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.

§22-8-15. Construction and severability.

Except as provided in subsection (c), section three of this article, this article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be
§22-8-16. Rules, regulations, orders and permits remain in effect.

The rules and regulations promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article four-a, of former chapter twenty-two of this code, shall remain in full force and effect as if such rules, regulations, orders and permits were adopted by the director established in this chapter but all such rules, regulations, orders and permits shall be subject to review by the commissioner to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two-b of this code.

ARTICLE 9. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22-9-1. Short title.

This article shall be cited as “The West Virginia Miner Training, Education and Certification Act.”

§22-9-2. Declaration of legislative findings and policy.

The Legislature hereby finds and declares that:

(a) The continued prosperity of the coal industry is of primary importance to the state of West Virginia;

(b) The highest priority and concern of this legislature and all in the coal mining industry must be the health and safety of the industry’s most valuable resource—the miner;

(c) A high priority must also be given to increasing the productivity and competitiveness of the mines in this state;

(d) An inordinate number of miners, working on both the surface in surface mining and in and at underground mines, are injured during the first few months of their experience in a mine;

(e) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of West Virginia’s coal industry;

(f) Injuries can be avoided through proper miner training, education and certification;
(g) Mining is a technical occupation with various specialities requiring individualized training and education; and

(h) It is the general purpose of this article to:

(1) Require adequate training, education and meaningful certification of all persons employed in coal mines;

(2) Establish a board of miner training, education, and certification and empower it to require certain training and education of all prospective miners and miners certified by the state;

(3) Authorize a stipend for prospective miners enrolled in this state's miner training, education and certification program;

(4) Direct the commissioner of the department of energy to apply and implement the standards set by the board of miner training, education and certification by establishing programs for miner and prospective miner education and training; and

(5) Provide for a program of continuing miner education for all categories of certified miners.


Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section one, article one-a, chapter twenty-two-a of this code shall have when used in this article the meaning therein assigned to them. These words include but are not limited to the following: Division, director of the division of mines and minerals, mine inspector, operator, miner, shot firer and certified electrician.

“Board” means the board of miner training, education and certification established by section four of this article.

“Mine” means any mine, including a “surface mine,” as that term is defined in section three, article three, chapter twenty-two-a of this code, and in section two, article four of said chapter; and a “mine” as that term is defined in section one, article one-a, chapter twenty-two-a of this code.

§22-9-4. Board of miner training, education and certification created; membership, method of appointment, terms.

(a) There is hereby continued a board of miner training, education and certification, which shall consist of seven
members, who shall be selected in the following manner:

(1) One member shall be appointed by the governor to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state shall be deemed to be that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to that year in which the appointment is made.

(2) Two members shall be appointed by the governor to represent the interests of the underground operators of this state. When said members are to be appointed, the governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state shall be deemed to be that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the governor who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the governor, submit a list of twelve nominees for membership on the board. The governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in
(4) The seventh member of the board, who shall serve as chairman, shall be the commissioner of the department of energy.

(5) All appointments made by the governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is not in session shall be permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the governor. Appointed members shall serve for a term of three years. The board shall meet at the call of the chairman, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy nominations shall be submitted to the governor within thirty days after the vacancy occurs. The vacancy shall be filled by the governor within thirty days of his receipt of the list of nominations.

(d) Each appointed member of the board shall receive one hundred ten dollars per diem while actually engaged in the performance of the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties. Each member shall receive meals, lodging and mileage expense reimbursements at the rates established by rule and regulation of the commissioner of the department of finance and administration for in-state travel of public employees, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

(e) A quorum of the board shall be four members. The
board may act officially by a majority of those members who are present.

(f) The chairman of the board shall be a nonvoting member: Provided. That in cases of a tie, the chairman shall cast the deciding vote on the issue or issues under consideration.

(g) The director of the division of mines and minerals shall serve as the secretary to the board and shall be present or send an authorized representative to all meetings of the board.

§22-9-5. Board powers and duties.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification, under this article or any other provision of this code. Such specialties include, but are not limited to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shot firer, mine electrician and belt examiner. Notwithstanding the provisions of this section the commissioner may by rule or regulation further subdivide the classification for certification.

(b) The board may require certification in other miner occupational specialties: Provided. That no new specialty may be created by the board unless certification in a new specialty is made desirable by action of the federal government requiring certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a program of pre-employment education and training to be required of miners working on the surface at underground mines who are not certified under the provisions of this article or any other provision of this code.

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis. Prior to issuing said standards, the board shall conduct public hearings at which the parties may be affected by its actions may be heard. Such education and training shall be provided in a manner determined by the commissioner to be sufficient to meet the standards established by the board.
(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided for in this article or any other provision of this code.

(f) The board may also, from time to time, conduct such hearings and other oversight activities as may be required to ensure full implementation of programs established by it.

(g) Nothing in this article shall be deemed to empower the board to revoke or suspend any certificate issued by the commissioner or the director of the division of mines and minerals.

(h) The board may, upon its own motion or whenever requested to do so by the commissioner, deem two certificates issued by this state to be of equal value or deem training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the commissioner, or by the provisions of this code.

§22-9-6. Duties of the commissioner and department.

The commissioner shall be empowered to promulgate, pursuant to chapter twenty-nine-a of this code, such reasonable rules and regulations as are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant’s knowledge and understanding of the training and instruction which he is required to have prior to the receipt of a certificate.

The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education and such other persons as may be available to him in implementing the program of instruction and examinations.

The commissioner may, at any time, make such recommendations or supply such information to the board as he may deem appropriate.
The commissioner is authorized and directed to utilize such state and federal moneys and personnel as may be available to the department for educational and training purposes in the implementation of the provisions of this article.

ARTICLE 10. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22-10-1. Certificate of competency and qualification or permit of apprenticeship required of all surface and underground miners.

Except as hereinafter provided, no person shall work or be employed for the purpose of performing normal duties as a surface or underground miner in any mine in this state unless he holds at the time he performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of this article.

§22-10-2. Definitions.

For purposes of this article the term "surface miner" means a person employed at a "surface mine," as that term is defined in section three, article three, chapter twenty-two-a of this code, and in section two, article four of said chapter.

For purposes of this article, the term "underground miner" means an underground worker in a bituminous coal mine, except as hereinafter provided.

For purposes of this article, the term "board of miner training, education and certification" means that board established in article nine of this chapter.

§22-10-3. Permit of apprenticeship-underground miner.

A permit of apprenticeship-underground miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in underground mines, including, but not limited to, general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, general mining hazards, roof control, ventilation, mine health and sanitation, mine mapping, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training education and certification: Provided, That each applicant for said permit shall complete
a program of education and training of at least eighty hours, which shall be determined by the board of miner training, education and certification and provided for and implemented by the director of the division of mines and minerals: Provided further, That if a sufficient number of qualified applicants having successfully completed the state training program provided by the state division of mines and minerals are not available, the operator may request approval from the director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided for trainees undergoing training provided by the state.

§22-10-4. Permit of apprenticeship-surface miner.

A permit of apprenticeship-surface miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tipple safety, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least forty hours, which program shall be determined by the board of miner training, education and certification and provided for and implemented by the director of the division of mines and minerals: Provided further, That if a sufficient number of qualified applicants having successfully completed the state training provided by the state division of mines and minerals are not available, the operator may request approval from the director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided for trainees undergoing training provided by the state.

§22-10-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be known
as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him, and under his supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss or assistant mine foreman or fire boss may have three persons working with him under his supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: Provided. That a mine foreman, assistant mine foreman or fire boss supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five apprentices under his supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the board of miner training, education and certification.

Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it shall be the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies him as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the director of the division of mines and minerals.

§22-10-6. Certificate of competency and qualification—Underground or surface miner.

A certificate of competency and qualification as an underground miner or as surface miner shall be issued by the director to any person who has at least six months’ total experience as an apprentice and demonstrated his competence as a miner by successful completion of an examination given by the director or his representative in a manner and place to be determined by the board of miner training, education and certification: Provided, That all examinations shall be
conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees:

Provided, further, That notice of the time and place of such examination shall be given to management at the mine, to the local union thereof if there is a local union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

§22-10-7. Refusal to issue certificate; appeal.

If the director or his representative finds that an applicant is not qualified and competent, he shall so notify the applicant not more than ten days after the date of examination.

Any applicant aggrieved by an action of the director in failing or refusing to issue a certificate of qualification and competency may, within ten days notice of the action complained of, appeal to the director who shall promptly give the applicant a hearing and either affirm the action or take such action as should have been taken.

§22-10-8. Limitations of article.

All persons possessing certificates of qualification heretofore issued by the department of mines of this state, or hereafter by the division of mines and minerals, entitling them to act as mine foreman-fire bosses; or assistant mine foreman-fire bosses; shall be eligible to engage at any time as miners in the mines of this state. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, shall not be required to possess a miners’ certificate.

Notwithstanding the provisions of this article, every person working as a surface miner in this state on or before the first day of July, one thousand nine hundred and seventy-four shall, upon application to the director, be issued a certificate of competency and qualification.

§22-10-9. Violations; penalties.
Any person who knowingly works in or at a mine without a certificate issued under the provision of this article, any person who knowingly employs an uncertified miner to work in or at a coal mine in this state, or, any operator who fails to insure the supervision of miners holding a certificate of apprenticeship as provided for in section five of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars.

ARTICLE 11. MINE INSPECTORS' EXAMINING BOARD.

§22-11-1. Mine inspectors' examining board.

There shall be a mine inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same causes and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.

The director of the division of mines and minerals shall be an ex officio member of the board and shall serve as secretary of the board, without additional compensation; but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor.

Each member of the board shall receive fifty dollars per diem while actually engaged in the performance of the work of the board; and shall receive mileage at the rate of ten cents for each mile actually traveled going from the home of the
member to the place of the meeting of the board and returning
therefrom, which shall be paid out of the state treasury upon
a requisition upon the state auditor, properly certified by such
members of the board.

The public member shall serve as chairman of the board.
Members of the board, before performing any duty, shall take
and subscribe to the oath required by article four, section five
of the constitution of West Virginia.

The mine inspectors' examining board shall meet at such
times and places as shall be designated by the chairman. It
shall be the duty of the chairman to call a meeting of the board
on the written request of three members or the director of the
division of mines and minerals. Notice of each meeting shall
be given in writing to each member by the secretary at least
five days in advance of the meeting. Three members shall
constitute a quorum for the transaction of business.

In addition to other duties expressly set forth elsewhere in
this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as mine inspectors and forms for
written examinations to test the qualifications of candidates
for that position;

(2) Adopt and promulgate reasonable rules and regulations
relating to the examination, qualification and certification of
candidates for appointment as mine inspectors, and hearing for
removal of inspectors, required to be held by section eleven,
article one-a, chapter twenty-two-a of this code. All of such
rules and regulations shall be printed and a copy thereof
furnished by the secretary of the board to any person upon
request;

(3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment as mine
inspector. By unanimous agreement of all members of the
board, one or more members of the board or an employee of
the division of mines and minerals may be designated to give
a candidate the written portion of the examination;

(4) Prepare and certify to the director of the division of
mines and minerals a register of qualified eligible candidates
for appointment as mine inspectors. The register shall list all
qualified eligible candidates in the order of their grades, the
candidate with the highest grade appearing at the top of the
list. After each meeting of the board held to examine such
candidates, and at least annually, the board shall prepare and
submit to the director of the division of mines and minerals
a revised and corrected register of qualified eligible candidates
for appointment as mine inspector, deleting from such revised
register all persons (a) who are no longer residents of West
Virginia, (b) who have allowed a calendar year to expire
without, in writing, indicating their continued availability for
such appointment, (c) who have been passed over for
appointment for three years, (d) who have become ineligible
for appointment since the board originally certified that such
person was qualified and eligible for appointment as mine
inspector, or (e) who, in the judgment of at least four members
of the board, should be removed from the register for good
cause;

(5) Cause the secretary of the board to keep and preserve
the written examination papers, manuscripts, grading sheets,
and other papers of all applicants for appointment as mine
inspector for such period of time as may be established by the
board. Specimens of the examinations given, together with the
correct solution of each question, shall be preserved perma-
nently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each
successful eligible candidate;

(7) Hear and determine proceedings for the removal of mine
inspectors in accordance with the provisions of this article;

(8) Hear and determine appeals of mine inspectors from
suspension orders made by the director pursuant to the
provisions of section four, article one-a, chapter twenty-two-
a of this code: Provided, That an aggrieved inspector, in order
to appeal from any order of suspension, shall file such appeal
in writing with the mine inspectors’ examining board not later
than ten days after receipt of notice of suspension. On such
appeal the board shall affirm the act of the director unless it
be satisfied from a clear preponderance of the evidence that
the director has acted arbitrarily;

(9) Make an annual report to the governor and the director
of the division of mines and minerals concerning the
ARTICLE 12. EMERGENCY MEDICAL PERSONNEL.

§22-12-1. Emergency personnel in coal mines.

(a) Emergency medical services personnel shall be employed on each shift at every mine that: (1) Employs more than ten employees and (2) more than eight persons are present on the shift. Said emergency medical services personnel shall be employed at their regular duties at a central location, or when more than one such person is required pursuant to subsection (b) or (c) at locations, convenient from quick response to emergencies; and further shall have available to them at all times such equipment as shall be prescribed by the director of the division of mines and minerals, in consultation with the director of the department of health.

(b) Until the first day of July, one thousand nine hundred eighty-five, emergency medical services personnel shall be defined as a medical service attendant as defined in article four-c, chapter sixteen of this code, paramedic as defined in article three-b, chapter thirty of this code, or physician assistant as defined in article three-a, chapter thirty of this code. At least one emergency medical services personnel shall be employed at a mine for every seventy employees or any part thereof who are engaged at one time, in the extraction, production or preparation of coal.

(c) After the first day of July, one thousand nine hundred eighty-five, emergency medical services personnel shall be defined as a person who is certified as an emergency medical technician-mining, emergency medical technician, emergency medical technician-ambulance, emergency medical technician-intermediate, mobile intensive care paramedic, emergency medical technician-paramedic as defined in section three, article four-c, chapter sixteen of this code, or physician assistant as defined in section sixteen, article three-a, chapter thirty of this code. At least one emergency medical services personnel shall be employed at a mine for every fifty employees or any part thereof who are engaged at any time, in the extraction, production or preparation of coal.
(d) A training course designed specifically for certification of emergency medical technician-mining, shall be developed at the earliest practicable time by the director at the earliest practicable time by the director of health in consultation with the board of miner training, education and certification. The training course for initial certification as an emergency medical technician-mining shall not be less than sixty hours, which shall include, but is not limited to, mast trouser application, basic life support skills and emergency room observation or other equivalent practical exposure to emergencies as prescribed by the director of the department of health.

(e) The maintenance of a valid emergency medical technician-mining certificate may be accomplished without taking a three year recertification examination provided that such emergency medical technician-mining personnel completes an eight (8) hour annual retraining and testing program prescribed by the director of health in consultation with the board of miner training, education and certification.

(f) All emergency medical services personnel currently certified as emergency medical service attendants, emergency medical technicians shall receive certification as emergency medical technicians without further training and examination for the remainder of their three year certification period; such emergency medical service attendant or emergency medical technician may upon expiration of such certification become certified as an emergency medical technician-mining upon completion of the eight hour retraining program referred to in subsection (e) above.

§22-12-2. First-aid training of coal mine employees.

Each coal mine operator shall provide every new employee within six months of the date of his employment with the opportunity for first-aid training as prescribed by the director of the division of mines and minerals unless such employees has previously received such training. Each coal mine employee shall be required to take refresher first-aid training of not less than five hours within each twenty-four months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first-aid training.

ARTICLE 13. OIL AND GAS INSPECTORS' EXAMINING BOARD.
§22-13-1. Oil and gas inspectors—Supervising inspectors; tenure; oath and bond.

Notwithstanding any other provisions of law, oil and gas inspectors shall be selected, serve and be removed as in this article provided.

The director for the division of oil and gas shall divide the state so as to equalize, as far as practical, the work of each oil and gas inspector. He may designate a supervising inspector and other inspectors as may be necessary, and may designate their places of abode, at points convenient to the accomplishment of their work.

The director for the division of oil and gas shall make each appointment from among the three qualified eligible candidates on the register having the highest grades. The commissioner of the department of energy or the director for the division of oil and gas, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the commissioner or director, as the case may be, shall immediately notify in writing each member of the oil and gas inspectors’ examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the oil and gas inspectors’ examining board, after hearing, if it finds that the action of striking such name was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the director for the division of oil and gas and the commissioner, an oil and gas inspector or supervising inspector shall have permanent tenure until he becomes seventy years of age, subject only to dismissal for cause in accordance with the provisions of section two of this article. No oil and gas inspector or supervising inspector while in office shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any oil or gas drilling or producing venture or of any coal mine in this state. Before entering upon the discharge of his
duties as an oil and gas inspector or supervising inspector, he
shall take the oath of office prescribed by section 5, article
IV of the constitution of West Virginia, and shall execute a
bond in the penalty of two thousand dollars, with security to
be approved by the director of the division of oil and gas,
conditioned upon the faithful discharge of his duties, a
certificate of which oath and bond shall be filed in the office
of the secretary of state.

The supervising inspector and oil and gas inspectors shall
perform such duties as are imposed upon them by this chapter
or chapter twenty-two b of this code, and related duties
assigned by the director for the division of oil and gas upon
approval of the commissioner.

§22-13-2. Oil and gas inspectors; eligibility for appointment;
qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and gas
inspector or supervising inspector unless, at the time of his
probationary appointment, he (1) is a citizen of West Virginia,
in good health, and of good character, reputation and
temperate habits; (2) has had at least ten years' practical
experience in the oil and gas industry, at least five years of
which, immediately preceding his original appointment shall
have been in the oil and gas industry in this state: Provided,
that a diploma in geology or in mining or petroleum
engineering shall be considered the equivalent of five years'
practical experience; and (3) has good theoretical and practical
knowledge of oil and gas drilling and production methods,
practices and techniques, sound safety practices and applicable
mining laws.

(b) In order to qualify for appointment as an oil and gas
inspector or supervising inspector, an eligible applicant shall
submit to a written and oral examination by the oil and gas
inspectors' examining board and shall furnish such evidence
of good health, character and other facts establishing eligibility
as such board may require. If such board finds after
investigation and examination that an applicant (1) is eligible
for appointment and (2) has passed all written and oral
examinations, the board shall add such applicant's name and
grade to the register of qualified eligible candidates and certify
its action to the director of the division of oil and gas. No
candidate's name may remain on the register for more than three years without requalifying.

(c) The salary of the supervising inspector shall be not less than twenty-seven thousand five hundred dollars per annum. Salaries of inspectors shall be not less than twenty-two thousand dollars per annum. The supervising inspector and inspectors shall receive mileage expense reimbursement at the rate established by rule of the commissioner of the department of finance and administration for in-state travel of public employees. Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by said director subject to the approval of the commissioner and oil and gas inspectors' examining board. In fixing salaries of the oil and gas inspectors and of the supervising inspector, said director shall consider ability, performance of duty and experience. No reimbursement for traveling expenses may be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

(d) An inspector or the supervising inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of an oil and gas inspector or the supervising inspector may be initiated by said director or the commissioner whenever either has reasonable grounds to believe and does believe that adequate cause exists warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the oil and gas inspectors' examining board by said director or the commissioner, setting forth with particularity the facts alleged. Not less than twenty reputable citizens engaged in oil and gas drilling and production operations in the state may petition said director or the commissioner for the removal of an inspector or the supervising inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, said director or the commissioner shall cause an investigation of the facts to be
made. If, after such investigation said director or the commissioner finds that there is substantial evidence which, if true, warrants removal of the inspector or supervising inspector, he shall file a petition with the oil and gas inspectors’ examining board requesting removal of the inspector or supervising inspector.

On receipt of a petition by said director or by the commissioner seeking removal of an inspector or the supervising inspector, the oil and gas inspectors’ examining board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days nor more than thirty days thereafter. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the petition filed with such board.

At the time and place designated in said notice, the oil and gas inspectors’ examining board shall hear all evidence offered in support of the petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance may be granted except for good cause shown.

The chairman of the board, said director and the commissioner may administer oaths and subpoena witnesses.

An inspector or supervising inspector who willfully refuses or fails to appear before such board, or having appeared, refuses to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or refuses to accept a grant of immunity from prosecution on account of any relevant matter about which he may be asked to testify at such hearing before such board, forfeits his position.

If, after hearing, the oil and gas inspectors’ examining board finds that the inspector or supervising inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.
§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the senate. Members may be removed only for the same causes and like manner as elective state officers. One member of the board who shall be the representative of the public, shall be a professor in the petroleum engineering department of the school of mines at West Virginia University appointed by the dean of said school; two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The director for the division of oil and gas shall be an ex officio member of the board and shall serve as secretary of the board without additional compensation, but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor.

Each member of the board shall receive seventy-five dollars per diem while actually engaged in the performance of the work of the board, and shall receive mileage at the rate of not more than fifteen cents for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board.

Members of the board, before performing any duty, shall take and subscribe to the oath required by section five, article four of the constitution of West Virginia.
The board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of two members, or on the written request of said director or the commissioner. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three voting members shall constitute a quorum for the transaction of business.

(b) In addition to other powers and duties expressly set forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of application for employment as an oil and gas inspector and supervising inspector and forms for written examinations to test the qualifications of candidates, with such distinctions, if any, in the forms for oil and gas inspector and supervising inspector as the board may from time to time deem necessary or advisable;

(2) Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, required to be held by this article. All of such rules and regulations shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

(3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By unanimous agreement of all members of the board, one or more members of the board or an employee of the department of energy may be designated to give to a candidate the written portion of the examination;

(4) Prepare and certify to said director and the commissioner a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at
least annually, the board shall prepare and submit to the said
director and the commissioner a revised and corrected register
of qualified eligible candidates for appointment, deleting from
such revised register all persons (a) who are no longer residents
of West Virginia, (b) who have allowed a calendar year to
expire without, in writing, indicating their continued availa-

cibility for such appointment, (c) who have been passed over
for appointment for three years, (d) who have become
ineligible for appointment since the board originally certified
that such persons were qualified and eligible for appointment,
or (e) who, in the judgment of at least three members of the
board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve
the written examination papers, manuscripts, grading sheets
and other papers of all applicants for appointment for such
period of time as may be established by the board. Specimens
of the examinations given, together with the correct solution
of each question, shall be preserved permanently by the
secretary of the board;

(6) Issue a letter or written notice of qualification to each
successful eligible candidate;

(7) Hear and determine proceedings for the removal of
inspectors or the supervising inspector in accordance with the
provisions of this article;

(8) Hear and determine appeals of inspectors or the
supervising inspector from suspension orders made by said
director pursuant to the provisions of section two, article one
of chapter twenty-two-b of this code: Provided, That in order
to appeal from any order of suspension, an aggrieved inspector
or supervising inspector shall file such appeal in writing with
the oil and gas inspectors’ examining board not later than ten
days after receipt of the notice of suspension. On such appeal
the board shall affirm the action of said director unless it be
satisfied from a clear preponderance of the evidence that said
director has acted arbitrarily;

(9) Make an annual report to the governor concerning the
administration of oil and gas inspection personnel in the state
service; making such recommendations as the board considers
to be in the public interest; and
(10) Render such advice and assistance to the director of
the division of oil and gas as he shall from time to time
determine necessary or desirable in the performance of his
duties.

(c) After having conducted a performance and fiscal audit
through its joint committee on government operations,
pursuant to section nine, article ten, chapter four of this code,
the Legislature hereby finds and declares that the oil and gas
inspectors’ examining board within the department of energy
should be continued and reestablished. Accordingly, notwith-
standing the provisions of section four, article ten, chapter four
of this code, the oil and gas inspectors’ examining board within
the department of energy shall continue to exist until the first
day of July, one thousand nine hundred eighty-seven.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 1. MINES AND MINERALS.

§22A-1-1. Division of mines and minerals.

1 The division of mines and minerals, created under the
provisions of section six, article one, chapter twenty-two of
this code, is hereby charged with the duties and responsibilities
set out in chapter twenty-two of this code and this chapter,
relating to the exploration for and development, production
and conservation of coal and all other minerals, except oil and
gas and those minerals found in association therewith as
provided in chapter twenty-two-b of this code. All legislative
findings and policies stated in chapter twenty-two of this code
in relation to these minerals apply to the operations of this
division and the provisions of this chapter.

§22A-1-2. Director of division of mines and minerals.

1 The director of the division of mines and minerals, as
provided in section seven, article one, chapter twenty-two of
this code shall have the responsibility and duties in adminis-
tration of the division of mines and minerals as are provided
in said chapter twenty-two and this chapter.

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

§22A-1A-1. Definitions.

1 Unless the context in which used clearly requires a different
meaning, the following definitions shall apply to this chapter:

(a) General.

(1) Accident: The term “accident” means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

(2) Agent: The term “agent” means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

(3) Approved: The term “approved” means in strict compliance with mining law, or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

(4) Commissioner, or commissioner of energy: The terms “commissioner” or “commissioner of energy” means the commissioner of the department of energy as provided in chapter twenty-two of this code.

(5) Face equipment: The term “face equipment” shall mean mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open cross cut in an entry or room.

(6) Imminent danger: The term “imminent danger” means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(7) Mine: The term “mine” includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

(8) Miner: The term “miner” means any individual working in a coal mine.
(9) Operator: The term “operator” means any firm, corporation, partnership or individual operating any coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

(10) Permissible: The term “permissible” means any equipment, device or explosive that has been approved as permissible by the federal mine safety and health administration and or the United States bureau of mines and meets all requirements, restrictions, exceptions, limitations and conditions attached to such classification by that agency or the bureau.

(11) Person: The term “person” means any individual partnership, association, corporation, firm, subsidiary of a corporation or other organization.

(12) Work of preparing the coal: The term “work of preparing the coal” means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or lignite, and such other work of preparing such coal as is usually done by the operator of the coal mine.

(b) Division of mines and minerals.

(1) Board of appeals: The term “board of appeals” means as provided for in article five of chapter twenty-two of this code.

(2) Division: The term “division” means the state division of mines and minerals provided for in article one section two of this chapter and article one of chapter twenty-two of this code.

(3) Director: The term “director” means the director of the division of mines and minerals provided for in article one, section two of this chapter and article one, chapter twenty-two of this code.

(4) Mine inspector: The term “mine inspector” means a state mine inspector provided for in section seven of this article.

(5) Mine inspectors’ examining board: The term “mine inspectors’ examining board” shall mean the mine inspectors’ examining board provided for in article eleven of chapter twenty-two of this code.
(c) Mine areas.

(1) Abandoned workings: The term "abandoned workings" means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term "active workings" means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term "drift" means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term "excavations and workings" means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(5) Inactive workings: The term "inactive workings" includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term "mechanical working section" means an area of a mine (A) in which coal is loaded mechanically, (B) which is comprised of a number of working places that are generally contiguous, and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term "panel" means workings that are or have been developed off of submain entries which do not exceed three thousand feet in length.

(8) Return air: The term "return air" means a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term "shaft" means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of men and material, in connection with the mining of coal.

(10) Slope: The term "slope" means a plane or incline roadway, usually driven to a coal seam from the surface and

used for the same purposes as a shaft.

(11) Working face: The term “working face” means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term “working place” means the area of a coal mine in by the last open crosscut.

(13) Working section: The term “working section” means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term “working unit” means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) Mine personnel.

(1) Assistant mine foreman: The term “assistant mine foreman” means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(2) Certified electrician: The term “certified electrician” means any person who is qualified as a mine electrician and who has passed an examination given by the division, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the division.

(3) Certified person: The term “certified person,” when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the provisions of this law to perform such duty.

(4) Interested persons: The term “interested persons” includes the operator, members of any mine safety committee
(5) Mine foreman: The term “mine foreman” means the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

(6) Qualified person: The term “qualified person” means a person who has completed an examination and is considered qualified on record by the division.

(7) Shot firer: The term “shot firer” means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his knowledge of mine gases, the use of a flame safety lamp, and other approved detecting devices by examination and certification given him by the division.

(8) Superintendent: The term “superintendent” means the person who shall have, on behalf of the operator, immediate supervision of one or more mines.

(9) Supervisor: The term “supervisor” means a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

(e) Electrical.

(1) Armored cable: The term “armored cable” means a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

(2) Borehole cable: The term “borehole cable” means a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.

(3) Branch circuit: The term “branch circuit” means any circuit, alternating current or direct current, connected to and leading from the main power lines.

(4) Cable: The term “cable” means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).
(5) Circuit breaker: The term “circuit breaker” means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(6) Delta connected: The term “delta connected” means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

(7) Effectively grounded: The term “effectively grounded” is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

(8) Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a portable flame-resistant cable that has passed the flame tests of the Federal Mine Safety and Health Administration.

(9) Ground or grounding conductor (mining): The term “ground or grounding conductor (mining),” also referred to as a safety ground conductor, safety ground, and frame ground, means a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.

(10) Grounded (earthed): The term “grounded (earthed)” means that the system, circuit, or apparatus referred to is provided with a ground.

(11) High voltage: The term “high voltage” means voltages of more than one thousand volts.

(12) Lightning arrester: The term “lightning arrester” means a protective device for limiting surge voltage on equipment by discharging or by passing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(13) Low voltage: The term “low voltage” means up to and including six hundred sixty volts.

(14) Medium voltage: The term “medium voltage” means voltages from six hundred sixty-one to one thousand volts.
(15) Mine power center or distribution center: The term 
"mine power center or distribution center" means a combined 
transformer or distribution unit, complete within a metal 
enclosure from which one or more low-voltage power circuits 
are taken.

(16) Neutral (derived): The term "neutral (derived)" means 
a neutral point or connection established by the addition of 
a "zig-zag" or grounding transformer to a normally under-
ground power system.

(17) Neutral point: The term "neutral point" means the 
connection point of transformer or generator windings from 
which the voltage to ground is nominally zero, and is the point 
generally used for system groundings in wye-connected a.c. 
power system.

(18) Portable (trailing) cable: The term "portable (trailing) 
cable" means a flexible cable or cord used for connecting 
mobile, portable or stationary equipment in mines to a trolley 
system or other external source of electric energy where 
permanent mine wiring is prohibited or is impracticable.

(19) Wye-connected: The term "wye-connected" means a 
power system connection in which one end of each phase 
windings or transformers or a.c. generators are connected 
together to form a neutral point, and a neutral conductor may 
or may not be connected to the neutral point, and the neutral 
point may or may not be grounded.

(20) Zig-zag transformer (grounding transformer): The term 
"zig-zag transformer (grounding transformer)" means a 
transformer intended primarily to provide a neutral point for 
grounding purposes.

§22A-1A-2. Division of mines and minerals; purposes; rules and 
regulations.

The division of mines and minerals shall have as its purpose 
the supervision of the execution and enforcement of the 
provisions of this chapter and, in carrying out the aforesaid 
purposes, it shall give prime consideration to the protection 
of the safety and health of persons employed within or at the 
mines of this state. In addition, the division shall, consistent 
with the aforesaid prime consideration, protect and preserve 
mining property and property used in connection therewith.
The division is hereby given authority, where authorized and
in the manner prescribed in this chapter, to enact such rules
and regulations as may be necessary to effectuate the above-
stated purposes, all under the supervision, review and approval
of the commissioner.

§22A-1A-3. Director of division of mines and minerals—Appointment.

There shall be a director of the division, who shall be
appointed by the commissioner of the department of energy
as provided for in section eight, article one of chapter twenty-
two.

§22A-1A-4. Director of the division department of mines and
minerals—Powers and duties.

The director of the division of mines and minerals shall have
full charge of the division. He shall have the power and duty
to:

(1) Supervise and direct the execution and enforcement of
the provisions of this chapter.

(2) Recommend the appointment and compensation of
deputy directors of the division to the commissioner.

(3) Employ such assistants, clerks, stenographers and other
employees as may be necessary to fully and effectively carry
out the provisions of this law and fix their compensation,
except as otherwise provided in this article.

(4) Assign mine inspectors hired by the commissioner to
divisions or districts in accordance with the provisions of
section seven of this article as may be necessary to fully and
effectively carry out the provisions of this law, including the
training of inspectors for the specialized requirements of
surface mining, shaft and slope sinking, and surface installa-
tions and to supervise and direct such mine inspectors in the
performance of their duties.

(5) Suspend, for good cause, any mine inspector without
compensation for a period not exceeding thirty days in any
calendar year.

(6) Prepare report forms to be used by mine inspectors in
making their findings, orders and notices, upon inspections
made in accordance with this chapter.

(7) Hear and determine applications made by mine opera-
tors for the annulment or revision of orders made by mine
inspectors, and to make inspections of mines, in accordance
with the provisions of this article.

(8) Cause a properly indexed permanent and public record
to be kept of all inspections made by himself or by mine
inspectors.

(9) Make annually a full and complete written report of the
administration of his division to the commissioner, the
governor and the legislature of the state for the year ending
the thirtieth day of June. Such report shall include the number
of visits and inspections of mines in the state by mine
inspectors, the quantity of coal, coke and other minerals
(excluding oil and gas) produced in the state, the number of
men employed, number of mines in operation, statistics with
regard to health and safety of persons working in the mines
including the causes of injuries and deaths, improvements
made, prosecutions, the total funds of the division from all
sources identifying each source of such funds, the expenditures
of the division, the surplus or deficit of the division at the
beginning and end of the year, the amount of fines collected,
the amount of fines imposed, the value of fines pending, the
number and type of violations found, the amount of fines
imposed, levied and turned over for collection, the total
amount of fines levied but not paid during the prior year, the
titles and salaries of all inspectors and other officials of the
division, the number of inspections made by each inspector,
the number and type of violations found by each inspector:
Provided. That no inspector shall be identified by name in this
report. Such reports shall be filed with the commissioner, the
governor and the Legislature on or before the thirty-first day
of December of the same year for which it was made, and shall
upon proper authority be printed and distributed to interested
persons.

(10) Call or subpoena witnesses, for the purpose of
conducting hearings into mine fires, mine explosions or any
mine accident; to administer oaths and to require production
of any books, papers, records, or other documents relevant or
material to any hearing, investigation or examination of any
mine permitted by this chapter. Any witness so called or
subpoenaed shall receive forty dollars per diem and shall
receive mileage at the rate of fifteen cents for each mile
actually traveled, which shall be paid out of the state treasury
upon a requisition upon the state auditor, properly certified
by such witness.

(11) Institute civil actions for relief, including permanent or
temporary injunctions, restraining orders, or any other
appropriate action in the appropriate federal or state court
whenever any operator or his agent violates or fails or refuses
to comply with any lawful order, notice or decision issued by
the director or his representative.

(12) Perform all other duties which are expressly imposed
upon him by the provisions of this chapter.

(13) Make all records of the division open for inspection of
interested persons and the public.

(14) In conjunction with the commissioner of the department
of energy, adopt programs, regulations and procedures
designed to assist the small coal operator with obtaining
permits and meeting the environmental protection perfor-
mance standards for strip and underground coal mining
operations within the state. For the purposes of this
subdivision, a small coal operator is one who is anticipated
to mine less than two hundred thousand tons per year, but
the division in determining tonnage shall consider wholly
owned subsidiaries to be the same operation as the parent
corporation.

(15) Issue all permits, which the director is specifically
authorized by the provisions of this chapter to issue, as
expeditiously as possible with prime consideration given to the
protection of the safety and health of all persons employed
within or at the mines of this state. In so doing he shall utilize
the technical and logistical support made available by the
deputy directors of safety, health and training; permitting; and
inspection and enforcement.

§22A-1A-5. Same—Eligibility; salary.

The director shall be a citizen of West Virginia, shall be a
competent person of good repute and temperate habits with
demonstrated interest and experience in coal mining. The
director shall devote all of his time to the duties of his office
and shall not be directly or indirectly interested financially in
any mine. The salary of the director shall be set by the
commissioner, with reimbursement for traveling expenses
incurred in the discharge of his official duties, which shall be
paid out of the state treasury upon a requisition upon the state
auditor, properly certified by the commissioner.


The director shall, before entering upon the discharge of his
duties, take the oath of office prescribed by section 5, article
12 of the constitution of West Virginia, and shall execute a
bond in the penalty of two thousand dollars, with security to
be approved by the governor, conditioned upon the faithful
discharge of his duties, a certificate of which oath and which
bond shall be filed in the office of the secretary of state.

§22A-1A-7. Mine inspectors; districts and divisions; employment;
tenure; oath; bond.

Notwithstanding any other provisions of law, mine inspec-
tors shall be selected, serve and be removed as in this article
provided.

The director shall divide the state into not more than forty-
five mining districts and not more than five mining divisions,
so as to equalize, as far as practical, the work of each
inspector. He may assign inspectors to districts, designate and
assign not more than one inspector-at-large to each division
and one assistant inspector-at-large. He shall designate the
places of abode of inspectors at points convenient to the mines
of their respective districts, and, in the case of inspectors and
assistant inspectors-at-large, their respective divisions.

Except as in the next preceding paragraph provided, all
mine inspectors appointed after the mine inspectors' examining
board has certified to the commissioner an adequate register
of qualified eligible candidates in accordance with section
eleven of this article, so long as such register contains the
names of at least three qualified eligible candidates, shall be
appointed from the names on such register. Each original
appointment shall be made by the commissioner for a
probationary period of not more than one year.

The commissioner shall make each appointment from
among the three qualified eligible candidates on the register having the highest grades: Provided, That the commissioner may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, commissioner shall immediately notify in writing each member of the mine inspectors' examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the mine inspectors' examining board, after hearing, if it finds that the action of the commissioner was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the commissioner, a mine inspector shall have permanent tenure, subject only to dismissal for cause in accordance with the provisions of section eleven of this article. No mine inspector, while in office, shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any coal mine. Before entering upon the discharge of his duties as a mine inspector, he shall take the oath of office prescribed by the section 5, article IV of the constitution of West Virginia and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The district inspectors, inspectors-at-large and assistant inspectors-at-large, together with the director and the commissioner, shall make all inspections authorized by articles one-a and two of this chapter and shall perform such other duties as are imposed upon mine inspectors by articles one-a, two and six of this chapter, and article ten of chapter twenty-two of this code.

§22A-1A-8. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

The division shall employ eleven or more mine safety instructors. To be eligible for employment as a mine safety
instructor, the applicant shall be (1) a citizen of West Virginia, in good health, not less than twenty-five years of age, and of
good character, reputation and temperate habits, and (2) a
person who has had at least five years' experience in first aid
and mine rescue work and who has had practical experience
with dangerous gases found in coal mines, and who has a
practical knowledge of mines, mining methods, mine ventila-
tion, sound safety practices, and applicable mining laws.

In order to qualify for appointment as a mine safety
instructor, an eligible applicant shall submit to a written and
oral examination, given by the mine inspectors' examining
board. The examination shall relate to the duties to be
performed by a safety instructor and may, subject to the
approval of the mine inspectors' examining board, be prepared
by the director.

If the board finds after investigation and examination that
the applicant (1) is eligible for appointment, and (2) has passed
all oral and written examinations with a grade of at least
eighty percent, the board shall add such applicant's name and
grade to a register of qualified eligible candidates and certify
its action to the commissioner. The commissioner may then
appoint one of the candidates from the three having the
highest grades.

The salary for a mine safety instructor shall be not less than
twenty-one thousand six hundred seventy-two dollars per year,
and shall be fixed by the commissioner, who shall take into
consideration ability, performance of duty, and experience.
Such instructor shall devote all of his time to the duties of
his office. No reimbursement for traveling expenses shall be
made except on an itemized accounting for such expenses
submitted by the instructor, who shall verify upon oath that
such expenses were actually incurred in the discharge of his
official duties.

Except as expressly provided in this section to the contrary,
all provisions of this article relating to the eligibility,
qualification, appointment, tenure and removal of mine
inspectors shall be applicable to mine safety instructors.

§22A-1A-9. Mine inspectors may be appointed to fill vacancy in
division.
Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the division, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position by the commissioner.

§22A-1A-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

The division shall employ five or more electrical inspectors. To be eligible for employment as an electrical inspector, the applicant shall be: (1) A citizen and resident of West Virginia, in good health, not less than twenty-five years of age, and of good character, reputation and of temperate habits; and (2) a person who has had seven years' practical electrical experience in coal mines, or a degree in electrical engineering from an accredited electrical engineering school and one year's practical experience in underground coal mining.

In order to qualify for appointment as a mine electrical inspector, an eligible applicant shall submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by an electrical inspector. If the board finds after investigation and examination that the applicant (1) is eligible for appointment and (2) has passed all oral and written examinations with a grade of at least ninety percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the commissioner. The commissioner may then appoint one of the candidates from the three having the highest grade.

The salary of a mine electrical inspector shall be not less than thirty thousand four hundred eighty dollars per year, and shall be fixed by the commissioner, who shall take into consideration ability, performance of duty, and experience. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expense submitted by the electrical inspector, who shall verify upon oath that such expenses were actually incurred in the discharge of his official duties.

Mine electrical inspectors, before entering upon the discharge of their duties, shall take and subscribe to the oath and shall execute a bond in the same penal sum, with surety approved by the director, all as is required by this article in
the case of mine inspectors.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualifications, appointment, tenure and removal of mine inspectors shall be applicable to mine electrical inspectors.

§22A-1A-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

(a) No person shall be eligible for appointment as a mine inspector unless, at the time of his probationary appointment, he (1) is a citizen of West Virginia, in good health, not less than twenty-four years of age, and of good character, reputation and temperate habits; (2) has had at least six years' practical experience in coal mines, at least three years of which, immediately preceding his original appointment, shall have been in mines of this state: Provided. That graduation from any accredited college of mining engineering shall be considered the equivalent of two years' practical experience; (3) has had practical experience with dangerous gases found in coal mines; and (4) has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as a mine inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least eighty percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the commissioner. No candidate's name shall remain in the register for more than three years without requalifying.

(c) Salaries of district inspectors shall not be less than twenty-eight thousand fifty-six dollars per year; assistant inspector-at-large, not less than thirty thousand one hundred eight dollars per year; inspectors-at-large, not less than thirty-one thousand five hundred seventy-two dollars per year, and they shall receive mileage at the rate of not less than twenty cents for each mile actually traveled in the discharge of their
official duties in a privately owned vehicle. Within the limits
provided by law, the salary of each inspector shall be fixed
by the commissioner, subject to the approval of the mine
inspectors' examining board. In fixing salaries of mine
inspectors, the commissioner shall consider ability, perfor-
ance of duty and experience. No reimbursement for traveling
expenses shall be made except on an itemized account of such
expenses submitted by the inspector, who shall verify upon
oath, that such expenses were actually incurred in the
discharge of his official duties. Every inspector shall be
afforded compensatory time or compensation of at least his
regular rate for all time in excess of forty-two hours per week.

(d) Any mine inspector who has fulfilled the requirements
of this section with respect to employment and who has served
satisfactorily as a mine inspector for a minimum period of one
year and who has terminated his employment as a mine
inspector, upon successfully passing a physical examination,
may be reinstated as a mine inspector within two years after
terminating his employment with the approval of the
examining board and the commissioner.

(e) A mine inspector, after having received a permanent
appointment, shall be removed from office only for physical
or mental impairment, incompetency, neglect of duty,
drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of a mine inspector may be
initiated by the director or commissioner whenever there is
reasonable cause to believe that adequate cause exists,
warranting removal. Such a proceeding shall be initiated by
a verified petition, filed with the board by the director or
commissioner, setting forth with particularity the facts alleged.
Not less than twenty reputable citizens, who are operators or
employees in mines in the state, may petition the director for
the removal of a mine inspector. If such petition is verified
by at least one of the petitioners, based on actual knowledge
of the affiant and alleged facts, which, if true, warrant the
removal of the inspector, the director shall cause an
investigation of the facts to be made. If, after such investiga-
tion, the director finds that there is substantial evidence,
which, if true, warrants removal of the inspector, he shall file
a petition with the board requesting removal of the inspector.
On receipt of a petition by the director or the commissioner seeking removal of a mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in said notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown. The chairman of the board and the director shall have power to administer oaths and subpoena witnesses.

Any mine inspector who shall willfully refuse or fail to appear before the board, or having appeared, shall refuse to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or shall refuse to waive immunity from prosecution on account of any relevant matter about which he may be asked to testify at any such hearing before the board, shall forfeit his position.

If, after hearing, the board finds that the inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.

§22A-1A-11a. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.

In order to qualify for an appointment as a surface mine inspector, under the provisions of this article, and eligible applicant shall have had at least five years' practical experience in surface mines, at least one year of which, immediately preceding his original appointment, shall have been in surface mines in this state, and submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a surface mine inspector and may, subject to the approval of the mine inspectors' examining board, be prepared by the director.
If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a grade of at least eighty percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the commissioner. The commissioner may then appoint one of the candidates from the three having the highest grades.

All such appointees shall be citizens of West Virginia, in good health, not less than twenty-five years of age, of good character and reputation, and temperate in habits. No person shall be eligible for permanent appointment as a surface mine inspector until he has served in a probationary status for a period of one year to the satisfaction of the commissioner.

Surface mine inspectors serving as such on the effective date of this section may continue to serve through their probationary period, and if eligible as prescribed by this section, may qualify for appointment during such probationary period in accordance with the provisions of this section.

However, surface mine inspectors employed on the effective date of this section and who have served to the satisfaction of the commissioner for a period of two years or more may continue to serve on a permanent tenure basis. In the performance of duties devolving upon surface mine inspectors, they shall be responsible to the director of the division of mines and minerals.

The salary of the surface mine inspector supervisor shall be not less than twenty-four thousand four hundred eighty dollars per year. Salaries of surface mine inspectors shall be not less than twenty-one thousand seven hundred eighty dollars per year. In the discharge of their official duties in privately owned vehicles, surface mine inspectors and the surface mine inspector supervisor shall receive mileage at the rate of not less than twenty cents per mile.

A surface mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

§22A-1A-12. Commissioner, director and inspectors authorized to
The commissioner, director, or his authorized representative shall have authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the commissioner or his authorized representative proper facilities for entering such mine and making examination or obtaining information.

If miners at any time or one of their authorized representatives have reason to believe that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section thirteen of this article, exists in any such mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in any such mine.

In addition to the other duties imposed by articles one-a and two of this chapter, it shall be the duty of each inspector to note each violation he finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

The mine inspector shall visit the scene of each fatal accident occurring in any mine within his district and shall make an
examination into the particular facts of such accident; make a
report to the director, setting forth the results of such
examination, including the condition of the mine and the cause
or causes of such fatal accident, if known, and all such reports
shall be made available to the interested parties, upon written
requests.

At the commencement of any inspection of a coal mine by
an authorized representative of the commissioner, the
authorized representative of the miners at the mine at the time
of such inspection shall be given an opportunity to accompany
the authorized representative of the commissioner on such
inspection.


(a) If, upon any inspection of a coal mine, an authorized
representative of the commissioner finds that an imminent
danger exists, such representative shall determine the area
throughout which such danger exists, and thereupon shall issue
forthwith an order requiring the operator of the mine or his
agent to cause immediately all persons, except those referred
to in subdivisions (1), (2), (3) and (4), subsection (c) of this
section, to be withdrawn from and to be prohibited from
entering such area until an authorized representative of the
commissioner determines that such imminent danger no longer
exists.

All employees on the inside and outside of a mine who are
idled as a result of the posting of a withdrawal order by a
mine inspector shall be compensated by the operator at their
regular rates of pay for the period they are idled, but not more
than the balance of such shift. If such order is not terminated
prior to the next working shift, all such employees on that shift
who are idled by such order shall be entitled to full
compensation by the operator at their regular rates of pay for
the period they are idled, but for not more than four hours
of such shift.

(b) If, upon any inspection of a coal mine, an authorized
representative of the commissioner finds that there has been
a violation of the law, but the violation has not created an
imminent danger, he shall issue a notice to the operator or
his agent, fixing a reasonable time for the abatement of the
violation. If, upon the expiration of the period of time, as
originally fixed or subsequently extended, an authorized
representative of the commissioner finds that the violation has
not been totally abated, and if he also finds that the period
of time should not be further extended, he shall find the extent
of the area affected by the violation and shall promptly issue
an order requiring the operator of such mine or his agent to
cause immediately all persons, except those referred to in
subdivisions (1), (2), (3) and (4), subsection (c) of this section,
to be withdrawn from, and to be prohibited from entering such
area until an authorized representative of the commissioner
determines that the violation has been abated.

(c) The following persons shall not be required to be
withdrawn from or prohibited from entering any area of the
coal mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary,
in the judgment of the operator or an authorized representative
of the commissioner, to eliminate the condition described in
the order;

(2) Any public official whose official duties require him to
enter such area;

(3) Any representative of the miners in such mine who is,
in the judgment of the operator or an authorized representative
of the commissioner, qualified to make coal mine examina-
tions or who is accompanied by such a person and whose
presence in such area is necessary for the investigation of the
conditions described in the order; and

(4) Any consultant to any of the foregoing.

(d) Notices and orders issued pursuant to this section shall
contain a detailed description of the conditions or practices
which cause and constitute an imminent danger or a violation
of any mandatory health or safety standard and, where
appropriate, a description of the area of the coal mine from
which persons must be withdrawn and prohibited from
entering.

(e) Each notice or order issued under this section shall be
given promptly to the operator of the coal mine or his agent
by an authorized representative of the commissioner issuing
such notice or order, and all such notices and orders shall be
in writing and shall be signed by such representative and
posted on the bulletin board at the mine.

(f) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the commissioner.

(g) Each finding, order, and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making such finding, order, or notice.

§22A-1A-14. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.

In order that the electrical inspector may properly perform the duties required of him, he shall devote his whole time and attention to the duties of his office, and he shall have the right to enter any coal mine for the purpose of inspecting electrical equipment, and if he finds during his inspection any defects in the electrical equipment which are covered by law and may be detrimental to the lives or health of the workmen, he shall have the authority to order the operator, in writing, to remedy such defects within a prescribed time, and to prohibit the continued operation of such electrical equipment after such time, unless such defects have been corrected.

The electrical inspector shall examine each mine in his division at least once each year or as often as the director may deem necessary.

It shall be the duty of the electrical inspector, after completing his examination of a mine, to prepare a report describing his findings in said mine in a manner and form designated by the director. The original report shall be forwarded to the operator or his representative whose duty it shall be to post it in some conspicuous place open to examination by any interested person or persons. The report shall show the date of inspection, a list of equipment, and any other information that the director may deem necessary.


(a) (1) An operator, issued an order pursuant to the provisions of section thirteen of this article, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the
commissioner for review of the order within thirty days of
receipt thereof or within thirty days of its modification or
termination. An operator, issued a notice pursuant to
subsection (b), section thirteen of this article, or any
representative of miners in any mine affected by such notice,
may, if he believes that the period of the time fixed in such
notice for the abatement of the violation is unreasonable,
apply to the commissioner for review of the notice within
thirty days of the receipt thereof. The applicant shall send a
copy of such application to the representative of miners in the
affected mine, or the operator, as appropriate. Upon receipt
of such application, the commissioner shall cause such
investigation to be made as he deems appropriate. Such
investigation shall provide an opportunity for a public hearing,
at the request of the operator or the representative of miners
in such mine, to enable the operator and the representative
of miners in such mine to present information relating to the
issuance and continuance of such order or the modification
or termination thereof or to the time fixed in such notice. The
filing of an application for review under this law shall not
operate as a stay of any order or notice.

(2) The operator and the representative of the miners shall
be given written notice of the time and place of the hearing
at least five days prior to the hearing.

(b) Upon receiving the report of such investigation, the
commissioner shall make findings of fact, and he shall issue
a written decision, incorporating therein an order vacating,
affirming, modifying, or terminating the order, or the
modification or termination of such order, or the notice
complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decision of
matters submitted to the commissioner under this law, all
actions which the commissioner takes under this section shall
be taken as promptly as practicable, consistent with adequate
consideration of the issues involved.

(d) Pending completion of the investigation required by this
section, the applicant may file with the commissioner a written
request that the commissioner grant temporary relief from any
modification or termination of any order, or from any order
issued under section thirteen of this article, except an order
issued under section fourteen of this article, together with a
detailed statement giving reasons for granting such relief. The
commissioner may grant such relief, under such conditions as
he may prescribe, if

(1) A hearing has been held in which all parties were given
an opportunity to be heard;

(2) The applicant shows that there is substantial likelihood
that the findings of the commissioner will be favorable to the
applicant; and

(3) Such relief will not adversely affect the health and safety
of miners in the coal mine.

No temporary relief shall be granted in the case of a notice
issued under section thirteen of this article.

§22A-1A-16. Posting of notices, orders, and decisions; delivery to
agent of operator; names and addresses to be filed
by operators.

(a) At each coal mine there shall be maintained an office
with a conspicuous sign designating it as the office of the mine,
and a bulletin board at such office or at some conspicuous
place near an entrance of the mine, in such manner that
notices, orders, and decisions required by this law or
regulation to be posted on the mine bulletin board may be
posted thereon, be easily visible to all persons desiring to read
them, and be protected against damage by weather and against
unauthorized removal. A copy of any notice, order, or decision
required by this law to be given to an operator shall be
delivered to the office of the affected mine, and a copy shall
be immediately posted on the bulletin board of such mine by
the operator or his agent.

(b) The commissioner shall cause a copy of any notice,
order, or decision required by this law to be given to an
operator to be mailed immediately to a representative of the
miners. Such notice, order, or decision shall be available for
public inspection.

(c) In order to insure prompt compliance with any notice,
order, or decision issued under this law, the authorized
representative of the commissioner may deliver such notice,
order, or decision to an agent of the operator and such agent
shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

(d) Each operator of a coal mine shall file with the director the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the director. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, or decision issued under this law affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the director the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this law.


(a) Any order or decision issued by the commissioner under this law, except an order or decision under section thirteen of this article shall be subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha county upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the commissioner shall promptly certify and file in such court a complete transcript of the record upon which the order or
decision complained of was issued. The court shall hear such
petition on the record made before the commissioner. The
findings of the commissioner, if supported by substantial
evidence on the record considered as a whole, shall be
conclusive. The court may affirm, vacate, or modify any order
or decision or may remand the proceedings to the commis-
sioner for such further action as it may direct.

(c) In the case of a proceeding to review any order or
decision issued by the commissioner under this law, except an
order or decision pertaining to an order issued under
subsection (a), section thirteen of this article or an order or
decision pertaining to a notice issued under subsection (b),
section thirteen of this article, 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

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

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

(C) Such relief will not adversely affect the health and safety
of miners in the coal mine.

(d) The judgment of the court shall be subject to review only
by the supreme court of appeals of West Virginia upon a writ
of certiorari filed in such court within sixty days from the entry
of the order and decision of the circuit court upon such appeal
from the commissioner.

(e) The commencement of a proceeding under this section
shall not, unless specifically ordered by the court, operate as
a stay of the order or decision of the commissioner.

(f) Subject to the direction and control of the attorney
general, attorneys appointed for the commissioner may appear
for and represent him in any proceeding instituted under this
section.


The commissioner 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
the county in which the mine is located or the circuit court
of Kanawha county, whenever the operator or his agent (a)
violates or fails or refuses to comply with any order or decision
issued under this law, or (b) interferes with, hinders, or delays
the director or his authorized representative in carrying out
the provisions of this law, or (c) refuses to admit such
representatives to the mine, or (d) refuses to permit the
inspection of the mine, or the investigation of an accident or
occupational disease occurring in, or connected with, such
mine, or (e) refuses to furnish any information or report
requested by the director in furtherance of the provisions of
this law, or (f) refuses to permit access to, and copying of,
such records as the director determines necessary in carrying
out the provisions of this law. Each court shall have
jurisdiction to provide such relief as may be appropriate.
Except as otherwise provided herein, any relief granted by the
court to enforce an order under clause (a) of this section shall
continue in effect until the completion or final termination of
all proceedings for review of such order under this law, unless,
prior thereto, the circuit court granting such relief sets it aside
or modifies it. In any action instituted under this section to
enforce an order or decision issued by the commissioner after
a public hearing, the findings of the commissioner, if
supported by substantial evidence on the record considered as
a whole, shall be conclusive.


(a) (1) Any operator of a coal mine in which a violation
occurs of any health or safety rule or regulation or who
violates any other provisions of this law, shall be assessed a
civil penalty by the commissioner under subdivision (3) of this
subsection, which penalty shall be not more than three
thousand dollars, for each such violation. Each such violation
shall constitute a separate offense. In determining the amount
of the penalty, the commissioner shall consider the operator's
history of previous violations, the appropriateness of such
penalty to the size of the business of the operator charged,
the gravity of the violation and the demonstrated good faith
of the operator charged in attempting to achieve rapid
compliance after notification of a violation.
(2) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule or regulation promulgated pursuant to this chapter shall be subject to a civil penalty assessed by the commissioner under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars for each occurrence of such violation.

(3) A civil penalty shall be assessed by the commissioner only after the person charged with a violation under this chapter or rule or regulation promulgated pursuant to this chapter has been given an opportunity for a public hearing and the commissioner has determined, by a decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the commissioner shall file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the commissioner shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the commissioner or it may remand the proceedings to the commissioner for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section eighteen of this article, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the commissioner may appear for and represent
him in any action to enforce an order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule or regulation promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section thirteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty of this article, shall be assessed a civil penalty by the commissioner under subdivision (3), subsection (a) of this section, of not more than five thousand dollars, and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules or regulations promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty of this article, any director, officer, or agent of such corporation who knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by him under this chapter which certified him or authorized him to direct other persons in coal mining by operation of law and shall bar him from being issued any such license under this chapter, except a miner's certification, for a period of not less than one year or for such longer period as may be determined by the commissioner.

(e) Whoever wilfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of such equipment, who wilfully misrepresents such equipment as complying with the provisions of this law, or with any specification or regulation of the commissioner applicable to such equipment, and which does not so comply, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.


(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that he believes or knows that such miner or representative (1) has notified the commissioner, his authorized representative, or an operator, directly or indirectly, of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted any proceeding under this law, (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this law. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done (1), (2) or (3) above.

(b) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination, or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Mailing of
the notice of hearing to the charged party at his last address of record as reflected in the records of the department of energy shall be deemed adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board’s finding therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.

(c) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney’s fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.


In addition to such records as are specifically required by this law, every operator of a coal mine shall establish and maintain such records, make such reports, and provide such information, as the commissioner may reasonably require from time to time to enable him to perform his functions under this law. The director is authorized to compile, analyze, and

The commissioner shall appoint a mine foreman examiner to examine and certify mine foremen-fire bosses, assistant mine foremen-fire bosses and mine examiners or fire bosses. Such mine foremen examiners shall be paid a minimum salary of thirty-one thousand thirty-two dollars per year.

§22A-1A-23. Duties of the mine foreman examiner.

The duties of the mine foreman examiner shall be to:
(a) Prepare and conduct examinations of mine foremen, assistant mine foremen, and fire bosses;
(b) Prepare and certify to the director a register of all persons who successfully completed the examination with a passing grade of eighty percent.

§22A-1A-24. Place and time for examinations.

The director shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two weeks' notice of the time and place where the examinations are to be held shall be given.

The examinations shall be given at any location where there are at least five men to be tested, and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the capitol complex in Charleston. All records pertaining to the examinations shall be kept at such office.

§22A-1A-25. Preparation of examinations; notice of intention to take examination; investigation of applicants.

The mine foreman examiner shall, with the approval of the director, prepare, and from time to time, modify examinations to be administered applicants for certification as mine foremen.
and fire bosses.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.


Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under this law.

§22A-1A-27. Mine foreman examiner to certify successful applicants to director.

The mine foreman examiner shall certify to the director, on a form furnished by him, every person whose examination shall disclose his fitness for the duties of mine foreman, assistant mine foreman, and fire boss, as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.


The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the division as public documents.

§22A-1A-29. Withdrawal of certification.

(a) Charge of breach of duty.—A mine inspector, the director, or the commissioner may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to article one or two of this chapter. The charge shall state the name of the person charged, the duty or duties he is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of
appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) Evaluation of charge by board of appeals.—Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of his receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the commissioner, the director, the representative of the miner or miners affected, and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing.—The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records, or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on
behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) Failure to cooperate.—Any person charged who shall, without just cause refuse or fail to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire boss or other certified person.

(e) Penalties.—The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) Integrity of penalties imposed.—No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under chapter twenty-two-a of this code, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder shall be entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

§22A-1A-30. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities
suspended in another state.

Any person whose license, certificate or similar authority to perform any supervisory or fire boss duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

§22A-1A-31. Mine rescue stations; equipment.

The director is hereby authorized to purchase, equip and operate for the use of said division such mine rescue stations and equipment as he may deem necessary.


The director is hereby authorized to have trained and employed at the rescue stations, operated by the division within the state, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

After the effective date of this article, it shall be the duty and responsibility of the division to see that all rescue teams be properly trained by a qualified instructor of the division or such persons who have a certificate of training from the Federal Mine Safety and Health Administration.

To qualify for membership of a mine rescue crew, an applicant shall be not more than fifty years of age and shall pass on at least an annual basis a physical examination by a licensed physician. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator, and a copy shall be furnished to the director. All rescue or recovery teams performing recovery work shall be under the jurisdiction of the division guided by the mine rescue apparatus and auxiliary equipment manual.

When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue
teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

Two-way communication and lifeline or its equivalent shall be provided at each fresh air base for all mine rescue or recovery teams, and no mine rescue team member shall advance more than one thousand feet inby the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, such rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That lifeline or its equivalent shall be provided inby each fresh air base for all mine rescue or recovery teams.

Each rescue or recovery team performing work with breathing apparatus shall be provided with a backup team of equal strength, stationed at each fresh air base.

A rescue or recovery team shall immediately return to the fresh air base when any team member's atmospheric pressure depletes to sixty atmospheres.

§22A-1A-33. Mine rescue teams.

It shall be the duty of any mine operator employing fifty or more employees to have available for mine rescue work a trained mine rescue team, the members of which shall work in the general area of the mine. In the event of any fire, explosion or recovery operations in or about any mine the
6 director is hereby authorized to call and assign any rescue team
7 for the protection of employees and the preservation of
8 property. The director also may assign mine rescue and
9 recovery work to inspectors, instructors, or other qualified
10 employees of the division as he may deem desirable.

§22A-1A-34. Mandatory safety programs; penalties.

1 (a) The commissioner, in consultation with the state board
2 of coal mine health and safety, shall promulgate rules and
3 regulations in accordance with chapter twenty-nine-a of this
4 code, detailing the requirements for mine safety programs to
5 be established by coal operators, as provided in subsection (b)
6 of this section. The regulations may require different types of
7 safety programs to be developed, depending upon the output
8 of the particular mine, the number of employees of the
9 particular mine, the location of the particular mine, the
10 physical features of the particular mine or any other factor
11 deemed relevant by the commissioner.

12 (b) Within six months of the date when the regulations
13 required in subsection (a), above, become final, each operator
14 shall develop and submit to the director a comprehensive mine
15 safety program for each mine, in accordance with such
16 regulations. Each employee of the mine shall be afforded an
17 opportunity to review and submit comments to the director
18 regarding the modification or revision of such program, prior
19 to submission of such program to the director. Upon
20 submission of such program the director shall have ninety days
21 to approve, reject or modify such program. If the program is
22 rejected, the director shall give the operator a reasonable time
23 to correct and resubmit such program. Each program which
24 is approved shall be reviewed, at least annually, by the
25 director. An up-to-date copy of each program shall be placed
26 on file in the division of mines and minerals and further copies
27 shall be made available to the miners of each mine and their
28 representatives. Each operator shall undertake all efforts
29 necessary to assure total compliance with the appropriate
30 safety program at each mine and shall fully implement all
31 portions of such program.

32 (c) Any person violating any provision of this section is
33 guilty of a misdemeanor, and, upon conviction thereof, shall
34 be fined not less than one hundred nor more than one
thousand dollars, or imprisoned in the county jail for not more
than six months, or both fined and imprisoned.


1 The various provisions of this article shall be construed as
2 separable and severable, and should any of the provisions,
3 sentences, clauses, or parts thereof be construed or held
4 unconstitutional or for any reason be invalid, the remaining
5 provisions of this article shall not be thereby affected.

ARTICLE 2. UNDERGROUND MINE MAPS.

§22A-2-1. Supervision by professional engineer or licensed land
surveyor; seal and certification; contents; extensions;
repository; availability; traversing; copies; archive;
final survey and map; penalties.

1 The mapping of all coal mines shall be supervised by a
2 competent engineer or land surveyor. The work of such
3 engineer or land surveyor shall be supervised by either a civil
4 engineer or a mining engineer certified by the board of
5 engineers, which exists by authority of section three, article
6 thirteen, chapter thirty of this code, or a licensed land surveyor
7 approved by the board of examiners of land surveyors as
8 provided by section three, article thirteen-a of said chapter
9 thirty. To each map supervised by the engineer or land
10 surveyor there shall be affixed thereto the seal of a certified
11 or professional engineer or licensed land surveyor, which shall
12 be identical to the design authorized by the board of engineers,
13 as provided in section nine, article thirteen of said chapter
14 thirty or board of examiners of land surveyors as provided by
15 section eleven, article thirteen-a of said chapter thirty. Every
16 map certified shall have the professional engineer’s or land
17 surveyor’s signature and certificate, in addition to his seal, in
18 the following form:

19 “I, the undersigned, hereby certify that this map is correct
20 and shows all the information, to the best of my knowledge
21 and belief, required by the laws of this State, and covers the
22 period ending ..................................................... P. E.

23 (Either Civil or Mining Engineer
24 or Land Surveyor).”
The operator of every underground coal mine shall make, or cause to be made, an accurate map of such mine, on a scale of not less than one hundred, and not more than five hundred feet to the inch. The map of such mine shall show:

1. Name and address of the mine;
2. The scale and orientation of the map;
3. The property or boundary lines of the mine;
4. The shafts, slopes, drifts, tunnels, entries, rooms, crosscuts and all other excavations and auger and strip mined areas of the coalbed being mined;
5. All drill holes that penetrate the coalbed being mined;
6. Dip of the coalbed;
7. The outcrop of the coalbed within the bounds of the property assigned to the mine;
8. The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;
9. The elevation of the floor at intervals of not more than two hundred feet in:
   a. At least one entry of each working section, and main and cross entries;
   b. The last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries are abandoned; and
   c. Rooms advancing toward or adjacent to property or boundary lines or adjacent mines;
10. Contour lines passing through whole number elevations of the coalbed being mined, the spacing of such lines not to exceed ten-foot elevation levels, except that a broader spacing of contour lines may be approved for steeply-pitching coalbeds by the person authorized so to do under the federal act; and contour lines may be placed on overlays or tracings attached to mine maps;
11. As far as practicable the outline of existing and extracted pillars;
12. Entries and air courses with the direction of airflow
indicated by arrows;

(13) The location of all surface mine ventilation fans, which location may be designated on the mine map by symbols;

(14) Escapeways;

(15) The known underground workings in the same coalbed on the adjoining properties within one thousand feet of such mine workings and projections;

(16) The location of any body of water dammed in the mine or held back in any portion of the mine, but such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines, as provided under subdivision (10) of this section;

(17) The elevation of any body of water dammed in the mine or held back in any portion of the mine;

(18) The abandoned portion or portions of the mine;

(19) The location and description of at least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

(20) Mines above or below;

(21) Water pools above;

(22) The location of the principal streams and bodies of water on the surface;

(23) Either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine;

(24) The location of all high pressure pipelines, high voltage power lines and principal roads;

(25) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

(26) Where the overburden is less than one hundred feet, occupied dwellings; and

(27) Such other information as may be required under the
federal act or by the department of mines.

The operator of every underground coal mine shall extend, or cause to be extended, on or before the first day of March and on or before the first day of September of each year, such mine map thereof to accurately show the progress of the workings as of the first day of July and the first day of January of each year. Such map shall be kept up to date by temporary notations, which shall include:

1. The location of each working face of each working place;
2. Pillars mined or other such second mining;
3. Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators and permanent stoppings, and the direction of air currents indicated; and
4. Escapeways designated by means of symbols.

Such map shall be revised and supplemented at intervals prescribed under the federal act on the basis of a survey made or certified by such engineer or surveyor, and shall be kept by the operator in a fireproof repository located in an area on the surface chosen by the operator to minimize the danger of destruction by fire or other hazard.

Such map and any revision and supplement thereof shall be available for inspection by a federal mine inspector, by mine health and safety instructors, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing or residing on surface areas of such mines or areas adjacent to such mines, and a copy of such map and any revision and supplement thereof shall be promptly filed with the division of mines and minerals. The operator shall also furnish to persons expressly entitled thereto under the federal act, upon request, one or more copies of such maps and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of the federal act and this chapter and in connection with the functions and responsibilities of the secretary of housing and urban development.

Surveying calculations and mapping of underground coal mines which were or are opened or reopened after the first
of July, one thousand nine hundred sixty-nine, shall be done
by the rectangular coordinate traversing method and meridians
carried through and tied between at least two parallel entries
of each development panel and panels or workings adjacent
to mine boundaries or abandoned workings. These surveys
shall originate from at least three permanent survey monu-
ments on the surface of the mine property. The monuments
shall be clearly referenced and described in the operator's
records. Elevations shall be tied to either the United States
geological survey or the United States coast and geodetic
survey bench mark system, be clearly referenced and described
on such map.

Underground coal mines operating on the first of July, one
thousand nine hundred sixty-nine, and not using the rectan-
gular coordinate traversing method shall, within two years of
such date, convert to this procedure for surveying calculations
and mapping. Meridians shall be carried through and tied
between at least two parallel entries of each development panel
and panels or workings adjacent to mine boundaries or
abandoned workings. These surveys shall originate from at
least three permanent survey monuments on the surface of the
mine property. The monuments shall be clearly referenced and
described in the coal mine operator's records. Elevations shall
be tied to either the United States geological survey or the
United States coast and geodetic survey bench mark system,
be clearly referenced and described on such map.

The operator of such underground coal mine shall, by
reasonable proof, demonstrate to the director or to any federal
mine inspector concerned, at any time, that a diligent search
was made for all existing and available maps and survey data
for the workings on the adjoining properties. The operator
shall further be able to show proof to the director or to any
federal mine inspector concerned, that a suitable method was
used to insure accuracy in the methods used in transposing
other workings to the map of such mine.

There shall be an archive of underground coal mine maps
maintained at the office of the director. The archive shall:

(1) Be secured in a fireproof and burglarproof vault;

(2) Have an appropriate map identification system; and
Have adequate map microfilming facilities.

Whenever an operator permanently closes or abandons an underground coal mine, or temporarily closes an underground coal mine for a period of more than ninety days, he shall promptly notify the division of mines and minerals and the federal mine inspector of the district in which such mine is located of such closure. Within sixty days of the permanent closure or abandonment of an underground coal mine, or, when an underground coal mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the division of mines and minerals and such federal mine inspector a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by a certified or professional engineer or licensed surveyor as aforesaid and shall be available for public inspection.

Any person having a map or surveying data of any worked out or abandoned underground coal mine shall make such map or data available to the division to copy or reproduce such material.

Any person who fails or refuses to discharge any duty imposed upon him by this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less that five hundred dollars nor more than one thousand dollars.

VENTILATION

§22A-2-2. Plan of ventilation; approval by director of the division of mines and minerals.

Every operator of a coal mine, before making any new or additional openings, shall submit to the director, for his information and approval, a general plan showing the proposed system of ventilation and ventilating equipment of the openings, with their location and relative positions to adjacent developments; no such new or additional openings shall be made until approved by the director, in consultation with the deputy directors of permitting and safety, health and training. The director shall promptly approve any such plans submitted, if the proposed system of ventilation and ventilating equipment meet the requirements of this article.

(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or his management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners, or other persons holding a certificate to make preshift examination.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: Provided, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: Provided, however, That there is another opening having a weak-wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided.
to permanently record the performance of the main fans and
to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used
in lieu of or in conjunction with line brattice to provide
adequate ventilation to the working faces: Provided, That
auxiliary fans be so located and operated to avoid recirculation
of air at any time. Auxiliary fans shall be approved and
maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical
equipment in the place shall be stopped and the power
disconnected at the power source until ventilation in the
working place is restored. During such stoppage, the
ventilation shall be by means of the primary air current
conducted into the place in a manner to prevent accumulation
of methane.

(e) In places where auxiliary fans and tubing are used, the
ventilation between shifts, weekends, and idle shifts shall be
provided to face areas with line brattice or the equivalent to
prevent accumulation of methane.

(f) If the air passing through the auxiliary fan or tubing
contains gas in excess of one percent, the current shall at once
be switched off and the trailing cable shall forthwith be
disconnected from the power supply until the place is
pronounced safe.

(g) The director may require that when continuous mine
equipment is being used, all face ventilating systems using
auxiliary fans and tubing shall be provided with machine-
mounted diffuser fans, and such fans shall be continuously
operated during mining operations.

(h) In the event of a fire or explosion in any coal mine, the
ventilating fan or fans shall not intentionally be started,
stopped, speed increased or decreased or the direction of the
air current changed without the approval of the general mine
foreman, and, if he is not immediately available, a represen-
tative of the division. A duly authorized representative of the
employees should be consulted if practical under the
circumstances.

(a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries shall be not less than nine thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand cubic feet of air per minute if at least nine thousand cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. All active underground working places in a mine shall be ventilated by a current of air containing not less than nineteen and five-tenths percent of oxygen, not more than five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

(b) Airflow shall be maintained in all intake and return air courses of a mine, and where multiple fans are used, neutral areas created by pressure equalization between main fans shall not be permitted. Production activities in working faces shall cease while tubing, line brattice, or other ventilation devices are being installed in by the machine operator.

(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(d) Brattice cloth used underground shall be of flame-resistant material. The space between the line brattice or other approved device and the rib shall be large enough to permit
the flow of a sufficient volume and velocity of air to keep the
working face clear of flammable, explosive, and noxious gases,
dust and explosive fumes.

(e) Each working unit newly developed in virgin coal
hereafter, shall be ventilated by a separate split of air:
Provided, That areas already under development and in areas
where physical conditions prevent compliance with this
provision, the director may grant temporary relief from
compliance until such time as physical conditions make
compliance possible. The quantity of air reaching the last
crosscut shall not be less than nine thousand cubic feet of air
per minute and shall under any condition have sufficient
volume and velocity to reduce and carry away smoke and
flammable or harmful gases from each working face in the
section.

(f) As working places advance, crosscuts for air shall be
made not more than eighty feet apart. Where necessary to
render harmless and carry away noxious or flammable gases,
line brattice or other approved methods of ventilation shall be
used so as to properly ventilate the face. All crosscuts between
the main intake and return airways not required for passage
of air and equipment shall be closed with stoppings substan-
tially built with incombustible or fire-resistive material so as
to keep working places well ventilated. In mines where it
becomes necessary to provide larger pillars for adequate roof
support, working places shall not be driven more than two
hundred feet without providing a connection that will allow
the free flow of air currents. In such cases, a minimum of
twelve thousand cubic feet of air a minute shall be delivered
to the last open crosscut and as much more as is necessary
to dilute and render harmless and carry away flammable and
noxious gases.

(g) In special instances for the construction of sidetracks,
haulageways, airways, or openings in shaft bottom or slope
bottom layouts where the size and strength of pillars is
important, the director may issue a permit approving greater
distances. The permit shall specify the conditions under which
such places may be driven.

(h) In all mines a system of bleeder openings on air courses
designed to provide positive movement of air through and/or
around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected after the first day of July, one thousand nine hundred seventy-one.

(i) If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return if at least twenty thousand cubic feet of air per minute is delivered to the intake of the pillar line.

(j) No operator or mine foreman shall permit any person to work where he is unable to maintain the quantity and quality of the air current as heretofore required: Provided, That such provisions shall not prohibit the employment of men to make place of employment safe.

(k) The ventilation of any mine shall be so arranged by means of air locks, overcasts, or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a mine they shall be erected in pairs so as to provide a ventilated air lock unless the doors are operated mechanically.

(l) A crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

(m) Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

§22A-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after the first day of July, one thousand nine hundred seventy-one, shall be sealed or ventilated. If such workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director, and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be deemed to be abandoned until such panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection or air that
has been used to ventilate seals shall not be used to ventilate
any working place in any working mine. No air which has been
used to ventilate an area from which the pillars have been
removed shall be used to ventilate any working place in a
mine, except that such air, if it does not contain 0.25 volume
percent or more of methane, may be used to ventilate enough
advancing working places immediately adjacent to the line of
retreat to maintain an orderly sequence of pillar recovery on
a set of entries. Before sealed areas, temporary or permanent
are reopened, the director shall be notified.

MOVEMENT OF EQUIPMENT


Mining equipment being transported or trammed under-
ground, other than ordinary sectional movements, shall be
transported or trammed by qualified personnel under the
supervision of a certified foreman. When equipment is being
transported or trammed, no person shall be permitted to be
in the equipment in the ventilating split that is passing over
such equipment. To avoid accidental contact with power lines,
face equipment shall be insulated and assemblies removed, if
necessary, so as to provide clearance.

MINE FOREMAN

§22A-2-7. When underground mine foreman-fire boss required;
assistants; certification.

(a) In every underground mine where five or more persons
are employed in a period of twenty-four hours, the operator
shall employ at least one person certified in accordance with
the provisions of article nine, chapter twenty-two of this code
as a mine foreman-fire boss. Each applicant for certification
as a mine foreman-fire boss shall, at the time he is issued a
certificate of competency: (1) Be a resident or employed in a
mine in this state; (2) have had at least five years' experience
in the underground working, ventilation and drainage of a coal
mine, which shall include at least eighteen months' experience
on or at a working section of an underground mine or be a
graduate of the school of mines at West Virginia University
or of another accredited mining engineering school or be a
graduate of an accredited engineering school with a bachelor's
degree in mining engineering technology, electrical, mechanical or civil engineering; and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical engineering or civil engineering and have had at least four years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; and (3) have demonstrated his knowledge of dangerous mine gases and their detection, mine safety, first aid, safety appliances, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under article nine, chapter twenty-two of this code.

(b) In mines in which the operations are so extensive that the duties devolving upon the mine foreman-fire boss cannot be discharged by one man, one or more assistant mine foreman-fire bosses may be designated. Such persons shall act under the instruction of the mine foreman-fire boss, who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article nine, chapter twenty-two of this code. Each applicant for certification as assistant mine foreman-fire boss shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman-fire boss: Provided, That he shall at the time he is certified be required to have at least three years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen months on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had twelve months' practical experience in an underground mine, all of which shall have been on or at a working section or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical or civil engineering and have had at least two years' practical experience in an
(c) Until the first day of January, one thousand nine hundred seventy-seven, in mines in which the operations are so extensive that all the duties devolving upon the mine foreman-fire boss cannot be discharged by one man, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine foreman-fire boss' instructions and the mine foreman-fire boss shall be responsible for their conduct in the discharge of their duties under such designation.

(d) Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman-fire boss in any mine in this state until the next regular mine foreman-fire boss' examination held by the division, but not to exceed a maximum of ninety days.

(e) After the first day of July, one thousand nine hundred seventy-four, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman-fire boss or an assistant underground mine foreman-fire boss.

After the first day of July, one thousand nine hundred seventy-four, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be of equal value to a certificate issued hereafter to an assistant mine foreman-fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be of equal value to a certificate issued hereafter to a mine foreman-fire boss.

§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He shall see that, as the miners advance their excavations, proper breakthroughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways
are removed or carefully secured so as to prevent danger to
persons employed in such mines, and that sufficient suitable
props, caps, timbers, roof bolts, or other approved methods
of roof supports are furnished for the places where they are
to be used and delivered at suitable points. The mine foreman
shall have all water drained or hauled out of the working
places where practicable, before the miners enter, and such
working places shall be kept dry as far as practicable while
the miners are at work. It shall be the duty of the mine
foreman to see that proper crosscuts are made, and that the
ventilation is conducted by means of such crosscuts through
the rooms by means of checks or doors placed on the entries
or other suitable places, and he shall not permit any room to
be opened in advance of the ventilation current. The mine
foreman or other certified persons designated by him, shall
measure the air current with an anemometer or other approved
device at least weekly at the inlet and outlet at or near the
faces of the advanced headings, and shall keep a record of such
measurements in a book or upon a form prescribed by the
director. Signs directing the way to outlets or escapeways shall
be conspicuously placed throughout the mine.

(b) After the first day of July, one thousand nine hundred
seventy-one, hinged man doors, at least thirty inches square
or the height of the coal seam, shall be installed between the
intake and return at intervals of three hundred feet when the
height of the coal is below forty-eight inches and at intervals
of five hundred feet when the height of the coal is above forty-
eight inches.

(c) The duties of the mine foreman and assistant mine
foreman shall include the instruction of apprentice miners in
the hazards incident to any new work assignments; to assure
that any individual given a work assignment in the working
face without prior experience on the face is instructed in the
hazards incident thereto and supervised by a miner with
experience in the tasks to be performed.


The mine foreman shall require that all slopes, incline planes
and haulage roads used by any person in the mine shall
conform to the provisions of this article.

§22A-2-10. Signals on haulways; lights at mouth and bottom of
shaft; operation of cages.

On all haulways, where hauling is done by machinery of any kind, the mine foreman shall provide for a proper system of signals, and a conspicuous light or approved trip reflector on the rear of every trip or train of cars when in motion in a mine. When hoisting or lowering of miners occurs in the morning before daylight, or in the evening after darkness, at any mine operated by shaft, the mine foreman shall provide and maintain at the shaft mouth a light of stationary character, sufficient to show the landing and all surrounding objects distinctly, and sufficient light of a stationary character shall be located at the bottom of the shaft so that persons coming to the bottom may clearly discern the cages and other objects contiguous thereto. The mine foreman shall require that no cages on which miners are riding shall be lifted or lowered at a rate of speed greater than one thousand feet per minute and that no mine cars, either empty or loaded, shall be hoisted while miners are being lowered, and no cage having an unstable self-dump platform shall be used for the carrying of miners unless the same is provided with some device by which it may be securely locked when miners are being hoisted or lowered into the mine: Provided, however, That during the initial development of a mine, and only until the shafts are joined, miners shall be permitted to ride cages with one empty car which has been bolted or strapped to the cage.


It shall further be the duty of the mine foreman to have boreholes kept not less than twenty feet in advance of the face, one each twenty feet on sides of the working places that are being driven toward and in dangerous proximity to an abandoned mine or part of a mine which may contain inflammable gases or which is filled with water. These holes shall be drilled whenever any working place in an underground mine approaches within fifty feet of abandoned workings in such mine, as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any abandoned workings of such mine which cannot be inspected.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety
The division shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to such employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within twelve weeks after any person shall be first employed as a miner. It shall further be the duty and responsibility of the division to see that such course shall be given to all persons as above provided after their first being employed in any mine in this state.

It shall be the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger incident to his work in such mine, and be furnished a copy of the mining laws and rules of such mine. It shall be the duty of every mine operator who employs apprentices, as that term is used in sections three and four, article ten, chapter twenty-two of this code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his assistant mine foreman and they shall be responsible for his safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his assistant mine foreman shall remain responsible for the apprentice. During the first ninety days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in such a location that the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for help of the apprentice. Such location shall be on the same side of any belt, conveyor or mining equipment.

Persons whose duties require them to use a flame safety lamp or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the division and a record of such examination shall be kept by the operator and the division. Flame safety lamps and other approved methane detectors shall be given proper
Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to ensure that such lamp or other device is in a permissible condition.


Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. The mine foreman, assistant mine foreman or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman or his assistants upon observing a violation or potential violation of article two of this chapter or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself. Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall place his initials, time and the date at or near each place he examines. He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.

It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his supervision for hazards at least once every two hours during each coal-producing shift, or more often if necessary for safety. In all mines such examinations shall include tests with an approved detector for methane and oxygen deficiency and may also include tests with a permissible flame safety lamp. It shall also be his duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the beginning of a shift and before any miner in such shift enters the active workings of the mine.


The mine foreman shall direct and see that all dangerous places and the entrance or entrances to worked out and abandoned places in all mines are properly dangered off across the openings.


The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book of the fire bosses, and he shall supervise the fire boss or fire bosses, except as hereinafter provided in section twenty-one of this article.

§22A-2-17. Ascertainment, record and removal of all dangers.

The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists. He or his assistants or certified persons designated by him, shall at least once each week travel and examine the air courses, roads and openings that give access to old workings or falls, and make a record of the condition of all places where danger has been found, with ink or indelible pencil in a book provided for that purpose.
§22A-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.

The mine foreman shall notify, in writing, the operator or superintendent of the mine, and the director, of his inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof. Every operator of a mine shall furnish all supplies necessary for the mine foreman to comply with the requirements of this law after being requested to do so in writing by the mine foreman.

§22A-2-19. Death or resignation of mine foreman; successor.

In case of the death or resignation of a mine foreman, the superintendent or manager shall appoint a certified man to act as mine foreman.

FIRE BOSS

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

It shall be the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his shift or prior to his entering the mine to make his examination and, except for those persons already on assigned duty, no person except the mine owner, operator, or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him to be safe. When reported by him to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make such fire boss examinations shall be assigned a definite underground area of such mine, and, in making his examination shall examine all active working places in the assigned area and make tests with a permissible flame safety lamp for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face, and ribs in the working
places and on active roadways and travelways, approaches to abandoned workings and accessible falls in active sections. He shall place his initials and the date at or near the face of each place he examines. Should he find a condition which he considers dangerous to persons entering such areas, he shall place a conspicuous danger sign at all entrances to such place or places. Only persons authorized by the mine management to enter such places for the purpose of eliminating the dangerous condition shall enter such place or places while the sign is posted. Upon completing his examination he shall report by suitable communication system or in person the results of this examination to a certified person designated by mine management to receive and record such report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in such coal-producing shifts. He shall also record the results of his examination with ink or indelible pencil in a book prescribed by the director kept for such purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

§22A-2-21. Fire bosses to have no superior officers.

In the performance of the duties devolving upon fire bosses, or certified persons acting as such, they shall have no superior officers, but all the employees working inside of such mine or mines shall be subordinate to them in their particular work.

§22A-2-22. Unlawful to enter mine until fire boss reports it safe; exceptions.

No person shall enter such mine or mines for any purpose at the beginning of work upon shift therein until such signal or warning has been given by the fire boss or bosses as to the safety thereof, as by statute provided, except under the direction of the fire boss or bosses, and then for the purpose of assisting in making the mine safe: Provided, however, That miners regularly employed on a shift during which the mine is being preshift examined by a fire boss or certified person shall be permitted to leave or enter the mine in the performance of their duties.

§22A-2-23. Authority of fire boss to perform other duties.
Notwithstanding any other provision in this article contained, any person who holds a certificate issued by the division certifying his competency to act as fire boss may perform the duties of a fire boss and any other duties, statutory or otherwise, for which he is qualified, in the same mine or section and on the same day or shift.

COAL DUST AND ROCK DUST

§22A-2-24. Control of coal dust; rock dusting.

(a) In all mines, dangerous accumulations of fine, dry coal and coal dust shall be removed from the mine, and all dry and dusty operating sections and haulageways and conveyors and back entries shall be rock dusted or dust allayed by such other methods as may be approved by the director.

(b) All mines or locations in mines that are too wet or too high in incombustible content for a coal dust explosion to initiate or propagate are not required to be rock dusted during the time any of these conditions prevail. Coal dust and other dust in suspension in unusual quantities shall be allayed by sprinkling or other dust allaying devices.

(c) In all dry and dusty mines or sections thereof, rock dust shall be applied and maintained upon the roof, floor and sides of all operating sections, haulageways and parallel entries connected thereto by open crosscuts. Back entries shall be rock dusted. Rock dust shall be so applied to include the last open crosscut of rooms and entries, and to within forty feet of faces. Rock dust shall be maintained in such quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than sixty-five percent, but the incombustible content in back entries shall not be less than eighty percent.

(d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass through a twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.

ROOF—FACE—RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.
(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director, in consultation with the deputy directors of permitting and safety, health and training, shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his authorized representative and shall be available to the miners and their representatives.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and over hanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct
immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner. The time, and parts of the plan reviewed shall be recorded in a log book kept for such purpose. Each log book entry so recorded shall be signed by such immediate supervisor making such entry.

(g) Any action taken against a miner due in whole or in part to his refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to section twenty, article one-a of this chapter. Upon a finding of discrimination by the appeals board pursuant to subsection (b) section twenty, article one-a of this chapter, the miner shall be awarded by the appeals board all reliefs available pursuant to subsections (b) and (c), section twenty, article one-a of this chapter.
§22A-2-26. Roof support; examination and testing; correction of dangerous condition; roof bolt recovery.

(a) The method of mining followed in any coal mine shall not expose the miner to unusual dangers from roof falls. The width of roadways shall not exceed fourteen feet unless additional support is added cross sectional. During the development of intersections, the roof between the tangents of the arches in the entry or room shall be supported with artificial roof supports prior to the development of such intersections. All areas where the arch is broken shall be considered as having unsupported roof and such roof should have artificial roof supports installed prior to any other work being performed in the area.

(b) Where miners are exposed to danger from falls of roof, face, and ribs, the operator shall examine and test the roof face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

(c) Roof bolts shall not be recovered where complete extraction of pillars is attempted, where adjacent to clay veins or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

§22A-2-27. Canopies or cabs; electric face equipment.

An authorized representative of the director may require in any coal mine where the height of the coal bed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.


The use of underground mining equipment of a size that does not conform to the height of the seam being mined, which creates unsafe working conditions for the miner operating the equipment or others, is prohibited. The board of coal mine
health and safety shall promulgate such rules and regulations as are necessary to effectuate this section.

EXPLOSIVES AND BLASTING

§22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.

Permissible explosives or permissible blasting devices only shall be used in blasting coal or other material in underground coal mines. It shall be unlawful to have, use or store any nonpermissible explosive or nonpermissible blasting devices in any coal mine or on the premises of the mine, without a permit from the director.


Separate surface magazines shall be provided for storage of explosives, detonators and blasting heater elements. Surface magazines shall be constructed of incombustible materials, be reasonably bulletproof and with no metal or sparking material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth inch steel plate lined with a two-inch thickness of wood or the equivalent, properly screened ventilators, and with no openings except for entrances and ventilation, and shall be kept locked securely when unattended. The area for a distance of at least twenty-five feet in all directions shall be kept free of materials of a combustible nature; suitable warning signs shall be erected, so located that a bullet passing directly through the face of the sign will not strike the magazine. The location of magazines shall be not less than two hundred feet from any mine openings, occupied buildings or public roads unless barricaded. If magazines are illuminated electrically, the lamps shall be of vapor-proof type, properly installed and wired, and smoking and open lights shall be prohibited in or near any magazine.


Individual containers used to carry permissible explosives or detonators shall be constructed of substantial, nonconductive materials, kept closed and maintained in good condition. When explosives or detonators are transported underground in cars moved by means of locomotives, ropes, or other motive
power, they shall be in substantially covered cars or in special
substantially built covered containers used specifically for
transporting detonators or explosives. Any container used for
transportation or storage of explosives shall be properly
identified or marked. Explosives or detonators shall not be
hauled into or out of a mine within five minutes preceding
or following a man trip. Where explosives and detonators are
transported underground by belts, they shall be handled in the
following manner: In the original and unopened cases, in
special closed cases constructed of nonconductive material, or
in suitable, individual containers. Clearance requirements shall
be a minimum of eighteen inches; stop controls shall be
provided at loading and unloading points, and an attendant
shall supervise the loading and unloading. Neither explosives
nor detonators shall be transported on flight or shaking
conveyors, mechanical loading machines, locomotives,
scrapers, cutting machines, drill trucks, or any self-propelled
mobile equipment. If explosives and detonators are trans-
ported in the same explosives car or in the same special
container, they shall be separated by at least four inches of
hardwood partition or the equivalent; the bodies of such cars
or containers shall be constructed or lined with nonconductive
material. No hand loader shall take into any mine any larger
quantity of explosives or detonators than he may reasonably
expect to use in any one shift.


Explosives and detonators stored underground shall be kept
in section boxes or magazines of substantial construction with
no metal exposed on the inside, and be located at least fifteen
feet from roadways and power wires in a well rock-dusted
location, protected from falls of roof. If not kept in separate
boxes or magazines not less than five feet apart, they may be
kept in the same box or magazine if separated by at least a
four-inch hardwood partition or the equivalent. Not more than
a forty-eight hour supply of explosives or detonators shall be
stored underground in section boxes or magazines. These
boxes or magazines shall be kept at least one hundred feet
from the faces and out of the direct line of blasting.

§22A-2-33. Preparation of shots; blasting practices.

(a) Only a certified “shot firer” designated by mine
management shall be permitted to handle explosives and do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drill holes shall be stemmed with at least twenty-four inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth, unless other permissible stemming devices or methods are used. Drill holes shall not be drilled beyond the limits of the cut, and as far as practicable, cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if drill holes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Miners shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas, until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with a permissible flame safety lamp until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to the working the face until the smoke has been cleared away and then he shall make a careful examination of the working face before leaving the place or before performing any other work in the place.

(b) Multiple shooting in coal or rock or both is authorized only under permit issued by the director. Permission to shoot more than ten shots simultaneously may be granted by the director only after consultation with interested persons, and the deputy director of safety, health and training, and such shooting will be performed by special methods and under precautions prescribed by the director. All multiple shooting in bottom or roof rock shall be performed in intake air, except by special permit from the director, after consultation with interested persons and the deputy director of safety, health and training, as heretofore provided. Multiple blasting of more than ten shots performed under any permit granted by the director under this section shall be done only on noncoal-producing shifts or idle days, except as may be provided as
a condition of the permit granted.

(c) Regular or short interval delay detonators may be used for blasting purposes with written permission from the director after consultation with the deputy director of safety, health and training. Regular delay detonators shall not be used for blasting coal, but may be used for grading above or below coal seams and during shaft, slope, tunnel work and in faults or wants. Where short-interval delay detonators are permitted by said director to be used, the shot firing circuit must be tested with a blasting galvanometer before firing, and the leg wires connected in series. No instantaneous, regular, or zero-delay detonators are to be fired in conjunction with short-interval delay detonators. The delay interval between dependent rows must not be less than twenty-five milliseconds or more than one hundred milliseconds, and the entire series of any one round shall not provide a delay of more than five hundred milliseconds between the first and last shot. The total number of charged holes to be fired during any one round must not exceed the limit permitted by the director. Misfires must be tested with a blasting galvanometer before removing.

(d) Electrical equipment shall not be operated in the face areas, and only work in connection with timbering and general safety shall be performed while boreholes are being charged. Shots shall be fired promptly after charging. Mudcaps (adobes) or any other unconfined shots shall not be permitted in any coal mine. No solid shooting shall be permitted without written permission of the division.

(e) Blasting cables shall be well insulated and shall be as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire. The cable, when new, shall be at least one hundred twenty-five feet in length and never less than one hundred feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

§22A-2-34. Misfires of explosives.

(a) Where misfires occur with electric detonators, a waiting period of at least five minutes shall elapse before anyone
returns to the shot. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

(b) Explosives shall be removed by firing a separate charge at least two feet away from and parallel to the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

c) A careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole, to recover any undetonated explosive.

(d) The handling of a misfired shot shall be under the direct supervision of the mine foreman or a certified person designated by him.

§22A-2-35. Other blasting devices.

(a) The provisions governing the handling, storage, transportation and use of permissible explosives shall apply to all other blasting devices employing a heater element when used underground.

(b) Where compressed air is used for blasting, the airlines shall be grounded at the compressor and, if practical, at other low-resistant ground connections along the lines. They shall not be connected in any way to rails, waterlines, or other electric return conductors and shall be adequately insulated and protected where they cross electric wires, underneath track, or at places where equipment passes over or under. Steel, copper, or other airlines connected therewith shall not be handled or repaired when air pressure is in the line. Shutoff valves shall be installed every thousand feet in all compressed-air blasting lines and at all points where branch lines leave the main line and blowdown valves shall not be less than fifty feet from the face and shall be around a corner.

(c) When misfires occur with any other blasting devices, they shall be handled in a safe manner and under the supervision of the mine foreman or a certified person designated by him.

HOISTING
§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he shall be readily available at all times when men are in the mine. He shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, and after the hoist has been idle for one hour or more before hoisting or lowering men; there shall be cut out around the side of the hoisting shaft or driven through the solid stata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man cages, and the miners shall remain in such station until the man trip or man cage is available.

(b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall
allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-half square feet per person shall be available for each person on any cage or car where men are transported. In no instance shall more than twenty miners be transported on a cage or car without the approval of the director, in consultation with the deputy director of safety, health and training. No person shall ride on a loaded cage or car in any shaft, slope, or incline: Provided, That this shall not prevent any trip rider from riding in the performance of his authorized duties. No engineer shall be required for automatically operated cages, elevators, or platforms. Cages and elevators shall have an emergency power source unless provided with other escapeway facilities.

(c) Each automatic elevator shall be provided with a telephone or other effective communication system by which aid or assistance can be obtained promptly.

(d) A “stop” switch shall be provided in the automatic elevator compartment that will permit the elevator to be stopped at any location in the shaft.

TRANSPORTATION

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

(a) The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track shall be maintained to within five hundred feet of the nearest working face.

(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries developed after the first day
of July, one thousand nine hundred and seventy-one, shall have a continuous, unobstructed clearance of at least twenty-four inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or "tight" side, after the effective date of this article, there shall be at least twelve inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other material: Provided, That not more than twenty-four inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors, which in no event shall be less than twenty-four inches.

(i) Shelter holes shall be provided along haulage entries driven after the first day of July, one thousand nine hundred seventy-one, where locomotive, rope or animal haulage is used. Such shelter holes shall be spaced not more than one hundred feet apart; they shall be on the side of the entry opposite the trolley wire: Provided, That where belt haulage and secondary track haulage are located in the same entry, shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director.

(j) Shelter holes made after the effective date of this article shall be at least five feet in depth, not more than four feet in width, and as high as the traveling space. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and other obstructions.

(l) After the effective date of this article, shelter holes shall
be provided at switch throws and manually operated permanent doors.

(m) No steam locomotive shall be used in mines where miners are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.

(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine.

(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier, barrier tractor and other related equipment shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, purchased after the first day of July, one thousand nine hundred seventy-one, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.

(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him in his duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: Provided, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion: Provided, That trip lights need not be used on cars being shifted to and from loading machines, on cars being handled at loading heads during gathering operations at working faces, or on trips being pulled by animals. No person except the operator or his assistant shall ride on locomotives or loaded cars. An empty car or cars shall be used to provide a safe distance between the locomotive and the material car when rail, pipe or long timbers are being hauled. A safe clearance shall be maintained
between the end car of trips placed on side tracks and moving traffic. On haulage roads the clearance point shall be marked with an approved device.

(r) No motorman, trip rider or brakeman shall get on or off cars, trips or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail or open or close a door.

(s) Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over eighty feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during the loading operation when he shall face the loading machine.

(t) (I) A system of signals, methods or devices shall be used to provide protection for trips, locomotives and other equipment coming out onto tracks used by other equipment.

(2) In any coal mine where more than three hundred fifty tons of coal are produced on any shift in each twenty-four hour period, a dispatcher shall be on duty when there are movements of track equipment underground, including time when there is no production of coal. Such traffic shall move only at the direction of the dispatcher.

(3) The dispatcher's only duty shall be to direct traffic. Where a dispatcher is employed, no person shall move a locomotive, personnel carrier or self-propelled equipment on or onto haulageways without instructions from the dispatcher.

(4) Any dispatcher's station provided after the effective date of this article shall be on the surface.

(5) All self-propelled track equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a
129 distance of at least three hundred feet from the rear end of
130 the trip ahead, unless such locomotive is coupled to the trip
131 ahead.

132 (w) Positive stopblocks or derails shall be installed on all
133 tracks near the top and at landings of shafts, slopes, and
134 surface inclines. Positive-acting stopblocks or derails shall be
135 used where necessary to protect persons from danger of
136 runaway haulage equipment.

137 (x) Shuttle cars shall not be altered by the addition of
138 sideboards so as to inhibit the view of the operator.

139 (y) Mining equipment shall not be parked within fifteen feet
140 of a check curtain or fly curtain.

§22A-2-38. Transportation of miners by cars; self-propelled
141 equipment; belts.

1 (a) Man trips shall be pulled, unless self-propelled, at safe
2 speeds consistent with the condition of roads and type of
3 equipment used, but not to exceed twelve miles an hour. Each
4 man trip shall be under the charge of a certified person or
5 other competent person designated by a mine foreman or
6 assistant mine foreman. It shall be operated independently of
7 any loaded trip of coal or other heavy material, but may
8 transport tools, small machine parts and supplies. When mine
9 cars are used for man trips, a locomotive shall be used on each
10 end of the trip.

11 (b) Cars on the man trip shall not be overloaded, and
12 sufficient cars in good mechanical condition shall be provided.
13 Sufficient space shall be afforded so that no miner shall have
14 to be transported in a hazardous position.

15 (c) No person shall ride under the trolley wire unless the
16 man cars used are suitably covered and insulated. No person
17 shall ride on loaded timber cars, loaded supply trucks, empty
18 timber cars or empty supply trucks which are not equipped
19 with side guards, on top of locomotives, on chain conveyors,
20 inside shuttle cars, on the tops of machinery or equipment,
21 or on the sides of machinery or equipment, except for
22 operators of such machinery or equipment.

23 (d) Miners shall not load or unload before the cars in which
24 they are to ride, or are riding, come to a full stop. Miners
shall proceed in an orderly manner to and from man trips.

(e) When belts are used for transporting miners, a minimum clearance of eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring and other objects. Visible reflectors shall be placed where projected equipment, cap pieces, overhead cables, wiring or other pieces cross the belt line. Where the height of the coal seam permits, the clearance shall not be less than twenty-four inches.

(f) The belt speed shall not exceed two hundred fifty feet per minute where the minimum overhead clearance is eighteen inches, or three hundred feet per minute where the minimum overhead clearance is twenty-four inches, while miners are loading, unloading, or being transported. A signaling system or method shall be provided for stopping the belt and miners shall ride not less than six feet apart.

(g) An assistant mine foreman or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man trips. Where miners are required to cross over belts, adequate and safe facilities shall be provided.

(h) Positive-acting stop controls shall be installed along all belt conveyors used to transport miners, and such controls shall be readily accessible, and maintained so that the belt can be stopped or started at any location.

(i) Belt conveyors used for man trips shall be stopped while men are loading or unloading.

(j) There shall be at least thirty-six inches of side clearance where miners board or leave such belt conveyors.

(k) Adequate illumination including colored lights or reflective signs shall be installed at all loading and unloading stations. Such colored lights and reflective signs shall be so located as to be observable to all persons riding the belt conveyor.

(l) Telephone or other suitable communications shall be provided at points where miners are regularly loaded on or unloaded from belt conveyors.

(m) After supplies have been transported on man trip cars,
such cars shall be examined for unsafe conditions prior to the transportation of miners.

(n) While trackmen are working on haulageways, the dispatcher, or if there is no dispatcher, such other person responsible for communications with haulage crews shall give notice to haulage crews to maintain traffic under a slow and safe operating speed at the point of construction or repair.


(a) On or after the first day of July, one thousand nine hundred seventy-one, all conveyor belts acquired for use underground shall be flame-resistant conveyor belts.

(b) A clear travelway at least twenty-four inches wide shall be provided on both sides of all belt conveyors installed after the first day of July, one thousand nine hundred seventy-one. Where roof supports are installed within twenty-four inches of a belt conveyor, a clear travelway at least twenty-four inches wide shall be provided on the side of such support farthest from the conveyor.

(c) On belt conveyors that do not transport men, stop and start controls shall be installed at intervals not to exceed one thousand feet. Such controls shall be properly installed and positioned so as to be readily accessible.

(d) Persons shall not cross moving belt conveyors, except where suitable crossing facilities are provided.

(e) All belt conveyors shall be inspected for frozen rollers, rock falls, and fires, following the last production shift each week, also before holidays, vacation periods, and each production shift, with records kept of daily inspection.

(f) Deluge-type water sprays, water sprinklers, dry chemical sprinkler system or foam generators (designed to be automatically activated in the event of a fire or rise in the temperature at or near the belt drive) shall be installed at each main and secondary conveyor drive.

(g) All underground belt conveyors shall be equipped with slippage and sequence switches.

(h) Telephones or other suitable communications shall be provided at points where supplies are regularly loaded or
unloaded from the belt conveyors.

(i) After supplies have been transported on belt conveyors, such belts shall be examined for unsafe conditions prior to the transportation of miners.

ELECTRICITY


Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

1. All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

2. Underground transformers shall be air cooled or cooled with noninflammable liquid or inert gas.

3. Underground stations containing circuit breakers filled with inflammable liquids shall be put on a separate split of air or ventilated to the return air, and shall be of fireproof construction.

4. Transformers shall be provided with adequate overload protection.

5. “Danger -- High Voltage” signs with the voltage indicated shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.

6. Dry insulating platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

7. Capacitors used for power factor connection shall be noninflammable liquid filled. Suitable drain-off resistors or other means to protect miners against electric shock following removal of power shall be provided.

8. All unattended underground loading points where electric driven hydraulic systems are used shall utilize a
fireproof oil or emulsion.

(9) Before electrical changes are made to permissible equipment for use in a mine, they shall be approved by the director.

(10) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

(11) In all mines all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible.

(12) All hand-held electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment which are taken into or used inby the last open crosscut of any coal mine shall be permissible.

(13) All electric face equipment which is taken into or used inby the last open crosscut of any coal mine shall be permissible.

(14) In mines operated in coal seams which are located at elevations above the water table, the phrase “coal seams above the water table” means coal seams in a mine which are located at an elevation above a river or the tributary of a river into which a local surface water system naturally drains.

(15) The operator of each coal mine shall maintain in permissible condition all electric face equipment, which is taken into or used inby the last open crosscut of any mine.

(16) Except where permissible power connection units are used, all power-connection points outby the last open crosscut shall be in intake air.

(17) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing.

(18) Energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of a mine shall require that such persons wear approved and tested insulated shoes and wireman’s gloves.
(19) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons who installed them, or, if such persons are unavailable, by persons authorized by the operator or his agent.

(20) All electric equipment shall be examined weekly, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the director and to the miners in such mine.

(21) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that rise in temperature resulting from normal operation will not damage the insulating material.

(22) All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(23) Cables shall enter metal frames of motors, splice boxes, and electric compartment only through proper fittings. When insulated wire, other than cables pass through metal frames, the holes shall be substantially bushed with insulated bushings.

(24) All power wire (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof or ribs.

(25) Power wires and cables, including but not limited to
phone communication and control wires, except trolley wires, trolley feeder wires and bare signal wires, shall be insulated adequately and fully protected. The provisions of this subdivision shall not become effective until the first day of January, one thousand nine hundred seventy-eight.

(26) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(27) Incandescent lamps installed along haulageways and at other locations shall not contact combustible material, and if powered from trolley or direct current feeder circuits, need not be provided with separate short circuits or overload protection, if the lamp is not more than eight feet in distance from such circuits.

(28) In all main power circuits, disconnecting switches shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.

(29) All electric equipment shall be provided with switches or other controls that are safely designed, constructed and installed.

(30) Each underground, exposed power conductor that leads underground shall be equipped with suitable lightning arrestors of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low-resistance grounding medium on the surface which shall be separated from neutral ground by a distance of not less than twenty-five feet.

(31) Except for areas of a coal mine inby the last open crosscut, incandescent lamps may be used to illuminate underground areas. When incandescent lamps are used in a track entry or belt entry or near track entries to illuminate special areas other than structures, the lamps shall be installed in weatherproof sockets located in positions such that the
lamps will not come in contact with any combustible material. Lamps used in all other places must be of substantial construction and be fitted with a glass enclosure.

(32) An authorized representative of the director may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(33) An authorized representative of the director shall require manually operated emergency stop switches, designed to deenergize the traction motor circuit when the contractors or controller fail to open, to be installed on all battery powered tractors, taken into or used in by the last open crosscut of any entry or room.

(34) Trailing cables used in coal mines shall meet the requirements for flame-resistant cables.

(35) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device approved by the director of adequate current-interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(36) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(37) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term "splice" means a mechanical joining of one or more conductors that have been severed.

(38) When permanent splices in trailing cables are made,
they shall be:

(A) Mechanically strong with adequate electrical conductivity and flexibility,

(B) Effectively insulated and sealed so as to exclude moisture, and

(C) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(39) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cables will be hung in a manner which will damage the insulation or conductors.

(40) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(41) Trailing cable and power cable connections to junction boxes and to electrical equipment shall not be made or broken under load.

(42) All metallic sheaths, armors and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the director.

(43) Except where waived by the director, metallic frames, casings and other enclosures of electric equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and on or before the first day of January, one thousand nine hundred seventy-eight, shall have a ground monitoring system.

(44) In instance where single-phase 110-220 volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings and other enclosure of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer.

(45) The attachment of grounding wires to a mine tract or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to
provide a solid connection.

(46) The frames of all offtrack direct-current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at no less safe voltages.

(47) Installation of silicon diodes shall be restricted to electric equipment receiving power from a direct-current system with one polarity grounded. Where such diodes are used on circuits having a nominal voltage rating of two hundred fifty, they must have a forward current rating of four hundred amperes or more, and have a peak inverse voltage rating of four hundred or more. Where such diodes are used on circuits having nominal voltage rating of five hundred fifty, they must have a forward current rating of two hundred fifty amperes or more, and have a peak inverse voltage rating of eight hundred or more.

(48) In addition to the grounding diode, a polarizing diode must be installed in the machine control circuit to prevent operation of the machine when the polarity of a trailing cable is reversed.

(49) When installed on permissible equipment, all grounding diodes, over-current devices, and polarizing diodes must be placed in explosion-proof compartments.

(50) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test and maintain protective devices in making such repairs.

(51) When two or more persons are working on an energized high-voltage surface line simultaneously, and any one of them is within reach of another, such persons shall not be allowed to work on different phases or on equipment with different potentials.

(52) All persons performing work on energized high-voltage surface lines shall wear protective rubber gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves
shall not be worn wrong side out or without protective leather
gloves. Protective devices worn by a person assigned to
perform repairs on high-voltage surface lines shall be worn
continuously from the time he leaves the ground until he
returns to the ground, and, if such devices are employed for
extended periods, such person shall visually inspect the
equipment assigned him for defects before each use, and, in
no case, less than twice each day.

(53) Disconnecting or cutout switches on energized high-
voltage surface lines shall be operated only with insulated
sticks, fuse tongs or pullers which are adequately insulated and
maintained to protect the operator from the voltage to which
he is exposed. When such switches are operated from the
ground, the person operating such devices shall wear protective
rubber gloves.

(54) Solely for purposes of grounding ungrounded high-
voltage power systems, grounded messenger wires used to
suspend the cables of such systems may be used as a grounding
medium.

(55) When not in use, power circuits underground shall be
deenergized on idle days and idle shifts, except that rectifiers
and transformers may remain energized.

(56) High-voltage circuits entering the underground area of
any coal mine shall be protected by suitable circuit breakers
of adequate interrupting capacity. Such breakers shall be
equipped with devices to provide protection against undervol-
tage, grounded phase, short circuit and overcurrent.

(57) Circuit breakers protecting high-voltage circuits
entering an underground area of any coal mine shall be located
on the surface and in no case installed either underground or
within a drift.

(58) One circuit breaker may be used to protect two or more
branch circuits, if the circuit breaker is adjusted to afford
overcurrent protection for the smallest conductor.

(59) The grounding resistor, where required, shall be of the
proper ohmic value to limit the voltage drop in the grounding
circuit external to the resistor to not more than one hundred
volts under fault conditions. The grounding resistor shall be
rated for maximum fault current continuously and insulated
from ground for a voltage equal to the phase-to-phase voltage of the system.

(60) High-voltage circuits extending underground and supplying portable mobile or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from the circuit, except that the director or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the director or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(61) High-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity, and the fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the director or his authorized representative to assure such continuity.

(62) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor with one or more ground conductors having a total cross-sectional area of not less than one half the power conductor, and with an insulated internal or external conductor not smaller than No. 10 (A.W.G.) for
the ground continuity check circuit.

(63) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(64) Single-phase loads, such as transformer primaries, shall be connected phase-to-phase.

(65) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(66) Disconnecting devices shall be installed at the beginning of branch lines in underground high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(67) Circuit breakers and disconnecting switches underground shall be marked for identification.

(68) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with the manufacturers' specifications.

(69) Frames, supporting structures and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(70) Low- and medium-voltage power circuits serving three-phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the director. Such breakers shall be equipped with devices to provide protection against under
voltage, grounded phase, short circuit and overcurrent.

(71) Power centers and portable transformers shall be
deenergized before they are moved from one location to
another, except that, when equipment powered by sources
other than such centers or transformers is not available, the
director may permit such centers and transformers to be
moved while energized, if he determines that another
equivalent or greater hazard may otherwise be created, and if
they are moved under the supervision of a qualified person,
and if such centers and transformers are examined prior to
such movement by such person and found to be grounded by
methods approved by an authorized representative of the
director and otherwise protected from hazards to the miner.
A record shall be kept of such examinations. High-voltage
cables, other than trailing cables, shall not be moved or
handled at any time while energized, except that when such
centers and transformers are moved while energized as
permitted under this section, energized high-voltage cables
attached to such centers and transformers may be moved only
by a qualified person and the operator of such mine shall
require that such person wear approved and tested insulated
wireman's gloves.

(72) Low- and medium-voltage three-phase alternating-
current circuits used underground shall contain either a direct
or derived neutral which shall be grounded through a suitable
resistor at the power center, and a grounding circuit,
originating at the grounded side of the grounding resistor, shall
extend along with the power conductors and serve as a
grounding conductor for the frames of all the electrical
equipment supplied power from the circuit, except that the
director or his authorized representative may permit under-
ground low- and medium-voltage circuits to be used under-
ground to feed such stationary electrical equipment if such
circuits are either steel armored or installed in grounded rigid
steel conduit throughout their entire length. The grounding
resistor, where required, shall be of the proper ohmic value
to limit the ground fault current to twenty-five amperes. The
grounding resistor shall be rated for maximum fault current
continuously and insulated from ground for a voltage equal
to the phase-to-phase voltage of the system.

(73) Low- and medium-voltage resistance grounded systems
serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the director or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the director on a mine-to-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(74) Disconnecting devices shall be installed in conjunction with circuit breakers serving portable or mobile equipment to provide visual evidence that the power is connected.

(75) Circuit breakers shall be marked for identification.

(76) Single-phase loads shall be connected phase-to-phase.

(77) Trailing cables for medium-voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a ground metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated two thousand volts or more.

(78) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than two thousand feet and near the beginning of all branch lines.

(79) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(80) Trolley wires and trolley feeder wires, high-voltage cables, and transformers shall not be located within fifteen feet of the last open crosscut and shall be kept at least one hundred fifty feet from pillar workings.

(81) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately:
(A) At all points where men are required to work or pass regularly under the wires.

(B) On both sides of all doors and stoppings.

(C) At man-trip stations.

(82) Temporary guards shall be provided where trackmen and other persons work in close proximity to trolley wires and trolley feeder wires.

(83) Adequate precaution shall be taken to ensure that equipment being moved along haulageways will not come in contact with trolley wires or trolley feeder wires.

(84) Trolley wires and feeder wires shall be installed as follows: Where installed on permanent haulage, they shall be:

(A) At least six inches outside the track gauge line.

(B) Kept taut and not permitted to touch the roof, rib or floor. Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.

(C) Installations of trolley wire hangers shall be provided within three feet of each splice in a trolley wire.

§22A-2-41. Bonding track used as power conductor.

Where track is used as a power conductor, rails and switches on main entries shall be bonded and cross-bonded in such manner as to assure adequate return. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than two hundred feet: Provided, however, That rail joints in such secondary haulage roads need not be bonded where a copper feeder adequate in size parallels the track and is electrically connected thereto at intervals of not more than two hundred feet by cross bonds.

§22A-2-42. Telephone service or communication facilities.

Telephone service or equivalent two-way communication facilities shall be provided in all mines at least one of which shall be in service at all times as follows:

(a) A telephone or equivalent two-way communication facility shall be located on the surface within five hundred feet
of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when miners are underground can hear the facility and respond immediately in the event of an emergency. "Two-way communication facility" shall mean a system maintained to allow voice contact to come in and out of the working section at all times.

(b) (1) Telephones or equivalent two-way communication facilities provided at each working section shall be located not more than five hundred feet out by the last open crosscut and not more than eight hundred feet from the farthest point of penetration of the working places on such section.

(2) The incoming communication signal shall activate an audible alarm, distinguishable from the surrounding noise level, or a visual alarm that can be seen by a miner regularly employed on the working section.

(3) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in the event the mine electric power fails or is cut off: Provided, That where trolley phones and telephones are both used, an alternate source of power for the trolley phone system is not required.

(4) Telephones or equivalent two-way communication facilities shall be maintained in good operating condition at all times. In the event of any failure in the system that results in loss of communication, repairs shall be started immediately, and the system restored to operating condition as soon as possible.

(5) Where required by the director, trucks used for haulage of coal, miners, or supplies by an operator shall be equipped with two-way communication instruments.

(c) On or after the first day of January, one thousand nine hundred seventy-eight, unless the director for good cause grants a waiver, all such telephones or equivalent two-way communications shall be connected to regular telephonic and other means of communication available in the community so
that in the event of an emergency, emergency medical
attendants or other personnel can communicate from within
the mine directly to health care facilities.

(d) Telephone lines and cables shall be carried on insulators
installed on the opposite side from power or trolley wires, and
where they cross power or trolley wires, they shall be insulated
adequately. Lightning arrestors shall be provided at the points
where telephone circuits enter the mine.


(a) Electric equipment shall not be taken into or operated
in any place where methane can be detected with a flame safety
lamp or other approved methane detector at any point not less
than eight inches from the roof, face, or rib.

(b) In all mines, electric haulage locomotives operated from
trolley wire and other electrical equipment or devices which
may ignite gas shall not be used in return air, unless permission
is granted by the director for a specified area. For the purpose
of this provision, air used to ventilate a section of a mine shall
not be considered return air until such time as the air has
ventilated all of the workings in the section.

(c) No person shall be placed in charge of a coal-cutting
machine in any mine who is not a qualified person, capable
of determining the safety of the roof and sides of the working
places and of detecting the presence of explosive gas, unless
they are accompanied by a certified or qualified person who
has passed such an examination.

(d) In any mine no machine shall be brought in by the last
breakthrough next to the working face until the machine man
shall have made an inspection for gas in the place where the
machine is to work. If explosive gas in excess of one percent
is found in the place, the machine shall not be taken in until
the danger is removed.

(e) In working places a safety lamp, or other suitable
approved apparatus for the detection of explosive gas, shall
be provided for use with each mining machine when working,
and should any indication of explosive gas in excess of one
percent appear on the flame of the safety lamp, or on other
apparatus used for the detection of explosive gas, the person
in charge shall immediately stop the machine, cut off the
current at the nearest switch and report the condition to the
mine foreman or supervisor. The machine shall not again be
started in such place until the condition found has been
corrected and been pronounced safe by a certified person.

(f) No electric equipment shall be operated in a mine for
a longer period than twenty minutes without an examination
as above described being made for gas; and if gas is found
in excess of one percent, the current shall at once be switched
off the machine, and the trailing cable shall forthwith be
disconnected from the power supply until the place is
pronounced safe.

(g) Machine runners and helpers shall use care while
operating mining machines. They shall not permit any person
to remain near the machine while it is in operation. They shall
examine the roof of the working place to see that it is safe
before starting to operate the machine. They shall not move
the machine while the cutter chain is in motion.

§22A-2-44. Hand-held electric drills and rotating tools; trailing
cables.

1 Electric drills and other electrically operated rotating tools
intended to be held in the hand shall have the electric switch
constructed so as to break the circuit when the hand releases
the switch and shall be equipped with friction or safety
clutches.

§22A-2-45. Installation of lighting.

1 Electric lights or other approved methods of lighting shall
be installed so that they do not come in contact with
combustible materials, and the wires shall be supported by
suitable insulators and fastened securely to the power
conductors.

§22A-2-46. Welding and cutting.

1 (a) A record shall be kept of oxygen and gas tanks or
cylinders taking into a mine and the date shall be recorded
when they are removed from the mine. No more tanks or
cylinders than necessary to perform efficiently the work shall
be permitted underground at one time.

(b) Propane torches may be used in lieu of blowtorches.
(c) Welding and cutting may be done in mines: Provided, that all equipment and gauges are maintained in safe condition and not abused, that suitable precautions are taken against ignition of methane, coal dust, or combustible materials, that means are provided for prompt extinguishment of fires accidentally started, and that only persons who have demonstrated competency in welding and cutting are entrusted to do this work. Adequate eye protection shall be used by all persons doing welding or cutting, and precautions shall be taken to prevent other persons from exposure that might be harmful to their eyes.

(d) Transportation of oxygen and gas tanks or cylinders shall be permitted on self-propelled machinery or belt conveyors specially equipped for safe holding of the containers in transportation. In no instance, shall such transportation be permitted in conjunction with any man trip.

(e) Empty oxygen and gas tanks or cylinders shall be marked “empty” and shall be removed from the mine promptly in safe containers provided for transportation of the same.

(f) When tanks and cylinders are not in use and when they are being transported, valve protection caps and plugs shall be placed on all tanks or cylinders for which caps and plugs are available. No oxygen tanks, gas tanks or cylinders shall be transported with the hoses and gauges attached.

(g) In all mines a certified person shall examine for gas with permissible flame safety lamps or other approved detectors before and during welding or cutting in, at or near working faces. The safety of the equipment and methods used in such cases shall be subject to approval of the director. If equipment is mobile, it shall be removed out by the last open breakthrough before cutting and welding may be performed on such equipment.

§22A-2-47. Responsibility for care and maintenance of face equipment.

Mine operators shall maintain face equipment in safe operating condition. Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them and shall promptly report defects known to them.

§22A-2-48. When respiratory equipment to be worn; control of dust.
Miners exposed for short periods to gas-, dust-, fume-, and mist-inhalation hazards shall wear permissible respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22A-2-49. Safeguards for mechanical equipment.

(a) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or being trammed. Loading machines shall not be trammed with loading arms in motion, except when loading materials.

(b) Belt, chain or rope drives and the moving parts of machinery which are within seven feet of the floor, ground or platform level, unless isolated, shall be guarded adequately. Repair pits shall be kept covered or guarded at all times when not in use. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Guards which have been removed shall be replaced before the machinery is again put into use. Provision shall be made to prevent accumulations of spilled lubricants.

(c) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods, and, unless goggles are used, eye shields.

(d) No person shall stand along the side of the boom, or pass or stand along the loading head or cutting head, on a continuous miner or loading machine in operation.

(e) Braking devices shall be guarded to prevent accidental release. When required by the director, track-mounted mobile equipment shall be equipped with workable sanding devices.

(f) On and after the first day of January, one thousand nine hundred seventy-eight, all battery powered equipment shall be equipped with an under-voltage indicator which will indicate when the voltage is less than three fourths of its rated capacity, at which time such equipment shall be withdrawn from use.
except for the purpose of returning the vehicle to the recharging station.

SURFACE STRUCTURES AND PRACTICES

§22A-2-50. Procurement of dust-tight electrical equipment; fireproof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.

(a) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction or enclosed with reasonably dust-tight housings or enclosures.

(b) After the first day of July, one thousand nine hundred seventy-one, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction.

(c) Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

(d) Where coal is dumped at or near air intake openings, reasonable provisions shall be made to prevent dust from entering the mine.

(e) Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen wherever necessary.

(f) Welding shall not be done in dusty atmospheres and dusty locations shall be well cleaned, and fire-fighting apparatus shall be readily available during welding.

(g) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are excepted from such requirement.

(h) Elevated platforms and stairways shall be provided with toeboards where necessary, and they shall be kept clear of refuse and ice and maintained in good repair.

(i) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and
protection in order that they may work safely. Permanent
ladders extending more than ten feet shall be provided with
back guards. Walkways around thickeners that are less than
four feet above the walkway shall be adequately guarded.
Employees required to work over thickeners shall wear a safety
harness adequately secured, unless walkways or other suitable
safety devices are provided.

1. Good housekeeping shall be practiced in and around mine
buildings and yards. Such practices include cleanliness, orderly
storage of materials, and the removal of possible sources of
injury, such as stumbling hazards, protruding nails and broken
glass.

§22A-2-52. Storage of flammable liquids in lamphouse.
1. Naphtha or other flammable liquids in lamphouses shall be
kept in approved containers or other safe dispensers.

§22A-2-53. Smoking in and around surface structures.
1. Smoking in or about surface structures shall be restricted
to places where it will not cause fire or an explosion.

MISCELLANEOUS SAFETY PROVISIONS
AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas.
1. Employees handling railroad cars shall have access to and
use an approved distinct audible signaling device to give
warning when cars are in motion. Where required by rule or
regulation, safety belts shall be worn and properly attached
by all car droppers handling railroad cars. All dumping ramps
shall be of a sufficient width to ensure safe operation of
vehicles used thereon.

§22A-2-54. Duties of persons subject to article; rules and
regulations of operators.
1. (a) It shall be the duty of the operator, mine foreman,
supervisors, mine examiners, and other officials to comply
with and to see that others comply with the provisions of this
article.

2. (b) It shall be the duty of all employees and checkweighmen
to comply with this article and to cooperate with management
and the department of energy and division of mines and
minerals in carrying out the provisions hereof.

(c) Reasonable rules and regulations of an operator for the
protection of employees and preservation of property that are
in harmony with the provisions of this article and other
applicable laws shall be complied with. They shall be printed
on cardboard or in book form in the English language and
posted at some conspicuous place about the mine or mines,
and given to each employee upon request.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles
to protect their eyes. All employees shall have approved
goggles or shields and use the same where there is a hazard
from flying particles, or other eye hazards.

(b) Employees engaged in haulage operations and all other
persons employed around moving equipment on the surface
and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which
may injure hands is handled, but gloves with gauntleted cuffs
shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all
persons while in or around a mine.

(e) Approved safety goggles or eyeshields shall be worn by
all persons while being transported in open-type man trips.

(f) A self-rescue device approved by the director shall be
worn by each person underground or kept within his
immediate reach, and such device shall be provided by the
operator. The self-rescue device shall be adequate to protect
such miner for one hour or longer. Each operator shall train
each miner in the use of such device, and refresher training
courses for all underground employees shall be held during
each calendar year.


All surface mine employees shall be required to wear safety
helmets when working in areas where there is a possible danger
of head injury from impact, or from falling or flying objects,
or from electrical shock and burns: Provided, That such employees shall not be required to wear such safety helmet while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National Standards Institute, Safety Requirements for Industrial Head Protection, Standard Z89.1, unless the director finds that the dangers set forth herein may be present: Provided, however, That such employees shall be required to wear safety helmets while not operating such equipment including period of travel to and from such equipment.

The safety helmets required hereunder shall meet the specifications for such helmets as prescribed by the mine health and safety administration.

§22A-2-56. Checking systems.

Each mine shall have a check-in and check-out system that will provide positive identification upon the person of every individual underground. An accurate record of the people in the mine, which shall consist of a written record, a check board, or a time-clock record, shall be kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number or name identical to the identification check fastened to the belt of all persons going underground.

§22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.

(a) No miner, worker or other person shall knowingly injure any shaft, lamp, instrument, air course, or brattice, or obstruct or throw open airways, or carry matches or open lights in the places worked by safety lights, or disturb any part of the machinery or appliances, open a door closed for directing ventilation and not close it again, or enter any part of a mine against caution, or disobey any order of any mine foreman or assistant mine foreman given in carrying out any of the provisions of this section.

(b) Open lights, smoking, and smokers' articles, including matches, are prohibited in all mines. No person shall at any time enter mines with or carry therein any matches, pipes, cigars, cigarettes, or any device for making lights or fire not
authorized or approved. The operator shall at frequent
intervals search, cause to be searched, any person, including
his clothing and material belongings, entering or about to enter
the mine, or inside the mine, to prevent such person from
taking or carrying therein any of the above-mentioned articles.

(c) No person shall at any time carry into any mine any
intoxicants or enter any mine while under the influence of
intoxicants.


(a) Suitable fire protection shall be provided at surface
installations of fans, shops, tipples, and preparation plants,
substations, hoist rooms and compressor stations.

(b) Fire drills and demonstration of various types of
available fire-fighting equipment shall be held for employees
at least every six months.

(c) The location of pipelines, location of valves, and fire
taps shall be shown on a map of the mine and kept available
at the mine office at all times.

(d) Each coal mine shall be provided with suitable fire-
fighting equipment adapted for the size and condition of the
mine. Fire-fighting equipment required under this article shall
meet the following requirements:

(1) Waterlines shall be capable of delivering fifty gallons
of water at a nozzle pressure of fifty pounds per square inch.

(2) A portable water car shall be of at least one thousand
gallons capacity, and shall have at least three hundred feet of
fire hose with nozzles. A portable water car shall be capable
of providing a flow through the hose of fifty gallons of water
per minute at a nozzle pressure of fifty pounds per square inch.

(3) A portable chemical car shall carry enough chemicals to
provide a fire extinguishing capacity equivalent to that of a
portable water car.

(4) A portable foam-generating machine shall have facilities
and equipment for supplying the machine with thirty gallons
of water per minute at thirty pounds per square inch for a
period of thirty-five minutes.

(5) A portable fire extinguisher shall be either a multipur-
pose dry chemical type, containing a nominal weight of five
pounds of dry powder and enough expellant to apply the
powder; or a foam-producing type containing at least two and
one-half gallons of foam-producing liquid and enough
expellant to supply the foam. Only fire extinguishers approved
by the Underwriters Laboratories, Inc. or Factor Mutual
Laboratories, carrying appropriate labels as to type and
purpose shall be used after the first day of July, nineteen
hundred seventy-one, and all new portable fire extinguishers
acquired for use in a coal mine shall be of the multipurpose
dry chemical type, having a 2A 10BC or higher rating.

(6) The fire hose shall be rubber-lined, mildew-proof and
the cover shall be of flame-resistant qualities, meeting
requirements for hose in Bureau of Mines Schedule 2G, except
that the test flame shall be applied to the outer surface rather
than to an open end. The bursting pressure shall be at least
four times higher than the static water at the mine location;
the maximum water pressure in the hose nozzle shall not
exceed 100 p.s.i.g.

(e) Each working section of coal mines producing three
hundred tons or more per shift shall be provided with two
portable fire extinguishers and two hundred forty pounds of
bagged rock dust; waterlines shall extend to each section
loading point and be equipped with enough fire hose to reach
each working face unless the section loading point is provided
with one of the following: (1) Two portable water cars or (2)
two portable chemical cars, or (3) one portable water car or
one portable chemical car and either a portable foam-
generating machine or a portable high-pressure rock-dusting
machine, fitted with at least two hundred fifty feet of hose and
supplied with at least sixty sacks of rock dust.

(f) In all coal mines, waterlines shall be installed parallel to
the entire length of belt conveyors and shall be equipped with
fire hose outlets with valves at three-hundred-foot intervals
along each belt conveyor and at tailpieces. At least five
hundred feet of fire hose with fittings suitable for connection
with each belt conveyor waterline system shall be stored at
strategic locations along the belt conveyor. Waterlines may be
installed in entries adjacent to the conveyor entry belt as long
as the outlets project into the belt conveyor entry. Each
working section of coal mines producing less than three
hundred tons of coal per shift shall be provided with two
portable fire extinguishers, two hundred forty pounds of
bagged rock dust and at least five hundred gallons of water
and at least three pails of ten-quart capacity. In lieu of the
five hundred gallon water supply, a waterline with sufficient
hose to reach the working places, a portable water car of five
hundred fifty gallons capacity, or a portable all-purpose dry
powder chemical car of at least one hundred twenty-five
pounds capacity may be provided.

(g) In mines producing three hundred tons of coal or more
per shift, waterlines shall be installed parallel to all haulage
tracks using mechanized equipment in the track or adjacent
entry and shall extend to the loading point of each working
section. Waterlines shall be equipped with outlet valves at
intervals of not more than five hundred feet, and five hundred
feet of fire hose with fittings suitable for connection with such
waterlines shall be provided at strategic locations. Two
portable water cars, readily available, may be used in lieu of
waterlines prescribed under this subsection.

(h) In mines producing less than three hundred tons of coal
per shift, there shall be provided at five-hundred-foot intervals
in all main and secondary haulage roads: (1) A tank of water
of at least fifty-five gallon capacity with at least three pails
of not less than ten-quart capacity, or (2) not less than two
hundred forty pounds of bagged rock dust.

(i) Each track or off-track locomotive, self-propelled
mantrip car, or personnel carrier shall be equipped with one
portable fire extinguisher.

(j) Two portable fire extinguishers shall be provided at each
permanent electrical installation. One portable fire extin-
guisher and two hundred forty pounds of rock dust shall be
provided at each temporary electrical installation.

(k) Two portable fire extinguishers and two hundred forty
pounds of rock dust shall be provided at each permanent
underground oil storage station. One portable fire extinguisher
shall be provided at each working section where twenty-five
gallons or more of oil are stored in addition to extinguishers
required under subsection (e) of this section.

(l) One portable fire extinguisher or two hundred forty
109  pounds of rock dust and water shall be provided at locations
110  where welding, cutting, or soldering with arc or flame is being
111  done.
112  (m) At each wooden door through which power lines pass
113  there shall be one portable fire extinguisher or two hundred
114  forty pounds of rock dust within twenty-five feet of the door
115  on the intake air side.
116  (n) At each mine producing three hundred tons of coal or
117  more per shift, there shall be readily available the following
118  materials at locations not exceeding two miles from each
119  working section:
120  (1) One thousand board feet of brattice boards
121  (2) Two rolls of brattice cloth
122  (3) Two handsaws
123  (4) Twenty-five pounds of 8° nails
124  (5) Twenty-five pounds of 10° nails
125  (6) Twenty-five pounds of 16° nails
126  (7) Three claw hammers
127  (8) Twenty-five bags of wood fiber plaster or ten bags of
128  cement (or equivalent material for stoppings)
129  (9) Five tons of rock dust.
130  (10) At each mine producing less than three hundred tons
131  of coal per shift, the above materials shall be available at the
132  mine: Provided, however, That the emergency materials for
133  one or more mines may be stored at a central warehouse or
134  building supply company and such supply must be the
135  equivalent of that required for all mines involved and within
136  one hour’s delivery time from each mine. This exception shall
137  not apply where the active working sections are more than two
138  miles from the surface.

§22A-2-59. First-aid equipment.

1  (a) Each operator of an underground coal mine shall
2  maintain a supply of first-aid equipment at each of the
3  following locations:
4  (1) At the mine dispatcher’s office and on the surface in the
close proximity to the mine entry.

(2) At the bottom of each regularly traveled slope or shaft; however, where the bottom of such slope or shaft is not more than one thousand feet from the surface, such first-aid supplies may be maintained on the surface at the entrance of the mine.

(3) At a point in each working section not more than five hundred feet outby the active working face or faces.

(b) The first-aid equipment required to be maintained shall include at least the following:

(1) One stretcher
(2) One broken-back board
(3) Twenty-four triangular bandages
(4) Eight four-inch bandage compresses
(5) Sixteen two-inch bandage compresses
(6) Twelve one-inch adhesive compresses
(7) One foille
(8) Two cloth blankets
(9) One rubber blanket
(10) Two tourniquets
(11) One one-ounce bottle of aromatic spirits of ammonia
(12) Two inflatable plastic arm splints
(13) Two inflatable plastic leg splints
(14) Six small splints, metal or wooden
(15) Two cold packs

(c) All first-aid supplies required to be maintained under the section shall be stored in suitable sanitary, dust-tight, moisture-proof containers and such supplies shall be accessible to the miners.

(d) No first-aid material shall be removed or diverted without authorization, except in case of accident in or about the mine.

(e) On all occasions when a person becomes sick or injured
underground to the extent that he must go to the surface, he
shall be accompanied by one or more persons.

§22A-2-60. Accessible outlets; safe roadways for emergencies;
accessibility of first-aid equipment; use of special
capsule for removal of personnel.

(a) No operator or mine foreman of any coal mine shall
employ any person to work in such mine, or permit any
persons to be in the mine for the purpose of working therein
unless they are provided with two openings or outlets to each
seam, separated by natural strata, such openings to be not less
than three hundred feet apart, if the mine be worked by shaft;
if the mine be worked by shaft and slope, such openings shall
be separated by one hundred feet of natural strata; and not
less than fifty feet apart at the outlets, if worked by slope or
drift; but this requirement of a distance of three hundred feet
between openings or outlets to shaft mines shall not apply
where such openings or outlets have been made prior to the
first day of July, one thousand nine hundred and seventy-one.

(b) At least two separate and distinct travelable passageways
designated as escapeways shall be maintained to ensure
passage at all times to any person, including disabled persons.
The escapeway openings to the surface shall be separated in
such manner as shall be prescribed by the director. If at least
two escapeways are not available for any reason, all miners
in the affected area other than those requisite to remedy the
situation shall be withdrawn from the affected area until such
time as the escapeway is made passable. Where the height of
the coal bed is more than five feet, the escapeways shall be
maintained at a height of at least five feet excluding necessary
roof support, and the travelway in such escapeway shall be
maintained at a width of at least six feet, excluding necessary
roof support and in those situations where the height of the
coal bed is less than five feet the escapeway should be
maintained to the height of the coal bed excluding any
necessary roof support, and the travelway in such escapeway
shall be maintained at a width of at least six feet. At least
one escapeway ventilated with intake air, maintained to the
last open crosscut, shall be provided from each working
section continuously to the nearest available opening on the
surface, and shall be maintained in safe condition and properly
marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of floodwater. Escape facilities approved by the director, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in event of an emergency. Return airways entries designated as escapeways shall be provided with permissible two-way communication systems to the surface, and such systems shall be located at points not to exceed every four thousand feet. On or after the first day of April, one thousand nine hundred seventy-eight, each operator shall provide lifeline cords, with reflective material at twenty-five foot intervals, from the last open crosscut to the surface along a designated escapeway ventilated by return air: Provided, That in case of a shaft mine such lifeline cords shall extend from the last open crosscut to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency.

(c) Escapeways shall be inspected and traveled at least once each week by a certified mine examiner who shall place his initials and the date in a conspicuous place or places and who shall file a written report thereon which shall be kept on the surface.

(d) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such connection shall be made as soon as possible.

(e) When only one opening is available because of final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(f) First-aid materials and such other equipment as the director may require shall be maintained within five hundred feet of each area in which miners are regularly working to which they may have access in case of an emergency and for protection against hazards.

(g) Each working area of the mine not serviced by track-
mounted or rubber-tired vehicles which uses conveyor belts for removal of coal shall be equipped with a special capsule in which an injured person can be placed and transported on the belt to the surface or to other transportation facilities. The director shall within nine months of the eighth day of July, one thousand nine hundred seventy-seven, promulgate standards and guidelines, or allow to continue in effect any present standards and guidelines, as to what such “special capsule” as used in this subsection shall include. Each section of the mine using or serviced by track-mounted or rubber-tired equipment shall have readily available a vehicle which can be used to promptly remove a person in case of injury.

§22A-2-6I. Coal storage bins; recovery tunnels; coal storage piles.

(a) Coal storage bins hereafter constructed with vertical sides fifty feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

(b) Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.

(c) A qualified person shall test for methane with a methane detector prior to and during cutting and welding operations inside or underneath a coal storage bin.

(d) Electric motors, switches and controls for coal storage bins hereafter acquired shall be of dust-tight construction.

(e) Repairs to electric equipment shall not be made when the surrounding atmosphere contains dangerous amounts of gas or dust.

(f) Where electric lights are used in recovery tunnels of over one hundred feet in length, the wiring shall be in rigid conduit and shall be enclosed in waterproof receptacles.

(g) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty inches in diameter and
where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(h) Extreme caution shall be exercised by all employees required to work at or near coal storage piles during coal recovery operations to avoid injury by coal slides or by being in or drawn into a chute.


(1) Good housekeeping shall be practiced in and around thermal dryer plants.

(2) Adequate fire-fighting facilities shall be provided on all floors.

(3) When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate fire-fighting apparatus shall be readily available during the operation.

(4) Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.

(5) Dryer control panels shall be provided with audible and visible alarm devices; such devices should be adjusted to function at somewhat less than maximum dryer temperature.

(6) A bypass or relief stack equipped with an automatically operated damper shall be provided for bypassing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.

(7) Thermal coal dryers hereafter installed shall not be enclosed except that roofs may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fireproof structure.

(8) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.
(9) Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.

(10) Dryers shall be equipped with quick-response heat control devices which, in the event of superelevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.

(11) All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.

(12) Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.

(13) Dryer controls, valves, and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

(14) The gauges of temperature control instruments shall be of the recording type.

(15) Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

(16) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

(17) Adequate illumination shall be provided.

(18) Dryers shall not be operated beyond their rated evaporation capacity.

(19) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

(20) After shutdowns, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding startups.
(21) Thermal coal dryers previously installed in a tipple or cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

(22) When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer system bins or any other dusty areas, permissable cap lamps shall be used for illumination.

§22A-2-63. No mine to be opened or reopened without prior approval of commissioner of the department of energy; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.

(a) After the first day of July, one thousand nine hundred seventy-one, no mine shall be opened or reopened unless prior approval has been obtained from the commissioner of the department of energy, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of ten dollars, which payment shall be tendered with the operator's application for such approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

(b) Within thirty days after the first day of January of each year, the operator of each mine holding a certificate evidencing approval of the commissioner to open a mine shall apply for the extension of such certificate of approval for an additional year. Such approval, evidenced by a certificate of the commissioner, shall be granted as a matter of right and without charge if, at the time such application is made, the operator is in compliance with the provisions of section seventy-two of this article and has paid or otherwise appealed all coal mine assessments imposed under article one-a, chapter twenty-two-a of this code. Applications for extension of such certificates of approval not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of ten dollars.

(c) Certificates of approval issued pursuant to this section
shall not be transferable.

(d) The provisions of this section shall be printed on the reverse side of every certificate issued hereunder.

(e) The district mine inspector shall be contacted for a preinspection of the area proposed for underground mining prior to the issuance of any new opening approval.

§22A-2-64. Sealing; permanently closed or abandoned mines.

(a) After the first day of July, one thousand nineteen hundred seventy-one, when any coal mine is worked out or indefinitely closed, such mine openings shall be properly sealed within ninety days after the mine is abandoned.

(b) Mines temporarily inactive for less than ninety days shall be adequately fenced with conspicuous signs prohibiting the possible entrance of unauthorized persons.

(c) Shaft openings shall be effectively capped or filled. Filling shall be for the entire depth of the shaft. Caps shall consist of a six inch thick concrete cap or other equivalent means approved by the director.

(d) Caps shall be equipped with a vent pipe at least two inches in diameter extending for a distance of at least fifteen feet above the surface shaft.

§22A-2-65. Mining close to abandoned workings.

Any operator working up to an abandoned coal mine may be permitted to work to his property line, if approved by the director, but in such cases precaution must be taken as provided in this article.

§22A-2-66. Explosion or accident; notice; investigation by division of mines and minerals.

Whenever, by reason of any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and in his absence, the mine foreman in charge of the mine, to give immediate notice to the director and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go the scene of such accident and make such recommendations and render such assistance as he
may deem necessary for the future safety of the men, and
investigate the cause of such explosion or accident and make
a record thereof which he shall preserve with the other records
in his office, the cost of such records to be paid by the division,
and a copy shall be furnished to the operator and other
interested parties. To enable him to make such investigation,
he shall have the power to compel the attendance of witnesses
and to administer oaths or affirmations. The director shall
have the right to appear and testify and to offer any testimony
that may be relevant to the questions and to cross-examine
witnesses.


Whenever any accident occurs in or about any coal mine
to any employee or person connected with the mining
operation, resulting in personal injury or death, the operator
shall, within twenty-four hours, report the same in writing to
the director and to the district mine inspector of the district
in which the accident occurs, giving full details thereof upon
forms furnished by the director.

§22A-2-68. Preservation of evidence following accident or disaster.

Following a mine accident resulting in the death of one or
more persons and following any mine disaster, the evidence
surrounding such occurrence shall not be disturbed after
recovery of bodies or injured persons until an investigation by
the division has been completed.

§22A-2-69. Fire in and about mine; notification of director and
district mine inspector.

The operator or mine foreman, upon the discovery of fire
in or about a mine, shall immediately notify the director and
the district mine inspector in whose district the mine is located.

§22A-2-70. Shafts and slopes.

(a) When mine examiner to be employed; qualifications.—
During the sinking of a shaft or the driving of a slope to a
coal bed or while engaged in underground construction work,
or relating thereto, the operator shall assign a mine examiner
to such project areas. Such mine examiner shall have a
certificate of competency valid only for the type of work
stipulated thereon and issued to him by the department of

8 mines after he has passed an examination given by the
department of mines. He shall, at the time he takes the
examination, have a minimum of five years' experience in shaft
sinking, slope driving and underground construction;
moreover, he shall be able to detect methane with a flame
safety lamp and have a thorough knowledge of the ventilation
of shafts, slopes, and mines, and the machinery connected
therewith, and finally, he shall be a person of good moral
character with temperate habits.

(b) Mine examiner or certified person acting as such; duties
generally; records open for inspection.—In all shafts and
slopes within three hours immediately preceding the beginning
of a work shift and before any workmen in such shift, other
than those who may be designated to make the examinations,
enter the underground areas of such shafts or slopes, a certified
foreman or mine examiner, designated by the operator of such
shaft or slope to do so, shall make an examination of such
areas. Each person designated to make such examinations shall
make tests with a permissible flame safety lamp for accum-
ulations of methane and oxygen deficiency, and examine sides
of shafts and ribs and roof of all slopes. Should he find a
condition which he considers dangerous to persons, he shall
place a conspicuous danger sign at all entrances to such places.
He shall record the results of his examination with ink or
indelible pencil in a book prescribed by the director, kept at
a place on the surface designated by mine management. All
records as prescribed herein shall be open for inspection by
interested persons.

(c) Approvals and permits.—An approval shall be obtained
from the division before work is started. A permit shall be
obtained from the division (1) to stop fan when miners are
in shafts or slopes; (2) to use electrical machinery in shafts or
slopes; (3) to use electric lights in shafts or slopes; (4) to use
welders, torches and like equipment in shafts or slopes; (5) to
hoist more than four miners at one time in buckets or cars;
(6) to shoot more than fifteen shots in one series.

(d) Records.—The foreman in charge on each shift shall
keep a daily report of conditions and practices. The forman
in charge on each shift shall read and countersign the reports
of the previous shift. Unsatisfactory conditions and practices
reported shall be repeated on daily reports until corrected.
Hoists, buckets, cars, ropes and appliances thereto shall be examined by a qualified person before the start of each shift and a written record kept. Deaths from accidents or previous injuries shall be reported immediately by wire to the office of the director and to the district mine inspector or the inspector-at-large. A written report of all injuries and deaths shall be mailed to the division and district mine inspector promptly. Immediate notice shall be given the office of the director, the district mine inspector and the inspector-at-large in the event of an ignition of gas, or serious accident to miners or equipment. All permits and approvals must be available for inspection by all interested persons.

(e) General.—The foreman on shift shall have at least five years' experience in shafts or slopes. New employees shall be instructed in the dangers and rules incident to their work. Conspicuous bulletin boards and warning signs shall be maintained. Unauthorized persons shall not be permitted around shafts or slopes. First-aid material shall be maintained at the operation as required by section fifty-nine of this article. The scene of a fatal accident shall be left unchanged until an investigation is made by all interested persons. All employees and others around the operation shall wear hard-toe shoes and hard-top hats. Goggles or other eye protection shall be worn when cutting, welding, or striking where particles may fly. Gears, belts, and revolving parts of machinery shall be properly guarded. Hand tools shall be in good condition. Sides of shafts, ribs and roof of all slopes shall be closely observed for loose and dangerous conditions. Loose brows, ribs and top in slopes shall be taken down or supported; loose ribs in shafts shall be scaled. Miners shall be hoisted and lowered under power in shafts and slopes. All hoists must have two positive breaking devices. At least three wraps of rope shall remain on the hoist drum at all times. Wire ropes shall not be less than three-fourths inches in diameter, and of a design to prevent excessive spinning or turning when hoisting.

When heavy materials are hoisted, a large rope shall be used if necessary. A hoisting engineer shall be in constant attendance while men are in shaft. Head frames shall be constructed substantially. Noise from machinery shall not interfere with signals. The standard signal code, whistle or bell shall be used for hoisting:
One signal ........................................... Hoist
One signal .......................................... Stop
Two signals ......................................... Lower
Three signals ....................................... Man cage
One signal from hoisting engineer ............... Miners
         board cage

Hoist signals shall be posted in front of the hoisting
engineer. The shaft opening shall be enclosed by a fence five
feet high. Buckets shall not be loaded within six inches of the
top rim. Buckets shall have a positive lock on the handle or
bale to prevent bucket from crumpling while being hoisted.
Positive coupling devices shall be used on buckets or cars
(hooks with safety catches or threaded clevis). Emergency
devices for escape shall be provided while shafts are under
construction. Miners shall not ride on or work from rims of
buckets. Buckets or cars shall not be lowered without a signal
from working area. Only sober and competent engineers shall
be permitted to operate hoists. No intoxicating liquors or
intoxicated persons shall be permitted in or around any shaft,
slope or machinery. Lattice type platforms shall be used.

(f) Explosives.—Explosives and blasting caps being taken
into or removed from the operation shall be transported and
kept in approved nonconducting receptacles (unopened cartons
or cases are permissible). Explosives shall not be primed until
ready to be inserted into holes. Handling of explosives and
loading of holes shall be under the strict supervision of a
qualified person or shotfirer. No more explosives or caps than
are required to shoot one round shall be taken into shafts.
Adobe, mudcapped or unconfined shots shall not be fired.
Holes shall be stemmed tightly and full into the mouth.
Blasting caps shall be inserted in line with the explosive. Leg
wires of blasting caps and buss wires shall be kept shunted
until connected. Shooting cables shall be shunted at firing
devices and before connecting to leg wires. Only approved
shooting devices shall be used. Shots shall be fired promptly
after the round of holes are charged. Warnings shall be given
before shots are fired by shouting “Fire” three times slowly
after those notified have withdrawn. The blasting circuit shall
be wired in series or parallel series. All shooting circuits shall
be tested with a galvanometer by a qualified person before
shooting. A careful examination for misfires shall be made
after each shot. Persons shall not return to the face until
smoke and dust have cleared away. The shooting cable shall
be adequately insulated and have a substantial covering; be
connected by the person firing the shot; and be kept away from
power circuits. Misfires shall be removed by firing separate
holes or by washing; shall not be drilled out; and shall be
removed under supervision of a foreman or qualified person.
Separate magazines for the storage of explosives and
detonators shall be located not less than three hundred feet
from openings or other structures. Magazines for the storage
of explosives and detonators shall be separated at least fifty
feet. Magazines shall be located behind barricades. The outside
of magazines shall be constructed of incombustible material.
Rubbish and combustible material shall not be permitted to
accumulate around or in magazine. Warning signs, to be seen
in all directions, shall be posted near magazines.

(g) Electrical.—Power cables installed in slopes shall be
placed in conduit away from the belt as far as possible. Surface
transformers shall be elevated at least eight feet from the
ground or enclosed by a fence six feet high, grounded if metal;
shall be properly grounded; shall be installed so that they will
not present a fire hazard; and shall be guarded by sufficient
danger signs.

Electric equipment shall be in good condition, clean and
orderly; shall be equipped with guards around moving parts;
and shall be grounded with effective frame grounds on motors
and control boxes.

All electric wires shall be installed and supported on
insulators. All electric equipment shall be protected by dual
element fuse or circuit breakers.

(h) Ventilation.—Ventilating fans shall be offset from portal
at least fifteen feet; shall be installed so that the ventilating
current is not contaminated by dust, smoke or gases; shall be
effectively frame grounded; and shall be provided with fire
extinguishers.

All shafts and slopes shall be ventilated adequately and
continuously with fresh air. Air tubing shall deliver not less
than nine thousand feet per minute at the working area or as
much more as the inspector may require.
(i) **Gases.**—A foreman shall be in attendance at all times in shafts and slopes who has passed an examination given by the division as to his competency in the use of flame safety lamps.

An examination shall be made before and after shooting by the foreman on shift. The foreman shall have no superior in the performance of his duties. A lighted flame safety lamp or other approved detector shall be carried at all times by the foreman when in the working area and weekly gas analysis made. In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified mine foreman or mine examiner designated by the operator of such shaft or slope to do so, shall make an examination of such area. Evidence of official examination shall be left at the face by marking date and initials.

Gases should be removed under the supervision of the foreman in charge. Smoking shall not be permitted inside of shafts or slopes.

(j) **Drilling.**—Dust allaying or dust collecting devices shall be used while drilling.

(k) **Lights to be used in shafts.**—Only approved electric cap lights shall be used in shafts. Other lights shall be of explosive-proof type. Lights shall be suspended in shafts by cable or chain other than the power conductor. In slopes lights must be substantially installed. Power cables shall be of an approved type. Power cables shall not be taut from shaft collar to light. Power cables shall be in good condition and free of improper splices. Lights shall be suspended not less than twenty feet above where miners are working. Lights shall be removed from shaft and power cut off when shooting. In slopes lights must be removed a safe distance when shots are fired. Lights shall not be replaced in shafts or slopes until examination has been made for gas by the mine examiner and found clear. Front of light shall be protected by a substantial metal type guard. Lights shall be protected from falling objects from above by a metal hood. The lighting circuit shall be properly fused. Electric lights shall not be used in gaseous atmospheres. A lighted flame safety lamp or approved detector shall be kept
§22A-2-71. Right of miner to refuse to operate unsafe equipment; procedures; discrimination.

No miner shall be required to operate unsafe equipment. On or before the first day of January, one thousand nine hundred eighty-one, the board of coal mine health and safety shall by rule or regulation establish a procedure for resolving disputes arising out of the refusal by a miner to operate such alleged unsafe equipment. No action shall be taken against a miner by an operator unless such miner is found to have acted in bad faith and without good cause by the director or his authorized representative.

§22A-2-72. Longwall and short wall mining.

(a) The legislature finds that new methods of extracting coal known as longwall or short wall mining is being used in this state. The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in such mining methods and shall promulgate by the first day of January, one thousand nine hundred eighty-one, and continuously update the same, rules and regulations governing longwall and short wall mining, which rules and regulations shall have as their paramount objective, the health and safety of the persons involved in such operations, and which said regulations shall include, but not be limited to, the certification of personnel involved in such operation.

(b) The commissioner may modify the application of any provision of this section to a mine if the commissioner determines that an alternative method of achieving the result of such provision exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such provision, or that the application of such provision to such mine will result in a diminution of the health of, or safety to, the miners in such mine. The commissioner shall give notice to the operator and the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners.
in such mine or other interested party to present information
relating to the modification of such provision. The commis-
sioner shall issue a decision incorporating his findings of fact
therein, and send a copy thereof to the operator and the
representative of the miners, as appropriate. Any such hearing
shall be of record.

§ 22A-2-73. Construction of shafts, slopes, surface facilities and the
safety hazards attendant therewith; duties of board
of coal mine health and safety to promulgate rules
and regulations; time limits therefor.

The board of coal mine health and safety shall investigate
or cause to be investigated the technology, procedures and
techniques used in the construction of shafts, slopes, surface
facilities, and the safety hazards, attendant therewith, and shall
promulgate rules and regulations governing the construction
of shafts and slopes; and shall promulgate by the first day of
January, one thousand nine hundred eighty-one, rules and
regulations governing the construction of surface facilities.

The board of coal mine health and safety shall continuously
update such rules and regulations governing the construction
of shafts, slopes and surface facilities, which rules and
regulations shall have as their paramount concern, the health
and safety of the persons involved in such operations, and such
rules and regulations shall include, but not be limited to, the
certification of all supervisors, the certification and training of
hoist operators and shaft workers, the certification of blasters,
and approval of plans. The provisions of such rules and
regulations may be enforced against operators and construc-
tion companies in accord with the provisions of article one-
a of this chapter. For purposes of this chapter, a construction
company shall be deemed an operator.

§ 22A-2-74. Control of respirable dust.

Each operator shall maintain the concentration of respirable
dust in the mine atmosphere during each shift to which miners
in active workings of such mine are exposed below such level
as the board may establish. The board may promulgate rules
and regulations governing respirable dust, including, but not
limited to, dust standards, sampling procedures, sampling
devices, equipment and sample analysis by using the data
Any operator found to be in violation of such standards shall bring itself into compliance with such standards and rules and regulations of the board or the commissioner may thereafter order such operator to discontinue such operation.

§22A-2-75. Coal Operators—Procedure before operating near oil and gas wells.

(a) Before a coal operator conducts underground mining operations within five hundred feet of any well, including the driving of an entry or passageway, or the removal of coal or other material, the coal operator shall file with the division of mines and minerals and forward to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within five hundred feet of the well, together with a notice, on a form furnished by the director, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section.

Once these mining maps and plans are filed with the division the coal operator may proceed with its underground mining operations in the manner and as projected on such plans or maps, but shall not remove, without the consent of the director, any coal or other material or cut any passageway nearer than two hundred feet of any completed well or well that is being drilled. The coal operator shall, at least every six months while mining within the five hundred foot area, update its mining maps and plans and file the same with the director and the well operator.

(b) Application may be made at any time to the director by a coal operator for leave to conduct underground mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified, showing the location of the well, the workings adjacent to the well and the mining operations contemplated within two hundred feet of the well or through such well, and praying the approval of the same by the director and naming the well operator as a
The petition shall notify the well operator that it may answer the petition within five days after receipt, and that in default of an answer the director may approve the proposed operations as requested if it be shown by the petitioner or otherwise to the satisfaction of the director that such operations are in accordance with the law and with the provisions of this article. If the well operator files an answer which requests a hearing, one shall be held within ten days of such answer and the director shall fix a time and date and give both the coal operator and well operator five days' written notice of the same by certified mail, return receipt requested. At the hearing, the well operator and coal operator, as well as the director, shall be permitted to offer any competent and relevant evidence. Upon conclusion of the hearing, the director shall grant the same, or make such other decision with respect to such proposed underground operation as in its judgment is just and reasonable under all circumstances and in accordance with law and the provisions of this article: Provided, That a grant by the director of a request to mine through a well shall require an acceptable test to be conducted by the coal operator establishing that such mining through can be done safely.

If a hearing is not requested by the well operator or if the well operator gives, in writing, its consent to the coal operator to mine within closer than two hundred feet of the specified well, the director shall grant the request of the coal operator within five days after the petition's original five day answer period if the director determines that such operations are just, reasonable and in accordance with law and the provisions of this article.

The director shall docket and keep a record of all such proceedings. From any such final decision or order of the director, either the well operator or coal operator, or both, may, within ten days, appeal to the circuit court of the county in which the well subject to said petition is located. The procedure in the circuit court shall be substantially as provided in section four, article five, chapter twenty-nine-a of this code,
with the director being named as a respondent. From any final
order or decree of circuit court, an appeal may be taken to
the supreme court of appeals as heretofore provided.

A copy of the document or documents evidencing the action
of the director with respect to such petition shall promptly be
filed with the director of the division of oil and gas.

(c) Before a coal operator conducts surface or strip mining
operations as defined in this chapter, within two hundred feet
of any well, including the removal of coal and other material,
the operator shall file with the director and furnish to the well
operator by certified mail, return receipt requested, its mining
maps and plans (which it is required to prepare, file and
update to and with the regulatory authority) for the area
within two hundred feet of the well, together with a notice,
on a form furnished by the director, informing them that the
mining maps and plans are being filed or mailed pursuant to
the requirements of this section, and representing that the
planned operations will not unreasonably interfere with access
to or operation of the well and will not damage the well. In
addition, the coal operator shall furnish the well operator with
evidence that it has in force public liability insurance, with at
least the minimum coverage required by article three, of this
chapter and the rules and regulations promulgated thereto and
thereunder.

Once these mining maps and plans are filed with the
director, the coal operator may proceed with its surface or
strip mining operations in the manner and as projected on such
plans or maps, so long as such surface mining operations do
not unreasonably interfere with access to, or operation of, the
well or do not damage the well.

(d) The filing of petitions and notices with the director as
herein provided may be complied with by mailing such petition
or notice to the director by certified mail, return receipt
requested.

GENERAL PROVISIONS

§22A-2-76. Reopening old or abandoned mines.

1 No person, without first giving to the commissioner ten
days' written notice thereof, shall reopen for any purposes any
old or abandoned mine wherein water or mine seepage has
collected or become impounded or exists in such manner or
quantity that upon the opening of such mine, such water or
seepage may drain into any stream or watercourse. Such notice
shall state clearly the name or names of the owner or owners
of the mine proposed to be opened, its exact location, and the
time of the proposed opening thereof.

Upon receipt of such notice, the commissioner shall have
his representative present at the mine at the time designated
in the notice for such opening, who shall have full supervision
of the work of opening such mine with full authority to direct
the work in such manner as to him seems proper and necessary
to prevent the flow of mine water or seepage from such mine
in such manner or quantity as will kill or be harmful to the
fish in any stream or watercourse into which such mine water
seepage may flow directly or indirectly.

§22A-2-77. Monthly report by operator of mine.

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

§22A-2-78. Examinations to determine compliance with permits.

Whenever permits are issued by the department of energy,
frequent examinations shall be made by the mine inspector
during the tenure of the permit to determine that the
requirements and limitations of the permit are complied with.


The various provisions of this article shall be construed as
separable and severable, and should any of the provisions,
sentences, clauses, or parts thereof be construed or held
unconstitutional or for any reason be invalid, the remaining
provisions of this article shall not be thereby affected.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLA-
MATION ACT.
§22A-3-1. Short Title.

This article shall be known and cited as the “West Virginia Surface Coal Mining and Reclamation Act.”

§22A-3-2. Legislative findings and purpose; jurisdiction vested in department of energy; authority of commissioner and director of division of mines and minerals; apportionment of responsibility; interdepartmental cooperation.

(a) The legislature finds that it is essential to the economic and social well-being of the citizens of the state of West Virginia to strike a careful balance between the protection of the environment and the economical mining of coal needed to meet energy requirements.

Further, the legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the state of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and by reason of the above it may be necessary for the commissioner, as provided in article four, chapter twenty-two, of this code to promulgate regulations which vary from federal regulations as is provided for in sections 101 (f) and 201 (c) (9) of the Surface Mining Control and Reclamation Act of 1977 “Public Law 95-87.”

Further, the legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and river and stream beds; by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the property of citizens; by creating hazards dangerous to life and property; and by degrading the quality of life in local communities, all where proper mining and reclamation is not practiced.

(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide program
to protect the public and the environment from the adverse affects of surface-mining operations;

(2) Assure that the rights of surface and mineral owners and other persons with legal interest in the land or appurtenances to land are adequately protected from such operations;

(3) Assure that surface-mining operations are not conducted where reclamation as required by this article is not feasible;

(4) Assure that surface-mining operations are conducted in a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface-mining operations;

(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and constitutional powers for the protection of the public interest through effective control of surface-mining operations; and

(8) Assure that the coal production essential to the nation's energy requirements and to the state's economic social well-being is provided.

c) In recognition of these findings and purposes, the Legislature hereby vests authority in the commissioner of the department of energy to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;

(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce regulations pursuant to this article;

(4) Enter into a cooperative agreement with the secretary of the United States department of the interior to provide for state regulations of surface-mining operations on federal lands
within West Virginia consistent with section 523 of Public Law 95-87; and

(5) Administer and enforce regulations promulgated pursuant to this chapter to accomplish the requirements of programs under Public Law 95-87.

d) The commissioner of the department of energy and the director of the division of mines and minerals shall cooperate with respect to departmental programs and records to effect an orderly and harmonious administration of the provisions of this article. The commissioner of the department of energy may avail himself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. Also, he may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

§22A-3-3. 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 commissioner 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) "Commissioner" means the commissioner of the department of energy or commissioner of energy.

(j) "Department" means the department of energy.

(k) "Director" means the director of the division of mines and minerals.

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

(m) "Division" means the division of mines and minerals of the department of energy.

(n) "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.

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

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

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

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

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

(u) "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.

(v) "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.

(w) "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, boxcut, openpit and area mining; the uses of explosives and blasting; reclamation in situ distillation or retorting, leaching or other chemical or physical processing; and the cleaning concentrating, or other processing or preparation, and 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,
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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 seven 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.

(x) “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.

(y) “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 commissioner. Any environmental harm is significant if that harm is appreciable and not immediately repairable.

§22A-3-4. Reclamation; duties and functions of commissioner.

(a) The commissioner shall administer the provisions of this article relating to surface-mining operations. The commissioner shall have within his jurisdiction and supervision all lands and areas of state, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included
within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, streams, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the commissioner shall be consistent with other provisions of this chapter.

(b) The commissioner shall have the authority to:

(1) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article: Provided, That the commissioner shall give notice by publication of the public hearing required in article three, chapter twenty-nine-a of this code: Provided, however, That any forms, handbooks or similar materials having the effect of a rule or regulation as defined in article three, chapter twenty-nine-a of this code were issued, developed or distributed by the commissioner pursuant to or as a result of a rule or regulation, shall be subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to insure complete compliance with the provisions of this code;

(3) Conduct hearings or appoint persons to conduct hearings under provisions of this article or rules and regulations adopted by the commissioner; and for the purpose of any investigation or hearing hereunder, the commissioner, or his designated representative, may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements or other documents or records relevant or material to the inquiry;

(4) Enforce, the provisions of this article as provided herein; and

(5) Appoint such advisory committees as may be of assistance to the commissioner in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public.
(c)(1) After the commissioner has adopted the regulations required by this article, any person may petition the commissioner to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the commissioner and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The commissioner may hold a public hearing or may conduct such investigation or proceeding as he considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the commissioner shall either grant or deny the petition. If the commissioner grants the petition, he shall promptly commence an appropriate proceeding in accordance with the provisions of chapter twenty-nine-a of this code. If the commissioner denies the petition, he shall notify the petitioner in writing setting forth the reasons for the denial.

§22A-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

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

Every surface-mining reclamation supervisor shall be paid not less than thirty thousand dollars per year. Every surface mining reclamation inspector shall be paid not less than twenty-five thousand dollars per year.

§22A-3-6. Duties of surface-mining reclamation inspectors and inspectors in training.

Except as otherwise provided in this article, surface-mining reclamation inspectors and inspectors in training shall make all necessary surveys and inspections of surface-mining
operations required by the provisions of this article, shall
administer and enforce all surface-mining laws, rules and
regulations, and shall perform such other duties and services
as may be prescribed by the commissioner. Such inspectors
shall give particular attention to all conditions of each permit
to ensure complete compliance therewith. Such inspectors shall
note and describe all violations of this article and immediately
report such violations to the commissioner in writing,
 furnishing at the same time a copy of such report to the
operator concerned.

§22A-3-7. Notice of intention to prospect, requirements therefor;
bonding; commissioner's authority to deny or limit;
postponement of reclamation; prohibited acts;
exceptions.

(a) Any person intending to prospect for coal in an area not
covered by a surface-mining permit, in order to determine the
location, quantity or quality of a natural coal deposit, making
feasibility studies or for any other purpose shall file with the
commissioner, at least fifteen days prior to commencement of
any disturbance associated with prospecting, a notice of
intention to prospect, which notice shall include a description
of the prospecting area, the period of supposed prospecting
and such other information as required by rules or regulations
promulgated pursuant to this section: Provided, That prior to
the commencement of such prospecting, the commissioner may
issue an order denying or limiting permission to prospect
where he finds that prospecting operations will damage or
destroy a unique natural area, or will cause serious harm to
water quality, or that the operator has failed to satisfactorily
reclaim other prospecting sites, or that there has been an abuse
of prospecting by previous prospecting operations in the area.

(b) Notice of intention to prospect shall be made in writing
on forms prescribed by the commissioner and shall be signed
and verified by the applicant. The notice shall be accompanied
by (1) a United States geological survey topographic map
showing by proper marking the crop line and the name, where
known, of the seam or seams to be prospected, and (2) a bond,
or cash, or collateral securities or certificates of the same type
and form and in the same manner as provided in section eleven
of this article, in the amount of five hundred dollars per acre
or fraction thereof for the total estimated disturbed area. If such bond is used, it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to backfilling and revegetation of the disturbed area.

(c) Any person prospecting under the provisions of this section shall ensure that such prospecting is conducted in accordance with the performance standards in section twelve of this article for all lands disturbed in explorations, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(d) Information submitted to the commissioner pursuant to this section as confidential, concerning trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to prospect the described area, shall not be available for public examination.

(e) Any person who conducts any prospecting activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of sections sixteen and seventeen of this article.

(f) No operator shall remove more than two hundred and fifty tons of coal without the specific written approval of the commissioner.

(g) The bond accompanying said notice of intention to prospect shall be released by the commissioner when the operator demonstrates that a permanent species of vegetation cover is established.

(h) In the event an operator desires to mine the area currently being prospected, and has requested and received an appropriate surface mine application (S.M.A.) number, the commissioner may permit the postponement of the reclamation of the area prospected. Any part of a prospecting operation, where reclamation has not been postponed as provided above, shall be reclaimed within a period of three months from disturbance.

(i) For the purpose of this section, the word “prospect” or
§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permit; permit fees.

No person may engage in surface-mining operations unless such person has first obtained a permit from the commissioner in accordance with the following:

(a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after that approval.

(b) No later than eight months after the secretary's approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the commissioner: Provided, That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502 (c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary's approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the commissioner.

(c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the commissioner may extend a permit for such longer term: Provided, however, That subject to the prior approval of the commissioner, a successor in interest to a permittee who applies for a new permit within
34 thirty days of succeeding to such interest, and who is able to
35 obtain the bond coverage of the original permittee, may
36 continue surface-mining and reclamation operations according
37 to the approved mining and reclamation plan of the original
38 permittee until such successor's application is granted or
39 denied.
40
41 (d) Proof of insurance shall be required on an annual basis.
42
43 (e) A permit shall terminate if the permittee has not
44 commenced the surface-mining operations covered by such
45 permit within three years of the date the permit was issued:
46 Provided, That the commissioner may grant reasonable
47 extensions of time upon a showing that such extensions are
48 necessary by reason of litigation precluding such commence-
49 ment, or threatening, substantial economic loss to the
50 permittee, or by reason of conditions beyond the control and
51 without the fault or negligence of the permittee: Provided,
52 however, That with respect to coal to be mined for use in a
53 synthetic fuel facility or specific major electric generating
54 facility, the permittee shall be deemed to have commenced
55 surface-mining operations at such time as the construction of
56 the synthetic fuel or generating facility is initiated.
57
58 (f) Each application for a new surface-mining permit filed
59 pursuant to this article shall be accompanied by a fee of five
60 hundred dollars. All permit fees provided for in this section
61 or elsewhere in this article shall be collected by the commis-
62 sioner and deposited with the treasurer of the state of West
63 Virginia to the credit of the operating permit fees fund and
64 shall be used, upon requisition of the commissioner, for the
65 administration of this article.
66
67 (g) Prior to the issuance of any permit, the commissioner
68 of energy shall ascertain from the commissioner of labor
69 compliance with section fourteen, article five, chapter twenty-
70 one of this code. Upon issuance of the permit, the commis-
71 sioner of energy shall forward a copy to the commissioner of
72 labor, who shall assure continued compliance under such
73 permit.

§22A-3-9. Permit application requirements and contents.

1 (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 energy
where the application is available for public inspection and
stating that written protests will be accepted by the commis-
sioner 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
commissioner 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 consequen-
tes 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 commissioner 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 commissioner, 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 commissioner, showing pertinent elevation and location of
test borings or core samplings, where required by the
commissioner, 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 commissioner 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 farm lands, 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 farm lands;

(16) A reclamation plan as presented in section ten 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 commissioner, 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 commissioner 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 commissioner 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 energy as specified in the applicant's advertisement.

(d) Each applicant for a permit shall be required to submit to the commissioner as 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 commissioner 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 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 commissioner 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 commissioner shall state in writing why
the application is incomplete.

§22A-3-9a. Application for permit to mine two acres or less;
requirements; fee; mining requirements; approval;
and prevention of attempts to improperly circumvent
provisions of this article.

(a) Application for a permit to engage in surface mining of
two acres or less shall be made in writing on forms prescribed
by the director and shall be signed and verified by the
applicant. The application shall be accompanied by:

(1) Accurate maps prepared by or under the direction of
and certified by a person approved by the director, to an
appropriate scale clearly showing: The land to be affected as
of the date of application; the area of land within the permit
area upon which the applicant has the legal right to enter and
conduct surface-mining operations; and all types of informa-
tion 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;
the location of all structures within one thousand feet of the
proposed area; and cross-section maps or plans of the
proposed affected area, including the actual area to be mined;

(2) The name of owner of the surface of the land to be
mined;
(3) The name of owner of the coal to be mined;

(4) A reasonable estimate of the number of acres of coal that would be mined: Provided, That in no event may such number of acres to be mined exceed two acres;

(5) Representative cross-sections showing existing and proposed site conditions;

(6) A reclamation plan as presented in section eleven of this article;

(7) A certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section ten of this article;

(8) A bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of five thousand dollars per acre, for a maximum disturbance of two acres, exclusive of roadways and temporary spoil placement. The bond shall be payable to the state of West Virginia and conditioned that the applicant shall complete regrading to approximate original contour and revegetation of all disturbed areas; and

(9) A copy of the applicant's advertisement to be published for at least one week in a newspaper of general circulation in the locality of the proposed permit area.

(b) A filing fee for the permit in the amount of five hundred dollars. The permit is valid for a period of five years.

(c) A permittee under this section shall conduct surface-mining operations so as to minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and ground water systems both during and after surface mining operations and during reclamation by: Avoiding acid or other toxic mine drainage; and conducting surface-mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable
state law.

(d) Due to the two acre maximum of distributed area, the director shall promulgate rules to authorize the director to tentatively approve permits. Such rules shall also provide that final approval shall be granted or denied within thirty days of submission of the application.

(e) Two or more operations will have to meet all three of the following components before being considered related:

1. They must occur within twelve months of each other;
2. They are physically related in that drainage from both operations flow into the same watershed at or before a point within five aerial miles of either operation; and
3. They are under common ownership or control, directly or indirectly.

§22A-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface-mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

1. The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;
2. The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if such land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section nine of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farm lands, and the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management;
3. The use which is proposed to be made of the land
following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, other state agencies and local governments, which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) A detailed description of how the proposed post mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section twelve of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section twelve or thirteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface-mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;
(11) A detailed description of the measures to be taken
during the surface-mining and reclamation process to assure
the protection of: (A) The quality of surface and ground water
systems, both on- and off-site, from adverse effects of the
surface-mining operation; (B) the rights of present users to
such water; and (C) the quantity of surface and ground water
systems, both on- and off-site, from adverse effects of the
surface-mining operation or to provide alternative sources of
water where such protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has
made at the area to be covered by the permit, or other
equivalent information and data in a form satisfactory to the
commissioner, including the location of subsurface water, and
an analysis of the chemical properties, including acid forming
properties of the mineral and overburden. Provided, That
information which pertains only to the analysis of the chemical
and physical properties of the coal, except information
regarding such mineral or elemental contents which are
potentially toxic in the environment, shall be kept confidential
and not made a matter of public record;

(13) The consideration which has been given to maximize
the utilization and conservation of the solid fuel resource being
recovered so that reaffecting the land in the future can be
minimized; and

(14) Such other requirements as the commissioner may
prescribe by regulation.

(b) The reclamation plan shall be available to the public for
review except for those portions thereof specifically exempted
in subsection (a) of this section.

§22A-3-11. 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 commissioner, payable to 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
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 commissioner 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 commissioner 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 commissioner 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 commissioner, 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 commissioner 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 commissioner may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the commissioner 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-three of this article.

(g) All special reclamation taxes deposited by the commissioner 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 commissioner, 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 commissioner
may also expend such amounts as are reasonably necessary to implement and administer the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code.

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 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 occupation 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 commissioner 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.

§22A-3-12. General environmental protection performance standards for surface mining; variances.

(a) Any permit issued by the commissioner 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 commissioner 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 commissioner shall promulgate rules and regulations governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface-mining operations permitted after the effective date of this article for (A) underground mining operations existing prior to the third day of August, one thousand nine hundred seventy-seven, or (B) for areas upon which surface mining prior to the first day of July, one thousand nine hundred seventy-seven, created highwalls;

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

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

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

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

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

(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 commissioner 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 commissioner may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

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

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

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

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the commissioner 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 commissioner 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 commissioner, 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 division of mines and minerals; 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 commissioner and a copy to the resident or owner making the request. The area of the survey shall be determined by the commissioner in accordance with regulations promulgated by him:

(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 commissioner 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 commissioner 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 commissioner 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), of this section;
(B) If the commissioner 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 commissioner 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 commissioner pursuant to subsection (b), section eleven of this article shall be for the duration of the underground mining operations and until the requirements of subsection (g), section eleven and section twenty-three 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
commissioner, 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 commissioner issues a written finding approving a long-term agricultural postmining land use as part of the mining and reclamation plan, the commissioner may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the commissioner 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, That spoil material may be placed outside the permit area, if approved by the commissioner, 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 commissioner, 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 commissioner 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 commissioner may prescribe procedures pursu-
ant to which he 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 commissioner 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 commissioner 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 commissioner provides the county commission of the county in which the land is located and any state or federal agency which the commissioner, 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
commissioner 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 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 commissioner
that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The commissioner 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 commissioner 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 commissioner 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 a pile or the landowners involved, enter upon the premises where any such coal processing waste pile exists and 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 commissioner under this subsection may be paid for initially by funds appropriated to the department of energy 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 commissioner. 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.

§22A-3-13. Pilot program for the growing of grapes on reclaimed areas.

In furtherance of the purposes set forth in subdivision twenty, section twelve of this article, the commissioner is hereby authorized and directed to establish and maintain a pilot program to determine the best procedures for propagating the growth of grapevines and bushes on reclaimed surface-mined areas. Such program shall investigate and implement selections of the best variety of grapes for reclamation purposes based upon environmental considerations and soil quality, the most desirable methods of planting and tending grapes and any other related matters deemed desirable by the commissioner. The cost of such program shall be paid from funds regularly appropriated to the division or department.

§22A-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

(a) The commissioner 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 commissioner 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.

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

(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 twelve 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 plan 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
(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 stream flow 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 twelve of this article for such effects which result from surface-mining operations: Provided, That the commissioner shall
98 make such modifications in the requirements imposed by this
99 subdivision as are necessary to accommodate the distinct
tolerance difference between surface and underground mining in West
100 Virginia;
101
102 (11) To the extent possible using the best technology
103 currently available, minimize disturbances and adverse impacts
104 of the operation on fish, aquatic life, wildlife and related
105 environmental values, and achieve enhancement of such
106 resources where practicable; and
107
108 (12) Unless otherwise permitted by the commissioner and in
109 consideration of the relevant safety and environmental factors,
110 locate openings for all new drift mines working in acid
111 producing or iron producing coal seams in a manner as to
112 prevent a gravity discharge of water from the mine.
113
114 (c) In order to protect the stability of the land, the
115 commissioner shall suspend underground mining under
116 urbanized areas, cities, towns and communities and adjacent
117 to industrial or commercial buildings, major impoundments or
118 permanent streams if he finds imminent danger to inhabitants
119 of the urbanized areas, cities, towns or communities.
120
121 (d) The provisions of this article relating to permits, bonds,
122 insurance, inspections, reclamation and enforcement, public
123 review and administrative and judicial review shall also be
124 applicable to surface operations and surface impacts incident
125 to an underground mine with such modifications by regulation
126 to the permit application requirements, permit approval or
127 denial procedures and bond requirements as are necessary to
128 accommodate the distinct difference between surface mines
129 and underground mines in West Virginia.
130
§22A-3-15. Inspections; monitoring; right of entry; inspection of
131 records; identification signs, progress maps.
132
133 (a) The commissioner shall cause to be made such inspec-
134 tions of surface-mining operations as are necessary to
135 effectively enforce the requirements of this article and for such
136 purposes the commissioner or his authorized representative
137 shall without advance notice and upon presentation of
138 appropriate credentials: (A) Have the right of entry to, upon
139 or through surface-mining operations or any premises in which
140 any records required to be maintained under subdivision (1),
subsection (b) of this section are located; and (B) at reasonable
times and without delay, have access to and copy any records
and inspect any monitoring equipment or method of operation
required under this article.

(b) For the purpose of enforcement under this article, in the
administration and enforcement of any permit under this
article, or for determining whether any person is in violation
of any requirement of this article:

(1) The commissioner shall at a minimum require any
operator to: (A) Establish and maintain appropriate records;
(B) make monthly reports to the department; (C) install, use
and maintain any necessary monitoring equipment or methods
consistent with subdivision (11), subsection (a), section ten of
this article; (D) evaluate results in accordance with such
methods, at such locations, intervals and in such manner as
the commissioner shall prescribe; and (E) provide such other
information relative to surface-mining operations as the
commissioner deems reasonable and necessary;

(2) For those surface-mining operations which remove or
disturb strata that serve as aquifers which significantly ensure
the hydrologic balance of water use either on or off the mining
site, the commissioner shall require that: (A) Monitoring sites
be established to record the quantity and quality of surface
drainage above and below the mine site as well as in the
potential zone of influence; (B) monitoring sites be established
to record level, amount and samples of ground water and
aquifers potentially affected by the surface mining and also
below the lower most mineral seam to be mined; (C) records
or well logs and boreholed date be maintained; and (D)
monitoring sites be established to record precipitation. The
monitoring data collection and analysis required by this
section shall be conducted according to standards and
procedures set forth by the commissioner in order to assure
their reliability and validity.

(c) All surface-mining operations shall be inspected at least
once every thirty days. Such inspections shall be made on an
irregular basis without prior notice to the operator or his
agents or employees, except for necessary on-site meetings with
the operator. The inspections shall include the filing of
inspection reports adequate to enforce the requirements, terms
and purposes of this article.

(d) Each permittee shall maintain at the entrances to the
surface-mining operations a clearly visible monument which
sets forth the name, business address and telephone number
of the permittee and the permit number of the surface-mining
operations.

(e) Copies of any records, reports, inspection materials or
information obtained under this article by the commissioner
shall be made immediately available to the public at central
and sufficient locations in the county, multi-county or state
area of mining so that they are conveniently available to
residents in the areas of mining unless specifically exempted
by this article.

(f) Within thirty days after service of a copy of an order
of the commissioner upon an operator by registered or
certified mail, the operator shall furnish to the commissioner
five copies of a progress map prepared by or under the
supervision of a person approved by the commissioner
showing the disturbed area to the date of such map. Such
progress map shall contain information identical to that
required for both the proposed and final maps required by this
article, and shall show in detail completed reclamation work
as required by the commissioner. Such progress map shall
include a geologic survey sketch showing the location of the
operation, shall be properly referenced to a permanent
landmark, and shall be within such reasonable degree of
accuracy as may be prescribed by the commissioner. If no land
has been disturbed by operations during the preceding year,
the operator shall notify the commissioner of that fact.

(g) Whenever on the basis of available information,
including reliable information from any person, the commis-
sioner has cause to believe that any person is in violation of
this article, any permit condition or any regulation promul-
gated under this article, the commissioner shall immediately
order state inspection of the surface-mining operation at which
the alleged violation is occurring unless the information is
available as a result of a prior state inspection. The
commissioner shall notify any person who supplied such
reliable information when the state inspection will be carried
out. Such person may accompany the inspector during the
Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip. Any such person accompanying an inspector on an inspection shall be responsible for supplying any safety equipment required for his use.

§22A-3-16. 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 practice exists, 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 enviromental 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 commissioner, setting forth reasons why the operation should not be halted. The commissioner forthwith shall determine when the operation or portion thereof may be resumed.

(b) The cessation order shall remain in effect until the commissioner determines that the condition, practice or violation has been abated, or until modified, vacated or released by the commissioner. Where the commissioner finds that the order 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
commissioner shall, in addition to the cessation order, impose
affirmative obligations on the operator requiring him to take
whatever steps the commissioner 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.

§22A-3-17. Notice of violation; procedure and actions; enforce­
ment; 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 commissioner may cause a
notice of violation to be served upon the operator or his duly
authorized agent. A copy of the notice shall be handed 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 commissioner 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
commissioner determines that the violation has been abated
or until modified, vacated or terminated by the commissioner
or by a court. In any cessation order issued under this
subsection the commissioner 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 commissioner 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 commissioner 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 commissioner 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 commissioner 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 commissioner shall immediately revoke the operator's permit, forfeit the operator's bond or other security posted pursuant to section eleven 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
(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 commissioner for placement in an escrow account. Formal hearings shall be of record and subject to the provisions of article five, chapter twenty-nine-a of this code. 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 commissioner 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 eleven 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 commissioner 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
commissioner 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 commissioner or the
board may file an appeal only in accordance with the
provisions of article four, chapter twenty-two of this code,
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 appeal from. Pending
completion of the investigation and hearing required by this
section, the applicant may file with the commissioner a written
request that the commissioner 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 commissioner 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 commissioner 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
commissioner.

(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 commissioner, 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 commissioner, 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 commissioner under this article; or (B) interferes with, hinders or delays the commissioner in carrying out the provisions of this article; or (C) refuses to admit the commissioner to the mine; or (D) refuses to permit inspection of the mine by the commissioner; or (E) refuses to furnish any reasonable information or report requested by the commissioner in furtherance of the provisions of this article; or (F) refuses to permit access to, and copying of, such records as the commissioner 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 commissioner, 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 commissioner 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.

§22A-3-18. Approval, denial, revision and prohibition of permit.

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

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

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

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

(3) The assessment of the probable cumulative impact of all
anticipated mining in the area on the hydrologic balance, as specified in section nine of this article, has been made by the commissioner and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

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

(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted: (A) The written consent of the surface owner to the extraction of coal by surface mining; or (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining; or (C) if the conveyance does not expressly grant the right to extract coal by surface 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 commissioner 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 commissioner 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 commissioner, 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 commissioner 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 commissioner 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 commissioner to be adequate to reclaim the disturbed area, and the commissioner 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 commissioner 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 twelve 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 commissioner 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 commissioner may delete such part of the land described in the application upon which such overburden exists.
§22A-3-19. 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 commissioner 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 protection standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the performance bond in effect for said operation will continue in effect for renewal requested as required pursuant to section eleven of this article; or (E) any additional revised or updated information as required pursuant to rules and regulations promulgated by the commissioner has not been provided.

(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 commissioner and shall contain such information as the commissioner requires pursuant to rule or regulation.

(b) (1) During the term of the permit, the permittee may submit to the commissioner 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 commissioner 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 commissioner 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 commissioner.

§22A-3-20. Public notice; written objections; public hearings; informal conferences.

(a) At the time of submission of an application for a surface-mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the department a copy of the required advertisement. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The commissioner shall notify various appropriate federal and state agencies as well as local governmental bodies, planning
agencies and sewage and water treatment authorities or water
companies in the locality in which the proposed surface-mining
operation will take place, notifying them of the operator's
intention to mine on a particularly described tract of land and
indicating the application number and where a copy of the
proposed mining and reclamation plan may be inspected.
These local bodies, agencies, authorities or companies may
submit written comments within a reasonable period estab-
lished by the commissioner on the mining application with
respect to the effect of the proposed operation on the
environment which is within their area of responsibility. Such
comments shall be immediately transmitted by the commis-
sioner to the applicant and to the appropriate office of the
department. The commissioner shall provide the name and
address of each applicant to the commissioner of labor who
shall within fifteen days from receipt notify the commissioner
as to the applicant's compliance, if necessary, with section
fourteen, article five, chapter twenty-one of this code.
(b) Any person having an interest which is or may be
adversely affected, or the officer or head of any federal, state
or local governmental agency, shall have the right to file
written objections to the proposed initial or revised permit
application for a surface-mining operation with the commis-
sioner within thirty days after the last publication of the
advertisement required in subsection (a) of this section. Such
objections shall be immediately transmitted to the applicant
by the commissioner and shall be made available to the public.
If written objections are filed and an informal conference
requested within thirty days of the last publication of the
above notice, the commissioner shall then hold a conference
in the locality of the proposed mining within three weeks after
the close of the public comment period. Those requesting the
conference shall be notified and the date, time and location
of the informal conference shall also be advertised by the
commissioner in a newspaper of general circulation in the
locality at least two weeks prior to the scheduled conference
date. The commissioner may arrange with the applicant, upon
request by any party to the conference proceeding, access to
the proposed mining area for the purpose of gathering
information relevant to the proceeding. An electronic or
stenographic record shall be made of the conference proceed-
ing unless waived by all parties. Such record shall be
maintained and shall be accessible to the parties at their respective expense until final release of the applicant’s performance bond or other security posted in lieu thereof. The commissioner’s authorized agent will preside over the conference. In the event all parties requesting the informal conference stipulate agreement prior to the conference and withdraw their request, a conference need not be held.

§22A-3-21. Decision of commissioner on permit application; hearing thereon.

(a) If an informal conference has been held the commissioner shall issue and furnish the applicant for a permit and persons who were parties to the informal conference with the written finding granting or denying the permit in whole or in part and stating the reasons therefor within thirty days of the informal conference, notwithstanding the requirements of subsection (a), section eighteen of this article.

(b) If the application is approved, the permit shall be issued.

If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified of the commissioner’s decision, the applicant or any person with an interest which is or may be adversely affected may request a hearing before the reclamation board of review as provided in article four, chapter twenty-two, of this code, to review the commissioner’s decision.

§22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain area; exceptions; taxation of minerals underlying land designated unsuitable.

(a) The commissioner 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 seven of this article on any area so designated.

(1) Upon petition pursuant to subsection (b) of this section, the commissioner 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 esthetic 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 commissioner 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 opera-
tions; (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 commissioner, or any person having an interest
which is or may be adversely affected, shall have the right to
petition the commissioner 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 commissioner
shall immediately begin an administrative study of the area
specified in the petition. Within ten months after receipt of
the petition, the commissioner 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 commissioner 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 commissioner 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 commissioner 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 commissioner and the federal, state or local agency with
jurisdiction over the park, the historic site or natural
landmarks;

(3) Within one hundred feet of the outside right-of-way line
on any public road, except where mine access roads or haulage
roads join such right-of-way line, and except that the
commissioner 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 commissioner 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, however, That the
surface operations and impacts are incident to an underground
coal mine.

(e) Notwithstanding any other provisions 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.

§22A-3-23. Release of performance bond or deposits; application;
notice; duties of commissioner; public hearings; final
maps on grade release.
(a) The permittee may file a request with the commissioner 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 commissioner 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 commissioner, 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 commissioner 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 commissioner's decision shall be issued within thirty days thereafter.

(c) If the commissioner 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 twelve 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 twelve of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, 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 section twelve or thirteen 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 nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section twelve 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 commissioner.
(d) If the commissioner disapproves the application for release of the bond or portion thereof, the commissioner 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 commissioner, 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 commissioner within thirty days after the last publication of the permittee’s advertisement. If written objections are filed and a hearing requested, the commissioner 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 commissioner 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 commissioner pursuant to this section, the commissioner 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 commissioner 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 commissioner at the cost of the person requesting the transcript.

§22A-3-24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article shall be construed as affecting in any way the rights of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface-mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately caused by such surface-mining operation, unless waived by said owner.

§22A-3-25. Citizen suits; order of court; damages.

(a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action in the circuit court of the county to which the surface-mining operation is located on his own behalf to compel compliance with this article:

(1) Against the state of West Virginia or any other governmental instrumentality or agency thereof, to the extent permitted by the West Virginia constitution and by law, which is alleged to be in violation of the provisions of this article or any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this article; or

(2) Against the commissioner, department, division, reclamation board of review or appropriate department employees, to the extent permitted by the West Virginia Constitution and by law, where there is alleged a failure of the above to perform any act or duty under this article which is not discretionary.
(b) No action may be commenced:

(1) Under subdivision (1), subsection (a) of this section: (A) prior to sixty days after the plaintiff has given notice in writing of the violation to the commissioner or to any alleged violator, or (B) if the commissioner has commenced and is diligently prosecuting a civil action in a circuit court to require compliance with the provisions of this article or any rule or regulation, order or permit issued pursuant to this article; or

(2) Under subdivision (2), subsection (a) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the commissioner, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) Any action respecting a violation of this article or the regulations thereunder may be brought in any appropriate circuit court. In such action under this section, the commissioner, if not a party, may intervene as a matter of right.

(d) The court in issuing any final order in any action brought pursuant to subsection (a) of this section may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(e) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this article and the regulations thereunder or to seek any other relief.

(f) Any person or property who is injured in his person through the violation by any operator of any rule, regulation, order or permit issued pursuant to this article may bring an action for damages, including reasonable attorney and expert witness fees, in any court of competent jurisdiction. Nothing in this subsection shall affect the rights established by or limits imposed under state worker's compensation laws.

(g) This section shall apply to violations of this article and
§22A-3-26. Surface-mining operations not subject to article.

The provisions of this article do not apply to any of the following activities:

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.

(b) The extraction of coal by a landowner engaged in construction, which construction does not require the disturbance of more than one acre of privately owned land: Provided, That prior to the extraction of coal by such landowner, he shall affirmatively demonstrate that such construction will occur within a reasonable time after surface disturbance.

(c) Notwithstanding any other provision of this article, a person or operator shall not be subject to the reclamation requirements of this article when engaged in the removal of borrow and fill material for grading in federal and state highway or other construction projects: Provided, That the provisions of the construction contract require the furnishing of a suitable bond which provides for reclamation, wherever practicable, of the area affected by such recovery activity.

(d) The extraction of coal for commercial purposes where the surface mining operation affects two acres or less: Provided, That the entity conducting or planning to conduct said operation complies with the provisions of section ten-a of this article.

§22A-3-27. Leasing of lands owned by state for surface mining of coal.

No land or interest in land owned by the state may be leased, and no present lease may be renewed by the state, nor any agency of the state, for the purpose of conducting surface-mining operations thereon unless said lease or renewal shall have been first authorized by an act of the legislature: Provided, That the provisions of this section shall not apply to underground mining on such land.
§22A-3-28. Special permits for removal of coal incidental to
development of land; prohibited acts; application;
bond; reclamation for existing abandoned coal
processing waste piles.

(a) Except where exempted by section twenty-six of this
article, it shall hereafter be unlawful for any person to engage
in surface mining as defined in this article as an incident to
the development of land for commercial, residential, industrial
or civic use without having first obtained from the commis-
sioner a permit therefor as provided in section eight of this
article, unless a special permit therefor shall have been first
obtained from the commissioner as provided in this section.

Application for a special permit to engage in surface mining
as an incident to the development of land for commercial,
residential, industrial or civic use shall be made in writing on
forms prescribed by the commissioner and shall be signed and
verified by the applicant. The application shall be accompanied
by:

(1) A site preparation plan, prepared and certified by or
under the supervision of a person approved by the commis-
sioner, showing the tract of land which the applicant proposes
to develop for commercial, residential, industrial or civic use;
the probable boundaries and areas of the coal deposit to be
mined and removed from said tract of land incident to the
proposed commercial, residential, industrial or civic use
thereof; and such other information as prescribed by the
commissioner;

(2) A development plan for the proposed commercial,
residential, industrial or civic use of said land;

(3) The name of owner of the surface of the land to be
developed;

(4) The name of owner of the coal to be mined incident to
the development of the land;

(5) A reasonable estimate of the number of acres of coal
that would be mined as a result of the proposed development
of said land: Provided, That in no event may such number
of acres to be mined, excluding roadways, exceed five acres;
and
(6) Such other information as the commissioner may require to satisfy and assure the commissioner that the surface mining under special permit is incidental or secondary to the proposed commercial, residential industrial or civic use of said land.

(b) There shall be attached to the application for the special permit a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section nine of this article.

The application for the special permit shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the commissioner and in the minimum amount of two thousand dollars per acre, for a maximum disturbance of five acres.

The bond shall be payable to the state of West Virginia and conditioned that the applicant shall complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site preparation plan submitted with the application, the bond conditions shall be satisfied and the bond and any cash, securities or certificates furnished with said bond may be released and returned to the applicant. The filing fee for the special permit shall be five hundred dollars. The special permit shall be valid until work permitted is completed.

(c) The purpose of this section is to vest jurisdiction in the commissioner, where the surface mining is incidental or secondary to the preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, minerals must be removed, including, but not limited to, the building and construction of railroads, shopping malls, factory and industrial sites, residential and building sites, and recreational areas. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the commissioner that such permit is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other
sections of this article shall not be applicable to the operator
holding a special permit: Provided, That the commissioner
shall promulgate regulations establishing applicable perfor-
manfce standards for operations permitted under this section.
(d) The commissioner may, in the exercise of his sound
discretion, when not in conflict with the purposes and findings
of this article and to bring about a more desirable land use
or to protect the public and the environment, issue a special
permit solely for the reprocessing of existing abandoned coal
processing waste piles. The commissioner shall promulgate
specific regulations for such operations: Provided, That a bond
and a reclamation plan shall be required for such operations.
§22A-3-29. Existing permits and performance bond conversion;
exemption from design criteria.
(a) All surface disturbance reclamation bonds submitted
pursuant to the requirements of chapter twenty-two of this
code by the department of mines for operations which
continue to operate eight months after the approval of the
state program shall be released upon notification by the
commissioner that the disturbed areas have been bonded in
accordance with the provisions of this article: Provided, That
for those operations permitted after the first day of July, one
thousand nine hundred seventy-six, and which do not continue
operation eight months after the approval of the state
program, the commissioner upon reclamation of the site in
accordance with the underground opening approval reclama-
tion plan, shall release such bonds: Provided, however, That
forfeiture proceedings shall begin upon failure of the operator
to reclaim within a reasonable time the disturbed area
pursuant to a plan approved after the first day of July, one
thousand nine hundred seventy-six.
(b) With regard to existing structures and facilities, persons
need not comply with design criteria if such structures and
facilities meet the environmental performance standards of this
article.
§22A-3-30. Experimental practices.
In order to encourage advances in surface mining and
reclamation practices or to allow postmining land use for
industrial, commercial, residential, agricultural or public use,
including recreational facilities, the commissioner may authorize departures, in individual cases and on an experimental basis, from the environmental protection performance standards promulgated under this article. Such departures may be authorized if the experimental practices are potentially more or at least as environmentally protective during and after surface-mining operations as those required by promulgated standards; the surface-mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and the experimental practices do not reduce the protection afforded health or safety of the public below that provided by promulgated standards.

§22A-3-31. Certification and training of blasters.

The director of the division of mines and minerals shall be responsible for the training, examination and certification of persons engaging in or directly responsible for blasting or use of explosives in surface-mining operations.

§22A-3-32. Surface miner certification required.

After the first day of July, one thousand nine hundred seventy-six, certification shall be required of all surface miners in accordance with the provisions of articles nine and ten, chapter twenty-two of this code and the regulations promulgated thereunder.

§22A-3-33. Certification of surface-mine foremen.

(a) In every surface mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article nine, chapter twenty-two of this code as a mine foreman. Each applicant for certification as a mine foreman shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least three years' experience in surface mining, which shall include at least eighteen months' experience on or at a working section of a surface mines, or be a graduate of the School of Mines at West Virginia University or of another accredited mining engineering school and have had at least two years' practical experience in a
surface mine, which shall include at least eighteen months’
experience on or at a working section of a surface mine; and
(3) have demonstrated his knowledge of mine safety, first aid,
safety appliances, emergency procedures relative to all
equipment, state and federal mining laws and regulations and
other subjects, by completing such training, education and
examinations as may be required of him under article nine,
chapter twenty-two of this code.

(b) In surface mines in which the operations are so extensive
that the duties devolving upon the mine foreman cannot be
discharged by one person, one or more assistant mine foreman
may be designated. Such persons shall act under the
instruction of the mine foreman who shall be responsible for
their conduct in the discharge of their duties. Each assistant
so designated shall be certified under the provisions of article
nine, chapter twenty-two of this code. Each applicant for
certification as assistant mine foreman shall, at the time he is
issued a certificate of competency, possess all of the
qualifications required of a mine foreman: Provided, That he
shall, at the time he is certified, be required to have at least
two years’ experience in surface mining, which shall include
eighteen months on or at a working section of a surface mine
or be a graduate of the School of Mines at West Virginia
University or of another accredited mining engineering school
and have had twelve months’ practical experience in a surface
mine, all of which shall have been on or at a working section.

(c) The director of the division of mines and minerals shall
promulgate such rules and regulations as may be necessary to
carry out the provisions of this section.

§22A-3-34. Monthly report by operator.

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

§22A-3-35. Applicability and enforcement of laws safeguarding life
and property; regulations; authority of division of
mines and minerals regarding enforcing safety laws.
All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The commissioner shall promulgate reasonable regulations in accordance with the provisions of chapter twenty-nine-a of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and regulations relating to the safety of those employed in and around surface mines is hereby vested in the division of mines and minerals and shall be enforced according to the provisions of chapter twenty-two-a of this code.

§22A-3-36. Conflicting provisions.

In the event of any inconsistency or conflict between any provision of this article and any provision of this chapter, the provisions of this article shall control.

§22A-3-37. Conflict of interest prohibited; criminal penalties therefor; employee protection.

(a) No employee of the division of mines and minerals engaged in the enforcement or administration of this article or employee of the reclamation board of review performing any function or duty under this article 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 commissioner 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.

(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.
(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), section two, article four, chapter twenty-two of this code.

(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.

§22A-3-38. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable: Provided, That in promulgating rules pursuant to the provisions of this article, the commissioner shall note relevant administrative and judicial decisions from both state
and federal systems and action by the United States Congress or the United States department of the interior.

§22A-3-39. 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 commissioner.

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

§22A-3-40. 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, chapter twenty of this code with respect to all coal mines, preparation plants and all refuse and waste therefrom subject to said article five-a, chapter twenty of this code are hereby transferred to the commissioner. The commissioner shall have sole authority to issue, amend, transfer, renew or revoke all permits required under article five-a, chapter twenty-two of this code 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 regulations promulgated pursuant to subsection (b). The commissioner shall consolidate the various permit programs under article five-a, chapter twenty of this code and article three of this chapter applicable to all coal mines, preparation plants and all refuse and waste therefrom. All provisions of article five-a, chapter twenty of this code 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 commissioner shall have sole authority to promulgate rules and regulations necessary or proper to implement the provisions of article five-a, chapter twenty of this code 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, article five-a, chapter twenty of this code to promulgate rules and regulations setting standards of water quality applicable to the waters of the state. To the extent feasible, the commissioner 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 commissioner shall have the sole authority to enforce and shall enforce the rules and regulations promulgated under this article by the commissioner 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. Rules and regulations adopted by the commissioner, pursuant to the requirements of article five-a of chapter twenty, of this code shall be enforceable by the commissioner under the provisions of sections seventeen and nineteen, article five-a, chapter twenty of this code, as though the regulations were promulgated by the water resources board: Provided, That the commissioner's authority to enforce such rules and regulations under article five-a, chapter twenty of this code shall not preclude the commissioner or any person from invoking the
remedies otherwise provided by article three of this chapter
and shall not preclude the commissioner from enforcing the
provisions of this article.

(d) Notwithstanding any provisions of this chapter to the
contrary, any permit of the commissioner issued pursuant to
subsection (a) of this section, or any order issued under article
five-a of chapter twenty, of this code, or for the purpose 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,
article five-a of chapter twenty of this code.

(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 Admin-
istrator of the United States Environmental Protection
Agency.

ARTICLE 4. SURFACE MINING AND RECLAMATION OF MINERALS
OTHER THAN COAL.

§22A-4-1. Jurisdiction vested in department of energy; legislative
purpose; apportionment of responsibility.

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

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

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

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

The commissioner of the department of energy and the director of the division of mines and minerals shall cooperate with respect to departmental programs and records so as to effect an orderly and harmonious administration of the provisions of this article. The commissioner of energy may avail himself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. He may also receive any federal funds, state funds or any other funds for the reclamation of land affected by surface mining.

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

§22A-4-2. Definitions.

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

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

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

(c) "Commissioner" means the commissioner of the department of energy or his authorized agents.

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

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

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

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

(h) "Permit area" means the area of land indicated on the approved map submitted by the operator with the reclamation plan as specified in section eight of this article showing the exact location of end strip markers, permit markers and monuments.

(i) "Person" means any individual, partnership, firm,
association, trust or corporation.

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

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

(1) "Surface of a regraded bench" means the top portion or part of any regraded area.

§22A-4-3. Department of energy; duties and functions.

Except as otherwise provided in this article, the commissioner shall administer all of the laws of this state relating to surface mining and shall exercise all of the powers and perform all of the duties by law vested in and imposed upon him in relation to said operations. The jurisdiction, supervision and enforcement authority granted the commissioner in this article shall be in addition to the jurisdiction, supervision and enforcement authority granted in this chapter.

§22A-4-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The commissioner shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be eligible civil service employees, but no person shall be qualified for such appointment until he has served in a probationary status for a period of one year to the satisfaction of the commissioner of energy: Provided, That the provisions of this section shall not affect the status of persons employed on the effective date of this article as reclamation inspectors under the former provisions of chapter twenty, if such persons are qualified civil service employees.

Every surface-mining reclamation supervisor or inspector

shall be paid not less than sixteen thousand dollars per year.

§22A-4-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the commissioner. Such inspectors shall give particular attention to all conditions of each permit to insure complete compliance therewith. The commissioner shall cause inspections to be made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days. Said inspector shall note and describe violations of this article and immediately report such violations to the commissioner in writing, furnishing at the same time a copy of such report to the operator concerned.

§22A-4-6. Permit required; applications; issuance and renewals; fees and use of proceeds.

It shall hereafter be unlawful for any person to engage in surface mining without having first obtained from the department of energy a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the commissioner of energy, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the commissioner, shall contain the following information: (1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section seven hereof; (3) the owner or owners of the surface of the land to be mined; (4) the owner or owners of the mineral to be mined; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit; (7) the permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface-mining permits are now held and the numbers thereof; (9) the names and post-office addresses of every officer, partner, director (or person
performing a similar function), of the applicant, together with all persons, if any, owning of record or beneficially (alone or
with associates), if known, ten percent or more of any class of stock of the applicant: Provided. That if such list be so large
as to cause undue inconvenience, the commissioner may waive the requirements that such list be made a part of such application, except the names and current addresses of every officer, partner, director and applicant must accompany such application; (10) if known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface-mining permit issued under the laws of this state revoked or has ever had a surface-mining bond, or security deopsited in lieu of bond, forfeited; and (11) names and addresses of the reputed owner or owners of all surface area within five hundred feet of any part of proposed disturbed land, which such owners shall be notified by registered or certified mail of such application and such owners shall be given ten days within which to file written objections thereto, if any, with the commissioner. There shall be attached to the application a true copy of an original policy of insurance issued by an insurance company authorized to do business in this state covering all surface-mining operations of the applicant in this state and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, protection in an amount of not less than three hundred thousand dollars.

The commissioner shall upon receipt of the application for a permit cause to be published, as a Class III legal advertise-
ment in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of the application for the permit. Such notice shall contain in abbreviated form the information required by this section, together with the commissioner’s statement that written protests to such application will be received by him until a specified date, which date shall be at least thirty days after the first publication of the notice.

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

Upon the filing of an application in proper form, accompanied by the fees and bond required by this article and said true copy of the policy of insurance, and after consideration of the merits of the application and written protests, if any, the commissioner may issue the permit applied for if the applicant has complied with all of the provisions of this article.

If the commissioner finds that the applicant is or has been affiliated with or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who or which has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant: Provided, That no surface-mining permit shall be refused because of any past revocation of a permit and forfeiture of a bond or other security if such revocation and forfeiture occurred before the first day of July, one thousand nine hundred seventy-one, and if, after such revocation and forfeiture, the operator whose permit has been revoked and bond forfeited shall have paid into the surface-mining reclamation fund the full amount of the bond so forfeited, and any additional sum of money determined by the commissioner to be adequate to reclaim the land covered by such forfeited bond: Provided, however, That in no event shall such additional sum be less than sixty dollars per acre.

The permit shall be valid for one year from its date of issue.

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

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

The permit of any operator who fails to pay any fees provided for in this article shall be revoked.

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

§22A-4-7. Preplans.

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

The application for a permit shall be accompanied by copies
of an enlarged United States geological survey topographic
map meeting the requirements of the subdivisions below.
Aerial photographs of the area shall be acceptable if the plan
for reclamation can be shown to the satisfaction of the
commissioner. The maps shall:
37. (a) Be prepared and certified by or under the supervision
38. of a registered professional civil engineer, or a registered
39. professional mining engineer, or a registered land surveyor,
40. who shall submit to the commissioner a certificate of
41. registration as a qualified engineer or land surveyor;
42. 
43. (b) Identify the areas to correspond with application;
44. 
45. (c) Show probable limits of adjacent deep-mining opera-
46. tions, probable limits of adjacent inactive or mined-out deep-
47. mined areas and the boundaries of surface properties and
48. names of surface and mineral owners of the surface area within
49. five hundred feet of any part of the proposed disturbed area;
50. 
51. (d) Be of such scale as may be prescribed by the
52. commissioner;
53. 
54. (e) Show the names and locations of all streams, creeks or
55. other bodies of public water, roads, buildings, cemeteries,
56. active, abandoned or plugged oil and gas wells, and utility lines
57. on the area of land to be disturbed and within five hundred
58. feet of such area;
59. 
60. (f) Show by appropriate markings the boundaries of the
61. area of land to be disturbed, the crop line of the seam to be
62. minded, if any, and the total number of acres involved in the
63. area of land to be disturbed;
64. 
65. (g) Show the date on which the map was prepared, the
66. north point and the quadrangle sketch and exact location of
67. the operation;
68. 
69. (h) Show the drainage plan on and away from the area of
70. land to be disturbed. Such plan shall indicate the directional
71. flow of water, constructed drainways, natural waterways used
72. for drainage, and the streams or tributaries receiving or to
73. receive this discharge. Upon receipt of such drainage plan, the
74. commissioner may furnish to the chief of the division of water
75. resources of the department of natural resources a copy of all
76. information required by this subdivision, as well as the names
77. and locations of all streams, creeks or other bodies of public
78. water within five hundred feet of the area to be disturbed;
79. 
80. (i) Show the presence of any acid-producing materials which
81. when present in the overburden, may cause spoil with a pH
82. factor below 3.5, preventing effective revegetation. The
presence of such materials, wherever occurring in significant quantity, shall be indicated on the map, filed with the application for permit. The operator shall also indicate the manner in which acid-bearing spoil will be suitably prepared for revegetation and stabilization, whether by application of mulch or suitable soil material to the surface or by some other type of treatment, subject to approval of the commissioner.

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

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

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

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

Upon an order of the commissioner, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnished to the department of energy four copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show in detail completed reclamation work, as required by the commissioner. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the commissioner. If no land has been disturbed
by operations during the preceding year, the operator shall notify the commissioner of this fact. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended.

§22A-4-8. Installation of drainage system.

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

§22A-4-9. Alternative plans; time.

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

By regulations of the commissioner, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such backfilling and grading is moved from the operation.

If the operator or other person desires to conduct deep mining upon the premises or use a deep-mining opening for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such deep mining or other use is completed, during which time the bond on file for that portion of that operation shall not be released. Such locations shall be described and designated on the map required by the provisions of section seven of this article.

Where applicable, suitable soil material shall be used to cover the surface of the regrated and backfilled area of operation in an amount sufficient to support vegetation.
When the backfilling and grading have been completed and approved by the commissioner, the commissioner shall release that portion of the bond which was filed and designated to cover the backfilling and grading requirements of this article, the remaining portion of the bond in an amount equal to two hundred fifty dollars per acre, but not less than a total amount of five thousand dollars being retained by the treasurer until such time as the planting and revegetation is done according to law and is approved by the commissioner, at which time the commissioner shall release the remainder of the bond.

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

In any such area where surface mining is being conducted, mulch shall be required on all disturbed areas where the remaining slope exceeds twenty degrees from horizontal as shown on the preplan map filed with the commissioner as required by the provisions of section seven of this article.

After the operation has been backfilled, graded and approved by the commissioner, the operator shall prepare or cause to be prepared a final planting plan for the planting of trees, shrubs, vines, grasses or legumes upon the area of the land affected in order to provide a suitable vegetative cover. The seed or plant mixtures, quantities, method of planting, type and amount of lime, fertilizer, mulch, and any other measures necessary to provide a suitable vegetative cover shall be defined by the rules and regulations of the commissioner.

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

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

§22A-4-10. Limitations; mandamus.

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

Therefore, authority is hereby vested in the commissioner to delete certain areas from all surface-mining operations.

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

If the commissioner finds that the overburden on any part
of the area of land described in the application for a permit
is such that experience in the state of West Virginia with a
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
commissioner may delete such part of the land described in
the application upon which such overburden exists.

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

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

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

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

§22A-4-11. Blasting restriction; formula; filing preplan; penalties; notice.

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

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

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

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

4. Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast other than secondary (boulder breaking) blasts the following information:
(a) Date and time of blast,
(b) Number of holes,
(c) Typical explosive weight per delay period,
(d) Total explosives in blast at any one time,
(e) Number of delays used,
(f) Weather conditions, and
(g) Signature of operator employee in charge of the blast.

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

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

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

(c) For the third offense in any one permit year under this section or for the failure to pay any assessment hereinafore set forth within a reasonable time established by the commissioner, the permit shall be revoked.

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

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

§22A-4-12. Time in which reclamation shall be done.

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

§22A-4-13. Obligations of the operator.

In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules and regulations adopted pursuant thereto, the operator shall be required to perform the following:

(1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the commissioner, or with a permanent water impoundment.

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

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

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

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

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

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

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

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

Lateral drainage ditches connecting to natural or constructed waterways shall be constructed to control water runoff and prevent erosion whenever required by the commissioner. There shall be no depressions that will accumulate water except those the commissioner may specify and approve. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

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

§22A-4-14. Cessation of operation by inspector.

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

§22-4-15. Completion of planting; inspection and evaluation.

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

All planting reports shall be certified by the operator, or by the party with whom the operator contracted for such planting, as aforesaid.

§22A-4-16. Performance bonds.

Each operator who shall make application for a permit under section six of this article shall, at the time such permit is requested, furnish bond, on a form to be prescribed and furnished by the commissioner, payable to the state of West Virginia and conditioned that the operator shall faithfully perform all of the requirements of this article. The amount of the bond shall be not less than six hundred dollars for each acre or fraction thereof of the land to be disturbed: Provided, That the commissioner shall have the discretion to determine the amount per acre of the bond that shall be required before a permit is issued, such amount to be based upon the estimated reclamation costs per acre, not to exceed a maximum of one thousand dollars per acre or fraction thereof. The minimum amount of bond furnished shall be ten thousand dollars. Such bond shall be executed by the operator and a corporate surety licensed to do business in the state of West Virginia: Provided, however, That in lieu of corporate surety, the operator may elect to deposit with the commissioner cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land banks, or of the home owners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the commissioner. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, immediately place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit
is made. The operator making the deposit shall be entitled
from time to time to receive from the state treasurer, upon
the written order of the commissioner, the whole or any
portion of any cash, securities or certificates so deposited,
upon depositing with him in lieu thereof, cash of other
securities or certificates of the classes herein specified having
value equal to or greater than the sum of the bond.

Is shall be unlawful for the owner or owners of surface rights
or the owner or owners of mineral rights to interfere with the
operator in the discharge of his obligation to the state for the
reclamation of lands disturbed by him. If the owner or owners
of the surface rights or the owner or owners of the mineral
rights desire another operator or other operators to conduct
mining operations on lands disturbed by the operator
furnishing bond hereunder, it shall be the duty of said owner
or owners to require the other operator or operators to secure
the necessary mining permit and furnish suitable bond as
herein provided. The commissioner may then release an
equivalent amount of the bond of the operator originally
furnishing bond on the disturbed area.

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

§22A-4-17. Exception as to highway construction projects for
reclamation requirements.

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

§22A-4-18. Applicability of laws safeguarding life and property;
rules and regulations; supervision of operations.
All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface-mining operations insofar as such laws are applicable thereto. The commissioner of the department of energy shall promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to protect the safety of those employed in and around surface mines. The enforcement of all laws, and rules and regulations relating to the safety of those employed in and around surface mines is hereby vested in the division of mines and minerals and shall be enforced according to the provisions of chapter twenty-two-a of this code.


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

§22A-4-20. Rules and regulations.

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


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

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

§22A-4-22. Adjudications, findings, etc., to be by written order;
contents; notice.

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

§22A-4-23. Appeals to board; hearing; record; findings and orders
of board.

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

The person so appealing to the board shall be known as the
appellant and the commissioner shall be known as the
appellee. The appellant and the appellee shall be deemed to
be parties to the appeal.

Such appeal shall be in writing and shall set forth the rule
and regulation, order or omission complained of and the
grounds upon which the appeal is based. Where the appellant
claims to be aggrieved or adversely affected by an order, such
appeal shall be filed with the board within thirty days after
the date upon which the appellant received notice by certified
mail of the making of the order complained of. Where the
appellant claims to be aggrieved or adversely affected by any
rule and regulation or omission, such appeal may be filed with
the board at any time. A notice of the filing of such appeal
shall be filed with the commissioner within three days after
the appeal is filed with the board.

Within seven days after receipt of such notice of appeal, the
commissioner shall prepare and certify to the board a complete
record of the proceedings before him, including all documents
and correspondence relating to the matter. The expense of
preparing the record shall be taxed as a part of the costs of
the appeal.

Upon the filing of such appeal, the board shall fix the time
and place at which the hearing on the appeal will be held,
which hearing shall be held within twenty days after the notice
of appeal is filed, and shall give the appellant and the
commissioner at least ten days’ written notice thereof by
certified mail. The board may postpone or continue any
hearing upon its own motion or upon application of the
appellant or of the commissioner.

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

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

For the purpose of conducting a hearing on an appeal, the
board may require the attendance of witnesses and the
production of books, records and papers, and it may, and at
the request of any party it shall, issue subpoenas for witnesses
or subpoenas duces tecum to compel the production of any
books, records or papers, directed to the sheriff of the county
where such witnesses, books, records or papers are found,
which 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.
Such fees and mileage expenses incurred at the request of the

54 appellant shall be paid in advance by the appellant, and the
55 remainder of such fees and expenses shall be paid out of funds
56 appropriated for the expenses of the department.

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

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

81 If upon completion of the hearing the board finds that the
82 rule and regulation or order appealed from was lawful and
83 reasonable, it shall make a written order affirming the rule and
84 regulation or order appealed from; if the board finds that such
85 rule and regulation or order was unreasonable or unlawful; it
86 shall make a written order vacating or modifying the rule and
87 regulation or order appealed from; and if the board finds that
88 the commissioner has unreasonably or unlawfully failed to
89 enter an order, it shall enter such order as it finds the
90 commissioner would have made. Every order made by the
91 board shall contain a written finding by the board of facts
92 upon which the order is based. Notice of the making of such
93 order shall be given forthwith to each party to the appeal by
94 mailing a certified copy thereof to each such party by certified

Any party adversely affected by an order of the reclamation board of review, other than an order affirming, modifying, or vacating a rule and regulation of the commissioner, may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha County or the circuit court of the county in which the surface-mining operation to which the order relates is or was conducted or is or was proposed to be conducted. Any party adversely affected by an order of the reclamation board of review, which order affirms, modifies or vacates a rule and regulation of the commissioner, may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha County or the circuit court of the county in which the rule and regulation in question relates or was conducted or is or was proposed to be conducted. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law, questions of fact or questions of law and fact. A copy of such notice shall also be filed by the appellant with the court and shall be mailed or otherwise delivered to the appellee. Such notice and copies thereof shall be filed and mailed or otherwise delivered within thirty days after the date upon which the appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond shall be required to make an appeal on questions of law, questions of fact or questions of law and fact effective.

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

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

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

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

§22A-4-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.

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

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

(c) Upon application by the commissioner the attorney
general, or the prosecuting attorney of the county in which
the major portion of the permit area is located, any court of
competent jurisdiction may by injunction compel compliance
with and enjoin violations of the provisions of this article. The
court or the judge thereof in vacation may issue a preliminary
injunction in any case pending a decision on the merits of any
application filed.
An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

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

§22A-4-26. Validity and construction of existing surface-mining permits.

Any valid surface-mining permit existing on the effective date of this article shall remain in full force and effect until such permit expires under its terms or is otherwise terminated under the provisions of this article. The provisions of this section shall not be construed to require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of this article.

§22A-4-27. Certification of surface miners.

After the first day of July, one thousand nine hundred seventy-six, certification shall be required of all surface miners in accordance with the provisions of articles nine and ten, chapter twenty-two of this code.

§22A-4-28. Certification of surface mine foremen.

(a) In every surface mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article ten, chapter twenty-two of this code as a mine foreman. Each applicant for certification as a mine foreman shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least three years’ experience in surface
mining, which shall include at least eighteen months' experience on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had at least two years' practical experience in a surface mine, which shall include at least eighteen months' experience on or at a working section of a surface mine; and (3) have demonstrated his knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under said article ten.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one person, one or more assistant mine foremen may be designated. Such persons shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article ten, chapter twenty-two of this code. Each applicant for certification as assistant mine foreman shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman: Provided, That he shall, at the time he is certified, be required to have at least two years' experience in surface mining, which shall include eighteen months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The commissioner shall promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

ARTICLE 5. UNDERGROUND CLAY MINE.

§22A-5-1. Definition.

In this article the term "mine" includes the shafts, slopes, drifts or inclines connected with excavations penetrating clay seams or strata, which excavations are ventilated by one general air current or division thereof, and the surface structures or equipment connected therewith which contribute
§22A-5-2. Clay mine foreman; when to be employed; qualifications; assistants.

In every underground clay mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ a mine foreman who shall be a competent and practical person holding a certificate of competence for said position issued to him by the division of mines and minerals after an examination by such division. In order to receive a certificate of competence qualifying a foreman in an underground clay mine, the applicant shall take an examination prescribed by the director of the division of mines and minerals, be a citizen of this state, of good moral character and temperate habits, having had at least three years' experience in the underground working of clay mines.


The commissioner may from time to time promulgate reasonable rules and regulations for the protection of the health and safety of the persons working in or about underground clay mines, to the extent the same are not more onerous or restrictive than the laws of this state intended to safeguard the life and health of persons working in underground coal mines contained in article two of this chapter.

ARTICLE 6. OPEN-PIT MINES, CEMENT MANUFACTURING PLANTS AND UNDERGROUND LIMESTONE AND SANDSTONE MINES.

§22A-6-1. Definitions.

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

(a) “Open-pit mine” means an excavation worked from the surface and open to daylight.
(b) “Underground mine” means subterranean workings for the purpose of obtaining a desired material or materials.
(c) “Sand” means waterworn sandstone fragments transported and deposited by water.
(d) “Gravel” means an occurrence of waterworn pebbles.
(e) “Sandstone” means a compacted or cemented sediment composed chiefly of quartz grains.
(f) "Limestone" means a sedimentary rock composed mostly of calcium carbonate.

(g) "Clay" means a natural material of mostly small fragments of hydrous aluminum silicates and possessing plastic properties.

(h) "Shale" means a laminated sedimentary rock composed chiefly of small particles of a clay grade.

(i) "Iron ore" means a mineral or minerals, and gangue when treated will yield iron at a profit.

(j) "Manganese ore" means a metalliferous mineral when treated will yield manganese at a profit.

§22A-6-2. Applicability of mining laws.

All provisions of the mining laws of this state intended for the protection of the health and safety of persons employed within or at any coal mine and for the protection of any coal mining property shall extend to all open-pit mines and any property used in connection therewith for the mining of underground limestone and sandstone mines, insofar as such laws are applicable thereto.

§22A-6-3. Rules and regulations.

The commissioner of the department of energy shall promulgate reasonable rules and regulations, in accordance with and confined to the provisions of chapter twenty-nine-a of this code, for the effective administration of this article.

§22A-6-4. Monthly report by operator.

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

§22A-6-5. Inspectors.

The director of the division of mines and minerals shall divide the state into not more than two mining districts and assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, or good character and reputation, temperate in habits, having a minimum of five
6 years of practical experience in such mining operations and
7 at the time of his appointment is not more than fifty-five years
8 of age. To qualify for appointment as such an inspector, an
9 eligible applicant shall submit to a written and oral examina-
10 tion by the mine inspectors’ examining board and furnish such
11 evidence of good health, character and other facts establishing
12 eligibility as the board may require. If the board finds after
13 investigation and examination that an applicant: (1) is eligible
14 for appointment and (2) has passed all written and oral
15 examinations, with a grade of at least ninety percent, the board
16 shall add such applicant’s name and grade to the register of
17 qualified eligible candidates and certify its action to the
18 director of the division of mines and minerals. No candidate’s
19 name shall remain in the register for more than three years
20 without requalifying.
21 Such inspector shall have the same tenure accorded a mine
22 inspector, as provided in subsection (d), section eight, article
23 one a of this chapter and shall be paid not less than fifteen
24 thousand dollars per year. Such inspector shall also receive
25 reimbursement for traveling expenses at the rate of not less
26 than fifteen cents for each mile actually traveled in the
27 discharge of their duties in a privately owned vehicle. Such
28 inspector shall also be reimbursed for any expense incurred
29 in maintaining an office in his or her home, which office is
30 used in the discharge of official duties: Provided, That such
31 reimbursement shall not exceed two hundred forty dollars per
32 annum.

§22A-5-6. Penalties.
1 Any person who fails or refuses to discharge any provision
2 of this article, rule and regulation promulgated or order issued
3 pursuant to the provisions of this article, shall be guilty of a
4 misdemeanor, and, upon conviction thereof, shall be punished
5 by a fine of not less than one hundred nor more than one
6 thousand dollars or by imprisonment not exceeding six
7 months, or by both.

CHAPTER 22B. OIL AND GAS.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS;
ADMINISTRATION; ENFORCEMENT.

§22B-1-1. Definitions.
Unless the context in which used clearly requires a different meaning, as used in this article;

(a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;
(b) "Cement" means hydraulic cement properly mixed with water;
(c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article seven, chapter twenty-two of this code;
(d) "Chief" means chief of the division of water resources of the department of natural resources;
(e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;
(f) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;
(g) "Commissioner" means commissioner of the department of energy;
(h) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;
(i) "Division" means, for purposes of this article and articles three and four of this chapter, the division of oil and gas of the department of energy;
(j) "Director" means, for the purposes of this article and articles two, three and four of this chapter, the director of the division of oil and gas of the department of energy;
(k) "Expanding cement" means any cement approved by the division of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;
(l) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in

39 this article or in articles three or four of this chapter, other
40 than a well or well site;
41 (m) “Gas” means all natural gas and all other fluid
42 hydrocarbons not defined as oil in subdivision (m) of this
43 section;
44 (n) “Oil” means natural crude oil or petroleum and other
45 hydrocarbons, regardless of gravity, which are produced at the
46 well in liquid form by ordinary production methods and which
47 are not the result of condensation of gas after it leaves the
48 underground reservoirs;
49 (o) “Owner” when used with reference to any well, shall
50 include any person or persons, firm, partnership, partnership
51 association or corporation that owns, manages, operates,
52 controls or possesses such well as principal, or as lessee or
53 contractor, employee or agent of such principal;
54 (p) “Owner” when used with reference to any coal seam,
55 shall include any person or persons who own, lease or operate
56 such coal seam;
57 (q) “Person” means any natural person, corporation, firm,
58 partnership, partnership association, venture, receiver, trustee,
59 executor, administrator, guardian, fiduciary or other represen-
60 tative of any kind, and includes any government or any
61 political subdivision or any agency thereof;
62 (r) “Plat” means a map, drawing or print showing the
63 location of a well or wells as herein defined;
64 (s) “Review board” means the West Virginia shallow gas
65 well review board as provided for in section four, article seven
66 of chapter twenty-two of the code;
67 (t) “Safe mining through of a well” means the mining of
68 coal in a workable coal bed up to a well which penetrates such
69 workable coal bed and through such well so that the casing
70 or plug in the well bore where the well penetrates the workable
71 coal bed is severed;
72 (u) “Shallow well” means any gas well drilled and completed
73 in a formation above the top of the uppermost member of the
74 “Onondaga Group” or at a depth less than six thousand feet,
75 whichever is shallower;
76 (v) “Stimulate” means any action taken by a well operator
77 to increase the inherent productivity of an oil or gas well,
including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(w) "Waste" means (i) physical waste, as the term is generally understood in the oil and gas industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter shall be construed to authorize any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article eight, chapter twenty-two of this code and the provisions of article seven, chapter twenty-two of this code; (v) inefficient storing of oil or gas: Provided, that storage in accordance with a certificate of public convenience issued by the federal energy regulatory commission shall be conclusively presumed to be efficient and (vi) other underground or surface waste in the production or storage of oil, gas, or condensate, however caused;

(x) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;

(y) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well;

(z) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corpo-
ration that proposes to or does locate, drill, operate or abandon any well as herein defined;

(aa) "Pollutant" shall have the same meaning as provided in subsection x, section two, article five-a, chapter twenty of this code; and

(bb) "Waters of this state" shall have the same meaning as the term "waters" as provided in subsection e, section two, article five-a, chapter twenty of this code.

§22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.

(a) The director of the division of oil and gas shall have as his duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles three and four of this chapter, subject to review and approval of the commissioner.

(b) The director of the division of oil and gas is authorized to enact rules and regulations necessary to effectuate the above-stated purposes, subject to review and approval by the Commissioner.

(c) The director shall have full charge of oil and gas matters set out in this article and in article three and four of this chapter, subject always to the direct supervision and control of the commissioner of the department of energy. In addition to all other powers and duties conferred upon him, the director shall have the power and duty to:

(1) Supervise and direct the activities of the division of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and oil and gas inspectors upon approval by the commissioner;

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;
(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his duties and the purposes of the division of oil and gas and fix their compensation.

(7) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of this article and articles three and four of this chapter;

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by oil and gas inspectors or the supervising inspector;

(9) Make annually a full and complete written report to the commissioner as he may from time to time request, so that the commissioner can complete the preparation of the commissioner's annual report to the governor of the state.

(10) Conduct such research and studies as the commissioner shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(11) Perform any and all acts necessary to carry out and implement the state requirements established by 92 Statutes at Large 3352, et seq., the “Natural Gas Policy Act of 1978,” which are to be performed by a designated state jurisdictional agency regarding determinations that wells within the state qualify for a maximum lawful price under certain categories of natural gas as set forth by the provisions of the said “Natural Gas Policy Act of 1978”;

(12) Collect a filing and processing fee of forty dollars for each well, for which a determination of qualification to receive a maximum lawful price under the provisions of “Natural Gas Policy Act of 1978” sought from the director; all revenues from such fees to be placed in the general revenue fund of the state;

(13) Collect a permit fee of two hundred fifty dollars for each permit application filed after the tenth day of June, one thousand nine hundred and eighty three: Provided, That no
permit application fee shall be required when an application
is submitted solely for plugging or replugging of a well. All
application fees required hereunder shall be in addition to any
other fees required by the provisions of this article;
(14) Perform all other duties which are expressly imposed
upon him by the provisions of this chapter, as well as duties
assigned to him by the commissioner;
(15) Perform all duties as the permit issuing authority for
the state in all matters pertaining to the exploration,
development, production, storage and recovery of this state's
oil and gas in accordance with section thirteen, of article one,
of chapter twenty-two of this code;
(16) Adopt rules and regulations in accordance with section
thirteen, article one, of chapter twenty-two of this code with
respect to the issuance, denial, retention, suspension, or
revocation of permits, authorizations and requirements of this
chapter, which rules and regulations shall assure that the
regulations, permits and authorizations issued by the director
are adequate to satisfy the purposes of this chapter and chapter
twenty-two of this code particularly with respect to the
consolidation of the various state and federal programs which
place permitting requirements on the exploration, develop-
ment, production, storage and recovery of this state's oil and
gas: Provided, That notwithstanding any provisions of this
chapter or chapter twenty-two of this code to the contrary,
the water resources board shall have the sole authority
pursuant to section three-a, article five-a of chapter twenty to
promulgate rules and regulations setting standards of water
quality applicable to waters of the state;
(17) Perform such acts as may be necessary or appropriate
to secure to this state the benefits of federal legislation
establishing programs relating to the exploration, develop-
ment, production, storage and recovery of this state's oil and
gas, which programs are assumable by the state.
(d) The director shall have authority to visit and inspect any
well or well site and any other oil or gas facility in this state
and may call for the assistance of any oil and gas inspector
or inspectors or supervising inspector whenever such assistance
is necessary in the inspection of any such well or well site or
any other oil or gas facility. Similarly, all oil and gas inspectors
and the supervising inspector shall have authority to visit and
inspect any well or well site and any other oil or gas facility in this state. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the director to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the director, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties.

(f) All records of the division shall be open to the public.

§22B-1-3. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

(a) If an oil and gas inspector, upon making an inspection of a well or well site or any other oil or gas facility, finds that any provision of this article is being violated, he shall also find whether or not an imminent danger to persons exists, or whether or not there exists an imminent danger that a fresh water source or supply will be contaminated or lost. If he finds that such imminent danger exists, he shall forthwith make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations until such imminent danger has been abated. If he finds that no such imminent danger exists, he shall determine what would be a reasonable period of time within which such violation should be totally abated. Such findings shall contain reference to the provisions of this article which he finds are being violated, and a detailed description of the conditions which cause and constitute such violation.

(b) The period of time so found by such oil and gas inspector to be a reasonable period of time shall not exceed seven days. Such period may be extended by such inspector, or by any other oil and gas inspector duly authorized by the director, from time to time, for good cause, but not to exceed
a total of thirty days, upon the making of a special inspection to ascertain whether or not such violation has been totally abated: Provided, That such thirty day period may be extended beyond thirty days by such inspectors where abatement is shown to be incapable of accomplishment because of circumstances or conditions beyond the control of the well operator. The director shall cause a special inspection to be made: (A) Whenever an operator of a well or well site or any other oil or gas facility, prior to the expiration of any such period of time, requests him to cause a special inspection to be made at such well or well site or any other oil or gas facility; and (B) Upon expiration of such period of time as originally fixed or as extended, unless the director is satisfied that the violation has been abated. Upon making such special inspection, such oil and gas inspector shall determine whether or not such violation has been totally abated. If he determines that such violation has not been totally abated, he shall determine whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If he determines that such period of time should be extended, he shall determine what a reasonable extension would be. If he determines that such violation has not been totally abated, and if such period of time as originally fixed, or as so fixed and extended, has then expired, and if he also determines that such period of time should not be further extended, he shall thereupon make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations of such well, well site or facility, as the case may be. Such findings and order shall contain reference to the specific provisions of this article which are being violated.

(c) Notice of each finding and order made under this section shall promptly be given to the operator of the well or well site or other oil or gas facility to which it pertains by the person making such finding or order.

(d) No order shall be issued under the authority of this section which is not expressly authorized herein.

§22B-1-4. Review of findings and orders by director; special inspection; annulment, revision, etc., of order; notice.

(a) Any well operator, complaining coal operator, owner or lessee, if any, aggrieved by findings or an order made by an oil or gas inspector pursuant to section three of this article,
may within fifteen days apply to the director for annulment or revision of such order. Upon receipt of such application the director shall make a special inspection of the well, well site or other oil and gas facility affected by such order, or cause two duly authorized oil and gas inspectors, other than the oil and gas inspector who made such order or the supervising inspector and one duly authorized oil and gas inspector other than the oil and gas inspector who made such order, to make such inspection of such well, or well site or other oil or gas facility and to report thereon to them. Upon making such special inspection himself, or upon receiving the report of such special inspection, as the case may be, the director shall make an order which shall include his findings and shall annul, revise or affirm the order of the oil and gas inspector.

(b) The director shall cause notice of each finding and order made under this section to be given promptly to the operator of the well, well site or other oil or gas facility to which such findings and order pertain, and the complainant under section three if any.

(c) At any time while an order made pursuant to section three of this article is in effect, the operator of the well, well site or other oil or gas facility affected by such order may apply to the director for annulment or revision of such order. The director shall thereupon proceed to act upon such application in the manner provided in this section.

(d) In view of the urgent need for prompt decision of matters submitted to the director under this article, all actions which he, or oil and gas inspectors, or the supervising inspector, is required to take under this article, shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

§22B-1-5. 

Requirements for findings, orders and notices; posting of findings and orders; judicial review of final orders of director.

(a) All findings and orders made pursuant to sections three or four of this article, and all notices required to be given of the making of such findings and orders, shall be in writing. All such findings and orders shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice. All such notices shall contain a copy of the findings and orders referred
(b) Notice of any finding or order required by sections three or four of this article to be given to an operator shall be given by causing such notice, addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains, to be delivered to such operator by causing a copy thereof to be sent by registered mail to the permanent address of such operator as filed with the division and by causing a copy thereof to be posted upon the drilling rig or other equipment at the well, well site or other oil and/or gas facility, as the case may be. The requirement of this article that a notice shall be “addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains,” shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to “Operator of ............,” specifying the well, well site or other oil and/or gas facility sufficiently to identify it, shall satisfy such requirement.

(c) Any well operator, complaining coal operator, owner or lessee, if any, adversely affected by a final order issued by the director under section four of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of the appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(e) Legal counsel and services for the director in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The director, with written approval of the attorney general, may employ special counsel to represent the director at any such appeal proceedings.

§22B-1-6. Permit required for well work; permit fee; application; soil erosion control plan.
(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, without first securing from the director a well work permit. An application may propose and a permit may approve two or more activities defined as well work.

(b) The application for a well work permit shall be accompanied by applicable bond as prescribed section twelve, fourteen or twenty-three of this article, and the applicable plat required by section twelve or fourteen of this article.

(c) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person whom the applicant must notify under any section of this article together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The name and address of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by section twelve, if any, if said owner or lessee is not yet operating said coal seams;

(3) The number of the well or such other identification as the director may require;

(4) The type of well;

(5) The well work for which a permit is requested;

(6) The approximate depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled;

(7) Any permit application fee required by law;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an oil well or a combination well or to drill a new well for the purpose of introducing pressure for the recovery of oil as provided in section twenty-five of this article, specifications in accordance with the data requirements of section fourteen of this article;

(10) If the proposed well work is to plug or replug the well,
(i) specifications in accordance with the data requirements of
section twenty-three of this article, (ii) a copy of all logs in
the operator’s possession as the director may require, and (iii)
a work order showing in detail the proposed manner of
plugging or unplugging the well, in order that a representative
of the director and any interested persons may be present when
the work is done. In the event of an application to drill, redrill
or deepen a well, if the well work is unsuccessful so that the
well must be plugged and abandoned, and if the well is one
on which the well work has been continuously progressing
pursuant to a permit, the operator may proceed to plug the
well as soon as he has obtained the verbal permission of the
director or his designated representative to plug and abandon
the well, except that the operator shall make reasonable effort
to notify as soon as practicable the surface owner and the coal
owner, if any, of the land at the well location, and shall also
timely file the plugging affidavit required by section twenty-
three of this article;

(11) If the proposed well work is to stimulate an oil or gas
well, specifications in accordance with the data requirements
of section thirteen of this article;

(12) The erosion and sediment control plan required under
subsection (d) of this section for applications for permits to
drill; and

(13) Any other relevant information which the director may
require by rule.

(d) An erosion and sediment control plan shall accompany
each application for a well work permit except for a well work
permit to plug or replug any well. Such plan shall contain
methods of stabilization and drainage, including a map of the
project area indicating the amount of acreage disturbed. The
erosion and sediment control plan shall meet the minimum
requirements of the West Virginia erosion and sediment
control manual as adopted and from time to time amended
by the division of oil and gas, in consultation with the several
soil conservation districts pursuant to the control program
established in this state through section 208 of the federal
Water Pollution Control Act Amendments of 1972 [33 U.S.C.
1288]. The erosion and sediment control plan shall become
part of the terms and conditions of a well work permit, except
for a well work permit to plug or replug any well, which is
issued and the provisions of the plan shall be carried out where
applicable in the operation. The erosion and sediment control
plan shall set out the proposed method of reclamation which
shall comply with the requirements of section thirty of this
article.

For the purpose of ascertaining whether or not issuance of
any permit for well work will cause or contribute to a pollution
problem, the director shall consult with the director of the
department of natural resources.

(e) The well operator named in such application shall
designate the name and address of an agent for such operator
who shall be the attorney-in-fact for the operator and who
shall be a resident of the State of West Virginia upon whom
notices, orders or other communications issued pursuant to
this article or article five-a, chapter twenty, may be served, and
upon whom process may be served. Every well operator
required to designate an agent under this section shall within
five days after the termination of such designation notify the
division of such termination and designate a new agent.

(f) The well owner or operator shall install the permit
number as issued by the director in a legible and permanent
manner to the well upon completion of any permitted work.
The dimensions, specifications and manner of installation shall
be in accordance with the rules of the director.

(g) The director may waive the requirements of this section
and sections nine, ten, and eleven of this article in any
emergency situation, if he deems such action necessary. In such
case the director may issue an emergency permit which would
be effective for not more than thirty days, but which would
be subject to reissuance by the director.

(h) The director shall deny the issuance of a permit if he
determines that the applicant has committed a substantial
violation of a previously issued permit, including the erosion
and sediment control plan, or a substantial violation of one
or more of the rules promulgated hereunder, and has failed
to abate or seek review of the violation within the time
prescribed by the director pursuant to the provisions of
sections three and four of this article and the rules promul-
gated hereunder, which time may not be unreasonable:

Provided, That in the event that the director does find that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, he may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit:

Provided, however, That the director may reinstate the permit without further notice, at which time the well work may be continued. The director shall make written findings of any such determination made by him and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section forty of this article. The director shall make a written finding of any such determination.

(i) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§22B-1-7. Water pollution control permits; powers and duties of the director; penalties.

(a) In addition to a permit for well work, the director, after public notice and an opportunity for public hearings, may either issue a separate permit, general permit or a permit consolidated with the well work permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of the director.

(b) It shall be unlawful for any person conducting activities which are subject to the requirements of this article, unless he holds a water pollution control permit therefor from the director, which is in full force and effect to:

(1) Allow pollutants or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state;

(2) Make, cause or permit to be made any outlet, or
substantially enlarge or add to the load of any existing outlet, for the discharge of pollutants or the effluent therefrom, into the waters of this state;

(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated pollutants or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;

(4) Increase in volume or concentration any pollutants in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any pollutants discharging or flowing into the waters of the state;

(6) Operate any disposal well for the injection or reinjection underground of any pollutant, including, but not limited to, liquids or gasses, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Notwithstanding any provision of this chapter to the contrary, the director shall have the same powers and duties relating to inspection and enforcement as those granted to the chief of water resources, his authorized agent or any authorized employee as the case may be under article five-a, chapter twenty of this code in connection with the issuance of any water pollution control permit or any person required to have such permit.

(d) Any person who violates any provision of this section, any order issued under this section or any permit issued pursuant to this section or any rule or regulation of the director relating to water pollution or who willfully or negligently violates any provision of this section or any permit issued pursuant to this section or any rule or regulation or order of the director relating to water pollution or who fails, or refused to apply for and obtain a permit or who intentionally misrepresents any material fact in an application, record, report, plan or other document files or required to be maintained under this section shall be subject to the same penalties for such violations as are provided for in sections
seventeen and nineteen of article five-a, chapter twenty of this code: Provided, That the provisions of section twenty, article five-a, chapter twenty of this code relating to exceptions to criminal liability shall also apply.

All applications for injunction filed pursuant to section seventeen, article five-a, chapter twenty of the code shall take priority on the docket of the circuit court in which pending, and shall take precedence over all other civil cases.

(e) Notwithstanding any provisions of this chapter or chapter twenty-two of this code to the contrary, any water pollution permit of the director of the division of oil and gas issued pursuant to this section or any order issued in connection with it or for the purpose of implementing the "national pollutant discharge elimination system" established under the Clean Water Act or the requirements of this section, shall be appealable only to the state water resources board and such appeal shall be governed by the provisions of section fifteen, article five-a of chapter twenty of this code.

(f) If any loss of game-fish or aquatic life results from a person's or persons' failure or refusal to discharge any duty imposed upon him by this section, the West Virginia department of natural resources shall have a cause of action on behalf of the state of West Virginia to recover from such person or persons causing such a loss a sum equal to the cost of replacing such game-fish or aquatic life. Any moneys so collected by the director of the department of natural resources shall be deposited in a special revenue fund entitled "natural resources game-fish and aquatic life fund" and shall be expended as hereinafter provided. The fund shall be expended to stock waters of this state with game-fish and aquatic life. Where feasible, the director of the department of natural resources shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in the fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever located in this state, with game-fish and aquatic life. The commissioner shall assist the director of the department of natural resources by providing witnesses, records, reports or other evidence relating to such cause of action.
§22B-1-8. Permits not to be issued on flat well royalty leases; legislative findings and declarations; permit requirements.

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas underlying this state is subject to development pursuant to leases or other continuing contractual agreements wherein the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well, and thus is not inherently related to the volume of the oil and gas produced or marketed;

3 (2) That continued exploitation of the natural resources of this state in exchange for such wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil and gas in place, and unreasonably deprives the economy of the state of West Virginia of the just benefit of the natural wealth of this state;

4 (3) That a great portion, if not all, of such leases or other continuing contracts based upon or calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently extracted, produced or marketed, were not known or contemplated by the parties, nor was it contemplated by the parties that oil and gas would be recovered or extracted or produced or marketed from the depths and horizons currently being developed by the well operators;

5 (4) That while being fully cognizant that the provisions of section 10, article I of the United States constitution and of section 4, article III of the constitution of West Virginia, proscribe the enactment of any law impairing the obligation of a contract, the legislature further finds that it is a valid exercise of the police powers of this state and in the interest of the state of West Virginia and in furtherance of the welfare of its citizens, to discourage as far as constitutionally possible the production and marketing of oil and gas located in this state under the type of leases or other continuing contacts described above.
(b) In the light of the foregoing findings, the legislature hereby declares that it is the policy of this state, to the extent possible, to prevent the extraction, production or marketing of oil or gas under a lease or leases or other continuing contract or contracts providing a flat well royalty or any similar provisions for compensation to the owner of the oil and gas in place, which is not inherently related to the volume of oil or gas produced or marketed, and toward these ends, the legislature further declares that it is the obligation of this state to prohibit the issuance of any permit required by it for the development of oil or gas where the right to develop, extract, produce or market the same is based upon such leases or other continuing contractual agreements.

(c) In addition to any requirements contained in this article with respect to the issuance of any permit required for the drilling, redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, no such permit shall be hereafter issued unless the lease or leases or other continuing contract or contracts by which the right to extract, produce or market the oil or gas is filed with the application for such permit. In lieu of filing the lease or leases or other continuing contract or contracts, the applicant for a permit described herein may file the following:

(1) A brief description of the tract of land including the district and county wherein the tract is located;

(2) The identification of all parties to all leases or other continuing contractual agreements by which the right to extract, produce or market the oil or gas is claimed;

(3) The book and page number wherein each such lease or contract by which the right to extract, produce or market the oil or gas is recorded; and

(4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of subsection (e) are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation
to another, of an existing oil or gas production well, where
or if the right to extract, produce or market the oil or gas
is based upon a lease or leases or other continuing contract
or contracts providing for flat well royalty or any similar
provision for compensation to the owner of the oil or gas in
place which is not inherently related to the volume of oil and
gas so extracted, produced and marketed.

(e) To avoid the permit prohibition of subsection (d), the
applicant may file with such application an affidavit which
certifies that the affiant is authorized by the owner of the
working interest in the well to state that it shall tender to the
owner of the oil or gas in place not less than one eighth of
the total amount paid to or received by or allowed to the
owner of the working interest at the wellhead for the oil or
gas so extracted, produced or marketed before deducting the
amount to be paid to or set aside for the owner of the oil
or gas in place, on all such oil or gas to be extracted, produced
or marketed from the well. If such affidavit be filed with such
application, then such application for permit shall be treated
as if such lease or leases or other continuing contract or
contracts comply with the provisions of this section.

(f) The owner of the oil or gas in place shall have a cause
of action to enforce his rights established by this section.

(g) The provisions of this section shall not affect or apply
to any lease or leases or other continuing contract or contracts
for the underground storage of gas or any well utilized in
connection therewith or otherwise subject to the provisions of
article four of this chapter.

(h) The director shall enforce this requirement irrespective
of whether such lease or other continuing contract was
executed before or after the effective date of this chapter.

(i) The provisions of this section shall not adversely affect
any rights to free gas.


(a) No later than the filing date of the application, the
applicant for a permit for any well work shall deliver by
personal service or by certified mail, return receipt requested,
copies of the application, well plat and erosion and sediment
control plan required by section six of this article to each of
6 the following persons:
7 (1) The owners of record of the surface of the tract on which
8 the well is, or is to be located; and
9 (2) The owners of record of the surface tract or tracts
10 overlying the oil and gas leasehold being developed by
11 proposed well work, if such surface tract is to be utilized for
12 roads or other land disturbance as described in the erosion and
13 sediment control plan submitted pursuant to section six of this
14 article.
15 (b) If more than three tenants in common or other co-
16 owners of interests described in subsection (a) of this section
17 hold interests in such lands, the applicant may serve the
18 documents required upon the person described in the records
19 of the sheriff required to be maintained pursuant to section
20 eight, article one, chapter eleven-a of this code, or publish in
21 the county in which the well is located or to be located a Class
22 II legal advertisement as described in section two, article three,
23 chapter fifty-nine of this code, containing such notice and
24 information as the director shall prescribe by rule and
25 regulation, with the first publication date being at least ten
26 days prior to the filing of the permit application: Provided,
27 that all owners occupying the tracts where the well work is,
28 or is proposed to be located at the filing date of the permit
29 application shall receive actual service of the documents
30 required by subsection (a) of this section.
31 (c) Materials served upon persons described in subsections
32 (a) and (b) of this section shall contain a statement of the
33 methods and time limits for filing comments, who may file
34 comments and the name and address of the director for the
35 purpose of filing comments and obtaining additional informa-
36 tion and a statement that such persons may request, at the
37 time of submitting comments, notice of the permit decision
38 and a list of persons qualified to test water as provided in this
39 section.
40 (d) Any person entitled to submit comments shall also be
41 entitled to receive a copy of the permit as issued or a copy
42 of the order denying the permit if such person requests the
43 receipt thereof as a part of the comments concerning said
44 permit application.
(e) Persons entitled to notice may contact the district office of the division to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the division shall consult with the state and local health departments.

§22B-1-10. Procedure for filing comments; certification of notice.

(a) All persons described in subsections (a) and (b), section nine of this article may file comments with the director as to the location or construction of the applicant's proposed well work within fifteen days after the application is filed with the director.

(b) Prior to the issuance of any permit for well work, the applicant shall certify to the director that the requirements of section nine of this article have been completed by the applicant. Such certification may be by affidavit of personal service or the return receipt card, or other postal receipt for certified mailing.

§22B-1-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

The director shall review each application for a well work permit and shall determine whether or not a permit shall be issued.

No permit shall be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the well work application, including the erosion and sediment control plan, if required, and the plat required by section six of this article, and further files written statements of no objection by all such persons, the director may issue the well work permit at any time.

The director may cause such inspections to be made of the proposed well work location as to assure adequate review of
the application. The permit shall not be issued, or shall be conditioned including conditions with respect to the location of the well and access roads prior to issuance if the director determines that:

(1) The proposed well work will constitute a hazard to the safety of persons; or

(2) The plan for soil erosion and sediment control is not adequate or effective; or

(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies.

The director shall promptly review all comments filed. If after review of the application and all comments received, the application for a well work permit is approved, and no timely objection or comment has been filed with the director or made by the director under the provisions of sections fifteen, sixteen or seventeen of this article, the permit shall be issued, with conditions, if any. Nothing in this section shall be construed to supersede the provisions of section six, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

The director shall mail a copy of the permit as issued or a copy of the order denying a permit to any person who submitted comments to the director concerning said permit and requested such copy.

Upon the issuance of any permit pursuant to the provisions of this article, the director shall transmit a copy of such permit to the office of the assessor for the county in which the well is located.

§22B-1-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

(a) Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of
land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the director. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating said coal seams beneath said tract of land, who has mapped the same and filed his maps with the division of mines and minerals in accordance with chapter twenty-two-a of this code, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the director) addressed to the director and to each such coal operator, owner and lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered or certified mail, pursuant to the requirements of this article. (b) If no objections are made, or are found by the director, to such proposed location or proposed fracturing within fifteen days from receipt of such plat and notice by the director, the same shall be filed and become a permanent record of such location or fracturing subject to inspection at any time by any interested person, and the director may forthwith issue to the well operator a permit reciting the filing of such plat, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the director, and authorizing the well operator to drill at such location, or to fracture the well. Unless the director has objections to such proposed location or proposed fracturing or stimulating, such permit may be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators, owners and lessees, if any, to whom copies of the plat and notice shall
have been mailed as herein required, and upon presentation
of such written consent to the director. The notice above
provided for may be given to the coal operator by delivering
or mailing it by registered or certified mail as above to any
agent or superintendent in actual charge of mines.

(c) A permit to drill, or to fracture or stimulate an oil or
gas well shall not be issued unless the application therefor is
accompanied by a bond as provided in section twenty-six of
this article.

§22B-1-13. Notice to coal operators, owners or lessees and director
of division of mines and minerals of intention to
fracture certain other wells; contents of such notice;
bond; permit required.

Before fracturing any well the well operator shall, by
registered or certified mail, forward a notice of intention to
fracture such well to the director and to each and every coal
operator operating coal seams beneath said tract of land, who
has mapped the same and filed his maps with the division of
mines and minerals in accordance with chapter twenty-two-a
of this code, and the coal seam owner and lessee, if any, if
said owner of record or lessee of record has recorded the
declaration provided in section thirty-six of this article, and
if said owner or lessee is not yet operating said coal seams
beneath said tract of land.

The notice shall be addressed to the director and to each
such coal operator at their respective addresses, shall contain
the number of the drilling permit for such well and such other
information as may be required by the director to enable that
division and the coal operators to locate and identify such well
and shall inform them that such notice is being mailed to them,
respectively, by registered or certified mail, pursuant to the
requirements of this article. (The form for such notice of
intention shall be furnished on request by the director.)

If no objections are made, or are found by the director to
such proposed fracturing within fifteen days from receipt of
such notice by the director, the same shall be filed and become
a permanent record of such fracturing, subject to inspection
at any time by any interested person, and the director shall
forthwith issue to the well operator a permit reciting the filing
of such notice, that no objections have been made by the coal
operators, or found thereto by the director, and authorizing
the well operator to fracture such well. Unless the director has
objections to such proposed fracturing, such permit shall be
issued prior to the expiration of such fifteen-day period upon
the obtaining by the well operator of the consent in writing
of the coal operator or operators, owners or lessees, if any,
to whom notice of intention to fracture shall have been mailed
as herein required, and upon presentation of such written
consent to the director. The notice above provided for may
be given to the coal operator by delivering or mailing it by
registered or certified mail as above to any agent or
superintendent in actual charge of mines.

§22B-1-14. Plats prerequisite to introducing liquids or waste into
wells; preparation and contents; notice and informa-
tion furnished to coal operators, owners or lessees
and division of mines and minerals chief of water
resources; issuance of permits; performance bonds or
security in lieu thereof.

(a) Before drilling a well for the introduction of liquids for
the purposes provided for in section twenty-five of this article
or for the introduction of liquids for the disposal of pollutants
or the effluent therefrom on any tract of land, or before
converting an existing well for such purposes, the well operator
shall have a plat prepared by a registered engineer or licensed
land surveyor showing the district and county in which the
tract of land is located, the name and acreage of the same,
the names of the owners of all adjacent tracts, the proposed
or actual location of the well or wells determined by a survey,
the courses and distances of such location from two permanent
points of land marked on said tract and the number to be
given to the well, and shall forward by registered or certified
mail the original and one copy of the plat to the division of
oil and gas. In addition, the well operator shall provide the
following information on the plat or by way of attachment
thereto to the director of the division of oil and gas in the
manner and form prescribed by the director's rules and
regulations: (1) The location of all wells, abandoned or
otherwise located within the area to be affected; (2) where
available, the casing records of all such wells; (3) where
available, the drilling log of all such wells; (4) the maximum
pressure to be introduced; (5) the geological formation into
which such liquid or pressure is to be introduced; (6) a general
description of the liquids to be introduced; (7) the location of
all water-bearing horizons above and below the geological
formation into which such pressure, liquid or waste is to be
introduced; and (8) such other information as the director by
rule and regulation may require.

(b) In the event the tract of land on which said well
proposed to be drilled or converted for the purposes provided
for in this section is located is known to be underlaid with
coal seams, copies of the plat and all information required by
this section shall be forwarded by the operator by registered
or certified mail to each and every coal operator operating coal
seams beneath said tract of land, who has mapped the same
and filed his maps with the division of mines and minerals in
accordance with chapter twenty-two-a of this code, and the
coal seam owner of record and lessee of record, if any, if said
owner or lessee has recorded the declaration provided in
section thirty-six of this article, and if said owner or lessee is
not yet operating said seams beneath said tract of land. With
each of such plats, there shall be enclosed a notice (form for
which shall be furnished on request by the director) addressed
to the director and to each such coal operator, owner or lessee,
if any, at their respective addresses, informing them that such
plat and notice are being mailed to them, respectively, by
registered or certified mail, pursuant to the requirements of
this section.

(c) If no objections are made by any such coal operator,
owner or lessee, or the chief of the division of water resources
of the department of natural resources or are found by the
director of the division of oil and gas to such proposed drilling
or converting of the well or wells for the purposes provided
for in this section within thirty days from the receipt of such
plat and notice by the director, the same shall be filed and
become a permanent record of such location or well, subject
to inspection at any time by any interested person, and the
director may after public notice and opportunity to comment,
issue such permit authorizing the well operator to drill at such
location or convert such existing well or wells for the purposes
provided for in this section. The notice above provided for
may be given to the coal operator by delivering or mailing it
by registered or certified mail as above to any agent or
superintendent in actual charge of the mines.

(d) A permit to drill a well or wells or convert an existing well or wells for the purposes provided for in this section shall not be issued until all of the bonding provisions required by the provisions of section twelve of this article have been fully complied with and all such bonding provisions shall apply to all wells drilled or converted for the purposes provided for in this section as if such wells had been drilled for the purposes provided for in section twelve of this article, except that such bonds shall be conditioned upon full compliance with all laws, rules and regulations relating to the drilling of a well or the converting of an existing well for the purposes provided for in said section twenty-five, or introducing of liquids for the disposal of pollutants including the redrilling, deepening, casing, plugging or abandonment of all such wells.

§22B-1-15. Objections to proposed drilling of deep wells and oil wells; objections to fracturing stimulating; notices and hearings; agreed locations or conditions; indication of changes on plats, etc.; issuance of permits.

(a) When a proposed deep well drilling site or oil well drilling site or any site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, or within fifteen days from the receipt by the director of notice required by section thirteen of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling or fracturing with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the director, the director shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least
ten days' written notice by the director, by registered or
certified mail, and summoned to appear. At the time and place
so fixed the well operator and the objecting coal operators,
owners or lessees, if any, or such of them as are present or
represented, shall proceed to consider the objections. In the
case of proposed drilling, such parties present or represented
may agree upon either the location as made or so moved as
to satisfy all objections and meet the approval of the director,
and any change in the original location so agreed upon and
approved by the director shall be indicated on said plat on
file with the director, and the distance and direction of the
new location from the original location shall be shown, and
as so altered, the plat shall be filed and become a permanent
record, and in the case of proposed fracturing, such parties
present or represented may agree upon conditions under which
the well is to be fractured which will protect life and property
and which will satisfy all objections and meet the approval of
the director, at which time the plat and notice required by
section twelve or the notice required by section thirteen as the
case may be, shall be filed and become a permanent record.
Whereupon the director shall forthwith issue to the well
operator a drilling or fracturing permit, as the case may be,
reciting the filing of the plat and notice required by said
section twelve, or the notice required by said section thirteen,
as the case may be, that at a hearing duly held a location as
shown on the plat or the conditions under which the fracturing
is to take place for the protection of life and property were
agreed upon and approved, and that the well operator is
authorized to drill at such location or to fracture at the site
shown on such plat, or to fracture the well identified in the
notice required by section thirteen, as the case may be.

(b) In the event the well operator and the objecting coal
operators, owners or lessees, if any, or such as are present or
represented at such hearing are unable to agree upon a drilling
location, or upon a drilling location that meets the approval
of the director, then the director shall proceed to hear the
evidence and testimony in accordance with sections one and
two, article five, chapter twenty-nine-a of this code, except
where such provisions are inconsistent with the article. The
director shall take into consideration in arriving at his
decision:
(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway, or passageway, or to any proposed extension thereof in any operated or abandoned or operating coal mine or coal mines already surveyed and platted, but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

At the close of the hearing or within ten days thereafter the director shall issue an order stating:

(1) That he refuses to issue a permit;

(2) That he will issue a permit for the proposed drilling location;

(3) That he will issue a permit for a drilling location different from that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that he will issue a permit, he shall issue a permit effective ten days after he has mailed such order, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice mailed to him as provided in section twelve of this article, and each notice mailed to him as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director

shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

(c) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

The director shall take into consideration upon his decision whether the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances.

At the close of the hearing, or within ten days thereafter, the director shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances. If such fracturing cannot be done safely, the director shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that he will issue a permit, he shall issue a permit effective ten days after it has mailed such order, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the well to be fractured on the plat on file and shall number and keep an index of and docket each plat and notice mailed to him as provided in section twelve of this article, and each notice mailed to him as provided in section thirteen of this article, entering in such docket the name of the well operator, the
names and addresses of all persons notified, the dates of
hearings and all actions taken by the director. The director
shall also prepare a record of the proceedings, which record
shall include all applications, plats and other documents filed
with the director, all notices given and proof of service thereof,
all orders issued, all permits issued and a transcript of the
hearing. The record prepared by the director shall be open to
inspection by the public.

§22B-1-16. Objections to proposed drilling or converting for
introducing liquids or waste into wells; notices and
hearings; agreed location or conditions; indication of
changes on plats, etc.; issuance of permits; docket of
proceeding.

(a) When a well is proposed to be drilled or converted for
the purposes provided for in section fourteen of this article,
and is above a seam or seams of coal, then the coal operator
operating said coal seams beneath the tract of land, or the coal
seam owner or lessee, if any, if said owner or lessee is not
yet operating said coal seams, may within fifteen days from
the receipt by the director of the plat and notice required by
section twelve of this article, file objections in writing (forms
for which will be furnished by the director on request) to such
proposed drilling or conversion.

(b) In any case wherein a well proposed to be drilled or
converted for the purposes provided for in section fourteen of
this article shall, in the opinion of the chief of the division
of water resources of the department of natural resources,
affect detrimentally the reasonable standards of purity and
quality of the waters of the state, such chief shall, within the
time period established by the director for the receipt of public
comment on such proposed drilling or conversion, file with the
director his objections in writing to such proposed drilling or
conversion, setting out therein as definitely as is reasonably
possible the ground or grounds upon which such objections
are based and indicating the conditions, consistent with the
provisions of this article and the rules or regulations
promulgated thereunder, as may be necessary for the
protection of the reasonable standards of the purity and
quality of such waters under which such proposed drilling or
conversion may be completed to overcome such objections, if
any.
(c) If any objection or objections are so filed, or are made by the director, the director shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than thirty days from the end of said thirty-day period, at which such objections will be considered, of which time and place the well operator and all objecting coal operators, the owners or lessees, if any, or such chief, shall be given at least ten days' written notice by the director by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, or such chief, shall proceed to consider the objections. In the case of proposed drilling or converting of a well for the purposes provided for in section fourteen of this article, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the director, and any change in the original location so agreed upon and approved by the director shall be indicated on said plat on file with the director, and the distance and direction of the new location from the original location shall be shown, and, as so altered, the plat shall be filed and become a permanent record. In the case of proposed conversion, such parties present or represented may agree upon conditions under which the conversion is to take place for the protection of life and property or for protection of reasonable standards of purity and quality of the waters of the state. At which time the plat and notice required by section fourteen shall be filed and become a permanent record. Whereupon the director may issue to the well operator a permit to drill or convert, as the case may be, reciting the filing of the plat and notice required by said section fourteen that at a hearing duly held a location as shown on the plat or the conditions under which the conversion is to take place for the protection of life and property and reasonable standards of purity and quality of the waters of the state where agreed upon and approved, and that the well operator is authorized to drill at such location or to convert at the site shown on such plat, as the case may be.

(d) (1) In the case the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that
meets the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The director shall take into consideration upon his decision:

(a) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, traveling, air haulage, drainage or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mine already surveyed and platted, but not yet being operated;

(b) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(c) Whether a well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances, due to the extraction of coal;

(d) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

(2) At the close of the hearing or within ten days thereafter the director shall issue an order stating:

(a) That he refuses to issue a permit;

(b) That he will issue a permit for the proposed drilling location;

(c) That he will issue a permit for a drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that he will issue a permit, he shall issue a permit effective ten days after he has mailed such order. Except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

(3) If a permit is issued, the director shall indicate the new
drilling location on the plat on file with the director and shall number and keep an index of and docket each plat and notice mailed to it as provided in section twelve of this article, and each notice mailed to it as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director, permits issued or refused, the papers filed and a transcript of the hearing. This shall constitute a record of the proceedings before the director and shall be open to inspection of the public.

(e) (1) In the case, the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be converted as to protect life and property, and the reasonable standards of purity and quality of the waters of the state, or upon conditions of converting that meet with the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The director shall take into consideration upon his decision:

(a) Whether the well can be converted safely, taking into consideration the dangers from creeps, squeezes or other disturbances;

(b) Whether the well can be converted, taking into consideration the reasonable standards of the purity and quality of the waters of the state.

(2) At the close of the hearing, or within ten days thereafter, the director shall issue an order stating the conditions under which the conversion is to take place, providing the well can be converted safely, taking into consideration the dangers from creeps, squeezes or other disturbances and the reasonable standards of purity and quality of the waters of this state. If such converting cannot be done safely, or if the reasonable standards of purity and quality of such waters will be endangered, the director shall issue an order stating with particularity the reasons for refusing to issue a permit.

(3) The order shall state with particularity the reasons for the director's order and shall be mailed by registered or
certified mail to the parties present or represented at such hearing. If the director has ruled that he will issue a permit, he shall issue a permit effective ten days after the division has mailed such order: Except for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

(4) If a permit is issued, the director shall indicate the well to be converted on the plat on file with the director, and shall number and keep an index of and docket each plat and notice mailed to him as provided in section fourteen of this article, entering in such docket the name of the well operator, and names and addresses of all persons notified, the dates of hearings and all actions taken by the director, permits issued or refused, the papers filed and a transcript of the hearings. This shall constitute a record of the proceedings before the director and shall be open to inspection by the public.

§22B-1-17. Objections to proposed drilling of shallow gas wells; notice to chairman of review board; indication of changes on plats; issuance of permits.

When a proposed shallow well drilling site is above a seam or seams of coal, then the owner of any such coal seam may, within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any such objection is filed, or if any objection is made by the director of the division of oil and gas the director shall forthwith mail, by registered or certified mail, to the chairman of the review board a notice that an objection to the proposed drilling or deepening of a shallow well has been filed with or made by the director, and shall enclose in such notice a copy of all objections and of the application and plat filed with the director in accordance with the provisions of section twelve of this article.

Thereafter, no further action shall be taken on such application by the director until he receives an order from the review board directing the director to:
(a) Refuse a drilling permit; or

(b) Issue a drilling permit for the proposed drilling location; or

(c) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or

(d) Issue a drilling permit either for the proposed drilling location or for an alternative drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more that one year from the date of issuance of such permit.

Upon receipt of such board order, the director shall promptly undertake the action directed by the review board, except that he shall not issue a drilling permit unless all other provisions of this article (except section fifteen) pertaining to the application for and approval of a drilling permit have been complied with. All permits issued by the director pursuant to this section shall be effective ten days after issuance unless the review board orders the director to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the director shall indicate the approved drilling location on the plat filed with the director in accordance with the provisions of section twelve of this article and shall number and keep an index of and docket each plat and notice mailed to him as provided in section twelve of this article, and each notice mailed to him as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of conferences, hearings and all other actions taken by the director and the review board. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

§22B-1-18. Protective devices—When well penetrates workable coal bed; when gas is found beneath or between workable coal beds.
(a) When a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coal bed or beds in such a manner as will exclude all oil, gas or gas pressure from the coal bed or beds, except such oil, gas or gas pressure as may be found in such coal bed or beds. Such string of casing shall be run to a point at least thirty feet below the lowest workable coal bed which the well penetrates and shall be circulated and cemented from such point to the surface in such a manner as provided for in reasonable rules and regulations promulgated by the director in accordance with the provisions of chapter twenty-nine-a. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth.

(b) In the event that gas is found beneath a workable coal bed before the hole has been reduced from the size it had at the coal bed, a packer shall be placed below the coal bed, and above the gas horizon, and the gas by this means diverted to the inside of the adjacent string of casing through perforations made in such casing, and through it passed to the surface without contact with the coal bed. Should gas be found between two workable beds of coal, in a hole, of the same diameter from bed to bed, two packers shall be placed, with perforations in the casing between them, permitting the gas to pass to the surface inside the adjacent casing. In either of the cases here specified, the strings of casing shall extend from their seats to the top of the well.

§22B-1-19. Same—Continuance during life of well; dry or abandoned wells.

In the event that a well becomes productive of natural gas or petroleum, or is drilled for or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section twenty-five of this article or for the disposal of pollutants or the effluent therefrom, all coal-protecting strings of casing and all water-protecting strings of casing shall remain in place until the well is plugged or abandoned. During the life of the well the annular spaces between the various strings of casing adjacent to workable beds of coal shall be kept open, and the top ends of all such strings shall be provided with casing heads, or such other suitable devices as will permit the free passage of gas.
§22B-1-20. Same—When well is drilled through horizon of coal bed from which coal has been removed.

When a well is drilled through the horizon of a coal bed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coal bed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet beneath the horizon of the coal bed and extend not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest sized casing to be used in the well, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coal beds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon.

§22B-1-21. Same—Installation of fresh water casings.

When a permit has been issued for the drilling of an oil or gas well or both, each well operator shall run and permanently cement a string of casing in the hole through the fresh water bearing strata in such a manner and to the extent provided for in rules and regulations promulgated by the director in accordance with the provisions of chapter twenty-two and twenty-nine-a of this code.

No oil or gas well shall be drilled nearer than two hundred feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well.
§22B-1-22. Well log to be filed; contents; authority to promulgate regulations.

Within a reasonable time after the completion of the drilling of a well, the well operator shall file with the director an accurate log. Such log shall contain the character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations and such other information as the director may require to effectuate the purposes of this chapter and chapter twenty-two of this code.

The director may promulgate such reasonable rules and regulations in accordance with article three, chapter twenty-nine-a of this code, as he may deem necessary to insure that the character, depth and thickness of geological formations encountered are accurately logged: Provided, That the director shall not require logging by the use of an electrical logging device.

§22B-1-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section nineteen of this article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the director and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section twelve of this article, and the coal operators to whom notices are required to be given by section thirteen of this article, of its intention to plug and abandon any such well (using such form of notice as the director may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after
the day on which such notice so mailed is received or in due
course should be received by the director, in order that a
representative or representatives of the director and such coal
operator, owner or lessee, if any, may be present at the
plugging and filling of the well: Provided, That whether such
representatives appear or do not appear, the well operator may
proceed at the time fixed to plug and fill the well in the manner
hereinafter described, or (b) first obtain the written approval
of the director and such coal operator, owner or lessee, if any,
or (c) in the event the well to be plugged and abandoned is
one on which drilling or reworking operations have been
continuously progressing pursuant to authorization granted by
the director, first obtain the verbal permission of the director
or his designated representative to plug and abandon such
well, except that the well operator shall, within a reasonable
period not to exceed five days after the commencement of such
plugging operations, give the written notices required by
subdivision (a) above.

No well may be plugged or abandoned unless prior to the
commencement of plugging operations and the abandonment
of any well the director is furnished a bond as provided in
section twenty-six of this article.

When the plugging, filling and reclamation of a well have
been completed, an affidavit, in triplicate, shall be made (on
a form to be furnished by the director) by two experienced
persons who participated in the work, the director for oil and
gas or his designated representative, in which affidavit shall
be set forth the time and manner in which the well was plugged
and filled and the land reclaimed. One copy of this affidavit
shall be retained by the well operator, another (or true copies
of same) shall be mailed to the coal operator or operators,
if any, and the third to the director.

§22B-1-24. Methods of plugging well.

Upon the abandonment or cessation of the operation of any
well drilled for natural gas or petroleum, or drilled or
converted for the introduction of pressure, whether liquid or
gas, or for the introduction of liquid for the purposes provided
for in section twenty-five of this article or for the disposal of
pollutants or the effluent therefrom the well operator, at the
time of such abandonment or cessation, shall fill and plug the
well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall be filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a final cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot, or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point,
but not less than twenty feet above the stratum in which
shooting has been done. In the event, however, that the
shooting has been done above one or more oil or gas-bearing
strata in the well, the liner shall be so placed that it will extend
not less than twenty feet above, nor less than twenty feet
below, the stratum in which shooting has been done.
Following the placing of the liner in the manner here specified
it shall be compactly filled with cement, mud, clay or other
nonporous sealing material;

(b) Where the well penetrates one or more workable coal
beds and a coal protection string of casing has been circulated
and cemented in to the surface, the well shall be filled and
securely plugged in the manner provided in subsection (a) of
this section, except that expanding cement shall be used
instead of regular hydraulic cement, to a point approximately
one hundred feet below the bottom of the coal protection
string of casing. A one hundred foot plug of expanding cement
shall then be placed in the well so that the top of such plug
is located at a point just below the coal protection string of
casing. After such plug has been securely placed in the well,
the coal protection string of casing shall be emptied of liquid
from the surface to a point one hundred feet below the lowest
workable coal bed or to the bottom of the coal protection
string of casing, whichever is shallower. A vent or other device
approved by the director shall then be installed on the top of
the coal protection string of casing in such a manner that will
prevent liquids and solids from entering the well but will
permit ready access to the full internal diameter of the coal
protection string of casing when required. The coal protection
string of casing and the vent or other device approved by the
director shall extend, when finally in place, a distance of not
less than thirty inches above ground level and shall be
permanently marked with the well number assigned by the
director.

(c) Where the well penetrates one or more workable coal
beds and a coal protection string of casing has not been
circulated and cemented in to the surface, the well shall be
filled and securely plugged in the manner provided in
subsection (a) of this section to a point fifty feet below the
lowest workable coal bed. Thereafter, a plug of cement shall
be placed in the well at a point not less than forty feet below
the lowest workable coal bed. After the cement plug has been securely placed in the well, the well shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point forty feet beneath the next overlying workable coal bed, if such there be, and the well shall then be filled with cement from this point to a point twenty feet above such workable coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and plugging of the well to a point above the highest workable coal bed, filling and plugging of the well shall continue in the manner provided in subsection (a) of this section to a point fifty feet below the surface, and a plug of cement shall be installed from the point fifty feet below the surface to the surface with a monument installed therein extending thirty inches above ground level.

(d) (1) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, a coal operator or coal seam owner may request that the well be plugged in the manner provided in subdivision (3) of this subsection rather than by the method provided in subsection (c) of this section. Such request (forms for which shall be provided by the director) must be filed in writing with the director prior to the scheduled plugging of the well, and must include the number of the well to be plugged and the name and address of the well operator. At the time such request is filed with the director, a copy of such request must also be mailed by registered or certified mail to the well operator named in the request.

(2) Upon receipt of such request, the director shall issue an order staying the plugging of the well and shall promptly determine the cost of plugging the well in the manner provided in subdivision (3) of this subsection and the cost of plugging the well in the manner provided in subsection (c) of this section. In making such determination, the director shall take into consideration any agreement previously made between the well operator and the coal operator or coal seam owner making the request. If the director determines that the cost of plugging the well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well in the
manner provided in subdivision (3) of this subsection, the
director shall grant the request of the coal operator or owner
and shall issue an order requiring the well operator to plug
the well in the manner provided in subdivision (3) of this
subsection. If the director determines that the cost of plugging
the well in the manner provided in subsection (c) of this section
is less than the cost of plugging the well in the manner
provided in subdivision (3) of this subsection, the director shall
request payment into escrow of the difference between the
determined costs by the coal operator or coal seam owner
making the request. Upon receipt of satisfactory notice of such
payment, or upon receipt of notice that the well operator has
waived such payment, the director shall grant the request of
the coal operator or coal seam owner and shall issue an order
requiring the well operator to plug the well in the manner
provided in subdivision (3) of this subsection. If satisfactory
notice of payment into escrow, or notice that the well operator
has waived such payment, is not received by the director within
fifteen days after the request for payment into escrow, the
director shall issue an order permitting the plugging of the well
in the manner provided in subsection (c) of this section. Copies
of all orders issued by the director shall be sent by registered
or certified mail to the coal operator or coal seam owner
making the request and to the well operator. When the escrow
agent has received certification from the director of the
satisfactory completion of the plugging work and the
reimbursable extra cost thereof (that is, the difference between
the director's determination of plugging cost in the manner
provided in subsection (c) of this section and the well
operator's actual plugging cost in the manner provided in
subdivision (3) of this subsection), he shall pay the reimbur-
sable sum to the well operator or his nominee from the
payment into escrow to the extent available. The amount by
which the payment into escrow exceeds the reimbursable sum
plus the escrow agent's fee, if any, shall be repaid to the coal
owner. If the amount paid to the well operator or his nominee
is less than the actual reimbursable sum, the escrow agent shall
inform the coal owner, who shall pay the deficiency to the well
operator or his nominee within thirty days. If the coal operator
breaches this duty to pay the deficiency, the well operator shall
have a right of action and be entitled to recover damages as
if for wrongful conversion of personalty, and his reasonable
(3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision (1) of this subsection has been granted by the director, the well shall be plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately two hundred feet below the lowest workable coal bed. A one hundred foot plug of expanding cement shall then be placed in the well beginning at the point approximately two hundred feet below the lowest workable coal bed and extending to a point approximately one hundred feet below the lowest workable coal bed. A string of casing with an outside diameter no less than four and one-half inches shall then be run into the well to a point approximately one hundred feet below the lowest workable coal bed and such string of casing shall be circulated and cemented in to the surface. The casing shall then be emptied of liquid from a point approximately one hundred feet below the lowest workable coal bed to the surface, and a vent or other device approved by the director shall be installed on the top of the string of casing in such a manner that it will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The string of casing and the vent or other device approved by the director shall extend, when finally in place, a distance of no less than thirty inches above ground level and shall be permanently marked with the well number assigned by the director. Notwithstanding the foregoing provisions of this subdivision, if under particular circumstances a different method of plugging is required to obtain the approval of another governmental agency for the safe mining through of said well, the director may approve such different method of plugging if he finds the same to be as safe for mining through and otherwise adequate to prevent gas or other fluid migration from the oil and gas reservoirs as the method above specified.

(e) Any person may apply to the director for an order to clean out and replug a previously plugged well in a manner which will permit the safe mining through of such well. Such application shall be filed with the director and shall contain the well number, a general description of the well location, the
name and address of the owner of the surface land upon which
the well is located, a copy of or record reference to a deed,
lease or other document which entitles the applicant to enter
upon the surface land, a description of the methods by which
the well was previously plugged, and a description of the
method by which such applicant proposes to clean out and
replug the well. At the time an application is filed with the
director, a copy shall be mailed by registered or certified mail
to the owner or owners of the land, and the oil and gas lessee
of record, if any, of the site land upon which the well is
located. If no objection to the replugging of the well is filed
by any such landowner or oil and gas lessee within thirty days
after the filing of the application, and if the director determines
that the method proposed for replugging the well will permit
the safe mining through of such well, the director shall grant
the application by an order authorizing the replugging of the
well. Such order shall specify the method by which the well
shall be replugged, and copies thereof shall be mailed by
certified or registered mail to the applicant and to the owner
or owners of the land, and the oil and gas lessee, if any, of
the site upon which such well is located. If any such landowner
or oil and gas lessee objects to the replugging of the well, the
director shall notify the applicant of such objection. Thereaf-
ter, the director shall schedule a hearing to consider the
objection, which hearing shall be held after notice by registered
or certified mail to the objectors and the applicant. After
consideration of the evidence presented at the hearing, the
director shall issue an order authorizing the replugging of the
well if he determines that replugging of the well will permit
the safe mining through of such well. Such order shall specify
the manner in which the well shall be replugged and copies
thereof shall be sent by registered or certified mail to the
applicant and objectors. The director shall issue an order
rejecting the application if he determines that the proposed
method for replugging the well will not permit the safe mining
through of such well.

(f) All persons adversely affected by a determination or
order of the director issued pursuant to the provisions of this
section shall be entitled to judicial review in accordance with
the provisions of articles five and six, chapter twenty-nine-a
of this code.
§22B-1-25. Introducing liquid pressure into producing strata to recover oil contained therein.

1 The owner or operator of any well or wells which produce oil or gas may allow such well or wells to remain open for the purpose of introducing water or other liquid pressure into and upon the producing strata for the purpose of recovering the oil contained therein, and may drill additional wells for like purposes, provided that the introduction of such water or other liquid pressure shall be controlled as to volume and pressure and shall be through casing or tubing which shall be so anchored and packed that no water-bearing strata or other oil, or gas-bearing sand or producing stratum, above or below the producing strata into and upon which such pressure is introduced, shall be affected thereby, fulfilling requirements as set forth under section fourteen.

§22B-1-26. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless a bond which is required for a particular activity by this article is or has been furnished as provided in this section.

(b) A separate bond may be furnished for a particular oil or gas well, or for a particular well for the introduction of liquids for the purposes provided in section twenty-five of this article. A separate bond shall be furnished for each well drilled or converted for the introduction of liquids for the disposal of pollutants or the effluent therefrom. Every such bond shall be in the sum of ten thousand dollars, payable to the State of West Virginia, conditioned on full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, and stimulating oil and gas wells (or, if applicable, with all laws, rules and regulations relating to drilling or converting wells for the introduction of liquids for the purposes provided for in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director.

(c) When an operator makes or has made application for permits to drill or stimulate a number of oil and gas wells or to drill or convert a number of wells for the introduction of liquids for the purposes provided in section twenty-five of this
article, the operator may in lieu of furnishing a separate bond
furnish a blanket bond in the sum of fifty thousand dollars,
payable to the state of West Virginia, and conditioned as
aforesaid in subsection (b) of this section.

(d) All bonds submitted hereunder shall have a corporate
bonding or surety company authorized to do business in this
state as surety thereon: Provided, however, That in lieu of
corporate surety on a separate or blanket bond, as the case
may be, the operator may elect to deposit with the director
cash or the following collateral securities or any combination
thereof: (1) Bonds of the United States or agency thereof, or
those guaranteed by, or for which the credit of the United
States or agency therefor is pledged for the payment of the
principal and interest thereof; (2) direct general obligation
bonds of this state, or any other state, or territory of the
United States, or the District of Columbia, unconditionally
guaranteed as to the principal and interest by such other state
or territory of the United States, or the District of Columbia
if such other state, territory, or the District of Columbia has
the power to levy taxes for the payment of the principal and
interest of such securities, and if at the time of the deposit
such other state, territory, or the District of Columbia is not
in default in the payment of any part of the principal or
interest owing by it upon any part of its funded indebtedness;
(3) direct general obligation bonds of any county, district, city,
town, village, school district or other political subdivision of
this state issued pursuant to law and payable from ad valorem
taxes levied on all taxable property located herein, that the
total indebtedness after deducting sinking funds and all debts
incurred for self-sustaining public works does not exceed five
percent of the assessed value of all taxable property therein
at the time of the last assessment made before the date of such
deposit, and that the issuer has not, within five years prior
to the making thereof, been in default for more than ninety
days in the payment of any part of the principal or interest
on any debt, evidenced by its bonds; (4) revenue bonds issued
by this state or any agency of this state when such bonds are
payable from revenues or earnings specifically pledged for the
payment of principal and interest, and a lawful sinking fund
or reserve fund has been established and is being maintained
for the payment of such bonds; (5) revenue bonds issued by
a municipality in this state for the acquisition, construction,
improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (6) revenue bonds issued by a public service board of a public service district in this state for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement or payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (7) revenue bonds issued by a board of trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; and (8) bonds issued by a federal land bank or home owners' loan corporation. The cash deposit or market value, or both, of the collateral securities shall be equal to or greater than the penalty of the separate or blanket bond, as the case may be. Upon receipt of any such deposit or cash or collateral securities, the director shall immediately deliver the same to the treasurer of the State of West Virginia. The treasurer shall determine whether any such securities satisfy the requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the securities are not approved, they shall be rejected and returned to the operator and no permit shall be issued until a corporate surety bond is filed or cash or proper collateral securities are filed in lieu of such surety. The treasurer shall hold any cash or securities in the name of the state in trust for the purposes for which the deposit was made. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing and fracturing of oil and gas wells (or, if applicable, with all laws, rules and regulations relating to drilling or converting wells for the introduction of liquids for
the purposes provided for in section twenty-five of this article for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director. The operator making the deposit shall be entitled from time to time to receive from the treasurer, upon the written order of the director, the whole or any portion of such securities upon depositing with the treasurer in lieu thereof cash equal to or greater than the penalty of the bond, in other approved securities of the classes herein specified having a market value equal to or greater than the penalty of the bond, or a corporate surety bond.

(e) When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas or both, its operator may deposit with the director cash from the sale of the oil or gas or both until the total deposited is ten-thousand dollars. When the sum of the cash deposited is ten-thousand dollars, the separate bond for the well shall be released by the director. Upon receipt of such cash, the director shall immediately deliver the same to the treasurer of the State of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as he has furnished all reports and information as may be required by the director. If the cash realized from the sale of oil or gas or both from the well is not sufficient for the operator to deposit with the director the sum of ten-thousand dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the director of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities, as provided in the next preceding paragraph of this section, with the director. If a new bond or collateral securities
are funished by the operator, the liability of the corporate
bonding or surety company under the original bond shall
terminate as to any acts and operations of the operator
occurring after the effective date of the new bond or the date
the collateral securities are accepted by the treasurer of the
State of West Virginia. If the operator does not furnish a new
bond or collateral securities, as provided in the next preceding
paragraph of this section, with the director, he shall
immediately plug, fill and reclaim the well in accordance with
all of the provisions of law, rules and regulations applicable
thereto. In such case, the corporate or surety company which
issued the original bond shall be liable for any plugging, filling
or reclamation not performed in accordance with such laws,
rules and regulations.

(f) Any separate bond furnished for a particular well prior
to the effective date of this chapter shall continue to be valid
for all work on the well permitting prior to the effective date
of this chapter; but no permit shall hereafter be issued on such
a particular well without a bond complying with the provisions
of this section. Any blanket bond furnished prior to the
effective date of this chapter shall be replaced with a new
blanket bond conforming to the requirements of this section,
at which time the prior bond shall be discharged by operation
of law; and if the director determines that any operator has
not furnished a new blanket bond, the director shall notify the
operator by certified mail, return receipt requested, of the
requirement for a new blanket bond; and failure to submit a
new blanket bond within sixty days after receipt of the notice
from the director shall work a forfeiture under subsection (h)
of this section of the blanket bond furnished prior to the
effective date of this chapter.

(g) Any such bond shall remain in force until released by
the director, and the director shall release the same when it
is satisfied the conditions thereof have been fully performed.
Upon the release of any such bond, any cash or collateral
securities deposited shall be returned by the director to the
operator who deposited same.

(h) If any of the requirements of this article or rules and
regulations promulgated pursuant thereto or the orders of the
director have not been complied with within the time limit set
by the violation notice as defined in sections three, four, and
of this article, the performance bond shall then be forfeited.

(i) When any bond is forfeited pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto the director shall give notice to the attorney general who shall collect the forfeiture without delay.

(j) All forfeitures shall be deposited in the treasury of the State of West Virginia in the special reclamation fund as defined in section twenty-nine of this article.

§22B-1-27. Cause of action for damages caused by explosions.

Any person suffering personal injury or property damage due to any explosion caused by any permittee, shall have a cause of action against such permittee for three years after the explosion regardless of whether the explosion occurred before or after the effective date of this article.

§22B-1-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.

The director shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and shall have such access to the plans, maps and other records and to the properties of the well operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the director may himself enter, or shall permit any aggrieved person to file before him, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, or reclaiming any well in accordance with the provisions of this article, or to the order of the director. True copies of any such complaints shall be served upon or mailed by registered mail to any person so charged, with notice of the time and place of hearing, of which the operator or operators so charged shall be given at least five days’ notice. At the time and place fixed for hearing, full opportunity shall be given any person so charged or complaining to be heard and to offer such evidence as desired, and after a full hearing, at which the director may offer in evidence the results of such investigations as it may have made, the director shall make his findings of fact and enter such order as in his judgment is just and right and necessary to
secure the proper administration of this article, and if he deems
necessary, restraining the well operator from continuing to
drill or case any well or from further plugging, filling or
reclaiming the same, except under such conditions as the
director may impose in order to insure a strict compliance with
the provisions of this article relating to such matters.

Any well operator or coal operator adversely affected by a
final decision or order of the director, may appeal in the
manner prescribed in section four of article five of chapter
twenty-nine-a of this code.

§22B-1-29. Special reclamation fund; fees.

In addition to any other fees required by the provisions of
this article, every applicant for a permit to drill a well shall,
before the permit is issued, pay to the director a special
reclamation fee of one hundred dollars for each well to be
drilled. Such special reclamation fee shall be paid at the time
the application for a drilling permit is filed with the director
and the payment of such reclamation fee shall be a condition
precedent to the issuance of said permit.

There is hereby created within the treasury of the state of
West Virginia a special fund to be known as the oil and gas
reclamation fund, and the director shall deposit with the state
treasurer to the credit of such special fund all special
reclamation fees collected. The proceeds of any bond forfeited
under the provisions of this article shall inure to the benefit
of and shall be deposited in such oil and gas reclamation fund.

The oil and gas reclamation fund shall be administered by
the director. The director shall cause to be prepared plans for
the reclaiming and plugging of abandoned wells which have
not been reclaimed or plugged or which have been improperly
reclaimed or plugged. The director, as funds become available
in the oil and gas reclamation fund, shall reclaim and properly
plug wells in accordance with said plans and specifications and
in accordance with the provisions of this article relating to the
reclaiming and plugging of wells and all rules and regulations
promulgated thereunder. Such funds may also be utilized for
the purchase of abandoned wells, where such purchase is
necessary, and for the reclamation of such abandoned wells,
and for any engineering, administrative and research costs as
may be necessary to properly effectuate the reclaiming and
The director may avail himself of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells.

The director shall make an annual report to the governor and to the legislature setting forth the number of wells reclaimed or plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

All wells shall be reclaimed or plugged by contract entered into by the director on a competitive bid basis as provided for under the provisions of article three, chapter five-a of this code and the rules and regulations promulgated thereunder.

§22B-1-30. Reclamation requirements.

The operator of a well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

(a) Within six months after the completion of the drilling process, the operator shall fill all the pits for containing muds, cuttings, salt water and oil that are not needed for production purposes, or are not required or allowed by state or federal law or rule and remove all concrete bases, drilling supplies and drilling equipment. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed, and properly disposed of, from any pit that is retained so the pit is kept reasonably free of salt water and oil.

(b) Within six months after a well that has produced oil or gas is plugged, or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment, and any oil, salt water and debris, and fill any
removing excavations. Within such period, the operator shall
grade or terrace and plant, seed or sod the area disturbed
where necessary to bind the soil and prevent substantial
erosion and sedimentation.

The director may, upon written application by an operator
showing reasonable cause, extend the period within which
reclamation shall be completed, but not to exceed a further
six-month period.

If the director refuses to approve a request for extension,
he shall do so by order.

(c) It shall be the duty of an operator to commence the
reclamation of the area of land disturbed in siting, drilling,
completing or producing the well in accordance with soil
erosion and sediment control plans approved by the director
or his designate.

(d) The director shall promulgate rules setting forth
requirements for the safe and efficient installation and burying
of all production and gathering pipelines where practical and
reasonable except that such rules shall not apply to those
pipelines regulated by the public service commission.

§22B-1-31. Preventing waste of gas; plan of operation required for
wasting gas in process of producing oil; rejection
thereof.

Natural gas shall not be permitted to waste or escape from
any well or pipeline, when it is reasonably possible to prevent
such waste, after the owner or operator of such gas, or well,
or pipeline, has had a reasonable length of time to shut in such
gas in the well, or make the necessary repairs to such well or
pipeline to prevent such waste: Provided, That (a) if, in the
process of drilling a well for oil or gas, or both, gas is found
in such well, and the owner or operator thereof desires to
continue to search for oil or gas, or both, by drilling deeper
in search of lower oil or gas-bearing strata, or (b) if it becomes
necessary to make repairs to any well producing gas,
commonly known as “cleaning out,” and if in either event it
is necessary for the gas in such well to escape therefrom during
the process of drilling or making repairs, as the case may be,
then the owner or operator of such well shall prosecute such
drilling or repairs with reasonable diligence, so that the waste
of gas from the well shall not continue longer than reasonably
necessary, and if, during the progress of such deeper drilling
or repairs, any temporary suspension thereof becomes
necessary, the owner or operator of such well shall use all
reasonable means to shut in the gas and prevent its waste
during such temporary suspension: Provided, however, That
in all cases where both oil and gas are found and produced
from the same oil and gas-bearing stratum, and where it is
necessary for the gas therefrom to waste in the process of
producing the oil, the owner or operator shall use all
reasonable diligence to conserve and save from waste so much
of such gas as it is reasonably possible to save, but in no case
shall such gas from any well be wasted in the process of
producing oil therefrom until the owner or operator of such
well shall have filed with the director a plan of operation for
said well showing, among other things, the gas-oil production
ratio involved in such operation, which plan shall govern the
operation of said well unless the director shall, within ten days
from the date on which such plan is submitted to the director,
make a finding that such plan fails, under all the facts and
circumstances, to propose the exercise of all reasonable
diligence to conserve and save from waste so much of such
gas as it is reasonably possible to save, in which event
production of oil at such well by the wasting of gas shall cease
and determine until a plan of operation is approved by the
director. Successive plans of operation may be filed by the
owner or operator of any such well with the director.

§22B-1-32. Right of adjacent owner or operator to prevent waste
of gas; recovery of cost.

If the owner or operator of any such well shall neglect or
refuse to drill, case and equip, or plug and abandon, or shut
in and conserve from waste the gas produced therefrom, as
required to be done and performed by the preceding sections
of this article, for a period of twenty days after a written notice
so to do, which notice may be served personally upon the
owner or operator, or may be posted in a conspicuous place
at or near the well, it shall be lawful for the owner or operator
of any adjacent or neighboring lands or the director to enter
upon the premises where such well is situated and properly
case and equip such well, or, in case the well is to be
abandoned, to properly plug and abandon it, or in case the
well is wasting gas, to properly shut it in and make such
needed repairs to the well to prevent the waste of gas, in the
manner required to be done by the preceding sections of this
article; and the reasonable cost and expense incurred by an
owner or operator or the director in so doing shall be paid
by the owner or operator of such well and may be recovered
as debts of like amount are by law recoverable.

The director may utilize funds and procedures established
pursuant to section twenty-nine of this article for the purposes
set out in the section. Amounts recovered by the director
pursuant to this section shall be deposited in the oil and gas
reclamation fund established pursuant to section twenty-nine
of this article.

§22B-1-33. Restraining waste.

Aside from and in addition to the imposition of any
penalties under this article, it shall be the duty of any circuit
court in the exercise of its equity jurisdiction to hear and
determine any bill or bills in equity which may be filed to
restrain the waste of natural gas in violation of this article,
and to grant relief by injunction or by other decrees or orders,
in accordance with the principles and practice in equity. The
plaintiff in such bill shall have sufficient standing to maintain
the same if he shall aver and prove that he is interested in
the lands situated within the distance of one mile from such
well, either as an owner of such land, or of the oil or gas,
or both, thereunder, in fee simple, or as an owner of leases
thereof or of rights therein for the production of oil and gas
or either of them or as the director.

§22B-1-34. Offenses; penalties.

(a) Any person or persons, firm, partnership, partnership
association or corporation who willfully violates any provision
of this article or any rule or order promulgated hereunder shall
be subject to a civil penalty not exceeding two thousand five
hundred dollars. Each day a violation continues after notice
by the division of oil and gas constitutes a separate offense.
The penalty shall be recovered by a civil action brought by
the division of oil and gas, in the name of the state, before
the circuit court of the county in which the subject well or
facility is located. All such civil penalties collected shall be
credited to the general fund of the state.
(b) Any person or persons, firm, partnership, partnership association or corporation willfully violating any of the provisions of this article which prescribe the manner of drilling and casing or plugging and filling any well, or which prescribe the methods of conserving gas from waste shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisonment in jail for not exceeding twelve months, or both, in the discretion of the court, and prosecutions under this section may be brought in the name of the state of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizens of this state.

§22B-1-35. Civil action for contamination or deprivation of fresh water source or supply; presumption.

In any action for contamination or deprivation of a fresh water source or supply within one thousand feet of the site of drilling for an oil or gas well, there shall be a rebuttable presumption that such drilling, and such oil or gas well, or either, was the proximate cause of the contamination or deprivation of such fresh water source or supply.

§22B-1-36. Declaration of oil and gas notice by owners and lessees of coal seams.

For purposes of notification under this article, any owner or lessee of coal seams shall file a declaration of his interest in such coal seams with the clerk of the county commission in the county where such coal seams are located. Said clerk shall file and index such declaration in accordance with section two, article one, chapter thirty-nine of this code, and shall index the name of the owner or lessee of such coal seams in the grantor index of the record maintained for the indexing of leases.

The declaration shall entitle such owner or lessee to the notices provided in sections twelve, thirteen, fourteen and twenty-three of this article: Provided, That the declaring owner shall be the record owner of the coal seam, and the declaring lessee shall be the record lessee with his source or sources of title recorded prior to recording such lessee's declaration.
The declaration shall be acknowledged by such owner or lessee, and in the case of a lessee, may be a part of the coal lease under which the lessee claims. Such declaration may be in the following language:

"DECLARATION OF OIL AND GAS NOTICE"

"The undersigned hereby declares:

(1) The undersigned is the ('owner' or 'lessee') of one or more coal seams or workable coal beds as those terms are defined in section one, article two, chapter twenty-two-a of the code of West Virginia.

(2) The coal seam(s) or workable coal bed(s) owned or leased partly or wholly by the undersigned lie(s) under the surface of lands described as follows:

(Here insert a description legally adequate for a deed, whether by metes and bounds or other locational description, or by title references such as a book and page legally sufficient to stand in lieu of a locational description.)

(3) The undersigned desires to be given all notices of oil and gas operations provided by sections twelve, thirteen, fourteen and twenty-three, article one, chapter twenty-two-b of the code of West Virginia, addressed as follows:

(Here insert the name and mailing address of the under­signed owner or lessee.)

..........................................................

(Signature)

(Here insert an acknowledgement legally adequate for a deed)."

The benefits of the foregoing declaration shall be personal to the declaring owner or lessee, and not transferable or assignable in any way.

§22B-1-37. Rules, regulations, orders and permits remain in effect.

The rules and regulations promulgated and all orders and permits in effect upon the effective date of this chapter pursuant to the provisions of former article four, chapter twenty-two, of this code, shall remain in full force and effect as if such rules, regulations, orders and permits were adopted
by the director established in this chapter but all such rules, regulations, orders and permits shall be subject to review by the director to ensure they are consistent with the purposes and policies set forth in this chapter.

§22B-1-38. Application of article; exclusions.

This article shall not apply to or affect any well work permitted prior to the effective date of this chapter under former article four, chapter twenty-two of this code, unless such well is, after completion (whether such completion is prior to or subsequent to the effective date of this chapter) deepened subsequent to the effective date of this chapter through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less than six thousand feet, whichever is shallower.

§22B-1-39. Injunctive relief.

(a) In addition to other remedies, and aside from various penalties provided by law, whenever it appears to the director that any person is violating or threatening to violate any provision of this article, any order or final decision of the director, or any lawful rule or regulation promulgated hereunder, the director may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such persons and any other persons who have been, are or are about to be, involved in any practices, acts or admissions so in violation, enjoining such person or persons from any violation or violations. Such application may be made and prosecuted to conclusion, whether or not any violation or violations have resulted or shall result, in prosecution or conviction under the provisions of this article.

(b) Upon application by the director, the circuit courts of this state may, by mandatory or prohibitory injunction compel compliance with the provisions of this article, and all orders and final decisions of the director. The court may issue a temporary injunction in any case pending a decision on the merits of any application, filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive
relief under the provisions of this article.

(c) The judgment of the circuit court upon application permitted by the provisions of this section, shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The director shall be represented in all such proceedings by the attorney general or his assistants or in such proceedings in the circuit courts by the prosecuting attorney of the several counties as well, all without additional compensation. The director with the written approval of the attorney general, may employ special counsel to represent the director in any such proceedings.

(e) If the director shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any order or final decision of the director, or any rules or regulations promulgated hereunder, within ten days after receipt of a written request to do so by any well operator, coal operator, operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land, adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the director might have brought suit. The director shall be made party defendant in such application in addition to the person or persons violating or threatening to violate any provisions of this article, any final order or decision of the director, or any rule or regulation promulgated hereunder. The application shall proceed and injunctive relief may be granted in the same manner as if the application had been made by the director: Except that the court may require a bond or other undertaking from the plaintiff.

§22B-1-40. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to the proceeding under section fifteen of this article or section seven, article seven, chapter twenty-two of this code, adversely affected by the issuance of a drilling permit
or to the issuance of a fracturing permit or the refusal of the
director to grant a drilling permit or fracturing permit is
entitled to judicial review thereof. All of the pertinent
provisions of section four, article five, chapter twenty-nine-a
of this code shall apply to and govern such judicial review with
like effect as if the provisions of said section four were set forth
in extenso in this section.

The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals in accordance with the provisions of section one,
article six, chapter twenty-nine-a of this code.

§22B-1-41. Appeal from order of issuance or refusal of permit for
drilling location for introduction of liquids or waste
or from conditions of converting procedure.

Any party to the proceedings under section sixteen of this
article adversely affected by the order of issuance of a drilling
permit or to the issuance of a fracturing permit or the refusal
of the director to grant a drilling permit or fracturing permit
is entitled to judicial review thereof. All of the pertinent
provisions of section four, article five, chapter twenty-nine-a
of this code shall apply to and govern such judicial review with
like effect as if the provisions of section four were set forth
in extenso in this section.

The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals in accordance with the provisions of section one,
article six, chapter twenty-nine-a of this code.

ARTICLE 2. OIL AND GAS PRODUCTION DAMAGE COM-
PENSATION.

§22B-2-1. Legislative findings and purpose.
(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas reserves
in this state must coexist with the use, agricultural or
otherwise, of the surface of certain land and that each
constitutes a right equal to the other.

(2) Modern methods of extraction of oil and gas require the
use of substantially more surface area than the methods
commonly in use at the time most mineral estates in this state
were severed from the fee tract; and, specifically, the drilling
of wells by the rotary drilling method was virtually unknown
in this state prior to the year one thousand nine hundred sixty,
so that no person theretofore severing his oil and gas from
his surface land and no person theretofore leasing his oil and
gas with the right to explore for and develop the same could
reasonably have known nor could it have been reasonably
contemplated that rotary drilling operations imposed a greater
burden on the surface than the cable tool drilling method
heretofore employed in this state; and since the year one
thousand nine hundred sixty, the use of rotary drilling
methods has spread slowly but steadily in this state, with
concomitant public awareness of its impact on surface land;
and that the public interest requires that the surface owner be
entitled to fair compensation for the loss of the use of his
surface area during the rotary drilling operation, but
recognizing the right of the oil and gas operator to conduct
rotary drilling operations as allowed by law.

(3) Prior to the first day of January, one thousand nine
hundred sixty, the rotary method of drilling oil or gas wells
was virtually unknown to the surface owners of this state nor
was such method reasonably contemplated during the
negotiations which occasioned the severance of either oil or
gas from the surface.

(4) The Legislature further finds and creates a rebuttable
presumption that even after the thirty-first day of December,
one thousand nine hundred fifty-nine, and prior to the ninth
day of June, one thousand nine hundred eighty-three, it was
unlikely that any surface owner knew or should have known
of the rotary method of drilling oil or gas wells, but, that such
knowledge was possible and that the rotary method of drilling
oil or gas wells could have, in some instances, been reasonably
contemplated by the parties during the negotiations of the
severance of the oil and gas from the surface. This presump-
tion against knowledge of the rotary drilling method may be
rebutted by a clear preponderance of the evidence showing that
the surface owner or his predecessor of record did in fact know
of the rotary drilling method at the time he or his predecessor
executed a severance deed or lease of oil and gas and that he
fairly contemplated the rotary drilling method, and received
compensation for the same.
(b) Any surface owner entitled to claim any finding or any presumption which is not rebutted as provided in this section shall be entitled to the compensation and damages of this article.

(c) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract entered into after the ninth day of June, one thousand nine hundred eighty-three.

(d) It is the purpose of this article to provide constitutionally permissible protection and compensation to surface owners of lands on which oil and gas wells are drilled from the burden resulting from drilling operations commenced after the ninth day of June, one thousand nine hundred eighty-three. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.


(a) In this article, unless the context or subject matter otherwise requires:

(1) “Agricultural production” means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially;

(2) “Drilling operations” means the actual drilling or redrilling of an oil or gas well commenced subsequent to the ninth day of June, one thousand nine hundred eighty-three, and the related preparation of the drilling site and access road, which requires entry, upon the surface estate;

(3) “Oil and gas developer” means the person who secures the drilling permit required by article one of this chapter;

(4) “Person” means any natural person, corporation, firm,
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partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(5) "Surface estate" means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(6) "Surface owner" means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.


(a) The oil and gas developer shall be obligated to pay the surface owner compensation for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained measured from the date the operator enters upon the land until the date reclamation is completed, (2) the market value of crops destroyed, damaged or prevented from reaching market, (3) any damage to a water supply in use prior to the commencement of the permitted activity, (4) the cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality, and (5) the diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-
ownership, any claim for compensation under this article shall be for the benefit of all such co-owners. The resolution of a claim for compensation provided in this article shall operate as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

§22B-2-4. Common law right of action preserved; offsets.

(a) Nothing in section three or elsewhere in this article shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent, or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of his mineral interest.

(b) An oil and gas developer shall be entitled to offset compensation agreed to be paid or awarded to a surface owner under section three of this article against any damages sought by or awarded to the surface owner through the assertion of common law remedies respecting the surface land actually occupied by the same drilling operation.

(c) An oil and gas developer shall be entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common-law remedies against compensation sought by or awarded to the surface owner under section three of this article respecting the surface land actually occupied by the same drilling operation.

§22B-2-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that he is commencing reclamation under section thirty, article one of this chapter. Such notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing. If more than three tenants in common or other co-owners hold interests in such lands, the developer may give such notice to the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be
located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the director shall prescribe by rule.

§22B-2-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made.

§22B-2-7. Rejection; legal action; arbitration; fees and costs.

(a) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within sixty days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) bring an action for compensation in the circuit court of the county in which the well is located, or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section six of article one of this chapter, to have his compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer shall not be admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common-law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in his notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator
within twenty days, then the two arbitrators are hereby
empowered to and shall forthwith submit the matter to the
court under the provisions of section one, article ten, chapter
fifty-five of this code, so that, among other things, the third
arbitrator can be chosen by the judge of the circuit court of
the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and
not be appointed as arbitrators: Any person who is personally
interested in the land on which rotary drilling is being
performed or has been performed, or in any interest or right
therein, or in the compensation and any damages to be
awarded therefor, or who is related by blood or marriage to
any person having such personal interest, or who stands in the
relation of guardian and ward, master and servant, principal
and agent, or partner, real estate broker, or surety to any
person having such personal interest, or who has enmity
against or bias in favor of any person who has such personal
interest or who is the owner of, or interested in, such land
or the oil and gas development thereof. No person shall be
deemed interested or incompetent to act as arbitrator by
reason of his being an inhabitant of the county, district or
municipal corporation wherein the land is located, or holding
an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take
such testimony and receive such exhibits as shall be necessary
to determine the amount of compensation to be paid to the
surface owner. However, no award of compensation shall be
made to the surface owner unless the panel of arbitrators has
first viewed the surface estate in question. A transcript of the
evidence may be made but shall not be required.

(e) Each party shall pay the compensation of his own
arbitrator and one half of the compensation of the third
arbitrator, or his own court costs as the case may be.

§22B-2-8. Application of article.

The remedies provided by this article shall not preclude any
person from seeking other remedies allowed by law.


If any section, subsection, subdivision, subparagraph,
sentence or clause of this article is adjudged to be unconsti-
tutional or invalid, such invalidation shall not affect the
validity of the remaining portions of this article, and, to this
end, the provisions of this article are hereby declared to be
severable.

ARTICLE 3. TRANSPORTATION OF OILS.

§22B-3-1. Scope of article.
Every person, corporation or company now engaged, or
which shall hereafter engage, in the business of transporting
or storing petroleum, by means of pipeline or lines or storage
by tanks, shall be subject to the provisions of this article and
shall conduct such business in conformity herewith: Provided,
That the provisions of this article shall be subject to all federal
laws regulating interstate commerce on the same subject.

§22B-3-2. Duty of pipeline companies to accept and transport oil.
Any company heretofore or hereafter organized for the
purpose of transporting petroleum or other oils or liquids by
means of pipeline or lines shall be required to accept all
petroleum offered to it in merchantable order in quantities of
not less than two thousand gallons at the wells where the same
is produced, making at its own expense all necessary
connections with the tanks or receptacles containing such
petroleum, and to transport and deliver the same at any
delivery station, within or without the state, on the route of
its line of pipes, which may be designated by the owners of
the petroleum so offered.

§22B-3-3. Oil of 35°Baume at 60° Fahrenheit; inspection, grading
and measurement; receipt; deduction for waste.
All petroleum of a gravity of thirty-five degrees Baume or
under, at a temperature of sixty degrees Fahrenheit, offered
for transportation by means of pipeline or lines, shall, before
the same is transported, as provided by section two of this
article, be inspected, graded and measured at the expense of
the pipeline company, and the company accepting the same
for transportation shall give to the owner thereof a receipt
stating therein the number of barrels or gallons so received,
and the grade, gravity and measurement thereof, and within
a reasonable time thereafter, upon demand of the owner or
his assigns, shall deliver to him at the point of delivery a like
quantity and grade or gravity of petroleum in merchantable
condition as specified in such receipt; except that the company may deduct for waste one percent of the amount of petroleum specified in such receipt.

§22B-3-4. Oil over 35° Baume 60° Fahrenheit; inspection and measurement; loss.

All petroleum of a gravity exceeding thirty-five degrees Baume, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported. The company accepting the same for transportation shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents from such tank, and the number of feet and inches of petroleum which remained in the tank after such run was completed. All deductions made for water, sediment or the like shall be made at the time such petroleum is measured. Within a reasonable time thereafter the company shall, upon demand, deliver from the petroleum in its custody to the owner thereof, or to his assignee, at such delivery station on the route of its line of pipes as he may elect, a quantity of merchantable petroleum, equal to the quantity of petroleum run from such tank, or receptacle, which shall be ascertained by computation; except that the company transporting such petroleum may deduct for evaporation and waste two percent of the amount of petroleum so run, as shown by such run ticket, and except that in case of loss of any petroleum while in the custody of company caused by fire, lightning, storm or other like unavoidable cause, such loss shall be borne pro rata by all the owners of such petroleum at the time thereof. But the company shall be liable for all petroleum that is lost while in its custody by the bursting of pipes or tanks, or by leakage from pipes or tanks; and it shall also be liable for all petroleum lost from tanks at the wells produced before the same has been received for transportation, if such loss be due to faulty connections made to such tanks; and the company shall be liable for all petroleum lost by the overflow of any tanks with which pipeline connections have been made, if such overflow be due
§22B-3-5. Lien for charges.

Any company engaged in transporting or storing petroleum shall have a lien upon such petroleum until all charges for transporting and storing the same are paid.

§22B-3-6. Accepted orders and certificates for oil—Negotiability.

Accepted orders and certificates for petroleum, issued by any company engaged in the business of transporting and storing petroleum in this state by means of pipeline or lines and tanks, shall be negotiable, and may be transferred by indorsement either in blank or to the order of another, and any person to whom such accepted orders and certificates shall be so transferred shall be deemed and taken to be the owner of the petroleum therein specified.

§22B-3-7. Same—Further provisions.

No receipt, certificate, accepted order or other voucher shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of the company issuing or putting in circulation such receipt, certificate, accepted order or voucher, or written evidence of liability. No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher shall be outstanding and uncanceled, except such original papers shall have been lost, in which case a duplicate, plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. No receipt, voucher, accepted order, certificate or written evidence of liability of such company on which petroleum, crude or refined, has been
delivered, shall be reissued, used or put in circulation. No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof. No duplicate receipt, certificate, voucher, accepted order or other evidence of liability, shall be made, issued or put in circulation until after notice of the loss of the original, and of the intention to apply for a duplicate thereof, shall have been given by advertisement over the signature of the owner thereof as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such duplicate is to be issued. Every receipt, voucher, accepted order, certificate or evidence of liability, when surrendered or the petroleum represented thereby delivered, shall be immediately canceled by stamping and punching the same across the face in large and legible letters with the word “canceled,” and giving the date of such cancellation; and it shall then be filed and preserved in the principal office of such company for a period of six years.

§22B-3-8. Dealing in oil without consent of owner.

No company, its officers or agents, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove or procure, or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of such company engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or a majority of the owners in interest thereof.

§22B-3-9. Monthly statements.

Every company now or hereafter engaged in the business of transporting by pipelines or storing crude or refined petroleum in this state shall, on or before the tenth day of each month, make or cause to be made and posted in its principal business office in this state, in an accessible and convenient place for the examination thereof by any person desiring such examination, and shall keep so posted continuously until the next
succeeding statement is so posted, a statement plainly written
or printed, signed by the officer, agent, person or persons
having charge of the pipes and tanks of such company, and
also by the officer or officers, person or persons, having charge
of the books and accounts thereof, which statement shall show
in legible and intelligent form the following details of the
business: (a) How much petroleum, crude or refined, was in
the actual and immediate custody of such company at the
beginning and close of the previous month, and where the
same was located or held; describing in detail the location and
designation of each tank or place of deposit, and the name
of its owner; (b) how much petroleum, crude or refined, was
received by such company during the previous month; (c) how
much petroleum, crude or refined, was delivered by such
company during the previous month; (d) for how much
petroleum, crude or refined, such company was liable for the
delivery or custody of to other corporations, companies or
persons at the close of the month; (e) how much of such
liability was represented by outstanding receipts or certificites,
accepted orders or other vouchers, and how much was
represented by credit balances; and (f) that all the provisions
of this article have been faithfully observed and obeyed during
the previous month. The statement so required to be made
shall also be sworn to by such officer, agent, person or persons
before some officer authorized by law to administer oaths,
which shall be in writing, and shall assert the familiarity and
acquaintance of the deponent with the business and condition
of such company, and with the facts sworn to, and that the
statements made in such report are true.

§22B-3-10. Statements of amount of oil.

All amounts in the statements required by this article, when
the petroleum is handled in bulk, shall be given in barrels and
hundredths of barrels, reckoning forty-two gallons to each
barrel, and when such petroleum is handled in barrels or
packages, the number of such barrels or packages shall be
given, and such statements shall distinguish between crude and
refined petroleum, and give the amount of each. Every
company engaged in the business aforesaid shall at all times
have in their pipes and tanks an amount of merchantable oil
equal to the aggregate of outstanding receipts, certificates,
accepted orders, vouchers, acknowledgements, evidences of
liability, and credit balances, on the books thereof.

§22B-3-11. Penalty—Wrongful issuance, sale or alteration of receipts, orders, etc.

1 Any company, its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this article, or shall do or cause to be done any of the acts prohibited by section seven of this article, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars, and, if the offender be a natural person, imprisoned not less than ten days nor exceeding one year.

§22B-3-12. Same—Dealing in oil without consent of owner in interest.

1 Any company, its officers or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or a majority of the owners in interest thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars and, if the offender be a natural person, imprisoned in the county jail not less than ninety days nor more than one year.

§22B-3-13. Same—Failure to make report and statement.

1 Any company engaged in the business of transporting by pipelines or storing petroleum, crude or refined, and each and every officer or agent of such company, who shall neglect or refuse to make the report and statement required by section nine of this article, within the time and the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report and statement required by said section nine shall remain unposted as therein directed.

ARTICLE 4. UNDERGROUND GAS STORAGE RESERVOIRS.
§22B-4-1. Definitions.

In this article unless the context otherwise requires:

(1) The term "coal mine" means those operations in a coal seam which include the excavated and abandoned portions as well as the places actually being worked; also all underground workings and shafts, slopes, tunnels, and other ways and openings and all such shafts, slopes, tunnels, and other openings in the course of being sunk or driven, together with all roads and facilities connected with them below the surface.

(2) The term "operating coal mine" means (a) a coal mine which is producing coal or has been in production of coal at any time during the twelve months immediately preceeding the date its status is put in question under this article and any worked out or abandoned coal mine connected underground with or contiguous to such operating coal mine as herein defined and (b) any coal mine to be established or reestablished as an operating coal mine in the future pursuant to section four of this article.

(3) The term "outside coal boundaries" when used in conjunction with the term "operating coal mine" means the boundaries of the coal acreage assigned to such coal mine and which can be practicably and reasonably expected to be mined through such coal mine.

(4) The term "well" means a borehole drilled or proposed to be drilled within the storage reservoir boundary or reservoir protective area for the purpose of or to be used for producing, extracting or injecting any gas, petroleum or other liquid but excluding boreholes drilled to produce potable water to be used as such.

(5) The term "gas" means any gaseous substance.

(6) The term "storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is or may be injected for the purpose of storage or for the purpose of testing whether said stratum is suitable for storage.

(7) The term "bridge" means an obstruction placed in a well at any specified depth.

(8) The term "linear foot" means a unit of measurement in a straight line on a horizontal plane.
(9) The term “person” means any individual, association, partnership or corporation.

(10) The term “reservoir protective area” means all of that area outside of and surrounding the storage reservoir boundary but within two thousand linear feet thereof.

(11) The term “retreat mining” means the removal of such coal, pillars, ribs and stumps as remain after the development mining has been completed in that section of a coal mine.

(12) The term “pillar” means a solid block of coal surrounded by either active mine workings or a mined out area.

(13) The term “inactivate” means to shut off all flow of gas from a well by means of a temporary plug, or other suitable device or by injecting aquagel or other such equally nonporous material into the well.

(14) The term “storage operator” means any person as herein defined who proposes to or does operate a storage reservoir, either as owner or lessee.

(15) The term “workable coal seam” shall have the same meaning as the term “workable coal bed” as set out in section one of article one of this chapter.

(16) The terms “owner,” “coal operator,” “well operator,” “division,” “division of mines and minerals,” “plat,” “casing,” “oil,” and “cement,” shall have the meanings set out in section one of article one of this chapter.

§22B-4-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

(a) Any person who, on the eighth day of June, one thousand nine hundred fifty-five is injecting gas into or storing gas in a storage reservoir which underlies or is within three thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area shall, within sixty days thereafter, file with the division a copy of a map and certain data in the form and manner provided in this subsection.

Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in
a storage reservoir which is not at such date under or within
three thousand linear feet, but is less than ten thousand linear
feet from an operating coal mine which is operating in a coal
seam that extends over the storage reservoir or the reservoir
protective area, shall file such map and data within such time
in excess of sixty days as the director may fix.

Any person who, after the eighth day of June, one thousand
nine hundred fifty-five, proposes to inject or store gas in a
storage reservoir located as above shall file the required map
and data with the director not less than six months prior to
the starting of actual injection or storage.

The map provided for herein shall be prepared by a
competent engineer or geologist. It shall show the stratum or
strata in which the existing or proposed storage reservoir is
or is to be located, the geographic location of the outside
boundaries of the said storage reservoir and the reservoir
protective area, the location of all known oil or gas wells which
have been drilled into or through the storage stratum within
the reservoir or within three thousand linear feet thereof,
indicating which of these wells have been, or are to be cleaned
out and plugged or reconditioned for storage and also
indicating the proposed location of all additional wells which
are to be drilled within the storage reservoir or within three
thousand linear feet thereof.

The following information, if available, shall be furnished
for all known oil or gas wells which have been drilled into
or through the storage stratum within the storage reservoir or
within three thousand linear feet thereof; name of the operator,
date drilled, total depth, depth of production if the well was
productive of oil or gas, the initial rock pressure and volume,
the depths at which all coal seams were encountered and a
copy of the driller's log or other similar information. At the
time of the filing of the aforesaid maps and data such person
shall file a detailed statement of what efforts he has made to
determine, (1) that the wells shown on said map are accurately
located thereon, and (2) that to the best of his knowledge they
are all the oil or gas wells which have ever been drilled into
or below the storage stratum within the proposed storage
reservoir or within the reservoir protective area. This statement
shall also include information as to whether or not the initial
injection is for testing purposes, the maximum pressures at
which injection and storage of gas is contemplated, and a
detailed explanation of the methods to be used or which
theretofore have been used in drilling, cleaning out, recondi-
tioning or plugging wells in the storage reservoir or within the
reservoir protective area. The map and data required to be
filed hereunder shall be amended or supplemented semiannu-
ally in case any material changes have occurred: Provided,
That the director may require a storage operator to amend or
supplement such map or data at more frequent intervals if
material changes have occurred justifying such earlier filing.

At the time of the filing of the above maps and data, and
the filing of amended or supplemental maps or data, the
director shall give written notice of said filing to all persons
who may be affected under the provisions of this subsection
by the storage reservoir described in such maps or data. Such
notices shall contain a description of the boundaries of such
storage reservoir. When a person operating a coal mine or
owning an interest in coal properties which are or may be
affected by the storage reservoir, requests in writing a copy
of any map or data filed with the director such copy shall be
furnished by the storage operator.

(b) Any person who, on the eighth day of June, one
thousand nine hundred fifty-five, is injecting gas into or storing
gas in any other storage reservoir in this state not subject to
subsection (a) of this section shall, on or before the first day
of July, one thousand nine hundred eighty-three, file with the
division a map in the same detail as the map required for a
storage reservoir subject to subsection (a) of this section; and,
if the initial injection of gas into the storage reservoir by such
person or any predecessor occurred after the thirty-first day
of December, one thousand nine hundred seventy, data in the
same detail as the data required for a storage reservoir shall
be filed subject to subsection (a) of this section: Provided, That
in the case of a storage reservoir the operation of which has
been certificated by the federal power commission or the
federal energy regulatory commission under section seven of
the federal Natural Gas Act, the person may, in lieu of the
data, submit copies of the application and all amendments and
supplements of record in the federal docket, together with the
certificate of public convenience and necessity and any
amendments thereto.
Any person who, after the eighth day of June, one thousand nine hundred fifty-five, proposes to inject or store gas in any other storage reservoir in this state not subject to subsection (a) of this section shall file with the division a map and data in the same detail as the map and data required for a storage reservoir subject to subsection (a) of this section not less than six months prior to the starting of actual injection or storage:

Provided, That in the case of a storage reservoir the operation of which will be required to be certificated by the federal energy regulatory commission, the person may, in lieu of the data, submit copies of the application and all amendments and supplementals filed in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto, within twenty days after the same have been filed by such person or issued by the federal energy regulatory commission.

At the time of the filing of the above maps and data or documents in lieu of data and filing of amended or supplemental maps or data or documents in lieu of data, or upon receipt of an application filed with the federal energy regulatory commission for a new storage reservoir, the director shall give notice of said filing by a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, the publication area for which shall be the county or counties in which the storage reservoir is located. Such legal advertisement shall contain a description of the boundaries of such storage reservoir. The storage operator shall pay for the legal advertisement upon receipt of the invoice therefor from the division. When any person owning an interest in land which is or may be affected by the storage reservoir requests in writing a copy of any map or data or documents in lieu of data filed with the division such copy shall be furnished by the storage operator.

(c) The director shall also intervene in the federal docket, and participate in the proceedings for the purpose of assuring that the certificate of public convenience and necessity issued by the federal energy regulatory commission does not authorize operations or practices in conflict with the provisions of this article. The director may cooperate with the public service commission if the commission also intervenes. The attorney general is hereby directed to provide legal represen-
(d) For all purposes of this article, the outside boundaries of a storage reservoir shall be defined by the location of those wells around the periphery of the storage reservoir which had no gas production when drilled in said storage stratum:

Provided, That the boundaries as thus defined shall be originally fixed or subsequently changed where, based upon the number and nature of such wells, upon the geological and production knowledge of the storage stratum, its character, permeability, and distribution, and operating experience, it is determined in a conference or hearing under section ten of this article that modification should be made.

§22B-4-3. Filings of maps and data by persons operating coal mines.

(a) Any person owning or operating a coal mine, who has not already done so with respect to the department of mines pursuant to the former provisions of article seven of chapter twenty-two of this code, shall, within thirty days from the effective date of this article, file with the director of the department of mines and minerals a map, prepared by a competent engineer, showing the outside coal boundaries of the said operating coal mine, the existing workings and exhausted areas and the relationship of said boundaries to identifiable surface properties and landmarks. Any person who is storing or contemplating the storage of gas in the vicinity of such operating coal mines shall, upon written request, be furnished a copy of the aforesaid map by the coal operator and such person and the director shall thereafter be informed of any boundary changes at the time such changes occur. The director shall keep a record of such information and shall promptly notify both the coal operator and the storage operator if it is found that the coal mine and the storage reservoir are within ten thousand linear feet of each other.

(b) Any person owning or operating any coal mine which, on the tenth day of March, one thousand nine hundred fifty-five, is or which thereafter comes within ten thousand linear feet of a storage reservoir, and where the coal seam being operated extends over the storage reservoir or the reservoir protective area, shall within forty-five days after he has notice
from the director of such fact, file with the director, and furnish to the person operating such storage reservoir, a map in the form hereinafter provided and showing in addition, the existing and projected excavations and workings of such operating coal mine for the ensuing eighteen-month period, and also the location of any oil or gas wells of which said coal operator has knowledge. Such person owning or operating said coal mine shall each six months thereafter file with the director and the director of the division of mines and minerals and furnish to the person operating such storage reservoir a revised map showing any additional excavations and workings, together with the projected excavations and workings for the then ensuing eighteen-month period which may be within ten thousand linear feet of said storage reservoir: Provided, That the director of mines and minerals may require a coal operator to file such revised map at more frequent intervals if material changes have occurred justifying such earlier filing. Such person owning or operating said coal mine shall also file with the director and furnish the person operating said reservoir prompt notice of any wells which have been cut into, together with all available pertinent information.

§22B-4-4. Notice by persons operating coal mines.

(a) Any person owning or operating a coal mine on the eighth day of June, one thousand nine hundred fifty-five, and having knowledge that it overlies or is within two thousand linear feet of a gas storage reservoir, shall within thirty days notify the director and the storage operator of such fact unless such notification has already been provided to the director of mines pursuant to the provisions of former article seven, chapter twenty-two, of this code.

(b) When any person owning or operating a coal mine hereafter expects that within the ensuing nine-month period such coal mine will be extended to a point which will be within two thousand linear feet of any storage reservoir, he shall notify the director and the storage operator in writing of such fact.

(c) Any person hereafter intending to establish or reestablish an operating coal mine which when established or reestablished will be over a storage reservoir or within two thousand linear feet of a storage reservoir, or which upon being
established or reestablished may within nine months thereafter be expected to be within two thousand linear feet of a storage reservoir, shall notify the director and the storage operator in writing before doing so and such notice shall include the date on which it is intended the operating coal mine will be established or reestablished.

Any person who serves such notice of an intention to establish or reestablish an operating coal mine under this subsection, without intending in good faith to establish or reestablish such mine, shall be liable for continuing damage to any storage operator injured by the serving of such improper notice and shall be guilty of a misdemeanor under this article and subject to the same penalties as set forth in section twelve of this article.

§22B-4-5. Obligations to be performed by persons operating storage reservoirs.

(a) Any person who, on or after the eighth day of June, one thousand nine hundred fifty-five, is operating a storage reservoir which underlies or is within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall:

(1) Use every known method which is reasonable under the circumstances for discovering and locating all wells which have or may have been drilled into or through the storage stratum in that acreage which is within the outside coal boundaries of such operating coal mine and which overlies the storage reservoir or the reservoir protective area;

(2) Plug or recondition, in the manner provided by sections twenty-three and twenty-four of article one of this chapter and subsection (e) of this section, all known wells (except to the extent otherwise provided in subsections (e), (f), (g) and (h) of this section) drilled into or through the storage stratum and which are located within that portion of the acreage of the operating coal mine overlying the storage reservoir or the reservoir protective area: Provided, That where objection is raised as to the use of any well as a storage well, and after a conference or hearing in accordance with section ten of this article it is determined, taking into account all the circumstances and conditions, that such well should not be used as a
storage well, such well shall be plugged: Provided, however, that if, in the opinion of the storage operator, the well to which such objection has been raised may at some future time be used as a storage well, the storage operator may recondition and inactivate such well instead of plugging it, if such alternative is approved by the director after taking into account all of the circumstances and conditions.

The requirements of clause (2) of this subsection shall be deemed to have been fully complied with if, as the operating coal mine is extended, all wells which, from time to time, come within the acreage described in said clause (2) are reconditioned or plugged as provided in subsection (e) or (f) of this section and in section twenty-four of article one of this chapter so that by the time the coal mine has reached a point within two thousand linear feet of any such wells, they will have been reconditioned or plugged so as to meet the requirements of said subsections (e) or (f) and of said section twenty-four of article one.

(b) Any person operating a storage reservoir referred to in subsection (a) of this section, who has not already done so with respect to the department of mines pursuant to the provisions of former article seven of chapter twenty-two of this code, shall within sixty days after the effective date of this article file with the director and furnish a copy to the person operating the affected operating coal mine, a verified statement setting forth:

(1) That the map and any supplemental maps required by subsection (a) of section two of this article have been prepared and filed in accordance with section two;

(2) A detailed explanation of what the storage operator has done to comply with the requirements of clauses (1) and (2) of subsection (a) of this section and the results thereof;

(3) Such additional efforts, if any, as the storage operator is making and intends to make to locate all oil and gas wells; and

(4) Any additional wells that are to be plugged or reconditioned to meet the requirements of clause (2) of subsection (a) of this section.

If such statement is not filed by the storage reservoir
operator within the time specified herein, the director shall summarily order such operator to file such statement.

(c) Within one hundred twenty days after the receipt of any such statement, the director may, and he shall, if so requested by either the storage operator or the coal operator affected, direct that a conference be held in accordance with section ten of this article to determine whether the information as filed indicates that the requirements of section two of this article and of subsection (a) of this section have been fully complied with. At such conference, if any person shall be of the opinion that such requirements have not been fully complied with, the parties shall attempt to agree on what additional things are to be done and the time within which they are to be completed, subject to the approval of the director, to meet the said requirements.

If such agreement cannot be reached, the director shall direct that a hearing be held in accordance with section ten of this article. At such hearing the director shall determine whether the requirements of said section two of this article and of subsection (a) of this section have been met and shall issue an order setting forth such determination. If the director shall determine that any of the said requirements have not been met, the order shall specify, in detail, both the extent to which such requirements have not been met, and the things which the storage operator must do to meet such requirements. The order shall grant to the storage operator such time as is reasonably necessary to complete each of the things which he is directed to do. If, in carrying out said order, the storage operator encounters conditions which were not known to exist at the time of the hearing and which materially affect the validity of said order or the ability of the storage operator to comply with the order, the storage operator may apply for a rehearing or modification of said order.

(d) Whenever, in compliance with subsection (a) of this section, a storage operator, after the filing of the statement provided for in subsection (b) of this section, plugs or reconditions a well, he shall so notify the director and the coal operator affected in writing, setting forth such facts as will indicate the manner in which the plugging or reconditioning was done. Upon receipt thereof, the coal operator affected or the director may request a conference or hearing in accordance
with section ten of this article.

(e) In order to meet the requirements of subsection (a) of this section, wells which are to be plugged shall be plugged in the manner specified in section twenty-four of article one of this chapter. When a well located within the storage reservoir or the reservoir protective area has been plugged prior to the tenth day of March, one thousand nine hundred fifty-five, and on the basis of the data, information and other evidence submitted to the director, it is determined that: (1) Such plugging was done in the manner required in section twenty-four of article one of this chapter; and (2) said plugging is still sufficiently effective to meet the requirements of this article, the obligations imposed by subsection (a) of this section as to plugging said well shall be considered fully satisfied.

(f) In order to meet the requirements of subsection (a) of this section, wells which are to be reconditioned shall be cleaned out from the surface through the storage horizon and the following casing strings shall be pulled and replaced with new casing, using the same procedure as is applicable to drilling a new well as provided for in sections eighteen, nineteen and twenty of article one of this chapter: (1) The producing casing; (2) the largest diameter casing passing through the lowest workable coal seam unless such casing extends at least twenty-five feet below the bottom of such coal seam and is determined to be in good physical condition: Provided, That the storage operator may, instead of replacing the largest diameter casing, replace the next largest casing string if such casing string extends at least twenty-five feet below the lowest workable coal seam; and (3) such other casing strings which are determined not to be in good physical condition. In the case of wells to be used for gas storage, the annular space between each string of casing, and the annular space behind the largest diameter casing to the extent possible, shall be filled to the surface with cement or aquagel or such equally nonporous material as is approved by the director pursuant to section eight of this article. At least fifteen days prior to the time when a well is to be reconditioned the storage operator shall give notice thereof to the coal operator or owner and to the director setting forth in such notice the manner in which it is planned to recondition such well and any pertinent
data known to the storage operator which will indicate the
then existing condition of such well. In addition the storage
operator shall give the coal operator or owner and such
representative of the director as the director shall have
designated at least seventy-two hours notice of the time when
such reconditioning is to begin. The coal operator or owner
shall have the right to file, within ten days after the receipt
of the first notice required herein, objections to the plan of
reconditioning as submitted by the storage operator. If no such
objections are filed or if none is raised by the director within
such ten-day period, the storage operator may proceed with
the reconditioning in accordance with the plan as submitted.
If any such objections are filed by the coal operator or owner
or are made by the director, the director shall fix a time and
place for a conference in accordance with section ten of this
article at which conference the well operator and the person
who has filed such objections shall endeavor to agree upon
a plan of reconditioning which meets the requirements herein
and which will satisfy such objections. If no plan is approved
at such conference, the director shall direct that a hearing be
held in accordance with section ten of this article and, after
such hearing, shall by an appropriate order determine whether
the plan as submitted meets the requirements set forth herein,
or what changes, if any, should be made to meet such
requirements. If, in reconditioning a well in accordance with
said plan, physical conditions are encountered which justify or
necessitate a change in said plan, the storage operator or the
coil operator may request that the plan be changed. If the
storage operator and the coal operator cannot agree upon such
change, the director shall arrange for a conference or hearing
in accordance with section ten of this article to determine the
matter in the same manner as set forth herein in connection
with original objections to said plan. Application may be made
to the director in the manner prescribed in section eight of
this article for approval of an alternative method of
reconditioning a well. When a well located within the storage
reservoir or the reservoir protective area has been recondi-
tioned prior to the tenth day of March, one thousand nine
hundred fifty-five, or was so drilled and equipped previously
and on the basis of the data, information and other evidence
submitted to the director, it is determined that: (1) Such
reconditioning or previous drilling and equipping was done in
the manner required in this subsection, or in a manner
approved as an alternative method in accordance with section
eight of this article and (2) such reconditioning or previous
drilling and equipping is still sufficiently effective to meet the
requirements of this article, the obligations imposed by
subsection (a) as to reconditioning said well shall be considered
fully satisfied. Where a well requires emergency repairs this
subsection shall not be construed to require the storage
operator to give the notices specified herein before making
such repairs.

(g) When a well located within the reservoir protective area
is a producing well in a stratum below the storage stratum the
obligations imposed by subsection (a) of this section shall not
begin until such well ceases to be a producing well.

(h) When a well within a storage reservoir or the reservoir
protective area penetrates the storage stratum but does not
penetrate the coal seam being mined by an operating coal mine
the director may, upon application of the operator of such
storage reservoir, exempt such well from the requirements of
this section. Either party affected may request a conference
and hearing with respect to the exemption of any such well
in accordance with section ten of this article.

(i) In fulfilling the requirements of clause (2) of subsection
(a) of this section with respect to a well within the reservoir
protective area, the storage operator shall not be required to
plug or recondition such well until he has received from the
coal operator written notice that the mine workings will within
the period stated in such notice, be within two thousand linear
feet of such well. Upon the receipt of such notice the storage
operator shall use due diligence to complete the plugging or
reconditioning of such well in accordance with the require-
ments of this section and of section twenty-four of article one
of this chapter. If the said mine workings do not, within a
period of three years after said well has been plugged, come
within two thousand linear feet of said well, the coal operator
shall reimburse the storage operator for the cost of said
plugging, provided such well is still within the reservoir
protective area as of that time.

(j) When retreat mining approaches a point where within
ninety days it is expected that such retreat work will be at the
The location of the pillar surrounding an active storage well the coal operator shall give written notice of such approach to the storage operator and by agreement said parties shall determine whether it is necessary or advisable to inactivate effectively said well temporarily. The well shall not be reactivated until a reasonable period has elapsed, such reasonable period to be determined by the said parties. In the event that the said parties cannot agree upon either of the foregoing matters, such question shall be submitted to the director for decision in accordance with section ten of this article. The number of wells required to be temporarily inactivated during the retreat period shall not be such as to materially affect the efficient operation of such storage pool. This provision shall not preclude the temporary inactivation of a particular well where the practical effect of inactivating such well is to render the pool temporarily inoperative.

(k) The requirements of subsections (a), (1), and (m) of this section shall not apply to the injection of gas into any stratum when the sole purpose of such injection (such purpose being herein referred to as testing) is to determine whether the said stratum is suitable for storage purposes: Provided, That such testing shall be conducted only in compliance with the following requirements:

(1) The person testing or proposing to test shall comply with all the provisions and requirements of section two of this article and shall verify the statement required to be filed thereby;

(2) If any part of the proposed storage reservoir is under or within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the proposed storage reservoir or the reservoir protective area, the storage operator shall give at least six months' written notice to the director and to the coal operator of the fact that injection of gas for testing purposes is proposed;

(3) The coal operator affected may at any time file objections with the director in accordance with subsection (d) of section nine of this article. If any such objections are filed by the coal operator or if the director shall have any objections, the director shall fix a time and place for a conference in accordance with section ten of this article, not
more than ten days from the date of the notice to the storage
operator, at which conference the storage operator and the
person who has filed such objections shall attempt to agree,
subject to the approval of the director, on the questions
involved. If such agreement cannot be reached at such
conference, the director shall direct that a hearing be held in
accordance with section ten of this article. At such hearing the
director shall determine and set forth in an appropriate order
the conditions and requirements which he shall deem necessary
or advisable in order to prevent gas from such storage
reservoir from entering any operating coal mine. The storage
operator shall comply with such conditions and requirements
throughout the period of the testing operations. In determining
such conditions and requirements the director shall take into
account the extent to which the matters referred to in
subsection (a) of this section have been performed. If, in
carrying out said order, either the storage operator or the coal
operator encounters or discovers conditions which were not
known to exist at the time of the hearing and which materially
affect said order or the ability of the storage operator to
comply with the order, either operator may apply for a
rehearing or modification of said order;

(4) Where, at any time, a proposed storage reservoir being
tested comes under or within two thousand linear feet of an
operating coal mine either because of the extension of the
storage reservoir being tested or because of the extension or
establishment or reestablishment of the operating coal mine,
then and at the time of any such event the requirements of
this subsection shall become applicable to such testing.

(1) Any person who, after the effective date of this article,
proposes to establish a storage reservoir under, or within two
thousand linear feet of an operating coal mine which is
operating in a coal seam that extends over the storage reservoir
or the reservoir protective area, shall, prior to establishing such
reservoir, in addition to complying with the requirements of
section two of this article and subsection (a) of this section,
file the verified statement required by subsection (b) of this
section and fully comply with such order or orders, if any, as
the director may issue in the manner provided for under
subsections (b) or (c) of this section before beginning the
operation of such storage reservoir. After the person proposing
(m) When a gas storage reservoir, (1) was in operation on the eighth day of June, one thousand nine hundred fifty-five, and at any time thereafter it is under or within two thousand linear feet of an operating coal mine, or (2) when a gas storage reservoir is put in operation after the eighth day of June, one thousand nine hundred fifty-five, and at any time after such storage operations begin it is under or within two thousand linear feet of an operating coal mine, then and in either such event, the storage operator shall comply with all of the provisions of this section except that the time for filing the verified statement under subsection (b) shall be sixty days after the date stated in the notice filed by the coal operator under subsections (b) or (c) of section four of this article as to when the operating coal mine will be at a point within two thousand linear feet of such reservoir: Provided, That if the extending of the projected workings or the proposed establishment or reestablishment of the operating coal mine is delayed after the giving of the notice provided in subsections (b) and (c) of section four of this article, the coal operator shall give notice of such delay to the director and the director shall, upon the request of the storage operator, extend the time for filing such statement by the additional time which will be required to extend or establish or reestablish such operating coal mine to a point within two thousand linear feet of such reservoir. Such verified statement shall also indicate that the map referred to in subsection (a) of section two of this article has been currently amended as of the time of the filing of such statement. The person operating any such storage reservoir shall continue to be subject to all of the provisions of this article.

(n) If, in any proceeding under this article, the director shall determine that any operator of a storage reservoir has failed to carry out any lawful order of the director issued under this article, the director shall have authority to require such storage operator to suspend the operation of such reservoir and to withdraw the gas therefrom until such violation is remedied. In such an event the gas shall be withdrawn under the
following conditions. The storage operator shall remove the
maximum amount of gas which is required by the director to
be removed from the storage reservoir that can be withdrawn
in accordance with recognized engineering and operating
procedures and shall proceed with due diligence insofar as
existing facilities used to remove gas from the reservoir will
permit.

(o) In addition to initial compliance with the other
provisions of this article and any lawful orders issued
thereunder, it shall be the duty at all times of the person
owning or operating any storage reservoir which is subject to
the provisions of this article to keep all wells drilled into or
through the storage stratum in such condition and to operate
the same in such manner as to prevent the escape of gas into
any coal mine therefrom, and to operate and maintain such
storage reservoir and its facilities in such manner and at such
pressures as will prevent gas from escaping from such reservoir
or its facilities into any coal mine: Provided, That this duty
shall not be construed to include the inability to prevent the
escape of gas where such escape results from an act of God
or an act of any person not under the control of the storage
operator other than in connection with any well which the
storage operator has failed to locate and to make known to
the director: Provided, however, That if any escape of gas into
a coal mine does result from an act of God or an act of any
person not under the control of the storage operator, the
storage operator shall be under the duty of taking such action
thereafter as is reasonably necessary to prevent further escape
of gas into the coal mine.

§22B-4-6. Inspection of facilities and records; reliance on maps;
burden of proof.

(a) In determining whether a particular coal mine or
operating coal mine is or will be within any distance material
under this article from any storage reservoir, the owner or
operator of such coal mine and the storage operator may rely
on the most recent map of the storage reservoir or coal mine
filed by the other with the director.

(b) In any proceeding under this article where the accuracy
of any map or data filed by any person pursuant to the
requirements of this article is in issue, the person filing the
same shall at the request of any party to such proceeding be required to disclose the information and method used in compiling such map and data and such information as is available to such person that might affect the current validity of such map or data. If any material question is raised in such proceeding as to the accuracy of such map or data with respect to any particular matter or matters contained therein, the person filing such map or data shall then have the burden of proving the accuracy of the map or data with respect to such matter or matters.

(c) The person operating any storage reservoir affected by the terms of this article shall, at all reasonable times, be permitted to inspect the applicable records and facilities of any coal mine overlying such storage reservoir or the reservoir protective area, and the person operating any such coal mine affected by the terms of this article, shall similarly, at all reasonable times, be permitted to inspect the applicable records and facilities of any such storage reservoir underlying any such coal mine. In the event that either such storage operator or coal operator shall refuse to permit any such inspection of records or facilities, the director shall, on his own motion, or on application of the party seeking the inspection after reasonable written notice, and a hearing thereon, if requested by either of the parties affected, make an order providing for such inspection.

§22B-4-7. Exemptions.

(a) The provisions of this article shall not apply to strip mines and auger mines operating from the surface.

(b) Injection of gas for storage purposes in any workable coal seam, whether or not such seam is being or has been mined, shall be prohibited. Nothing in this article shall be construed to prohibit the original extraction of natural gas, crude oil, or coal. No storage operator shall have authority to appropriate any coal or coal measure whether or not being mined, or any interest therein.

§22B-4-8. Alternative method.

(a) Whenever provision is made in this article by reference to this section for using an alternative method or material in carrying out any obligation imposed by the article, the person
seeking the authority to use such alternative method or material shall file an application with the director describing such proposed alternative method or material in reasonable detail. Notice of filing of any such application shall be given by registered mail to any coal operator or operators affected. Any such coal operator may within ten days following such notice, file objections to such proposed alternative method or material. If no objections are filed within said ten-day period or if none is raised by the director, the director shall forthwith issue a permit approving such proposed alternative method or material.

(b) If any such objections are filed by any coal operator or are raised by the director, the director shall direct that a conference be held in accordance with section ten of this article within the ten days following the filing of such objections. At such conferences the person seeking approval of the alternative method or material and the person who has filed such objections shall attempt to agree on such alternative method or material or any modification thereof, and if such agreement is reached and approved by the director, the director shall forthwith issue a permit approving the alternative method or material. If no such agreement is reached and approved, the director shall direct that a hearing be held in accordance with section ten of this article: Provided, That if the alternative method or material involves a new development in technology or technique the director may, before such a hearing is held, grant such affected parties a period not to exceed ninety days to study and evaluate said proposed alternative method or material. Following such hearing, if the director shall find that such proposed alternative method or material will furnish adequate protection to the workable coal seams, the director shall by order approve such alternative method or material; otherwise the director shall deny the said application.

§22B-4-9. Powers and duties of director.

(a) The director may review the maps and data filed under sections two and three hereof for the purpose of determining the accuracy thereof. Where any material question is raised by any interested storage operator or coal operator or owner as to the accuracy of any such map or data, the director shall hold hearings thereon and shall by an appropriate order require the person filing such map or data to correct the same
(b) It shall be the duty of the director to receive and keep in a safe place for public inspection any map, data, report, well log, notice or other writing required to be filed with it pursuant to the provisions of this article. The director shall keep such indices of all such information as will enable any person using the same to readily locate such information either by the identity of the person who filed the same or by the person or persons affected by such filing or by the geographic location of the subject matter by political subdivision. The director shall also keep a docket for public inspection of all proceedings, in which shall be entered the dates of any notices, the names of all persons notified and their addresses, the dates of hearings, conferences and all orders, decrees, decisions, determinations, rulings or other actions issued or taken by the director and such docket shall constitute the record of each and every proceeding before the director.

(c) The director shall have authority to make any inspections and investigations of records and facilities which he shall deem necessary or desirable to perform his functions under this article.

(d) Where in any section of this article provision is made for the filing of objections, such objections shall be filed in writing with the director, by the person entitled to file the same or by the director, and shall state as definitely as is reasonably possible the reasons for such objections. The person filing such objections shall send a copy thereof by registered mail to the person or persons affected thereby.

§22B-4-10. Conferences, hearings and appeals.

(a) The director or any person having a direct interest in the subject matter of this article may at any time request that a conference be held for the purpose of discussing and endeavoring to resolve by mutual agreement any matter arising under the provisions of this article. Prompt notice of any such conference shall be given by the director to all such interested parties. At such conference a representative of the director shall be in attendance, and the director may make such recommendations as he deems appropriate. Any agreement reached at such conference shall be consistent with the requirements of this article and, if approved by such
representative of the director, it shall be reduced to writing
and shall be effective unless reviewed and rejected by the
director within ten days after the close of the conference. The
record of any such agreement approved by the director shall
be kept on file by the director with copies furnished to the
parties. The conference shall be deemed terminated as of the
date any party refuses to confer thereafter. Such a conference
shall be held in all cases prior to conducting any hearing under
this section.

(b) Within ten days after termination of the conference
provided for in this section at which no approved agreement
has been reached or within ten days after the rejection by the
director of any agreement approved at any such conference,
any person who has a direct interest in the subject matter of
the conference may submit the matter or matters, or any part
thereof, considered at the conference, to the director for
determination at a public hearing. The hearing procedure shall
be formally commenced by the filing of a petition with the
director upon forms prescribed by the director or by specifying
in writing the essential elements of the petition, including name
and address of the petitioner and of all other persons affected
thereby, a clear and concise statement of the facts involved,
and a specific statement of the relief sought. The hearing shall
thereafter be conducted in accordance with the provisions of
article five, chapter twenty-nine-a of this code and with such
regulations and such provisions as to reasonable notice as the
director may prescribe. Consistent with the requirements for
reasonable notice all hearings under this article shall be held
by the director promptly. All testimony taken at such hearings
shall be under oath and shall be reduced to writing by a
reporter appointed by the director, and the parties shall be
entitled to appear and be heard in person or by attorney. The
director may present at such hearing any evidence which is
material to the matter under consideration and which has
come to the director’s attention in any investigation or
inspection made pursuant to provisions of this article.

(c) After the conclusion of hearings, the director shall make
and file his findings and order with his opinion, if any. A copy
of such order shall be served by registered mail upon the
person against whom it runs, or his attorney of record, and
notice thereof shall be given to the other parties to the
(d) The director may, at any time after notice and after opportunity to be heard as provided in this section, rescind or amend any approved agreement or order made by him. Any order rescinding or amending a prior agreement or order shall, when served upon the person affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders; but no such order shall affect the legality or validity of any acts done by such person in accordance with the prior agreement or order before receipt by such person of the notice of such change.

(e) The director shall have power, either personally or by any of his authorized representatives, to subpoena witnesses and take testimony, and administer oaths to any witness in any hearing, proceeding or examination instituted before the director or conducted by him with reference to any matter within the jurisdiction of the director. In all hearings or proceedings before the director the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the director or any party to the proceedings before the director may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of such books, records, maps, plats, papers, documents and other writings as he may deem necessary or proper in and pertinent to any hearing, proceeding or investigation held or had by it. Such court, in case of the refusal of any such person to obey the subpoena, shall issue an order requiring such person to appear before the director and produce the required documentary evidence, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to criminate the person giving the same shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify.

(f) With the consent of the director, the testimony of any witness may be taken by deposition at the instance of a party to any hearing before the director at any time after hearing has been formally commenced. The director may, of his own
motion, order testimony to be taken by deposition at any stage
in any hearing, proceeding or investigation pending before it.
Such deposition shall be taken in the manner prescribed by
the laws of West Virginia for taking depositions in civil cases
in courts of record.

(g) Whether or not it be so expressly stated, an appeal from
any final order, decision or action by the director in
administering the provisions of this article may be taken by
any aggrieved person within ten days of notice of such order,
decision or action, to the circuit court of the county in which
the subject matter of such order, decision or action is located,
and in all cases of appeals to the circuit court, that court shall
certify its decisions to the director. The circuit court to which
the appeal is taken shall hear the appeal without a jury on
the record certified by the director. In any such appeal the
findings of the director shall, if supported by substantial
evidence, be conclusive. If the order of the director is not
affirmed, the court may set aside or modify it, in whole or
in part, or may remand the proceedings to the director for
further disposition in accordance with the order of the court.
From all final decisions of the circuit court an appeal shall
lie to the supreme court of appeals as is now provided by law
in cases in equity, by the director as well as by any other party
of record before the circuit court.

Any party feeling aggrieved by the final order of the circuit
court affecting him, may present his petition in writing to the
supreme court of appeals, or to a judge thereof in vacation,
within twenty days after the entry of such order, praying for
the suspension or modification of such final order. The
applicant shall deliver a copy of such petition to the director
and to all other parties of record before presenting the same
to the court or judge. The court or judge shall fix a time for
the hearing on the application, but such hearing shall not be
held sooner than seven days after its presentation unless by
agreement of the parties, and notice of the time and place of
such hearing shall be forthwith given to the director and to
all other parties of record. If the court or judge, after such
hearing, be of opinion that such final order should be
suspended or modified, the court or the judge may require
bond, upon such conditions and in such penalty, and impose
such terms and conditions upon the petitioner as are just and
reasonable. For such hearing the entire record before the circuit
court, or a certified copy thereof, shall be filed in the supreme
court, and that court, upon such papers, shall promptly decide
the matter in controversy as may seem to it to be just and
right, and may award costs in each case as to it may seem
just and equitable.

§22B-4-11. Enforcement.

(a) The director or any person having a direct interest in
the subject matter of this article may complain in writing
setting forth that any person is violating or is about to violate,
any provisions of this article, or has done, or is about to do,
any act, matter or thing therein prohibited or declared to be
unlawful, or has failed, omitted, neglected or refused, or is
about to fail, omit, neglect or refuse, to perform any duty
enjoined upon him by this article. Upon the filing of a
complaint against any person, the director shall cause a copy
thereof to be served upon such person by registered mail
accompanied by a notice from the director setting such
complaint for hearing at a time and place specified in such
notice. At least five days' notice of such hearing shall be given
to the parties affected and such hearing shall be held in
accordance with the provisions of section ten of this article.
Following such hearing, the director shall, if he finds that the
matter alleged in the complaint is not in violation of this
article, dismiss the complaint, but if the director shall find that
the complaint is justified, he shall by appropriate order compel
compliance with this article.

(b) Whenever the director shall be of the opinion that any
person is violating, or is about to violate, any provisions of
this article, or has done, or is about to do, any act, matter
or thing therein prohibited or declared to be unlawful, or has
failed, omitted, neglected or refused, or is about to fail, omit,
neglect or refuse, to perform any duty enjoined upon him by
this article, or has failed, omitted, neglected or refused, or is
about to fail, omit, neglect or refuse to obey any lawful
requirement or order made by the director, or any final
judgment, order or decree made by any court pursuant to this
article, then and in every such case the director may institute
in the circuit court of the county or counties wherein the
operation is situated, injunction, mandamus or other approp-
riate legal proceedings to restrain such violations of the
provisions of this article or of orders of the director to enforce obedience therewith. No injunction bond shall be required to be filed in any such proceeding. Such persons or corporations as the court may deem necessary or proper to be joined as parties in order to make its judgment, order or writ effective may be joined as parties. The final judgment in any such action or proceedings shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction or other order, issue or be made permanent as prayed for in the petition or in such modified or other form as will afford appropriate relief. An appeal may be taken as in other civil actions.

(c) In addition to the other remedies herein provided, any storage operator or coal operator affected by the provisions of this article may proceed by injunction or other appropriate remedy to restrain violations or threatened violations of the provisions of this article or of orders of the director or the judgments, orders or decrees of any court or to enforce obedience therewith.

(d) Each remedy prescribed in this section shall be deemed concurrent or contemporaneous with any other remedy prescribed herein and the existence or exercise of any one such remedy shall not prevent the exercise of any other such remedy.

§22B-4-12. Penalties.

Any person who shall willfully violate any order of the director issued pursuant to the provisions of this article shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisoned in jail for not exceeding twelve months, or both, in the discretion of the court, and prosecutions under this section may be brought in the name of the State of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizen of this state.

§22B-4-13. Orders remain in effect.

All orders in effect upon the effective date of this article pursuant to the provisions of former article seven, chapter twenty-two of this code, shall remain in full force and effect.
4 as if such orders were adopted by the division established in
5 this chapter but all such orders shall be subject to review by
6 the director to ensure they are consistent with the purposes
7 and policies set forth in this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ________ be and hereby is approved this the ________ day of ____________ day of ____________ 1985.

Governor