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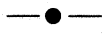
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OFFICE OF THE CLERK  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1850

(By Mr. Speaker, Mr. Albright, + Del. Swann)  
(By request of the Executive)



Passed April 12, 1985

In Effect 90 Days From Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 1850**

(By MR. SPEAKER, MR. ALBRIGHT, and DELEGATE SWANN)

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[Passed April 12, 1985; in effect ninety days from passage.]

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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, manddoors 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, adjudications, 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, prohibitions, 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.**

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

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

1 The Legislature hereby finds and declares that the mineral  
2 development industry is vital to the state’s economy and the  
3 employment of many of its citizens, that there exists a need  
4 for comprehensive regulation of this industry and the  
5 consolidation of regulatory power and statutes in a single act  
6 and under a single department of state government with  
7 related boards and commissions, that such consolidation will  
8 result in more efficient administration, avoid unnecessary  
9 delays in permitting and other matters, provide better and  
10 more expeditious enforcement and application of environmen-  
11 tal and safety laws as herein provided, result in better  
12 cooperation between agencies, provide for uniform policies  
13 and consistent treatment of entities engaged in mineral  
14 development, and that such efficient and uniform administra-  
15 tion and regulation will make this state’s industry more  
16 competitive with that in other enegy producing states.

17 Accordingly, it is hereby declared the public policy of this  
18 state and the purpose of this act:

19 (a) To foster, encourage and promote the exploration for  
20 and the development, production, utilization and conservation  
21 of coal, oil and gas and other mineral resources of the state  
22 through the fullest practical means, and at the same time  
23 promote economic development in the state, protect the  
24 environment and enhance safety and health in these vital  
25 industries;

26 (b) To provide a comprehensive program for the explora-  
27 tion, conservation, development, protection, enjoyment,  
28 recovery and use of coal, oil and gas, and other mineral  
29 resources in this state;

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

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

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

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

**§22-1-3. Definitions.**

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

4 (1) "Commissioner" means the commissioner of the  
5 department of energy;

6 (2) "Department" means the state department of energy;

7 (3) "Division of Mines and Minerals" means the division of  
8 mines and minerals of the department of energy; and

9 (4) "Division of Oil and Gas" means the division of oil and  
10 gas of the department of energy.

11 (b) Unless the context clearly indicates otherwise, the use  
12 of the word "and" and the word "or" shall be interchangeable,  
13 as, for example, "oil and gas" shall mean oil or gas or both.

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

1 There is hereby created in state government a department  
2 to be known as the department of energy. It shall be the  
3 purpose of the department, by and through the commissioner,  
4 the director of the division of mines and minerals and the  
5 director of the division of oil and gas to carry out the energy  
6 policy of the state as set forth in this chapter and in chapters  
7 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.**

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

12 The commissioner shall have the power to and may  
13 designate the deputy commissioner or other officers or  
14 employees of the department to substitute for him on any  
15 board or commission established under this chapter or to sit  
16 in his place in any hearings, appeals, meetings or other  
17 activities with such substitute having the same powers, duties,  
18 authority and responsibility as the commissioner. Additionally,



19 the commissioner shall have the power to delegate to the  
20 deputy commissioner, division directors, section deputies or  
21 other personnel, his powers, duties, authority and responsibil-  
22 ity relating to issuing permits, hiring and training inspectors  
23 and other employees of the department, conducting hearings  
24 and appeals and such other duties and functions set forth in  
25 this chapter or chapters twenty-two-a and twenty-two-b as he  
26 considers appropriate.

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

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

41 The commissioner shall receive an annual salary of \$65,000  
42 and shall be allowed and paid necessary expenses incident to  
43 the performance of his official duties. Prior to the assumption  
44 of the duties of his office, the commissioner shall take and  
45 subscribe to the oath required of public officers prescribed by  
46 section 5, article IV of the constitution of West Virginia and  
47 shall execute a bond, with surety approved by the governor,  
48 in the penal sum of ten thousand dollars, which executed oath  
49 and bond shall be filed in the office of the secretary of state.  
50 Premiums on the bond shall be paid from the department  
51 funds.

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

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

6 responsibilities of the deputy commissioner.

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

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

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

15 (b) There shall be within the division of mines and minerals  
16 a permit section, an inspection and enforcement section and  
17 a safety, health and training section, and such other sections  
18 and units of activity as may be found by the commissioner  
19 to be necessary and desirable for the orderly, efficient and  
20 economical administration of the department for the accom-  
21 plishment of its purposes. Each section shall be headed by a  
22 deputy director appointed by the commissioner. The deputy  
23 director of the safety, health and training section shall be a  
24 citizen of this state, shall be a competent person of good repute  
25 and temperate habits and shall have had at least fifteen years'  
26 experience underground in coal mines, at least ten of which  
27 shall have been underground in coal mines in this state. Such  
28 deputy director of the safety, health and training section shall  
29 possess practical knowledge of the different systems for the  
30 working, ventilating and draining of coal mines, and a

31 practical and scientific knowledge of all noxious and  
32 dangerous gases found in such mines. A diploma in mining  
33 engineering from the West Virginia University school of mines  
34 or any similarly accredited engineering school shall be counted  
35 as two years' working experience. Such deputy director shall  
36 devote all of his time to the duties of the office and shall not  
37 be directly or indirectly interested financially in any mine in  
38 this state. The deputy director of any other section of the  
39 division of mines and minerals shall possess such qualifications  
40 as shall be prescribed by the commissioner.

41 (c) There shall be within the division of oil and gas a permit  
42 section, an inspection and enforcement section and a safety,  
43 health and training section, and such other sections and units  
44 of activity as may be found by the commissioner to be  
45 necessary and desirable for the orderly, efficient and  
46 economical administration of the department for the accomplish-  
47 ment of its purposes. Each such section shall be headed  
48 by a deputy director appointed by the commissioner. The  
49 deputy director of each section of the division of oil and gas  
50 shall possess such qualifications as shall be prescribed by the  
51 commissioner.

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

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

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

18 any mine in this State.

**§22-1-9. Same—Oath and bond.**

1 The director of the division of mines and minerals shall,  
2 before entering upon the discharge of his duties, take the oath  
3 of office prescribed by section five, article four of the  
4 Constitution of West Virginia, and shall execute a bond in the  
5 penalty of two thousand dollars, with security to be approved  
6 by the governor, conditioned upon the faithful discharge of  
7 his duties, a certificate of which oath and bond shall be filed  
8 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.**

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

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

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

9 (b) The director of the division of oil and gas shall be a  
10 citizen of West Virginia, shall be a competent person of good  
11 reputation and temperate habits and shall be a registered  
12 professional engineer and shall have had at least ten years'  
13 practical experience in the oil and gas industry. A degree in  
14 mining, petroleum engineering or geology shall be counted as  
15 two years' practical experience. The director of the division of  
16 oil and gas shall devote all of his time to his duties and shall  
17 not be directly or indirectly interested financially in any oil  
18 or gas production or drilling or in any coal mine in this state.

**§22-1-12. Same—Oath and bond.**

1 The director of the division of oil and gas shall, before  
2 entering upon the discharge of his duties, take the oath of  
3 office prescribed by section five, article four of the constitution  
4 of West Virginia, and shall execute a bond in the penalty of  
5 two thousand dollars, with security to be approved by the  
6 governor, conditioned upon the faithful discharge of his duties,  
7 a certificate of which oath and which bond shall be filed in  
8 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.**

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

16 (b) The director of the division of oil and gas is authorized  
17 to propose or promulgate such rules and regulations as are  
18 necessary to carry out and implement the provisions of this  
19 chapter and chapter twenty-two-b of this code as are  
20 specifically authorized in said chapter twenty-two-b of this  
21 code. Except where specifically exempted in chapter twenty-  
22 two-b of this code, the provisions of chapter twenty-nine-a of  
23 this code shall apply to the proposal or promulgation of any  
24 such rules and regulations. No rules and regulations shall be  
25 finally proposed or promulgated by the director of the division  
26 of oil and gas for purposes of chapter twenty-nine-a of this  
27 code, unless and until the commissioner has approved such  
28 rules and regulations as provided herein. To the extent that  
29 the commissioner approves only a portion thereof, only that

30 portion so approved may be finally proposed or promulgated  
 31 by the director of the division of oil and gas. The commis-  
 32 sioner shall determine whether he will review the rules and  
 33 regulations within thirty days from the date the same are filed  
 34 with the commissioner by the director of the division of oil  
 35 and gas. If the commissioner decides to make such a review,  
 36 he shall file a notice of review with the director of the division  
 37 of oil and gas within the thirty day time period. Failure by  
 38 the commissioner to file a notice of review shall be considered  
 39 to be commissioner approval of such rules and regulations, or  
 40 parts thereof. If the commissioner files a notice of review, he  
 41 shall act to approve, disapprove or rewrite such rules and  
 42 regulations or parts thereof within sixty days from the filing  
 43 of the notice of review. Failure by the commissioner to act  
 44 within the sixty day time period shall be considered to be  
 45 commissioner approval of such rules and regulations, or part  
 46 thereof. Those rules and regulations specifically approved,  
 47 approved by failure to act, or rewritten shall be proposed or  
 48 promulgated under the provisions of chapter twenty-nine-a of  
 49 this code.

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

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

17 (b) Whenever any questions arise as to the transfer to the  
 18 department of energy of any appropriations, funds, credits,  
 19 other assets, books, documents, records, surveys, papers, files,

20 equipment or any other tangible property or material used or  
21 held in the exercise of the powers and the performances of  
22 the duties and functions vested in any agency immediately  
23 prior to the effective date of this act, the commissioner of  
24 finance and administration shall make a determination thereon  
25 and certify the same to the state agencies concerned.

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

1 The commissioner shall have the power and authority to  
2 propose or promulgate rules and regulations to organize the  
3 department and to carry out and implement the provisions of  
4 this chapter and chapter twenty-two-a of this code. With  
5 respect to chapter twenty-two-b of this code, the commission-  
6 er's rulemaking powers and authority shall be as described in  
7 section thirteen of this article. All rules and regulations in  
8 effect on the effective date of this act which pertain to the  
9 provisions of this chapter, chapter twenty-two-a and twenty-  
10 two-b of this code shall remain in effect until changed or  
11 superseded by the commissioner, or as appropriate, the  
12 director of the division of oil and gas. Except when specifically  
13 exempted by the provisions of this chapter, or chapters twenty-  
14 two-a or twenty-two-b of this code, all rules and regulations  
15 or changes thereto shall be proposed or promulgated by the  
16 commissioner in accordance with the provisions of chapter  
17 twenty-nine-a of this code.

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

1 Except as otherwise expressly provided in this chapter or  
2 in chapters twenty-two-a or twenty-two-b of this code,  
3 jurisdiction over the issuance of regulations, or any and all  
4 permits and other governmental authorizations required or to  
5 be required in all matters pertaining to the exploration,  
6 development, production, storage and recovery of coal, oil and  
7 gas, and other mineral resources in this state including all  
8 safety, conservation, land, water, waste disposal, reclamation,  
9 and environmental regulations, permits and authorizations of  
10 such activities called for pursuant to articles five, five-a, five-  
11 d and five-f, chapter twenty of this code, and the enforcement  
12 and implementation thereof is vested exclusively in the

13 department of energy. The department of energy is hereby  
 14 designated as the lead regulatory agency for this state for all  
 15 purposes of federal legislation relating to such activities.

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

23 All permits, certifications, waivers, bonds, orders or  
 24 authorizations heretofore issued by the department of mines,  
 25 department of natural resources, or any of the boards or  
 26 commissions continued in effect by this chapter shall be  
 27 continued in effect but become subject to the provisions of this  
 28 chapter, chapter twenty-two-a and chapter twenty-two-b of  
 29 this code. All permits, certifications, waivers, bonds, orders or  
 30 authorizations heretofore issued by the department of mines  
 31 or department of natural resources shall become subject to the  
 32 jurisdiction of the department of energy. All permits,  
 33 certifications, waivers, bonds, orders or authorizations  
 34 heretofore issued by any of the boards or commissions  
 35 continued in effect by the provisions of this chapter shall  
 36 remain subject to the jurisdiction of those boards or  
 38 commissions.

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

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

**§22-1-18. Construction.**

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

**§22-1-19. Effective date of act.**



1 This act shall become effective ninety days after passage.

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

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

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

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

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

1 All employees of the department of natural resources and  
2 department of mines as of the date of the passage of this  
3 chapter, whose functions and duties are transferred to the  
4 department of energy, shall be employed in a comparable  
5 position within the department of energy. Those positions  
6 within the departments of mines or natural resources which,

7 prior to the reenactment of this chapter, were afforded tenure  
 8 or civil service protection and coverage which are transferred  
 9 to the department of energy pursuant to such reenactment,  
 10 shall continue to be tenured or subject to civil service  
 11 protection and coverage, as the case may be, to the same  
 12 extent as ~~of~~ this chapter had not been reenacted.

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

## ARTICLE 2. INTERSTATE MINING COMPACT.

### §22-2-1. Enactment of compact.

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

#### INTERSTATE MINING COMPACT

##### Article I. Findings and Purposes.

6 (a) The party states find that:

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

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

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

19 (4) Such variables as soil structure and composition,

20 physiography, climatic conditions and the needs of the public  
21 make impracticable to all mining areas of a single standard  
22 for the conservation, adaption or restoration of mined land,  
23 or the development of mineral and other natural resources, but  
24 justifiable requirements of law and practice relating to the  
25 effects of mining on land, water and other resources may be  
26 reduced in equity or effectiveness unless they pertain similarly  
27 from state to state for all mining operations similarly situated.

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

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

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

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

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

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

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

53 **Article II. Definitions.**

54 As used in this compact, the term:

55 (a) "Mining" means the breaking of the surface soil in order  
56 to facilitate or accomplish the extraction or removal of  
57 minerals, ores or other solid matter, any activity or process

58 constituting all or part of a process for the extraction or  
59 removal of minerals, ores and other solid matter from its  
60 original location, and the preparation, washing, cleaning or  
61 other treatment of minerals, ores or other solid matter so as  
62 to make them suitable for commercial, industrial or construc-  
63 tion use; but shall not include those aspects of deep mining  
64 not having significant effect on the surface, and shall not  
65 include excavation or grading when conducted solely in aid  
66 of on-site farming or construction.

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

70 **Article III. State Programs.**

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

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

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

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

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

90 **Article IV. Powers.**

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

94 (a) Study mining operations, processes and techniques for

95 the purpose of gaining knowledge concerning the effects of  
96 such operations, processes and techniques on land, soil, water,  
97 air, plant and animal life, recreation and patterns of  
98 community or regional development or change.

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

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

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

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

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

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

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

123 **Article V. The Commission**

124 (a) There is hereby created an agency of the party states to  
125 be known as the "Interstate Mining Commission," hereinafter  
126 called "the commission." The commission shall be composed  
127 of one commissioner from each party state who shall be the  
128 governor thereof. Pursuant to the laws of his party state, each  
129 governor shall have the assistance of an advisory body  
130 (including membership from mining industries, conservation  
131 interests and such other public and private interests as may  
132 be appropriate) in considering problems relating to mining and

133 in discharging his responsibilities as the commissioner of his  
134 state on the commission. In any instance where a governor is  
135 unable to attend a meeting of the commission or perform any  
136 other function in connection with the business of the  
137 commission, he shall designate an alternate from among the  
138 members of the advisory body required by this paragraph, who  
139 shall represent him and act in his place and stead. The  
140 designation of an alternate shall be communicated by the  
141 governor to the commission in such manner as its bylaws may  
142 provide.

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

158 (c) The commission shall have a seal.

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

167 (e) Irrespective of the civil service, personnel or other merit  
168 system laws of any of the party states, the executive director  
169 with the approval of the commission, shall appoint, remove  
170 or discharge such personnel as may be necessary for the  
171 performance of the commission's functions, and shall fix the  
172 duties and compensation of such personnel.

173 (f) The commission may establish and maintain, independ-  
174 ently or in conjunction with a party state, a suitable retirement  
175 system for its employees. Employees of the commission shall  
176 be eligible for social security coverage in respect of old age  
177 and survivor's insurance: *Provided*, That the commission take  
178 such steps as may be necessary pursuant to the laws of the  
179 United States to participate in such program of insurance as  
180 a governmental agency or unit. The commission may establish  
181 and maintain or participate in such additional programs of  
182 employee benefits as it may deem appropriate.

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

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

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

206 (j) The commission annually shall make to the governor,  
207 Legislature and advisory body required by Article V (a) of  
208 each party state a report covering the activities of the  
209 commission for the preceding year, and embodying such  
210 recommendations as may have been made by the commission.  
211 The commission may make such additional reports as it may  
212 deem desirable.

213 **Article VI. Advisory, Technical and Regional Committees.**

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

225 **Article VII. Finance.**

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

231 (b) Each of the commission's budgets of estimated expen-  
 232 ditures shall contain specific recommendations of the amount  
 233 or amounts to be appropriated by each of the party states.  
 234 The total amount of appropriations requested under any such  
 235 budget shall be apportioned among the party states as follows:  
 236 One half in equal shares, and the remainder in proportion to  
 237 the value of minerals, ores and other solid matter mined. In  
 238 determining such values, the commission shall employ such  
 239 available public source or sources of information as, in its  
 240 judgment, present the most equitable and accurate compari-  
 241 sons among the party states. Each of the commission's budgets  
 242 of estimated expenditures and requests for appropriations shall  
 243 indicate the source or sources used in obtaining information  
 244 concerning value of minerals, ores and other solid matter  
 245 mined.

246 (c) The commission shall not pledge the credit of any party  
 247 state. The commission may meet any of its obligations in  
 248 whole or in part with funds available to it under Article V  
 249 (h) of this compact: *Provided*, That the commission takes  
 250 specific action setting aside such funds prior to incurring any  
 251 obligation to be met <sup>in</sup> whole or in part in such manner. Except  
 252 where the commission makes use of funds available to it under

251  
 252



253 Article V (h) hereof, the commission shall not incur any  
254 obligation prior to the allotment of funds by the party states  
255 adequate to meet the same.

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

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

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

272 **Article VIII. Entry Into Force and Withdrawal.**

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

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

284 **Article IX. Effect on Other Laws.**

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

287 **Article X. Construction and Severability.**

288 This compact shall be liberally construed so as to effectuate  
289 the purposes thereof. The provisions of this compact shall be

290 severable and if any phrase, clause, sentence or provision of  
 291 this compact is declared to be contrary to the constitution of  
 292 any state or of the United States or the applicability thereof  
 293 to any government, agency, person or circumstance is held  
 294 invalid, the validity of the remainder of this compact and the  
 295 applicability thereof to any government, agency, person or  
 296 circumstance shall not be affected thereby. If this compact  
 297 shall be held contrary to the constitution of any state  
 298 participating herein, the compact shall remain in full force and  
 299 effect as to the remaining party states and in full force and  
 300 effect as to the state affected as to all severable matters.

**§22-2-2. Bylaws of interstate mining commission.**

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

**§22-2-3. Effective date.**

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

**ARTICLE 3. ABANDONED MINE RECLAMATION ACT.**

**§22-3-1. Short title.**

1 This article shall be known and cited as the "Abandoned  
 2 Mine Lands and Reclamation Act."

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

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

11 Further, the Legislature finds and declares that, due to the  
 12 passage of Public Law 95-87, certain areas within the

13 boundaries of this state do not meet present day standards for  
14 reclamation.

15 Further, the Legislature finds that Title IV of the Surface  
16 Mining Control and Reclamation Act of 1977 "Public Law 95-  
17 87" provides for the collection of thirty-five cents per ton of  
18 coal produced from surface mine operations and fifteen cents  
19 per ton of coal produced from underground mine operations  
20 in West Virginia to be collected by the secretary of the United  
21 States department of the interior for a period of at least fifteen  
22 years. At least fifty percent of the funds so collected are to  
23 be allocated directly to the state of West Virginia to  
24 accomplish reclamation of abandoned coal mining operations,  
25 as of the date the state of West Virginia obtained an approved  
26 abandoned mine reclamation plan in accordance with sections  
27 405 and 503 of Public Law 95-87.

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

**§22-3-3. Definitions.**

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

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

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

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

11 (1) Reclamation and restoration of land and water resources

12 adversely affected by past coal surface-mining operations,  
13 including, but not limited to, reclamation and restoration of  
14 abandoned surface mine areas, abandoned coal processing  
15 areas and abandoned coal processing waste areas; sealing and  
16 filling abandoned deep mine entries and voids; planting of land  
17 adversely affected by past coal surface-mining operations to  
18 prevent erosion and sedimentation; prevention, abatement,  
19 treatment and control of water pollution created by coal mine  
20 drainage, including restoration of stream beds and construc-  
21 tion and operation of water treatment plants; prevention,  
22 abatement and control of burning coal processing waste areas  
23 and burning coal in situ; prevention, abatement and control  
24 of coal mine subsidence; and payment of administrative  
25 expenses and all other necessary expenses incurred to  
26 accomplish the purpose of this article: *Provided*, That all  
27 expenditures from this fund shall reflect the following  
28 priorities in the order stated:

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

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

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

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

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

48 (F) The development of publicly owned land adversely  
49 affected by past coal surface mining practices, including land  
50 acquired as provided in this article for recreation and historic

51 purposes, conservation and reclamation purposes and open  
52 space benefits.

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

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

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

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

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

11 (c) On an annual basis, the commissioner shall submit to

12 the secretary of the interior an application for the support of  
13 the state program and implementation of specific reclamation  
14 projects. Such annual requests shall include information as  
15 may be requested by the secretary of the interior including:

16 (1) A general description of each proposed project;

17 (2) A priority evaluation of each proposed project;

18 (3) A statement of the estimated benefits in such terms as  
19 number of acres restored, miles of stream improved, acres of  
20 surface lands protected from subsidence, population protected  
21 from subsidence, air pollution and hazards of mine and coal  
22 refuse disposal area fires;

23 (4) An estimate of the cost for each proposed project;

24 (5) In the case of proposed research and demonstration  
25 projects, a description of the specific techniques to be  
26 evaluated or objective to be attained;

27 (6) An identification of lands or interest therein to be  
28 acquired and the estimated cost; and

29 (7) In each year after the first in which a plan is filed under  
30 this article, an inventory of each project funded under the  
31 previous year's grant, which inventory shall include details of  
32 financial expenditures on such project together with a brief  
33 description of the project, including project location,  
34 landowner's name, acreage and type of reclamation performed.

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

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

1 (a) If the commissioner makes a finding of fact that:

2 (1) Land or water resources have been adversely affected by  
3 past coal mining practices;

4 (2) The adverse effects are at a stage where, in the public  
5 interest, action to restore, reclaim, abate, control or prevent  
6 should be taken;

7 (3) The owners of the land or water resources where entry  
8 must be made to restore, reclaim, abate, control or prevent  
9 the adverse effects of past coal mining practices are not known  
10 or readily available; or

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

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

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

48 and that:

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

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

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

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

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

72 (f) The commissioner may accept and local political  
73 subdivisions may transfer to the commissioner land belonging  
74 to them to carry out the purposes set out in this article and  
75 in such event they shall have a preferential right to purchase  
76 said land after reclamation at the fair market value less the  
77 political subdivison's cost of acquisition, but at no time shall  
78 the commissioner sell such land to a political subdivison at  
79 a price less than the cost of the acquisition and reclamation  
80 of said land: *Provided*, That if any land sold to a political  
81 subdivision under this subsection is not used for a valid public  
82 purpose as specified by the commissioner in the terms and  
83 conditions of the sales agreement, then all rights, title and  
84 interest in such land shall revert to the West Virginia  
85 department of energy. Any moneys received from such sale  
86 shall be deposited in the abandoned land reclamation fund.



87 (g) Where land acquired pursuant to this section is deemed  
88 to be suitable for industrial, commercial, residential or  
89 recreational development, the commissioner may sell such land  
90 by public sale under a system of competitive bidding at not  
91 less than fair market value and pursuant to regulations  
92 promulgated to ensure that such lands are put to proper use  
93 consistent with State and local land use plans.

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

102 (i) In addition to the authority to acquire land under other  
103 provisions of this section, the commissioner is authorized to  
104 use money in the fund to acquire land from any federal, state  
105 or local government or from a political subdivision thereof,  
106 or from any person, firm, association or corporation, if he  
107 determines that such is an integral and necessary element of  
108 an economically feasible plan for the project to construct or  
109 rehabilitate housing for persons disabled as the result of  
110 employment in the mines or work incidental thereto, persons  
111 displaced by acquisition of land pursuant to this section, or  
112 persons dislocated as the result of adverse effects of coal  
113 mining practices which constitute an emergency as provided  
114 in section 410 of Public Law 95-87, or persons dislocated as  
115 the result of natural disasters or catastrophic failures from any  
116 cause. Such activities shall be accomplished under such terms  
117 and conditions as the commissioner shall require, which may  
118 include transfers of land with or without monetary consider-  
119 ation: *Provided*, That to the extent that the consideration is  
120 below the fair market value of the land transferred, no portion  
121 of the difference between the fair market value and the  
122 consideration shall accrue as a profit to such person, firm,  
123 association or corporation. No part of the funds provided  
124 under this article may be used to pay the actual construction  
125 costs of housing. The commissioner may carry out the  
126 purposes of this subsection directly or he may make grants and  
127 commitments for grants, and may advance money under such

128 terms and conditions as he may require to any department,  
129 agency or political subdivision of this State, or any public  
130 body or nonprofit organization designated by the commis-  
131 sioner.

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

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

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

32 (c) The statement filed pursuant to subsection (a) of this  
33 section, shall constitute a lien upon the said land as of the  
34 date of the expenditure of the moneys and shall have priority

35 as a lien second only to the lien of real estate taxes imposed  
36 upon said land.

**§22-3-8. Filling voids and sealing tunnels.**

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

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

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

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

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

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

9 (c) The commissioner may request the attorney general, who  
10 is hereby authorized to initiate, in addition to any other  
11 remedies provided for in this article, in any court of competent

12 jurisdiction, an action in equity for an injunction to restrain  
 13 any interference with the exercise of the right to enter or to  
 14 conduct any work provided in this article.

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

26 (e) All departments, boards, commissions and agencies of  
 27 the state shall cooperate with the commissioner by providing  
 28 technical expertise, personnel, equipment, materials and  
 29 supplies to implement and administer the provisions of this  
 30 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.**

1 (a) There is hereby continued a reclamation board of review  
 2 consisting of five members to be appointed by the governor  
 3 with the advice and consent of the Senate for terms of five  
 4 years, except that the terms of the first five members of said  
 5 board shall be for one, two, three, four and five years  
 6 respectively, as designated by the governor at the time of the  
 7 appointment. Any vacancy in the office of a member of said  
 8 board shall be filled by appointment by the governor for the  
 9 unexpired term of the member whose office is vacant. Each  
 10 vacancy occurring on said board shall be filled by appointment  
 11 within sixty days after such vacancy occurs. One of the  
 12 appointees to such board shall be a person who, by reason  
 13 of his previous vocation, employment or affiliations, can be  
 14 classed as one capable and experienced in coal mining. One  
 15 of the appointees to such board shall be a person who, by  
 16 reason of his previous training and experience, can be classed  
 17 as one capable and experienced in the practice of agriculture

18 and who represents the general public interest. One of the  
19 appointees to such board shall be a person who, by reason  
20 of his previous training and experience, can be classed as one  
21 capable and experienced in the modern forestry practices and  
22 who represents the general public interest. One of the  
23 appointees to such board shall be a person who, by reasons  
24 of his previous training and experience, can be classed as one  
25 capable and experienced in engineering. One of the appointees  
26 of such board shall be a person who, by reason of his previous  
27 training and experience, can be classed as one capable and  
28 experienced in water pollution control or water conservation  
29 problems. Not more than three members shall be members of  
30 the same political party.

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

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

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

59 thereon. In such case the action of the governor removing such  
60 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.**

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

14 (b) The appeal shall be in writing and shall set forth the  
15 action complained of and the specific grounds upon which the  
16 appeal is based. Within thirty days after the appellant is  
17 notified of the decision of the commissioner, or within fifteen  
18 days after the appellant is notified of the decision of the  
19 assessment officer, the appellant or any person with an interest  
20 which is or may be adversely affected may request a hearing  
21 on the reasons for the decision complained of. A notice of the  
22 appeal shall be filed with the commissioner within three days  
23 after the appeal is filed with the board.

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

32 (d) Not later than five days prior to the time fixed for the  
33 hearing on the appeal, the commissioner shall prepare and  
34 certify to the board a complete record of the proceedings of  
35 the commissioner out of which the appeal arises, including all

36 documents and correspondence related to the matter.

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

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

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

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



22 specifically ordered by the court, operate as a stay of the order  
23 of the board. The court may, under such conditions as it may  
24 prescribe, grant such temporary relief as it deems appropriate  
25 pending final determination of the proceedings if:

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

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

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

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

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

53 (e) The court may affirm, vacate, modify, set aside or  
54 remand any <sup>order</sup> ~~other~~ of the board for further action as the court  
55 may direct. Any order shall be affirmed if the court concludes  
56 that the order is supported by substantial evidence based on  
57 the record as a whole. The judgment of the court shall be final  
58 unless reversed, vacated or modified on appeal to the supreme  
59 court of appeals of West Virginia, and jurisdiction is hereby  
60 conferred upon the court to hear and entertain the appeals

61 upon application made therefor in the manner and within the  
62 time provided for civil appeals generally.

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

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

**ARTICLE 5. BOARD OF APPEALS.**

**§22-5-1. Board of appeals.**

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

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

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

22 Each member of the board shall receive one hundred dollars

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

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

**ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.**

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

1 (a) The Legislature hereby finds and declares that:

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

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

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

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

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

21 (1) Continue the board of coal mine health and safety;

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

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

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

**§22-6-2. Definitions.**

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

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

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

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

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19 special experience and competence in coal mine health and  
20 safety. There shall be submitted with such list a summary ~~on~~ <sup>of</sup>  
21 the qualifications of each nominee. If the full lists of nominees <sup>of</sup>  
22 are submitted in accordance with the provisions of this <sup>EN.</sup>  
23 subdivision, the governor shall make his appointments from  
24 the persons so nominated. For purposes of this subdivision,  
25 the major trade association representing operators in this state  
26 shall be deemed to be that association which represents  
27 operators accounting for over one half of the coal produced  
28 in mines in this state in the year prior to the year in which  
29 the appointment is to be made.

30 (2) The governor shall appoint two members who can  
31 reasonably be expected to represent the viewpoint of the  
32 working miners of this state. If the major employee organi-  
33 zation representing coal miners in this state is divided into  
34 administrative districts, such members shall not be from the  
35 same administrative district. The highest ranking official  
36 within the major employee organization representing coal  
37 miners within this state shall, upon request by the governor,  
38 submit a list of three nominees for each such position on the  
39 board: *Provided*, That if the major employee organization  
40 representing coal miners in this state is divided into adminis-  
41 trative districts, and if there are two vacancies to be filled in  
42 accordance with the provisions of this subdivision, not more  
43 than two persons on each list of three nominees shall be from  
44 the same administrative district and at least three districts shall  
45 be represented on the two lists submitted, and if there is one  
46 vacancy to be filled, no names shall be submitted of persons  
47 from the same administrative district already represented on  
48 the board. Said nominees shall have a background in coal  
49 mine health and safety, and shall at the time of their  
50 appointment be employed in a position which involves the  
51 protection of health and safety of miners. There shall be  
52 submitted with such list a summary of the qualifications of  
53 each nominee. If the full lists of nominees are submitted in  
54 accordance with the provisions of this subdivision, the  
55 governor shall make his appointments from the persons so  
56 nominated.

57 (3) The governor shall appoint one public member who is  
58 professionally qualified in the field of occupational health and  
59 safety and who shall be (A) an employee of the institute of

60 labor studies at West Virginia University or (B) a person who  
61 is engaged in or who has broad experience in occupational  
62 health and safety from the perspective of the worker. Such  
63 nominee shall have technical experience in occupational health  
64 and safety or education and experience in such field: *Provided*,  
65 That the nominee shall not have been, prior to his appoint-  
66 ment to the board, employed by a mining or industrial  
67 business entity in a managerial or supervisory position, or shall  
68 not have been employed by the major employee organization  
69 representing coal miners in this state, or shall not have been  
70 a miner.

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

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

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

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

97 (1) With regard to the two members appointed in accor-  
98 dance with the provisions of subdivision (1), subsection (a) of  
99 this section, one member shall serve a beginning term of one

100 year, and one member shall serve a beginning term of two  
101 years.

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

107 (3) The members appointed in accordance with the provi-  
108 sions of subdivisions (3) and (4), subsection (a) of this section  
109 shall each be appointed to serve a beginning term of three  
110 years.

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

115 (c) The governor shall appoint a health and safety admin-  
116 istrator in accordance with the provisions of section four-b of  
117 this article, who shall certify all official records of the board.  
118 The health and safety administrator shall be a full-time officer  
119 of the board of coal mine health and safety with the duties  
120 provided for in section four-b of this article. The health and  
121 safety administrator shall have such education and experience  
122 as the governor deems necessary to properly investigate areas  
123 of concern to the board in the development of rules and  
124 regulations governing mine health and safety. The governor  
125 shall appoint as health and safety administrator a person who  
126 has an independent and impartial viewpoint on issues  
127 involving mine safety. The health and safety administrator  
128 shall be a person who has not been, during the two years  
129 immediately preceding his appointment, and is not during his  
130 term, an officer, trustee, director, substantial shareholder or  
131 employee of any coal operator, or an employee or officer of  
132 an employee organization, or a spouse of any such person. The  
133 health and safety administrator shall have the expertise to  
134 draft proposed rules and regulations and shall prepare such  
135 rules and regulations as are required by this code and on such  
136 other areas as will improve coal mine health and safety.

137 (d) The board shall meet at least once during each calendar  
138 month, or more often as may be necessary, and at other times  
139 upon the call of the chairman, or upon the request of any three

140 members of the board. Under the direction of the board, the  
141 health and safety administrator shall prepare an agenda for  
142 each board meeting giving priority to the promulgation of  
143 rules and regulations as may be required from time to time  
144 by this code, and as may be required to improve coal mine  
145 health and safety. The health and safety administrator shall  
146 provide each member of the board with notice of the meeting  
147 and the agenda as far in advance of the meeting as practical,  
148 but in any event, at least five days prior thereto. No meeting  
149 of the board shall be conducted unless said notice and agenda  
150 are given to the board members at least five days in advance,  
151 as provided herein, except in cases of emergency, as declared  
152 by the chairman, in which event members shall be notified of  
153 the board meeting and the agenda in a manner to be  
154 determined by the chairman: *Provided*, That upon agreement  
155 of a majority of the quorum present, any scheduled meeting  
156 may be ordered recessed to another day certain without further  
157 notice of additional agenda.

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

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



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

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

**§22-6-4. Board powers and duties.**

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

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

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

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

31 the health and safety of miners.

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

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

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

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

65 (6) On or before the last day of any period fixed for the  
66 submission of written data or comments under subdivision (5)  
67 of this section, any interested person may file with the board  
68 written objections to a proposed rule or regulation, stating the  
69 grounds therefor and requesting a public hearing on such  
70 objections. As soon as practicable after the period for filing

71 such objections has expired, the board shall release a notice  
72 specifying the proposed rules or regulations to which  
73 objections have been filed and a hearing requested.

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

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

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

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

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

111 may be necessary to prevent the recurrence of such injuries.

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

116 (1) The number of fatalities during the previous calendar  
117 year, the apparent reason for each fatality as determined by  
118 the department of energy and the action, if any, taken by the  
119 board to prevent such fatality;

120 (2) Any rules and regulations promulgated by the board  
121 during the last year;

122 (3) What rules and regulations the board intends to  
123 promulgate during the current calendar year;

124 (4) Any problem the board is having in its effort to  
125 promulgate rules and regulations to enhance health and safety  
126 in the mining industry;

127 (5) Recommendations, if any, for the enactment, repeal or  
128 amendment of any statute which would cause the enhancement  
129 of health and safety in the mining industry;

130 (6) Any other information the board deems appropriate;

131 (7) In addition to the report by the board, as herein  
132 contained, each individual member of said board shall have  
133 the right to submit a separate report, setting forth any views  
134 contrary to the report of the board, and the separate report,  
135 if any, shall be appended to the report of the board and be  
136 considered a part thereof.

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

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

5 (1) During a board meeting or at any time when the board  
6 is not meeting, any board member may suggest to the health  
7 and safety administrator, or such administrator on his own  
8 initiative may develop, subjects for investigation and possible  
9 regulation;

10 (2) Upon receipt of a suggestion for investigation, the health  
11 and safety administrator shall prepare a report, to be given  
12 at the next scheduled board meeting, of the technical evidence  
13 available which relates to such suggestion, the staff time  
14 required to develop the subject matter, the legal authority of  
15 the board to act on the subject matter, including a description  
16 of findings of fact and conclusions of law which will be  
17 necessary to support any proposed rules and regulations;

18 (3) The board shall by majority vote of those members who  
19 are present determine whether the health and safety admin-  
20 istrator shall prepare a draft regulation concerning the  
21 suggested subject matter;

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

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

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

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

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

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

45 (c) Without undue delay, the board shall adopt an order of  
46 business for the conduct of meetings which will promote the  
47 orderly and efficient consideration of proposed rules and

48 regulations in accordance with the provisions of this section.

**§22-6-4b. Health and safety administrator; qualifications; duties; employees; compensation.**

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

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

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

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

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

36 (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

18 board, or to prepare for a meeting of the board, any contract  
 19 of employment to the contrary notwithstanding.

**ARTICLE 7. SHALLOW GAS WELL REVIEW BOARD.**

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

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

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

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

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

16 (b) The Legislature hereby determines and finds that gas  
 17 found in West Virginia in shallow sands or strata has been  
 18 produced continuously for more than one hundred years; that  
 19 the placing of shallow wells has heretofore been regulated by  
 20 the state for the purpose of ensuring the safe recovery of coal  
 21 and gas, but that regulation should also be directed toward  
 22 encouraging the fullest practical recovery of both coal and gas  
 23 because modern extraction technologies indicate the desirabil-  
 24 ity of such change in existing regulation and because the  
 25 energy needs of this state and the United States require  
 26 encouragement of the fullest practical recovery of both coal  
 27 and gas; that in order to encourage and ensure the fullest  
 28 practical recovery of coal and gas in this state and to further  
 29 ensure the safe recovery of such natural resources, it is in the  
 30 public interest to enact new statutory provisions establishing  
 31 a shallow gas well review board which shall have the authority  
 32 to regulate and determine the appropriate placing of shallow  
 33 wells when gas well operators and owners of coal seams fail  
 34 to agree on the placing of such wells, and establishing specific



35 considerations, including minimum distances to be allowed  
36 between certain shallow gas wells, to be utilized by the shallow  
37 gas well review board in regulating the placing of shallow  
38 wells; that in order to encourage and ensure the fullest  
39 practical recovery of coal and gas in this state and to protect  
40 and enforce the correlative rights of gas operators and royalty  
41 owners of gas resources, it is in the public interest to enact  
42 new statutory provisions establishing a shallow gas well review  
43 board which shall also have authority to establish drilling units  
44 and order the pooling of interests therein to provide all gas  
45 operators and royalty owners with an opportunity to recover  
46 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

24 waste the gas in and under a tract or tracts, or the equivalent  
25 thereof;

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

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

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

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

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

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

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

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

59 (16) "Owner" when used with reference to any coal seam,

60 shall include any person or persons who own, lease or operate  
61 such coal seam;

62 (17) "Person" means any natural person, corporation, firm,  
63 partnership, partnership association, venture, receiver, trustee,  
64 executor, administrator, guardian, fiduciary or other represen-  
65 tative of any kind, and includes any government or any  
66 political subdivision or any agency thereof;

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

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

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

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

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

89 (23) "Well" means any shaft or hole sunk, drilled, bored or  
90 dug into the earth or into underground strata for the  
91 extraction, injection or placement of any liquid or gas, or any  
92 shaft or hole sunk or used in conjunction with such extraction,  
93 injection or placement. The term "well" does not include any  
94 shaft or hole sunk, drilled, bored or dug into the earth for  
95 the sole purpose of core drilling or pumping or extracting  
96 therefrom potable, fresh or usable water for household,  
97 domestic, industrial, agricultural or public use; and

98 (24) "Well operator" means any person who proposes to or  
99 does locate, drill, operate or abandon any well.

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

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

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

13 (1) Deep wells;

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

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

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

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

31 (6) Free gas rights.

32 (c) The provisions of this article affecting applications for  
33 permits to drill shallow gas wells shall only apply to such

34 applications filed after 12:01 a.m. the first day of August, one  
35 thousand nine hundred seventy-eight, and the provisions of  
36 article four of former chapter twenty-two affecting such  
37 applications which were in effect immediately prior to the  
38 ninth day of June, one thousand nine hundred seventy-eight  
39 shall apply to all such applications filed prior to 12:01 a.m.,  
40 the first day of August, one thousand nine hundred seventy-  
41 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.**

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

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

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

30 board.

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

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

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

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

31 (c) A majority of the members of the board shall constitute  
32 a quorum for the transaction of any business. A majority of  
33 the members of the board shall be required to determine any  
34 issue brought before it.

35 (d) The board is hereby empowered and it shall be its duty  
36 to execute and carry out, administer and enforce the provisions  
37 of this article in the manner provided herein. Subject to the  
38 provisions of section three of this article, the board shall have  
39 jurisdiction and authority over all persons and property  
40 necessary therefor: *Provided*, That the provisions of this article  
41 shall not be construed to grant to the board authority or power  
42 to (1) limit production or output from or prorate production  
43 of any gas well, or (2) fix prices of gas.

44 (e) The board shall have specific authority to:

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

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

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

54 (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.**

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

5 (b) Notwithstanding the provisions of section two, article  
6 seven, chapter twenty-nine-a of this code, any notice required  
7 under the provisions of this article shall be given at the  
8 direction of the chairman by (1) personal or substituted service  
9 and if such cannot be had then by (2) certified United States  
10 mail, addressed, postage and certification fee prepaid, to the  
11 last known mailing address, if any, of the person being served,

12 with the direction that the same be delivered to addressee only,  
13 return receipt requested, and if there be no known mailing  
14 address or if the notice is not so delivered then by (3)  
15 publication of such notice as a Class II legal advertisement in  
16 compliance with the provisions of article three, chapter fifty-  
17 nine of this code, and the publication area for such publication  
18 shall be the county or counties wherein any land which may  
19 be affected by the order of the board is situate. The chairman  
20 shall also mail a copy of such notice to all other persons who  
21 have specified to the chairman an address to which all such  
22 notices may be mailed. All notices shall issue in the name of  
23 the state, shall be signed by the chairman, shall specify the  
24 style and number of the proceeding, the date, time and place  
25 of any meeting, conference or hearing, and shall briefly state  
26 the purpose of the proceeding. Proof of service or publication  
27 of such notice shall be made to the board promptly and in  
28 any event within the time during which the person served must  
29 respond to the notice. If service is made by a person other  
30 than the sheriff or the chairman, he shall make proof thereof  
31 by affidavit. Failure to make proof of service or publication  
32 within the time required shall not affect the validity of the  
33 service of the notice.

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

1 (a) At the time and place fixed by the chairman for the  
2 meeting of the board and for consideration of the objections  
3 to proposed drilling filed by coal seam owners pursuant to  
4 section seventeen, article one, chapter twenty-two-b of this  
5 code, the well operator and the objecting coal seam owners  
6 present or represented, shall hold a conference with the board  
7 to consider the objections. Such persons present or represented  
8 at the conference may agree upon either the drilling location  
9 as proposed by the well operator or an alternate location. Any  
10 change in the drilling location from the drilling location  
11 proposed by the well operator shall be indicated on the plat  
12 enclosed with the notice of objection filed with the chairman  
13 by the director in accordance with the provisions of section  
14 seventeen, article one of chapter twenty-two-b of this code, and  
15 the distance and direction to the new drilling location from  
16 the proposed drilling location shall also be shown on such plat.  
17 If agreement is reached at the conference by the well operator



18 and such objecting coal seam owners present or represented  
19 at the conference, the board shall issue a written order stating  
20 that an agreement has been reached, stating the nature of such  
21 agreement, and directing the director to grant the well operator  
22 a drilling permit for the location agreed upon. The original  
23 of such order shall be filed with the division within five days  
24 after the conference of the board at which the drilling location  
25 was agreed upon and copies thereof shall be mailed by  
26 registered or certified mail to the well operator and the  
27 objecting coal seam owners present or represented at such  
28 conference.

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

40 (1) Refuse a drilling permit; or

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

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

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

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

55 (1) Whether the drilling location is above or in close  
56 proximity to any mine opening, or shaft, entry, travelway,

57 airway, haulageway, drainageway or passageway, or to any  
58 proposed extension thereof, in any operated or abandoned or  
59 operating coal mine, or any coal mine already surveyed and  
60 platted but not yet being operated;

61 (2) Whether the proposed drilling can reasonably be done  
62 through an existing or planned pillar of coal, or in close  
63 proximity to an existing well or such pillar of coal, taking into  
64 consideration the surface topography;

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

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

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

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

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

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

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

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

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

89 (11) The surface topography and use; and

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

92 (d) Any member of the board may file a separate opinion.

93 Copies of all orders and opinions shall be mailed by the board,  
94 by registered or certified mail, to the parties present or  
95 represented at the hearing.

**§22-7-8. Distance limitations.**

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

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

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

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

33 (c) The minimum distance limitations established by this  
34 section shall not apply if the proposed well will be drilled  
35 through an existing or planned pillar of coal required for

36 protection of a preexisting oil or gas well and the proposed  
37 well will neither require enlargement of such pillar nor  
38 otherwise have an adverse effect on existing or planned coal  
39 mining operations.

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

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

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

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

11 (1) The name and address of the applicant;

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

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

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

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

28 (6) A statement indicating whether a voluntary pooling

29 agreement has been reached among any or all of the royalty  
30 owners of the gas underlying the tracts which comprise the  
31 proposed drilling unit and the gas operators of such tracts;

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

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

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

62 (d) At the time an application to establish a drilling unit  
63 is filed, the applicant shall forward a copy thereof by registered  
64 or certified mail to each and every person whose name and  
65 address were included on the application in accordance with  
66 the provisions of subdivisions (3) and (4), subsection (b) of this  
67 section. With each such application there shall be enclosed a  
68 notice (the form for which shall be furnished by the board on

69 request) addressed to each such person to whom a copy of  
70 the application is required to be sent, informing him that such  
71 application is being mailed to him respectively by registered  
72 or certified mail, pursuant to the requirements of this article:  
73 *Provided*, That the application and notice need not be  
74 forwarded to those royalty owners or gas operators within the  
75 boundary of the proposed drilling unit who have previously  
76 agreed to voluntary pooling by separately stated document or  
77 documents empowering the gas operator, by assignment or  
78 otherwise, unilaterally to declare a unit.

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

1 (a) At the time and place fixed by the chairman for the  
2 meeting of the board and for consideration of an application  
3 to establish a drilling unit, the applicant shall present proof  
4 that the drilling location on the proposed drilling unit has been  
5 agreed to by all of the owners of the coal seams underlying  
6 such drilling location; and thereafter the applicant, the royalty  
7 owners of the gas underlying the tracts comprising the unit,  
8 and the gas operators of the tracts comprising the unit, or such  
9 of them as are present or represented, shall hold a conference  
10 with the board to consider the application. Such persons  
11 present or represented at the conference may agree upon the  
12 boundary of the drilling unit as proposed by the applicant or  
13 as changed to satisfy all valid objections of those persons  
14 present or represented. Any change in the boundary of the  
15 drilling unit from the boundary proposed by the applicant  
16 shall be shown on the plat filed with the board as part of the  
17 application. If agreement is reached at the conference upon the  
18 boundary of the drilling unit among the applicants, the royalty  
19 owners of the gas underlying the tracts comprising the drilling  
20 unit and the gas operators of the tracts comprising such unit,  
21 or such of them as are present or represented, and if such  
22 agreement is approved by the board, the board shall issue a  
23 written order establishing and specifying the boundary of the  
24 drilling unit.

25 (b) If the applicant, the royalty owners of the gas underlying  
26 the tracts comprising the drilling unit and the gas operators  
27 of the tracts comprising such unit, or such of them as are  
28 present or represented at the time and place fixed by the  
29 chairman for consideration of the application, are unable to  
30 agree upon the boundary of the drilling unit, then the board

31 shall hold a hearing without recess of more than one business  
32 day to consider the application to establish a drilling unit. All  
33 of the pertinent provisions of article five, chapter twenty-nine-  
34 a of this code shall apply to and govern such hearing. Within  
35 twenty days after the close of the hearing, the board shall issue  
36 a written order either establishing a drilling unit or dismissing  
37 the application. If the board determines to establish a drilling  
38 unit, the order shall specify the boundary of such drilling unit.  
39 In determining whether to grant or deny an application to  
40 establish a drilling unit, the board shall consider:

41 (1) The surface topography and property lines of the lands  
42 comprising the drilling unit;

43 (2) The correlative rights of all gas operators and royalty  
44 owners therein;

45 (3) The just and equitable share of production of each gas  
46 operator and royalty owner therein;

47 (4) Whether a gas operator or royalty owner objecting to  
48 the drilling unit has proved by clear and convincing evidence  
49 that the drilling unit is substantially smaller than the area that  
50 will be produced by the proposed well; and

51 (5) Other evidence relevant to the establishment of the  
52 boundary of a drilling unit.

53 (c) The board shall not grant an application to establish a  
54 drilling unit, nor shall it approve any drilling unit, unless the  
55 board finds that:

56 (1) The applicant has proved that the drilling location on  
57 the drilling unit has been agreed to by all of the owners of  
58 the coal seams underlying such drilling location;

59 (2) The director has previously refused to issue a drilling  
60 permit on one of the tracts comprising the drilling unit because  
61 of an order of the board;

62 (3) The drilling unit includes all acreage within the  
63 minimum distance limitations provided by section eight of this  
64 article, unless the gas operators and royalty owners of any  
65 excluded acreage have agreed to such exclusion; and

66 (4) The drilling unit includes a portion of the acreage from  
67 under which the well operator intended to produce gas under

68 the drilling permit which was refused.

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

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

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

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

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

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



30 who elect to participate therein.

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

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

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

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

1 (a) An order issued by the board establishing a drilling unit  
2 and ordering the pooling of interests therein shall not entitle  
3 the gas operator designated in such order to drill a well on

4 such drilling unit until such gas operator shall have received  
 5 a drilling permit in accordance with the provisions applicable  
 6 to alternative drilling locations set out in section seventeen,  
 7 article one, chapter twenty-two-b of this code. All orders  
 8 issued by the board establishing a drilling unit shall be filed  
 9 with the director and shall also direct the director to issue a  
 10 drilling permit for the drilling location agreed to by all of the  
 11 owners of the coal seams underlying such drilling location.

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

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

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

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

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

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

1 All operations including, but not limited to, the commence-  
 2 ment, drilling or operation of a well upon a drilling unit for

3 which a pooling order as been entered, shall be deemed for  
4 all purposes the conduct of such operations upon each  
5 separately owned tract in the drilling unit by the several  
6 owners thereof. That portion of the production allocated to  
7 a separately owned tract included in a drilling unit shall, when  
8 produced, be deemed for all purposes to have been actually  
9 produced from such tract by a well drilled thereon.

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

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

**§22-7-16. Injunctive relief.**

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

16 (b) Upon application by the board, the circuit courts of this  
17 state may by mandatory or prohibitory injunction compel  
18 compliance with the provisions of this article, the rules and  
19 regulations promulgated by the board hereunder and all orders  
20 of the board. The court may issue a temporary injunction in  
21 any case pending a decision on the merits of any application  
22 filed. Any other section of this code to the contrary  
23 notwithstanding, the state shall not be required to furnish

24 bond or other undertaking as a prerequisite to obtaining  
25 mandatory, prohibitory or temporary injunctive relief under  
26 the provisions of this article.

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

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

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

**§22-7-17. Penalties.**

1 (a) Any person who violates any provision of this article,  
2 any of the rules and regulations promulgated by the board  
3 hereunder or any order of the board other than a violation  
4 governed by the provisions of subsection (b) of this section,  
5 shall be guilty of a misdemeanor, and, upon conviction  
6 thereof, shall be fined not more than one thousand dollars.

7 (b) Any person who, with the intention of evading any  
8 provision of this article, any of the rules and regulations  
9 promulgated by the board hereunder or any order of the board  
10 shall make or cause to be made any false entry or statement  
11 in any application or other document permitted or required  
12 to be filed under the provisions of this article, any of the rules  
13 and regulations promulgated by the board hereunder or any  
14 order of the board, shall be guilty of a misdemeanor, and,  
15 upon conviction thereof, shall be fined not more than five  
16 thousand dollars, or imprisoned in the county jail not more  
17 than six months, or both fined and imprisoned.

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

**§22-7-18. Construction.**

1 This article shall be liberally construed so as to effectuate  
2 the declaration of public policy set forth in section one of this  
3 article.

**§22-7-19. Rules, regulations, orders and permits remain in effect.**

1 The rules and regulations promulgated and all orders and  
2 permits in effect upon the effective date of this article pursuant  
3 to the provisions of article four-b, of former chapter twenty-  
4 two of this code, shall remain in full force and effect as if such  
5 rules, regulations, orders and permits were adopted by the  
6 board continued in this article but all such rules, regulations,  
7 orders and permits shall be subject to review by the board to  
8 ensure they are consistent with the purposes and policies set  
9 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.**

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

3 (1) Foster, encourage and promote exploration for <sup>and</sup> the <sup>OK</sup>  
4 development, production, utilization and conservation of oil <sup>(P.)</sup>  
5 and gas resources;

6 (2) Prohibit waste of oil and gas resources and unnecessary  
7 surface loss of oil and gas and their constituents;

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

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

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

#### §22-8-2. Definitions.

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

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

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

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

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14 agency thereof;

15 (4) "Operator" means any owner of the right to develop,  
16 operate and produce oil and gas from a pool and to  
17 appropriate the oil and gas produced therefrom, either for  
18 himself or for himself and others; in the event that there is  
19 no oil and gas lease in existence with respect to the tract in  
20 question, the owner of the oil and gas rights therein shall be  
21 considered as "operator" to the extent of seven eighths of the <sup>h</sup>  
22 oil and gas in that portion of the pool underlying the tract <sup>OK</sup>  
23 owned by such owner, and as "royalty owner" as to one-eighth  
24 interest in such oil and gas; and in the event the oil is owned  
25 separately from the gas, the owner of the substance being  
26 produced or sought to be produced from the pool shall be  
27 considered as "operator" as to such pool;

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

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

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

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

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

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

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

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

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

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

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

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

84 (b) Unless the context clearly indicates otherwise, the use  
85 of the word "and" and the word "or" shall be interchangeable,  
86 as, for example, "oil and gas" shall mean oil or gas or both.

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

1 (a) Except as provided in subsection (b) of this section, the  
2 provisions of this article shall apply to all lands located in this  
3 state, however owned, including any lands owned or admin-



4 istered by any government or any agency or subdivision  
5 thereof, over which the state has jurisdiction under its police  
6 power. The provisions of this article are in addition to and  
7 not in derogation of or substitution for the provisions of article  
8 one of chapter twenty-two-b of this code.

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

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

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

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

24 (4) Free gas rights.

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

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

30 (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 qualifi-  
cations of commissioner; general powers and duties.**

1 (a) There is hereby continued, as provided for in subsection  
2 (h) of this section, the "West Virginia Oil and Gas Conser-  
3 vation Commission" which shall be composed of five members.

4 The commissioner of the department of energy and the  
5 director for the division of oil and gas shall be members of  
6 the commission ex officio. The remaining three members of  
7 the commission shall be appointed by the governor, by and  
8 with the advice and consent of the Senate. Of the three  
9 members appointed by the governor, one shall be an  
10 independent producer and at least one shall be a public  
11 member not engaged in full-time employment in an activity  
12 under the jurisdiction of the public service commission or the  
13 federal energy regulatory commission. As soon as practical  
14 after appointment of the members of the commission, the  
15 governor shall call a meeting of the commission to be  
16 convened at the state capitol for the purpose of organizing and  
17 electing a chairman.

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

36 (c) The commission shall meet at such times and places as  
37 shall be designated by the chairman. The chairman may call  
38 a meeting of the commission at any time, and he shall call  
39 a meeting of the commission upon the written request of two  
40 members or upon the written request of the oil and gas  
41 conservation commissioner. Notification of each meeting shall  
42 be given in writing to each member by the chairman at least  
43 five days in advance of the meeting. Any three members, one  
44 of which may be the chairman, shall constitute a quorum for

45 the transaction of any business as herein provided for. A  
46 majority of the commission shall be required to determine any  
47 issue brought before it.

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

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

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

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

80 (1) Regulate the spacing of deep wells;

81 (2) Make and enforce reasonable rules and regulations and  
82 orders reasonably necessary to prevent waste, protect  
83 correlative rights, govern the practice and procedure before the

84 commissioner and otherwise administer the provisions of this  
85 article;

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

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

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

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

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

8 (b) Notwithstanding the provisions of section two, article  
9 seven, chapter twenty-nine-a of this code, any notice required  
10 under the provisions of this article shall be given at the  
11 direction of the commissioner by (1) personal or substituted  
12 service and if such cannot be had then by (2) certified United  
13 States mail, addressed, postage prepaid, to the last known  
14 mailing address, if any, of the person being served, with the  
15 direction that the same be delivered to addressee only, return

16 receipt requested, and if there be no known mailing address  
17 or if the notice is not so delivered then by (3) publication of  
18 such notices as a Class II legal advertisement in compliance  
19 with the provisions of article three, chapter fifty-nine of this  
20 code, and the publication area for such publication shall be  
21 the county or counties wherein any land which may be affected  
22 by such order is situate. In addition, the commissioner shall  
23 mail a copy of such notice to all other persons who have  
24 specified to the commissioner an address to which all such  
25 notices may be mailed. The notice shall issue in the name of  
26 the state, shall be signed by the commissioner, shall specify  
27 the style and number of the proceeding, the time and place  
28 of any hearing, and shall briefly state the purpose of the  
29 proceeding. Personal or substituted service and proof thereof  
30 may be made by an officer authorized to serve process or by  
31 an agent of the commissioner in the same manner as is now  
32 provided by the "West Virginia Rules of Civil Procedure for  
33 Trial Courts of Record" for service of process in civil actions  
34 in the various courts of this state. A certified copy of any  
35 pooling order entered under the provisions of this article shall  
36 be presented by the commissioner to the clerk of the county  
37 commission of each county wherein all or any portion of the  
38 pooled tract is located, for recordation in the record book of  
39 such county in which oil and gas leases are normally recorded.  
40 Such recording of such order from the time noted thereon by  
41 such clerk shall be notice of the order to all persons.

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

1 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.**

1 (a) Drilling units.

2 (1) After one deep well has been drilled establishing a pool,  
3 an application to establish drilling units may be filed with the  
4 commissiner by the operator of such discovery deep well or  
5 by the operator of any lands directly and immediately affected  
6 by the drilling of such discovery deep well, or subsequent deep  
7 wells in said pool, and the commissioner shall promptly  
8 schedule a hearing on said application. Each application shall  
9 contain such information as the commissioner may prescribe  
10 by reasonable rules and regluations promulgated by him in

11 accordance with the provisions of section five of this article.

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

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

25 (i) The surface topography and property lines of the lands  
26 underlaid by the pool to be included in such order;

27 (ii) The plan of deep well spacing then being employed or  
28 proposed in such pool for such lands;

29 (iii) The depth at which production from said pool has been  
30 found;

31 (iv) The nature and character of the producing formation  
32 or formations, and whether the substance produced or sought  
33 to be produced is gas or oil;

34 (v) The maximum area which may be drained efficiently and  
35 economically by one deep well; and

36 (vi) Any other available geological or scientific data  
37 pertaining to said pool which may be of probative value to  
38 the commissioner in determining the proper deep well drilling  
39 units therefor.

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

46 (4) When it is determined that an oil or gas pool underlies  
47 an area for which a spacing order is to be entered, the

48 commissioner shall include in his order all lands determined  
49 or believed to be underlaid by such pool and exclude all other  
50 lands.

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

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

82 (7) An order establishing drilling units for a pool shall cover  
83 all lands determined or believed to be underlaid by such pool,  
84 and may be modified by the commissioner from time to time,  
85 to include additional lands determined to be underlaid by such  
86 pool or to exclude lands determined not to be underlaid by  
87 such pool. An order establishing drilling units may be modified  
88 by the commissioner to permit the drilling of additional deep

89 wells on a reasonably uniform pattern at a uniform minimum  
90 distance from the nearest unit boundary as provided above.  
91 Any order modifying a proper order shall be made only after  
92 application by an interested operator and notice and hearing  
93 as prescribed herein for the original order. However, drilling  
94 units established by order shall not exceed one hundred sixty  
95 acres for an oil well or six hundred forty acres for a gas well.

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

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

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

111 (b) Pooling of interests in drilling units.

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

125 (2) All operations, including, but not limited to, the  
126 commencement, drilling or operation of a deep well, upon any  
127 portion of a drilling unit for which a pooling order has been



128 entered, shall be deemed for all purposes the conduct of such  
129 operations upon each separately owned tract in the drilling  
130 unit by the several owners thereof. That portion of the  
131 production allocated to a separately owned tract included in  
132 a drilling unit shall, when produced, be deemed for all  
133 purposes to have been actually produced from such tract by  
134 a deep well drilled thereon.

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

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

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

165 (i) Option 1. To surrender his interest or a portion thereof  
166 to the participating owners on a reasonable basis and for a  
167 reasonable consideration, which, if not agreed upon, shall be

168 determined by the commissioner; or

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

173 (6) In the event a nonparticipating owner elects Option 2,  
174 and an owner of any operating interest in any portion of the  
175 pooled tract shall drill and operate, or pay the costs of drilling  
176 and operating, a deep well for the benefit of such nonpartic-  
177 ipating owner as provided in the pooling order, then such  
178 operating owner shall be entitled to the share of production  
179 from the tracts or portions thereof pooled accruing to the  
180 interest of such nonparticipating owner, exclusive of any  
181 royalty or overriding royalty reserved in any leases, assign-  
182 ments thereof or agreements relating thereto, of such tracts or  
183 portions thereof, or exclusive of one eighth of the production  
184 attributable to all unleased tracts or portions thereof, until the  
185 market value of such nonparticipating owner's share of the  
186 production, exclusive of such royalty, overriding royalty or  
187 one eighth of production, equals double the share of such costs  
188 payable by or charged to the interest of such nonparticipating  
189 owner.

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

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

1 Upon the application of any operator in a pool productive  
2 of oil and after notice and hearing, the commissioner may  
3 enter an order requiring the unit operation of such pool in  
4 connection with a program of secondary recovery of oil, and  
5 providing for the unitization of separately owned tracts and  
6 interests within such pool, but only after finding that: (1) The  
7 order is reasonably necessary for the prevention of waste and  
8 the drilling of unnecessary deep wells; (2) the proposed plan  
9 of secondary recovery will increase the ultimate recovery of  
10 oil from the pool to such an extent that the proposed  
11 secondary recovery operation will be economically feasible; (3)  
12 the production of oil from the unitized pool can be allocated

13 in such a manner as to insure the recovery by all operators  
14 of their just and equitable share of such production; and (4)  
15 the operators of at least three fourths of the acreage  
16 (calculating partial interests on a pro rata basis for operator  
17 interests on any parcel owned in common) and the royalty  
18 owners of at least three fourths of the acreage (calculating  
19 partial interests on a pro rata basis for royalty interests on  
20 any parcel owned in common) in such pool have approved the  
21 plan and terms of unit operation to be specified by the  
22 commissioner in its order, such approval to be evidenced by  
23 a written contract setting forth the terms of the unit operation  
24 and executed by said operators and said royalty owners, and  
25 filed with the commissioner on or before the day set for  
26 hearing. The order requiring such unit operation shall  
27 designate one operator in the pool as unit operator and shall  
28 also make provision for the proportionate allocation to all  
29 operators of the costs and expenses of the unit operation,  
30 including reasonable charges for supervision and interest on  
31 past-due accounts, which allocation shall be in the same  
32 proportion that the separately owned tracts share in the  
33 production of oil from the unit. In the absence of an agreement  
34 entered into by the operators and filed with the commissioner  
35 providing for sharing the costs of capital investment in wells  
36 and physical equipment, and intangible drilling costs, the  
37 commissioner shall provide by order for the sharing of such  
38 costs in the same proportion as the costs and expenses of the  
39 unit operation: *Provided*, That any operator who has not  
40 consented to the unitization shall not be required to contribute  
41 to the costs or expenses of the unit operation, or to the cost  
42 of capital investment in wells and physical equipment, and  
43 intangible drilling costs, except out of the proceeds from the  
44 sale of the production accruing to the interest of such operator:  
45 *Provided, however*, That no credit to the well costs shall be  
46 adjusted on the basis of less than the average well costs within  
47 the unitized area: *Provided further*, That no order entered  
48 under the provisions of this section requiring unit operation  
49 shall vary or alter any of the terms of any contract entered  
50 into by operators and royalty owners under the provisions of  
51 this section.

**§22-8-9. Validity of unit agreements.**

1 No agreement between or among operators, lessees or other

2 owners of oil or gas rights in oil and gas properties, entered  
3 into pursuant to the provisions of this article or with a view  
4 to or for the purpose of bringing about the unitized  
5 development or operation of such properties, shall be held to  
6 violate the statutory or common law of this state prohibiting  
7 monopolies or acts, arrangements, contracts, combinations or  
8 conspiracies in restraint of trade or commerce.

**§22-8-10. Hearing procedures.**

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

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

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

25 (d) At any such hearing any interested person may represent  
26 himself or be represented by an attorney-at-law admitted to  
27 practice before any circuit court of this state. Upon request  
28 by the commissioner, he shall be represented at such hearing  
29 by the attorney general or his assistants without additional  
30 compensation. The commissioner, with the written approval of  
31 the attorney general, may employ special counsel to represent  
32 the commissioner at any such hearing.

33 (e) After any such hearing and consideration of all of the  
34 testimony, evidence and record in the case, the commissioner  
35 shall render his decision in writing. The written decision of the  
36 commissioner shall be accompanied by findings of fact and  
37 conclusions of law as specified in section three, article five,  
38 chapter twenty-nine-a of this code, and a copy of such decision  
39 and accompanying findings and conclusions shall be served by  
40 certified mail, return receipt requested, upon all interested  
41 persons and their attorney of record, if any.

42 The decision of the commissioner shall be final unless  
43 reversed, vacated or modified upon judicial review thereof in  
44 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.**

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

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

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

**§22-8-12. Injunctive relief.**

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

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

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

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

42 (e) If the commissioner shall refuse or fail to apply for an  
43 injunction to enjoin a violation or threatened violation of any  
44 provision of this article, any reasonable rule and regulation  
45 promulgated by the commissioner hereunder or any order or  
46 final decision of the commissioner, within ten days after receipt  
47 of a written request to do so by any person who is or will  
48 be adversely affected by such violation or threatened violation,  
49 the person making such request may apply in his own behalf  
50 for an injunction to enjoin such violation or threatened  
51 violation in any court in which the commissioner might have  
52 brought suit. The commissioner shall be made a party  
53 defendant in such application in addition to the person or  
54 persons violating or threatening to violate any provision of this  
55 article, any reasonable rule and regulation promulgated by the  
56 commissioner hereunder or any order or final decision of the  
57 commissioner. The application shall proceed and injunctive  
58 relief may be granted without bond or other undertaking in  
59 the same manner as if the applicaton had been made by the  
60 commissioner.

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

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

**§22-8-14. Penalties.**

1 (a) Any person who violates any provision of this article,  
2 any of the reasonable rules and regulations promulgated by  
3 the commissioner hereunder or any order or any final decision  
4 of the commissioner, other than a violation covered by the  
5 provisions of subsection (b) of this section, shall be guilty of

6 a misdemeanor, and, upon conviction thereof, shall be fined  
7 not more than one thousand dollars, and each day that a  
8 violation continues shall constitute a new and separate  
9 violation.

10 (b) Any person who, for the purpose of evading any  
11 provision of this article, any of the reasonable rules and  
12 regulations promulgated by the commissioner hereunder or  
13 any order or final decision of the commissioner, shall make  
14 or cause to be made any false entry or statement in a report  
15 required under the provisions of this article, any of the  
16 reasonable rules and regulations promulgated by the commis-  
17 sioner hereunder or any order or final decision of the  
18 commissioner, or shall make or cause to be made any false  
19 entry in any record, account or memorandum required under  
20 the provisions of this article, any of the reasonable rules and  
21 regulations promulgated by the commissioner hereunder or  
22 any order or any final decision of the commissioner, or who  
23 shall omit, or cause to be omitted, from any such record,  
24 account or memorandum, full, true and correct entries, or shall  
25 remove from this state or destroy, mutilate, alter or falsify any  
26 such record, account or memorandum, shall be guilty of a  
27 misdemeanor, and, upon conviction thereof, shall be fined not  
28 more than five thousand dollars, or imprisoned in the county  
29 jail not more than six months, or both fined and imprisoned.

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

**§22-8-15. Construction and severability.**

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

5 If any section, subsection, subdivison, subparagraph,  
6 sentence or clause of this article is adjudged to be unconsti-  
7 tutional or invalid, such invalidation shall not affect the  
8 validity of the remaining portions of this article, and, to this  
9 end, the provisions of this article are hereby declared to be



10 severable.

**§22-8-16. Rules, regulations, orders and permits remain in effect.**

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

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

**§22-9-1. Short title.**

1 This article shall be cited as "The West Virginia Miner  
2 Training, Education and Certification Act."

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

1 The Legislature hereby finds and declares that:

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

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

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

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

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

16 (f) Injuries can be avoided through proper miner training,  
17 education and certification;

18 (g) Mining is a technical occupation with various specialities  
19 requiring individualized training and education; and

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

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

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

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

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

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

**§22-9-3. Definitions.**

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

8 "Board" means the board of miner training, education and  
9 certification established by section four of this article.

10 "Mine" means any mine, including a "surface mine," as that  
11 term is defined in section three, article three, chapter twenty-  
12 two-a of this code, and in section two, article four of said  
13 chapter; and a "mine" as that term is defined in section one,  
14 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.**

1 (a) There is hereby continued a board of miner training,  
2 education and certification, which shall consist of seven

3 members, who shall be selected in the following manner:

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

16 (2) Two members shall be appointed by the governor to  
17 represent the interests of the underground operators of this  
18 state. When said members are to be appointed, the governor  
19 shall request from the major association representing the  
20 underground coal operators in this state a list of six nominees  
21 to the board. The governor shall select from said nominees  
22 two persons to serve on the board. For purposes of this  
23 subsection, the major association representing the under-  
24 ground operators in this state shall be deemed to be that  
25 association, if any, which represents underground operators  
26 accounting for over one half of the coal produced in  
27 underground mines in this state in the year prior to that year  
28 in which the appointments are made.

29 (3) Three members shall be appointed by the governor who  
30 can reasonably be expected to represent the interests of the  
31 working miners in this state. If the major employee organi-  
32 zation representing coal miners in this state is divided into  
33 administrative districts, the employee organization of each  
34 district shall, upon request by the governor, submit a list of  
35 three nominees for membership on the board. If such major  
36 employee organization is not so divided into administrative  
37 districts, such employee organization shall, upon request by  
38 the governor, submit a list of twelve nominees for membership  
39 on the board. The governor shall make such appointments  
40 from the persons so nominated: *Provided*, That in the event  
41 nominations are made by administrative districts, not more  
42 than one member shall be appointed from the nominees of any  
43 one district unless there are less than three such districts in

44 this state.

45 (4) The seventh member of the board, who shall serve as  
46 chairman, shall be the commissioner of the department of  
47 energy.

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

54 (b) The board shall be appointed by the governor. Ap-  
55 pointed members shall serve for a term of three years. The  
56 board shall meet at the call of the chairman, at the call of  
57 the director, or upon the request of any two members of the  
58 board: *Provided*, That no meeting of the board for any  
59 purpose shall be conducted unless the board members are  
60 notified at least five days in advance of a proposed meeting.  
61 In cases of an emergency, members may be notified of a board  
62 meeting by the most appropriate means of communication  
63 available.

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

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

82 (e) A quorum of the board shall be four members. The

83 board may act officially by a majority of those members who  
84 are present.

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

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

**§22-9-5. Board powers and duties.**

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

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

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

22 (d) The board shall set minimum standards for a program  
23 of continuing education and training of certified persons and  
24 other miners on an annual basis. Prior to issuing said  
25 standards, the board shall conduct public hearings at which  
26 the parties may be affected by its actions may be heard. Such  
27 education and training shall be provided in a manner  
28 determined by the commissioner to be sufficient to meet the  
29 standards established by the board.

30 (e) The board may, in conjunction with any state, local or  
31 federal agency or any other person or institution, provide for  
32 the payment of a stipend to prospective miners enrolled in one  
33 or more of the programs of miner education, training and  
34 certification provided for in this article or any other provision  
35 of this code.

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

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

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

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

1 The commissioner shall be empowered to promulgate,  
2 pursuant to chapter twenty-nine-a of this code, such reasona-  
3 ble rules and regulations as are necessary to establish a  
4 program to implement the provisions of this article. Such  
5 program shall include, but not be limited to implementation  
6 of a program of instruction in each of the miner occupational  
7 specialties and the conduct of examinations to test each  
8 applicant's knowledge and understanding of the training and  
9 instruction which he is required to have prior to the receipt  
10 of a certificate.

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

16 The commissioner may, at any time, make such recommen-  
17 dations or supply such information to the board as he may  
18 deem appropriate.

19 The commissioner is authorized and directed to utilize such  
20 state and federal moneys and personnel as may be available  
21 to the department for educational and training purposes in the  
22 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 under-  
ground miners.**

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

**§22-10-2. Definitions.**

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

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

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

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

1 A permit of apprenticeship-underground miner shall be  
2 issued by the director to any person who has demonstrated  
3 by examination a knowledge of the subjects and skills  
4 pertaining to employment in underground mines, including,  
5 but not limited to, general safety, first aid, miner and operator  
6 rights and responsibilities, general principles of electricity,  
7 general mining hazards, roof control, ventilation, mine health  
8 and sanitation, mine mapping, state and federal mining laws  
9 and regulations and such other subjects as may be required  
10 by the board of miner training education and certification:  
11 *Provided*, That each applicant for said permit shall complete

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12 a program of education and training of at least eighty hours,  
13 which shall be determined by the board of miner training,  
14 education and certification and provided for and implemented  
15 by the director of the division of mines and minerals: *Provided*  
16 *further*, That if a sufficient number of qualified applicants  
17 having successfully completed the state training program  
18 provided by the state division of mines and minerals are not  
19 available, the operator may request approval from the director  
20 to conduct his own preemployment training program so long  
21 as such training adequately covers the minimum criteria  
22 determined by the board and such trainees shall be eligible for  
23 the same certification as provided for trainees undergoing  
24 training provided by the state.

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

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

**§22-10-5. Supervision of apprentices.**

1 Each holder of a permit of apprenticeship shall be known



2 as an apprentice. Any miner holding a certificate of compet-  
3 ency and qualification may have one person working with him,  
4 and under his supervision and direction, as an apprentice, for  
5 the purpose of learning and being instructed in the duties and  
6 calling of mining. Any mine foreman or fire boss or assistant  
7 mine foreman or fire boss may have three persons working  
8 with him under his supervision and direction, as apprentices,  
9 for the purpose of learning and being instructed in the duties  
10 and calling of mining: *Provided*, That a mine foreman,  
11 assistant mine foreman or fire boss supervising apprentices in  
12 an area where no coal is being produced or which is outby  
13 the working section may have as many as five apprentices  
14 under his supervision and direction, as apprentices, for the  
15 purpose of learning and being instructed in the duties and  
16 calling of mining or where the operator is using a production  
17 section under program for training of apprentice miners,  
18 approved by the board of miner training, education and  
19 certification.

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

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

**§22-10-6. Certificate of competency and qualification—Under-  
ground or surface miner.**

1 A certificate of competency and qualification as an  
2 underground miner or as surface miner shall be issued by the  
3 director to any person who has at least six months' total  
4 experience as an apprentice and demonstrated his competence  
5 as a miner by successful completion of an examination given  
6 by the director or his representative in a manner and place  
7 to be determined by the board of miner training, education  
8 and certification: *Provided*, That all examinations shall be

9 conducted in the English language and shall be of a practical  
 10 nature, so as to determine the competency and qualifications  
 11 of the applicant to engage in the mining of coal with  
 12 reasonable safety to himself and his fellow employees:  
 13 *Provided, further,* That notice of the time and place of such  
 14 examination shall be given to management at the mine, to the  
 15 local union thereat if there is a local union, and notice shall  
 16 also be posted at the place or places in the vicinity of the mine  
 17 where notices to employees are ordinarily posted. Examina-  
 18 tions shall also be held at such times and places, and after  
 19 such notice, as the board finds necessary to enable all  
 20 applicants for certificates to have an opportunity to qualify for  
 21 certification.

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

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

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

**§22-10-8. Limitations of article.**

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

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

**§22-10-9. Violations; penalties.**

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

**ARTICLE 11. MINE INSPECTORS' EXAMINING BOARD.**

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

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

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

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

25 Each member of the board shall receive fifty dollars per  
26 diem while actually engaged in the performance of the work  
27 of the board; and shall receive mileage at the rate of ten cents  
28 for each mile actually traveled going from the home of the

29 member to the place of the meeting of the board and returning  
30 therefrom, which shall be paid out of the state treasury upon  
31 a requisition upon the state auditor, properly certified by such  
32 members of the board.

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

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

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

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

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

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

65 (4) Prepare and certify to the director of the division of  
66 mines and minerals a register of qualified eligible candidates  
67 for appointment as mine inspectors. The register shall list all

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

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

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

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

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

106 (9) Make an annual report to the governor and the director  
107 of the division of mines and minerals concerning the

108 administration of mine inspection personnel in the state  
109 service, making such recommendations as the board considers  
110 to be in the public interest.

**ARTICLE 12. EMERGENCY MEDICAL PERSONNEL.**

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

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

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

22 (c) After the first day of July, one thousand nine hundred  
23 eighty-five, emergency medical services personnel shall be  
24 defined as a person who is certified as an emergency medical  
25 technician-mining, emergency medical technician, emergency  
26 medical technician-ambulance, emergency medical technician-  
27 intermediate, mobile intensive care paramedic, emergency  
28 medical technician-paramedic as defined in section three,  
29 article four-c, chapter sixteen of this code, or physician  
30 assistant as defined in section sixteen, article three-a, chapter  
31 thirty of this code. At least one emergency medical services  
32 personnel shall be employed at a mine for every fifty  
33 employees or any part thereof who are engaged at any time,  
34 in the extraction, production or preparation of coal.

35 (d) A training course designed specifically for certification  
36 of emergency medical technician-mining, shall be developed at  
37 the earliest practicable time by the ~~director at the earliest~~  
38 ~~practicable time by the~~ director of health in consultation with  
39 the board of miner training, education and certification. The  
40 training course for initial certification as an emergency medical  
41 technician-mining shall not be less than sixty hours, which  
42 shall include, but is not limited to, mast trouser application,  
43 basic life support skills and emergency room observation or  
44 other equivalent practical exposure to emergencies as  
45 prescribed by the director of the department of health.

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

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

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

1 Each coal mine operator shall provide every new employee  
2 within six months of the date of his employment with the  
3 opportunity for first-aid training as prescribed by the director  
4 of the division of mines and minerals unless such employees  
5 has previously received such training. Each coal mine  
6 employee shall be required to take refresher first-aid training  
7 of not less than five hours within each twenty-four months of  
8 employment. The employee shall be paid regular wages, or  
9 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.**

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

4 The director for the division of oil and gas shall divide the  
5 state so as to equalize, as far as practical, the work of each  
6 oil and gas inspector. He may designate a supervising inspector  
7 and other inspectors as may be necessary, and may designate  
8 their places of abode, at points convenient to the accomplish-  
9 ment of their work.

10 The director for the division of oil and gas shall make each  
11 appointment from among the three qualified eligible candi-  
12 dates on the register having the highest grades. The commis-  
13 sioner of the department of energy or the director for the  
14 division of oil and gas, for good cause, at least thirty days  
15 prior to making an appointment, strike any name from the  
16 register. Upon striking any name from the register, the  
17 commissioner or director, as the case may be, shall imme-  
18 diately notify in writing each member of the oil and gas  
19 inspectors' examining board of his action, together with a  
20 detailed statement of the reasons therefor. Thereafter, the oil  
21 and gas inspectors' examining board, after hearing, if it finds  
22 that the action of striking such name was arbitrary or  
23 unreasonable, may order the name of any candidate so stricken  
24 from the register to be reinstated thereon. Such reinstatement  
25 shall be effective from the date of removal from the register.

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

28 After having served for a probationary period of one year  
29 to the satisfaction of the director for the division of oil and  
30 gas and the commissioner, an oil and gas inspector or  
31 supervising inspector shall have permanent tenure until he  
32 becomes seventy years of age, subject only to dismissal for  
33 cause in accordance with the provisions of section two of this  
34 article. No oil and gas inspector or supervising inspector while  
35 in office shall be directly or indirectly interested as owner,  
36 lessor, operator, stockholder, superintendent or engineer of  
37 any oil or gas drilling or producing venture or of any coal  
38 mine in this state. Before entering upon the discharge of his



39 duties as an oil and gas inspector or supervising inspector, he  
40 shall take the oath of office prescribed by section 5, article  
41 IV of the constitution of West Virginia, and shall execute a  
42 bond in the penalty of two thousand dollars, with security to  
43 be approved by the director of the division of oil and gas,  
44 conditioned upon the faithful discharge of his duties, a  
45 certificate of which oath and bond shall be filed in the office  
46 of the secretary of state.

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

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

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

15 (b) In order to qualify for appointment as an oil and gas  
16 inspector or supervising inspector, an eligible applicant shall  
17 submit to a written and oral examination by the oil and gas  
18 inspectors' examining board and shall furnish such evidence  
19 of good health, character and other facts establishing eligibility  
20 as such board may require. If such board finds after  
21 investigation and examination that an applicant (1) is eligible  
22 for appointment and (2) has passed all written and oral  
23 examinations, the board shall add such applicant's name and  
24 grade to the register of qualified eligible candidates and certify  
25 its action to the director of the division of oil and gas. No

26 candidate's name may remain on the register for more than  
27 three years without requalifying.

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

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

51 Proceedings for the removal of an oil and gas inspector or  
52 the supervising inspector may be initiated by said director or  
53 the commissioner whenever either has reasonable grounds to  
54 believe and does believe that adequate cause exists warranting  
55 removal. Such a proceeding shall be initiated by a verified  
56 petition, filed with the oil and gas inspectors' examining board  
57 by said director or the commissioner, setting forth with  
58 particularity the facts alleged. Not less than twenty reputable  
59 citizens engaged in oil and gas drilling and production  
60 operations in the state may petition said director or the  
61 commissioner for the removal of an inspector or the  
62 supervising inspector. If such petition is verified by at least one  
63 of the petitioners, based on actual knowledge of the affiant,  
64 and alleges facts which, if true, warrant the removal of the  
65 inspector or supervising inspector, said director or the  
66 commissioner shall cause an investigation of the facts to be

67 made. If, after such investigation said director or the  
68 commissioner finds that there is substantial evidence which, if  
69 true, warrants removal of the inspector or supervising  
70 inspector, he shall file a petition with the oil and gas  
71 inspectors' examining board requesting removal of the  
72 inspector or supervising inspector.

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

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

90 The chairman of the board, said director and the commis-  
91 sioner may administer oaths and subpoena witnesses.

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

100 If, after hearing, the oil and gas inspectors' examining board  
101 finds that the inspector or supervising inspector should be  
102 removed, it shall enter an order to that effect. The decision  
103 of the board shall be final and shall not be subject to judicial  
104 review.

**§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.**

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

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

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

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

33 The public member shall serve as chairman of the board.

34 Members of the board, before performing any duty, shall  
35 take and subscribe to the oath required by section five, article  
36 four of the constitution of West Virginia.

37 The board shall meet at such times and places as shall be  
38 designated by the chairman. It shall be the duty of the  
39 chairman to call a meeting of the board on the written request  
40 of two members, or on the written request of said director or  
41 the commissioner. Notice of each meeting shall be given in  
42 writing to each member by the secretary at least five days in  
43 advance of the meeting. Three voting members shall constitute  
44 a quorum for the transaction of business.

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

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

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

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

67 (4) Prepare and certify to said director and the commis-  
68 sioner a register of qualified eligible candidates for appoint-  
69 ment as oil and gas inspectors or as supervising inspectors,  
70 with such differentiation, if any, between the certification of  
71 candidates for oil and gas inspectors and for supervising  
72 inspectors as the board may from time to time deem necessary  
73 or advisable. The register shall list all qualified eligible  
74 candidates in the order of their grades, the candidate with the  
75 highest grade appearing at the top of the list. After each  
76 meeting of the board held to examine such candidates and at

77 least annually, the board shall prepare and submit to the said  
78 director and the commissioner a revised and corrected register  
79 of qualified eligible candidates for appointment, deleting from  
80 such revised register all persons (a) who are no longer residents  
81 of West Virginia, (b) who have allowed a calendar year to  
82 expire without, in writing, indicating their continued availa-  
83 bility for such appointment, (c) who have been passed over  
84 for appointment for three years, (d) who have become  
85 ineligible for appointment since the board originally certified  
86 that such persons were qualified and eligible for appointment,  
87 or (e) who, in the judgment of at least three members of the  
88 board, should be removed from the register for good cause;

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

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

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

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

112 (9) Make an annual report to the governor concerning the  
113 administration of oil and gas inspection personnel in the state  
114 service; making such recommendations as the board considers  
115 to be in the public interest; and

116 (10) Render such advice and assistance to the director of  
117 the division of oil and gas as he shall from time to time  
118 determine necessary or desirable in the performance of his  
119 duties.

120 (c) After having conducted a performance and fiscal audit  
121 through its joint committee on government operations,  
122 pursuant to section nine, article ten, chapter four of this code,  
123 the Legislature hereby finds and declares that the oil and gas  
124 inspectors' examining board within the department of energy  
125 should be continued and reestablished. Accordingly, notwith-  
126 standing the provisions of section four, article ten, chapter four  
127 of this code, the oil and gas inspectors' examining board within  
128 the department of energy shall continue to exist until the first  
129 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  
2 provisions of section six, article one, chapter twenty-two of  
3 this code, is hereby charged with the duties and responsibilities  
4 set out in chapter twenty-two ~~and~~ this code and this chapter,  
5 relating to the exploration for and development, production  
6 and conservation of coal and all other minerals, except oil and  
7 gas and those minerals found in association therewith as  
8 provided in chapter twenty-two-b of this code. All legislative  
9 findings and policies stated in chapter twenty-two of this code  
10 in relation to these minerals apply to the operations of this  
11 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  
2 provided in section seven, article one, chapter twenty-two of  
3 this code shall have the responsibility and duties in adminis-  
4 tration of the division of mines and minerals as are provided  
5 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

2 meaning, the following definitions shall apply to this chapter:

3 **(a) General.**

4 (1) Accident: The term "accident" means any mine explo-  
5 sion, mine ignition, mine fire, or mine inundation, or injury  
6 to, or death of any person.

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

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

15 (4) Commissioner, or commissioner of energy: The terms  
16 "commissioner" or "commissioner of energy" means the  
17 commissioner of the department of energy as provided in  
18 chapter twenty-two of this code.

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

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

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

37 (8) Miner: The term "miner" means any individual working  
38 in a coal mine.



39 (9) Operator: The term "operator" means any firm,  
40 corporation, partnership or individual operating any coal mine  
41 or part thereof, or engaged in the construction of any facility  
42 associated with a coal mine.

43 (10) Permissible: The term "permissible" means any  
44 equipment, device or explosive that has been approved as  
45 permissible by the federal mine safety and health administra-  
46 tion and or the United States bureau of mines and meets all  
47 requirements, restrictions, exceptions, limitations and condi-  
48 tions attached to such classification by that agency or the  
49 bureau.

50 (11) Person: The term "person" means any individual  
51 partnership, association, corporation, firm, subsidiary of a  
52 corporation or other organization.

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

58 **(b) Division of mines and minerals.**

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

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

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

70 (4) Mine inspector: The term "mine inspector" means a  
71 state mine inspector provided for in section seven of this  
72 article.

73 (5) Mine inspectors' examining board: The term "mine  
74 inspectors' examining board" shall mean the mine inspectors'  
75 examining board provided for in article eleven of chapter  
76 twenty-two of this code.

77      **(c) Mine areas.**

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

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

84      (3) Drift: The term “drift” means a horizontal or approx-  
85 imately horizontal opening through the strata or in a coal seam  
86 and used for the same purposes as a shaft.

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

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

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

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

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

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

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

114 used for the same purposes as a shaft.

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

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

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

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

130 **(d) Mine personnel.**

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

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

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

150 (4) Interested persons: The term “interested persons”  
151 includes the operator, members of any mine safety committee

152 at the mine affected and other duly authorized representatives  
153 of the mine workers and the department.

154 (5) Mine foreman: The term "mine foreman" means the  
155 certified person whom the operator or superintendent shall  
156 place in charge of the inside workings of the mine and of the  
157 persons employed therein.

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

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

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

171 (9) Supervisor: The term "supervisor" means a superintend-  
172 ent, mine foreman, assistant mine foreman, or any person  
173 specifically designated by the superintendent or mine foreman  
174 to supervise work or employees and who is acting pursuant  
175 to such specific designation and instructions.

176 (e) **Electrical.**

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

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

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

186 (4) Cable: The term "cable" means a standard conductor  
187 (single conductor cable) or a combination of conductors  
188 insulated from one another (multiple conductor cable).

189 (5) Circuit breaker: The term "circuit breaker" means a  
190 device for interrupting a circuit between separable contacts  
191 under normal or abnormal conditions.

192 (6) Delta connected: The term "delta connected" means a  
193 power system in which the windings or transformers or a.c.  
194 generators are connected to form a triangular phase relation-  
195 ship, and with phase conductors connected to each point of  
196 the triangle.

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

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

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

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

216 (11) High voltage: The term "high voltage" means voltages  
217 of more than one thousand volts.

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

223 (13) Low voltage: The term "low voltage" means up to and  
224 including six hundred sixty volts.

225 (14) Medium voltage: The term "medium voltage" means  
226 voltages from six hundred sixty-one to one thousand volts.

227 (15) Mine power center or distribution center: The term  
 228 "mine power center or distribution center" means a combined  
 229 transformer or distribution unit, complete within a metal  
 230 enclosure from which one or more low-voltage power circuits  
 231 are taken.

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

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

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

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

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

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

1 The division of mines and minerals shall have as its purpose  
 2 the supervision of the execution and enforcement of the  
 3 provisions of this chapter and, in carrying out the aforesaid  
 4 purposes, it shall give prime consideration to the protection  
 5 of the safety and health of persons employed within or at the  
 6 mines of this state. In addition, the division shall, consistent  
 7 with the aforesaid prime consideration, protect and preserve  
 8 mining property and property used in connection therewith.

9 The division is hereby given authority, where authorized and  
10 in the manner prescribed in this chapter, to enact such rules  
11 and regulations as may be necessary to effectuate the above-  
12 stated purposes, all under the supervision, review and approval  
13 of the commissioner.

**§22A-1A-3. Director of division of mines and minerals—Appoint-  
ment.**

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

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

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

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

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

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

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

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

23 (6) Prepare report forms to be used by mine inspectors in  
24 making their findings, orders and notices, upon inspections

25 made in accordance with this chapter.

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

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

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

60 (10) Call or subpoena witnesses, for the purpose of  
61 conducting hearings into mine fires, mine explosions or any  
62 mine accident; to administer oaths and to require production  
63 of any books, papers, records, or other documents relevant or  
64 material to any hearing, investigation or examination of any



65 mine permitted by this chapter. Any witness so called or  
66 subpoenaed shall receive forty dollars per diem and shall  
67 receive mileage at the rate of fifteen cents for each mile  
68 actually traveled, which shall be paid out of the state treasury  
69 upon a requisition upon the state auditor, properly certified  
70 by such witness.

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

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

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

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

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

**§22A-1A-5. Same—Eligibility; salary.**

1 The director shall be a citizen of West Virginia, shall be a  
2 competent person of good repute and temperate habits with  
3 demonstrated interest and experience in coal mining. The

4 director shall devote all of his time to the duties of his office  
 5 and shall not be directly or indirectly interested financially in  
 6 any mine. The salary of the director shall be set by the  
 7 commissioner, with reimbursement for traveling expenses  
 8 incurred in the discharge of his official duties, which shall be  
 9 paid out of the state treasury upon a requisition upon the state  
 10 auditor, properly certified by the commissioner.

**§22A-1A-6. Same—Oath and bond.**

1 The director shall, before entering upon the discharge of his  
 2 duties, take the oath of office prescribed by section 5, article  
 3 12 of the constitution of West Virginia, and shall execute a  
 4 bond in the penalty of two thousand dollars, with security to  
 5 be approved by the governor, conditioned upon the faithful  
 6 discharge of his duties, a certificate of which oath and which  
 7 bond shall be filed in the office of the secretary of state.

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

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

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

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

22 The commissioner shall make each appointment from

23 among the three qualified eligible candidates on the register  
24 having the highest grades: *Provided*, That the commissioner  
25 may, for good cause, at least thirty days prior to making an  
26 appointment, strike any name from the register. Upon striking  
27 any name from the register, <sup>OK</sup> commissioner shall immediately  
28 notify in writing each member of the mine inspectors'  
29 examining board of his action, together with a detailed  
30 statement of the reasons therefor. Thereafter, the mine  
31 inspectors' examining board, after hearing, if it finds that the  
32 action of the commissioner was arbitrary or unreasonable, may  
33 order the name of any candidate so stricken from the register  
34 to be reinstated thereon. Such reinstatement shall be effective  
35 from the date of removal from the register.

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

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

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

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

1 The division shall employ eleven or more mine safety  
2 instructors. To be eligible for employment as a mine safety

3 instructor, the applicant shall be (1) a citizen of West Virginia,  
4 in good health, not less than twenty-five years of age, and of  
5 good character, reputation and temperate habits, and (2) a  
6 person who has had at least five years' experience in first aid  
7 and mine rescue work and who has had practical experience  
8 with dangerous gases found in coal mines, and who has a  
9 practical knowledge of mines, mining methods, mine ventila-  
10 tion, sound safety practices, and applicable mining laws.

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

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

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

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

**§22A-1A-9. Mine inspectors may be appointed to fill vacancy in  
division.**

1 Notwithstanding any other provisions of law, if a vacancy  
2 occurs in any appointive position within the division, any mine  
3 inspector having permanent tenure, if qualified, may be  
4 appointed to such appointive position by the commissioner.

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

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

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

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

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

35 the case of mine inspectors.

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

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

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

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

27 (c) Salaries of district inspectors shall not be less than  
28 twenty-eight thousand fifty-six dollars per year; assistant  
29 inspector-at-large, not less than thirty thousand one hundred  
30 eight dollars per year; inspectors-at-large, not less than thirty-  
31 one thousand five hundred seventy-two dollars per year, and  
32 they shall receive mileage at the rate of not less than twenty  
33 cents for each mile actually traveled in the discharge of their

34 official duties in a privately owned vehicle. Within the limits  
35 provided by law, the salary of each inspector shall be fixed  
36 by the commissioner, subject to the approval of the mine  
37 inspectors' examining board. In fixing salaries of mine  
38 inspectors, the commissioner shall consider ability, perfor-  
39 mance of duty and experience. No reimbursement for traveling  
40 expenses shall be made except on an itemized account of such  
41 expenses submitted by the inspector, who shall verify upon  
42 oath, that such expenses were actually incurred in the  
43 discharge of his official duties. Every inspector shall be  
44 afforded compensatory time or compensation of at least his  
45 regular rate for all time in excess of forty-two hours per week.

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

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

58 Proceedings for the removal of a mine inspector may be  
59 initiated by the director or commissioner whenever there is  
60 reasonable cause to believe that adequate cause exists,  
61 warranting removal. Such a proceeding shall be initiated by  
62 a verified petition, filed with the board by the director or  
63 commissioner, setting forth with particularity the facts alleged.  
64 Not less than twenty reputable citizens, who are operators or  
65 employees in mines in the state, may petition the director for  
66 the removal of a mine inspector. If such petition is verified  
67 by at least one of the petitioners, based on actual knowledge  
68 of the affiant and alleged facts, which, if true, warrant the  
69 removal of the inspector, the director shall cause an  
70 investigation of the facts to be made. If, after such investiga-  
71 tion, the director finds that there is substantial evidence,  
72 which, if true, warrants removal of the inspector, he shall file  
73 a petition with the board requesting removal of the inspector.

74 On receipt of a petition by the director or the commissioner  
 75 seeking removal of a mine inspector, the board shall promptly  
 76 notify the inspector to appear before it at a time and place  
 77 designated in said notice, which time shall be not less than  
 78 fifteen days thereafter. There shall be attached to the copy of  
 79 the notice served upon the inspector a copy of the petition filed  
 80 with the board.

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

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

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

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

1 In order to qualify for an appointment as a surface mine  
 2 inspector, under the provisions of this article, and eligible  
 3 applicant shall have had at least five years' practical experience  
 4 in surface mines, at least one year of which, immediately  
 5 preceding his original appointment, shall have been in surface  
 6 mines in this state, and submit to a written and oral  
 7 examination given by the mine inspectors' examining board.  
 8 The examination shall relate to the duties to be performed by  
 9 a surface mine inspector and may, subject to the approval of  
 10 the mine inspectors' examining board, be prepared by the  
 11 director.



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

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

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

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

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

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

**§22A-1A-12. Commissioner, director and inspectors authorized to**

**enter mines; duties of inspectors to examine mines;  
no advance notice; reports after fatal accidents.**

1 The commissioner, director, or his authorized representative  
2 shall have authority to visit, enter, and examine any mine,  
3 whether underground or on the surface, and may call for the  
4 assistance of any district mine inspector or inspectors whenever  
5 such assistance is necessary in the examination of any mine.  
6 The operator of every coal mine shall furnish the commissioner  
7 or his authorized representative proper facilities for entering  
8 such mine and making examination or obtaining information.

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

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

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

37 The mine inspector shall visit the scene of each fatal accident  
38 occurring in any mine within his district and shall make an

39 examination into the particlar facts of such accident; make a  
40 report to the director, setting forth the results of such  
41 examination, including the condition of the mine and the cause  
42 or causes of such fatal accident, if known, and all such reports  
43 shall be made available to the interested parties, upon written  
44 requests.

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

**§22A-1A-13. Findings, orders and notices.**

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

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

22 (b) If, upon any inspection of a coal mine, an authorized  
23 representative of the commissioner finds that there has been  
24 a violation of the law, but the violation has not created an  
25 imminent danger, he shall issue a notice to the operator or  
26 his agent, fixing a reasonable time for the abatement of the  
27 violation. If, upon the expiration of the period of time, as

28 originally fixed or subsequently extended, an authorized  
29 representative of the commissioner finds that the violation has  
30 not been totally abated, and if he also finds that the period  
31 of time should not be further extended, he shall find the extent  
32 of the area affected by the violation and shall promptly issue  
33 an order requiring the operator of such mine or his agent to  
34 cause immediately all persons, except those referred to in  
35 subdivisions (1), (2), (3) and (4), subsection (c) of this section,  
36 to be withdrawn from, and to be prohibited from entering such  
37 area until an authorized representative of the commissioner  
38 determines that the violation has been abated.

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

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

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

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

54 (4) Any consultant to any of the foregoing.

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

62 (e) Each notice or order issued under this section shall be  
63 given promptly to the operator of the coal mine or his agent  
64 by an authorized representative of the commissioner issuing  
65 such notice or order, and all such notices and orders shall be  
66 in writing and shall be signed by such representative and

67 posted on the bulletin board at the mine.

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

71 (g) Each finding, order, and notice made under this section  
72 shall promptly be given to the operator of the mine to which  
73 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.**

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

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

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

**§22A-1A-15. Review of orders and notices by the commissioner.**

1 (a) (1) An operator, issued an order pursuant to the  
2 provisions of section thirteen of this article, or any represen-  
3 tative of miners in any mine affected by such order or by any  
4 modification or termination of such order, may apply to the

5 commissioner for review of the order within thirty days of  
6 receipt thereof or within thirty days of its modification or  
7 termination. An operator, issued a notice pursuant to  
8 subsection (b), section thirteen of this article, or any  
9 representative of miners in any mine affected by such notice,  
10 may, if he believes that the period of the time fixed in such  
11 notice for the abatement of the violation is unreasonable,  
12 apply to the commissioner for review of the notice within  
13 thirty days of the receipt thereof. The applicant shall send a  
14 copy of such application to the representative of miners in the  
15 affected mine, or the operator, as appropriate. Upon receipt  
16 of such application, the commissioner shall cause such  
17 investigation to be made as he deems appropriate. Such  
18 investigation shall provide an opportunity for a public hearing,  
19 at the request of the operator or the representative of miners  
20 in such mine, to enable the operator and the representative  
21 of miners in such mine to present information relating to the  
22 issuance and continuance of such order or the modification  
23 or termination thereof or to the time fixed in such notice. The  
24 filing of an application for review under this law shall not  
25 operate as a stay of any order or notice.

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

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

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

40 (d) Pending completion of the investigation required by this  
41 section, the applicant may file with the commissioner a written  
42 request that the commissioner grant temporary relief from any  
43 modification or termination of any order, or from any order  
44 issued under section thirteen of this article, except an order

45 issued under section fourteen of this article, together with a  
46 detailed statement giving reasons for granting such relief. The  
47 commissioner may grant such relief, under such conditions as  
48 he may prescribe, if

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

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

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

56 No temporary relief shall be granted in the case of a notice  
57 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.**

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

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

19 (c) In order to insure prompt compliance with any notice,  
20 order, or decision issued under this law, the authorized  
21 representative of the commissioner may deliver such notice,  
22 order, or decision to an agent of the operator and such agent

23 shall immediately take appropriate measures to insure  
24 compliance with such notice, order, or decision.

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

**§22A-1A-17. Judicial review.**

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

13 (b) The party making such appeal shall forthwith send a  
14 copy of such petition for appeal, by registered mail, to the  
15 other party. Upon receipt of such petition for appeal, the  
16 commissioner shall promptly certify and file in such court a  
17 complete transcript of the record upon which the order or



18 decision complained of was issued. The court shall hear such  
19 petition on the record made before the commissioner. The  
20 findings of the commissioner, if supported by substantial  
21 evidence on the record considered as a whole, shall be  
22 conclusive. The court may affirm, vacate, or modify any order  
23 or decision or may remand the proceedings to the commis-  
24 sioner for such further action as it may direct.

25 (c) In the case of a proceeding to review any order or  
26 decision issued by the commissioner under this law, except an  
27 order or decision pertaining to an order issued under  
28 subsection (a), section thirteen of this article or an order or  
29 decision pertaining to a notice issued under subsection (b),  
30 section thirteen of this article, the court may, under such  
31 conditions as it may prescribe, grant such temporary relief as  
32 it deems appropriate pending final determination of the  
33 proceedings if

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

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

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

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

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

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

**§22A-1A-18. Injunctions.**

1 The commissioner may institute a civil action for relief,

2 including a permanent or temporary injunction, restraining  
3 order, or any other appropriate order in the circuit court of  
4 the county in which the mine is located or the circuit court  
5 of Kanawha county, whenever the operator or his agent (a)  
6 violates or fails or refuses to comply with any order or decision  
7 issued under this law, or (b) interferes with, hinders, or delays  
8 the director or his authorized representative in carrying out  
9 the provisions of this law, or (c) refuses to admit such  
10 representatives to the mine, or (d) refuses to permit the  
11 inspection of the mine, or the investigation of an accident or  
12 occupational disease occurring in, or connected with, such  
13 mine, or (e) refuses to furnish any information or report  
14 requested by the director in furtherance of the provisions of  
15 this law, or (f) refuses to permit access to, and copying of,  
16 such records as the director determines necessary in carrying  
17 out the provisions of this law. Each court shall have  
18 jurisdiction to provide such relief as may be appropriate.  
19 Except as otherwise provided herein, any relief granted by the  
20 court to enforce an order under clause (a) of this section shall  
21 continue in effect until the completion or final termination of  
22 all proceedings for review of such order under this law, unless,  
23 prior thereto, the circuit court granting such relief sets it aside  
24 or modifies it. In any action instituted under this section to  
25 enforce an order or decision issued by the commissioner after  
26 a public hearing, the findings of the commissioner, if  
27 supported by substantial evidence on the record considered as  
28 a whole, shall be conclusive.

**§22A-1A-19. Penalties.**

1 (a) (1) Any operator of a coal mine in which a violation  
2 occurs of any health or safety rule or regulation or who  
3 violates any other provisions of this law, shall be assessed a  
4 civil penalty by the commissioner under subdivision (3) of this  
5 subsection, which penalty shall be not more than three  
6 thousand dollars, for each such violation. Each such violation  
7 shall constitute a separate offense. In determining the amount  
8 of the penalty, the commissioner shall consider the operator's  
9 history of previous violations, the appropriateness of such  
10 penalty to the size of the business of the operator charged,  
11 the gravity of the violation and the demonstrated good faith  
12 of the operator charged in attempting to achieve rapid  
13 compliance after notification of a violation.

14 (2) Any miner who knowingly violates any health or safety  
15 provision of this chapter or health or safety rule or regulation  
16 promulgated pursuant to this chapter shall be subject to a civil  
17 penalty assessed by the commissioner under subdivision (3) of  
18 this subsection which penalty shall not be more than two  
19 hundred fifty dollars for each occurrence of such violation.

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

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

55 him in any action to enforce an order assessing civil penalties  
56 under this subdivision.

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

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

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

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

**§22A-1A-20. Discrimination.**

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

15 (b) Any miner or a representative of miners who believes  
16 that he has been discharged or otherwise discriminated against,  
17 or any miner who has not been compensated by an operator  
18 for lost time due to the posting of a withdrawal order, may,  
19 within thirty days after such violation occurs, apply to the  
20 appeals board for a review of such alleged discharge,  
21 discrimination, or failure to compensate. A copy of the  
22 application shall be sent to such person who shall be the  
23 respondent. Upon receipt of such application, the appeals  
24 board shall cause such investigation to be made as it deems  
25 appropriate. Such investigation shall provide an opportunity  
26 for a public hearing at the request of any party to enable the  
27 parties to present information relating to such violation. The  
28 parties shall be given written notice of the time and place of  
29 the hearing at least five days prior to the hearing. Mailing of

30 the notice of hearing to the charged party at his last address  
31 of record as reflected in the records of the department of  
32 energy shall be deemed adequate notice to the charged party.  
33 Such notice shall be by certified mail, return receipt requested.  
34 Any such hearing shall be of record. Upon receiving the report  
35 of such investigation, the board shall make findings of fact.  
36 If it finds that such violation did occur, it shall issue a decision  
37 within forty-five days, incorporating an order therein,  
38 requiring the person committing such violation to take such  
39 affirmative action to abate the violation as the board deems  
40 appropriate, including, but not limited to, the rehiring or  
41 reinstatement of the miner or representative of miners to his  
42 former position with back pay, and also pay compensation for  
43 the idle time as a result of a withdrawal order. If it finds that  
44 there was no such violation, it shall issue an order denying  
45 the application. Such order shall incorporate the board's  
46 finding therein. If the proceedings under this section relative  
47 to discharge are not completed within forty-five days of the  
48 date of discharge due to delay caused by the operator, the  
49 miner shall be automatically reinstated until the final  
50 determination. If such proceedings are not completed within  
51 forty-five days of the date of discharge due to delay caused  
52 by the board, then the board may, at its option, reinstate the  
53 miner until the final determination. If such proceedings are not  
54 completed within forty-five days of the date of discharge due  
55 to delay caused by the miner the board shall not reinstate the  
56 miner until the final determination.

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

**§22A-1A-21. Records and reports.**

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

7 publish, either in summary or detailed form, such reports or  
8 information so obtained. Except to the extent otherwise  
9 specifically provided by this law, all records, information,  
10 reports, findings, notices, orders, or decisions required or  
11 issued pursuant to or under this law may be published from  
12 time to time, may be released to any interested person, and  
13 shall be made available for public inspection.

**§22A-1A-22. Mine foreman examiner for mine foremen-fire bosses  
and assistant mine foremen-fire bosses; salary.**

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

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

1 The duties of the mine foreman examiner shall be to:

2 (a) Prepare and conduct examinations of mine foremen,  
3 assistant mine foremen, and fire bosses;

4 (b) Prepare and certify to the <sup>commissioner</sup>~~director~~ a register of all  
5 persons who successfully completed the examination with a  
6 passing grade of eighty percent.

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

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

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

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

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

4 and fire bosses.

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

**§22A-1A-26. Certificates of qualification heretofore granted.**

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

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

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

**§22A-1A-28. Record of examinations.**

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

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

1 (a) **Charge of breach of duty.**—A mine inspector, the  
2 director, or the commissioner may charge a mine foreman,  
3 assistant mine foreman, fire boss or any other certified person  
4 with neglect or failure to perform any duty mandated pursuant  
5 to article one or two of this chapter. The charge shall state  
6 the name of the person charged, the duty or duties he is alleged  
7 to have violated, the approximate date and place so far as is  
8 known of the violation of duty, the capacity of the person  
9 making the charge, and shall be verified on the basis of  
10 information and belief or personal knowledge. The charge is  
11 initiated by filing it with the director or with the board of



12 appeals. A copy of any charge filed with the board of appeals  
13 or any member thereof, shall be transmitted promptly to the  
14 director. The director shall maintain a file of each charge and  
15 of all related documents which shall be open to the public.

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

40 (c) **Hearing.**—The board of appeals shall hold a hearing,  
41 may appoint a hearing examiner to take evidence and report  
42 to the board of appeals within the time allotted, may direct  
43 or authorize taking of oral depositions under oath by any  
44 participant, or adopt any other method for the gathering of  
45 sworn evidence which affords the charging party, the charged  
46 party, the director and any interested party of record due  
47 process of law and a fair opportunity to present and make a  
48 record of evidence. Any member of the board shall have the  
49 power to administer oaths. The board may subpoena witnesses  
50 and require production of any books, papers, records, or other  
51 documents relevant or material to the inquiry. The board shall  
52 consider all evidence offered in support of the charge and on

53 behalf of the persons so charged at the time and place  
 54 designated in the notice. Each witness shall be sworn and a  
 55 transcript shall be made of all evidence presented in any such  
 56 hearing. No continuance shall be granted except for good  
 57 cause shown.

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

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

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

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

86 (g) Any party adversely affected by a final order or decision  
 87 issued by the board hereunder shall be entitled to judicial  
 88 review thereof pursuant to section four, article five, chapter  
 89 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.**

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

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

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

**§22A-1A-32. Mine rescue crews.**

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

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

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

26 When engaged in rescue work required by an explosion, fire  
27 or other emergency at a mine, all members of mine rescue

28 teams assigned to rescue operations shall, during the period  
29 of their rescue work, be employees of the operator of the mine  
30 where the emergency exists, and shall be compensated by the  
31 operator at the rate established in the area for such work. In  
32 no case shall this rate be less than the prevailing wage rate  
33 in the industry for the most skilled class of inside mine labor.  
34 During the period of their emergency employment, members'  
35 of mine rescue teams shall be protected by the workers'  
36 compensation subscription of such emergency employer.

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

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

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

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

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

**§22A-1A-33. Mine rescue teams.**

1 It shall be the duty of any mine operator employing fifty  
2 or more employees to have available for mine rescue work a  
3 trained mine rescue team, the members of which shall work  
4 in the general area of the mine. In the event of any fire,  
5 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

35 thousand dollars, or imprisoned in the county jail for not more  
36 than six months, or both fined and imprisoned.

**§22A-1A-35. Provisions of article severable.**

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 .....

23 .....P. E.  
24 (Either Civil or Mining Engineer  
25 or Land Surveyor)."

26 The operator of every underground coal mine shall make,  
27 or cause to be made, an accurate map of such mine, on a scale  
28 of not less than one hundred, and not more than five hundred  
29 feet to the inch. The map of such mine shall show:

- 30 (1) Name and address of the mine;
- 31 (2) The scale and orientation of the map;
- 32 (3) The property or boundary lines of the mine;
- 33 (4) The shafts, slopes, drifts, tunnels, entries, rooms,  
34 crosscuts and all other excavations and auger and strip mined  
35 areas of the coalbed being mined;
- 36 (5) All drill holes that penetrate the coalbed being mined;
- 37 (6) Dip of the coalbed;
- 38 (7) The outcrop of the coalbed within the bounds of the  
39 property assigned to the mine;
- 40 (8) The elevations of tops and bottoms of shafts and slopes,  
41 and the floor at the entrance to drift and tunnel openings;
- 42 (9) The elevation of the floor at intervals of not more than  
43 two hundred feet in:
  - 44 (a) At least one entry of each working section, and main  
45 and cross entries;
  - 46 (b) The last line of open crosscuts of each working section,  
47 and main and cross entries before such sections and main and  
48 cross entries are abandoned; and
  - 49 (c) Rooms advancing toward or adjacent to property or  
50 boundary lines or adjacent mines;
- 51 (10) Contour lines passing through whole number elevations  
52 of the coalbed being mined, the spacing of such lines not to  
53 exceed ten-foot elevation levels, except that a broader spacing  
54 of contour lines may be approved for steeply-pitching coalbeds  
55 by the person authorized so to do under the federal act; and  
56 contour lines may be placed on overlays or tracings attached  
57 to mine maps;
- 58 (11) As far as practicable the outline of existing and  
59 extracted pillars;
- 60 (12) Entries and air courses with the direction of airflow

61 indicated by arrows;

62 (13) The location of all surface mine ventilation fans, which  
63 location may be designated on the mine map by symbols;

64 (14) Escapeways;

65 (15) The known underground workings in the same coalbed  
66 on the adjoining properties within one thousand feet of such  
67 mine workings and projections;

68 (16) The location of any body of water dammed in the mine  
69 or held back in any portion of the mine, but such bodies of  
70 water may be shown on overlays or tracings attached to the  
71 mine maps used to show contour lines, as provided under  
72 subdivision (10) of this section;

73 (17) The elevation of any body of water dammed in the  
74 mine or held back in any portion of the mine;

75 (18) The abandoned portion or portions of the mine;

76 (19) The location and description of at least two permanent  
77 base line points coordinated with the underground and surface  
78 mine traverses, and the location and description of at least two  
79 permanent elevation bench marks used in connection with  
80 establishing or referencing mine elevation surveys;

81 (20) Mines above or below;

82 (21) Water pools above;

83 (22) The location of the principal streams and bodies of  
84 water on the surface;

85 (23) Either producing or abandoned oil and gas wells  
86 located within five hundred feet of such mine and any  
87 underground area of such mine;

88 (24) The location of all high pressure pipelines, high voltage  
89 power lines and principal roads;

90 (25) The location of railroad tracks and public highways  
91 leading to the mine, and mine buildings of a permanent nature  
92 with identifying names shown;

93 (26) Where the overburden is less than one hundred feet,  
94 occupied dwellings; and

95 (27) Such other information as may be required under the



96 federal act or by the department of mines.

97 The operator of every underground coal mine shall extend,  
98 or cause to be extended, on or before the first day of March  
99 and on or before the first day of September of each year, such  
100 mine map thereof to accurately show the progress of the  
101 workings as of the first day of July and the first day of January  
102 of each year. Such map shall be kept up to date by temporary  
103 notations, which shall include:

104 (1) The location of each working face of each working place;

105 (2) Pillars mined or other such second mining;

106 (3) Permanent ventilation controls constructed or removed,  
107 such as seals, overcasts, undercasts, regulators and permanent  
108 stoppings, and the direction of air currents indicated; and

109 (4) Escapeways designated by means of symbols.

110 Such map shall be revised and supplemented at intervals  
111 prescribed under the federal act on the basis of a survey made  
112 or certified by such engineer or surveyor, and shall be kept  
113 by the operator in a fireproof repository located in an area  
114 on the surface chosen by the operator to minimize the danger  
115 of destruction by fire or other hazard.

116 Such map and any revision and supplement thereof shall be  
117 available for inspection by a federal mine inspector, by mine  
118 health and safety instructors, by miners in the mine and their  
119 representatives and by operators of adjacent coal mines and  
120 by persons owning, leasing or residing on surface areas of such  
121 mines or areas adjacent to such mines, and a copy of such  
122 map and any revision and supplement thereof shall be  
123 promptly filed with the division of mines and minerals. The  
124 operator shall also furnish to persons expressly entitled thereto  
125 under the federal act, upon request, one or more copies of such  
126 maps and any revision and supplement thereof. Such map or  
127 revision and supplement thereof shall be kept confidential and  
128 its contents shall not be divulged to any other person, except  
129 to the extent necessary to carry out the provisions of the  
130 federal act and this chapter and in connection with the  
131 functions and responsibilities of the secretary of housing and  
132 urban development.

133 Surveying calculations and mapping of underground coal  
134 mines which were or are opened or reopened after the first

135 of July, one thousand nine hundred sixty-nine, shall be done  
136 by the rectangular coordinate traversing method and meridians  
137 carried through and tied between at least two parallel entries  
138 of each development panel and panels or workings adjacent  
139 to mine boundaries or abandoned workings. These surveys  
140 shall originate from at least three permanent survey monu-  
141 ments on the surface of the mine property. The monuments  
142 shall be clearly referenced and described in the operator's  
143 records. Elevations shall be tied to either the United States  
144 geological survey or the United States coast and geodetic  
145 survey bench mark system, be clearly referenced and described  
146 on such map.

147       Underground coal mines operating on the first of July, one  
148 thousand nine hundred sixty-nine, and not using the rectan-  
149 gular coordinate traversing method shall, within two years of  
150 such date, convert to this procedure for surveying calculations  
151 and mapping. Meridians shall be carried through and tied  
152 between at least two parallel entries of each development panel  
153 and panels or workings adjacent to mine boundaries or  
154 abandoned workings. These surveys shall originate from at  
155 least three permanent survey monuments on the surface of the  
156 mine property. The monuments shall be clearly referenced and  
157 described in the coal mine operator's records. Elevations shall  
158 be tied to either the United States geological survey or the  
159 United States coast and geodetic survey bench mark system,  
160 be clearly referenced and described on such map.

161       The operator of such underground coal mine shall, by  
162 reasonable proof, demonstrate to the director or to any federal  
163 mine inspector concerned, at any time, that a diligent search  
164 was made for all existing and available maps and survey data  
165 for the workings on the adjoining properties. The operator  
166 shall further be able to show proof to the director or to any  
167 federal mine inspector concerned, that a suitable method was  
168 used to insure accuracy in the methods used in transposing  
169 other workings to the map of such mine.

170       There shall be an archive of underground coal mine maps  
171 maintained at the office of the director. The archive shall:

- 172       (1) Be secured in a fireproof and burglarproof vault;
- 173       (2) Have an appropriate map identification system; and

174 (3) Have adequate map microfilming facilities.

175 Whenever an operator permanently closes or abandons an  
176 underground coal mine, or temporarily closes an underground  
177 coal mine for a period of more than ninety days, he shall  
178 promptly notify the division of mines and minerals and the  
179 federal mine inspector of the district in which such mine is  
180 located of such closure. Within sixty days of the permanent  
181 closure or abandonment of an underground coal mine, or,  
182 when an underground coal mine is temporarily closed, upon  
183 the expiration of a period of ninety days from the date of  
184 closure, the operator shall file with the division of mines and  
185 minerals and such federal mine inspector a copy of the mine  
186 map revised and supplemented to the date of the closure. Such  
187 copy of the mine map shall be certified by a certified or  
188 professional engineer or licensed surveyor as aforesaid and  
189 shall be available for public inspection.

190 Any person having a map or surveying data of any worked  
191 out or abandoned underground coal mine shall make such  
192 map or data available to the division to copy or reproduce  
193 such material.

194 Any person who fails or refuses to discharge any duty  
195 imposed upon him by this section shall be guilty of a  
196 misdemeanor, and, upon conviction thereof, shall be fined not  
197 less than five hundred dollars nor more than one thousand  
198 dollars.

### VENTILATION

#### **§22A-2-2. Plan of ventilation; approval by director of the division of mines and minerals.**

1 Every operator of a coal mine, before making any new or  
2 additional openings, shall submit to the director, for his  
3 information and approval, a general plan showing the  
4 proposed system of ventilation and ventilating equipment of  
5 the openings, with their location and relative positions to  
6 adjacent developments; no such new or additional openings  
7 shall be made until approved by the director, in consultation  
8 with the deputy directors of permitting and safety, health and  
9 training. The director shall promptly approve any such plans  
10 submitted, if the proposed system of ventilation and ventilating  
11 equipment meet the requirements of this article.

**§22A-2-3. Fans.**

1 (a) The ventilation of mines, the systems for which extend  
2 for more than two hundred feet underground and which are  
3 opened after the effective date of this article, shall be produced  
4 by a mechanically operated fan or mechanically operated fans.  
5 Ventilation by means of a furnace is prohibited in any mine.  
6 The fan or fans shall be kept in continuous operation, unless  
7 written permission to do otherwise be granted by the director.  
8 In case of interruption to a ventilating fan or its machinery  
9 whereby the ventilation of the mine is interrupted, immediate  
10 action shall be taken by the mine operator or his management  
11 personnel, in all mines, to cut off the power and withdraw the  
12 men from the face regions or other areas of the mine affected.  
13 If ventilation is restored in fifteen minutes, the face regions  
14 and other places in the affected areas where gas (methane) is  
15 likely to accumulate, shall be reexamined by a certified person;  
16 and if found free of explosive gas, power may be restored and  
17 work resumed. If ventilation is not restored in fifteen minutes,  
18 all underground employees shall be removed from the mine,  
19 all power shall be cut off in a timely manner, and the  
20 underground employees shall not return until ventilation is  
21 restored and the mine examined by certified persons, mine  
22 examiners, or other persons holding a certificate to make  
23 preshift examination.

24 (b) All main fans installed after the effective date of this  
25 article shall be located on the surface in fireproof housings  
26 offset not less than fifteen feet from the nearest side of the  
27 mine opening, equipped with fireproof air ducts, provided with  
28 explosion doors or a weak wall, and operated from an  
29 independent power circuit. In lieu of the requirements for the  
30 location of fans and pressure-relief facilities, a fan may be  
31 directly in front of, or over a mine opening: *Provided*, That  
32 such opening is not in direct line with possible forces coming  
33 out of the mine if an explosion occurs: *Provided, however*,  
34 That there is another opening having a weak-wall stopping or  
35 explosion doors that would be in direct line with forces coming  
36 out of the mine. All main fans shall be provided with pressure-  
37 recording gauges or water gauges. A daily inspection shall be  
38 made of all main fans and machinery connected therewith by  
39 a certified electrician and a record kept of the same in a book  
40 prescribed for this purpose or by adequate facilities provided

41 to permanently record the performance of the main fans and  
42 to give warning of an interruption to a fan.

43 (c) Auxiliary fans and tubing shall be permitted to be used  
44 in lieu of or in conjunction with line brattice to provide  
45 adequate ventilation to the working faces: *Provided*, That  
46 auxiliary fans be so located and operated to avoid recirculation  
47 of air at any time. Auxiliary fans shall be approved and  
48 maintained as permissible.

49 (d) If the auxiliary fan is stopped or fails, the electrical  
50 equipment in the place shall be stopped and the power  
51 disconnected at the power source until ventilation in the  
52 working place is restored. During such stoppage, the  
53 ventilation shall be by means of the primary air current  
54 conducted into the place in a manner to prevent accumulation  
55 of methane.

56 (e) In places where auxiliary fans and tubing are used, the  
57 ventilation between shifts, weekends, and idle shifts shall be  
58 provided to face areas with line brattice or the equivalent to  
59 prevent accumulation of methane.

60 (f) If the air passing through the auxiliary fan or tubing  
61 contains gas in excess of one percent, the current shall at once  
62 be switched off and the trailing cable shall forthwith be  
63 disconnected from the power supply until the place is  
64 pronounced safe.

65 (g) The director may require that when continuous mine  
66 equipment is being used, all face ventilating systems using  
67 auxiliary fans and tubing shall be provided with machine-  
68 mounted diffuser fans, and such fans shall be continuously  
69 operated during mining operations.

70 (h) In the event of a fire or explosion in any coal mine, the  
71 ventilating fan or fans shall not intentionally be started,  
72 stopped, speed increased or decreased or the direction of the  
73 air current changed without the approval of the general mine  
74 foreman, and, if he is not immediately available, a represen-  
75 tative of the division. A duly authorized representative of the  
76 employees should be consulted if practical under the  
77 circumstances.

**§22A-2-4. Ventilation of mines in general.**

1 (a) The operator or mine foreman of every coal mine,  
2 whether worked by shaft, slope, or drift, shall provide and  
3 hereafter maintain for every such mine adequate ventilation.  
4 In all mines the quantity of air passing through the last open  
5 crosscut between the intake and return in any pair or set of  
6 entries shall be not less than nine thousand cubic feet of air  
7 per minute and as much more as is necessary to dilute and  
8 render harmless and carry away flammable and harmful gases.  
9 All working faces in a working section between the intake and  
10 return airway entries shall be ventilated with a minimum  
11 quantity of three thousand cubic feet of air per minute and  
12 as much more as is necessary to dilute and render harmless  
13 and carry away flammable and harmful gases. The quantity  
14 of air reaching the last crosscut in pillar sections may be less  
15 than nine thousand cubic feet of air per minute if at least nine  
16 thousand cubic feet of air per minute is being delivered to the  
17 intake of the pillar line. The air current shall under any  
18 conditions have a sufficient volume and velocity to reduce and  
19 carry away smoke from blasting and any flammable or  
20 harmful gases. All active underground working places in a  
21 mine shall be ventilated by a current of air containing not less  
22 than nineteen and five-tenths percent of oxygen, not more than  
23 five-tenths percent of carbon dioxide, and no harmful  
24 quantities of other noxious or poisonous gases.

25 (b) Airflow shall be maintained in all intake and return air  
26 courses of a mine, and where multiple fans are used, neutral  
27 areas created by pressure equalization between main fans shall  
28 not be permitted. Production activities in working faces shall  
29 cease while tubing, line brattice, or other ventilation devices  
30 are being installed in by the machine operator.

31 (c) Properly installed and adequately maintained line  
32 brattice or other approved devices shall be continuously used  
33 from the last open crosscut of an entry or room of each  
34 working section to provide adequate ventilation to the working  
35 faces for the miners and to remove flammable, explosive, and  
36 noxious gases, dust, and explosive fumes. When damaged by  
37 falls or otherwise, such line brattice or other devices shall be  
38 repaired immediately.

39 (d) Brattice cloth used underground shall be of flame-  
40 resistant material. The space between the line brattice or other  
41 approved device and the rib shall be large enough to permit

42 the flow of a sufficient volume and velocity of air to keep the  
43 working face clear of flammable, explosive, and noxious gases,  
44 dust and explosive fumes.

45 (e) Each working unit newly developed in virgin coal  
46 hereafter, shall be ventilated by a separate split of air:  
47 *Provided*, That areas already under development and in areas  
48 where physical conditions prevent compliance with this  
49 provision, the director may grant temporary relief from  
50 compliance until such time as physical conditions make  
51 compliance possible. The quantity of air reaching the last  
52 crosscut shall not be less than nine thousand cubic feet of air  
53 per minute and shall under any condition have sufficient  
54 volume and velocity to reduce and carry away smoke and  
55 flammable or harmful gases from each working face in the  
56 section.

57 (f) As working places advance, crosscuts for air shall be  
58 made not more than eighty feet apart. Where necessary to  
59 render harmless and carry away noxious or flammable gases,  
60 line brattice or other approved methods of ventilation shall be  
61 used so as to properly ventilate the face. All crosscuts between  
62 the main intake and return airways not required for passage  
63 of air and equipment shall be closed with stoppings substan-  
64 tially built with incombustible or fire-resistive material so as  
65 to keep working places well ventilated. In mines where it  
66 becomes necessary to provide larger pillars for adequate roof  
67 support, working places shall not be driven more than two  
68 hundred feet without providing a connection that will allow  
69 the free flow of air currents. In such cases, a minimum of  
70 twelve thousand cubic feet of air a minute shall be delivered  
71 to the last open crosscut and as much more as is necessary  
72 to dilute and render harmless and carry away flammable and  
73 noxious gases.

74 (g) In special instances for the construction of sidetracks,  
75 haulageways, airways, or openings in shaft bottom or slope  
76 bottom layouts where the size and strength of pillars is  
77 important, the director may issue a permit approving greater  
78 distances. The permit shall specify the conditions under which  
79 such places may be driven.

80 (h) In all mines a system of bleeder openings on air courses  
81 designed to provide positive movement of air through and/or

82 around abandoned or caved areas, sufficient to prevent  
83 dangerous accumulation of gas in such areas and to minimize  
84 the effect of variations in atmospheric pressure shall be made  
85 a part of pillar recovery plans projected after the first day of  
86 July, one thousand nine hundred seventy-one.

87 (i) If a bleeder return is closed as a result of roof falls or  
88 water during pillar recovery operations, pillar operations may  
89 continue without reopening the bleeder return if at least twenty  
90 thousand cubic feet of air per minute is delivered to the intake  
91 of the pillar line.

92 (j) No operator or mine foreman shall permit any person  
93 to work where he is unable to maintain the quantity and  
94 quality of the air current as heretofore required: *Provided,*  
95 That such provisions shall not prohibit the employment of men  
96 to make place of employment safe.

97 (k) The ventilation of any mine shall be so arranged by  
98 means of air locks, overcasts, or undercasts, that the use of  
99 doors on passageways where men or equipment travel may be  
100 kept to a minimum. Where doors are used in a mine they shall  
101 be erected in pairs so as to provide a ventilated air lock unless  
102 the doors are operated mechanically.

103 (l) A crosscut shall be provided at or near the face of each  
104 entry or room before such places are abandoned.

105 (m) Overcasts or undercasts shall be constructed of  
106 incombustible material and maintained in good condition.

**§22A-2-5. Unused and abandoned parts of mine.**

1 (a) In any mine, all workings which are abandoned after the  
2 first day of July, one thousand nine hundred seventy-one, shall  
3 be sealed or ventilated. If such workings are sealed, the sealing  
4 shall be done with incombustible material in a manner  
5 prescribed by the director, and one or more of the seals of  
6 every sealed area shall be fitted with a pipe and cap or valve  
7 to permit the sampling of gases and measuring of hydrostatic  
8 pressure behind the seals. For the purpose of this section,  
9 working within a panel shall not be deemed to be abandoned  
10 until such panel is abandoned.

11 (b) Air that has passed through an abandoned area or an  
12 area which is inaccessible or unsafe for inspection or air that



13 has been used to ventilate seals shall not be used to ventilate  
14 any working place in any working mine. No air which has been  
15 used to ventilate an area from which the pillars have been  
16 removed shall be used to ventilate any working place in a  
17 mine, except that such air, if it does not contain 0.25 volume  
18 percent or more of methane, may be used to ventilate enough  
19 advancing working places immediately adjacent to the line of  
20 retreat to maintain an orderly sequence of pillar recovery on  
21 a set of entries. Before sealed areas, temporary or permanent  
22 are reopened, the director shall be notified.

### **MOVEMENT OF EQUIPMENT**

#### **§22A-2-6. Movement of mining equipment.**

1 Mining equipment being transported or trammed under-  
2 ground, other than ordinary sectional movements, shall be  
3 transported or trammed by qualified personnel under the  
4 supervision of a certified foreman. When equipment is being  
5 transported or trammed, no person shall be permitted to be  
6 inby the equipment in the ventilating split that is passing over  
7 such equipment. To avoid accidental contact with power lines,  
8 face equipment shall be insulated and assemblies removed, if  
9 necessary, so as to provide clearance.

### **MINE FOREMAN**

#### **§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.**

1 (a) In every underground mine where five or more persons  
2 are employed in a period of twenty-four hours, the operator  
3 shall employ at least one person certified in accordance with  
4 the provisions of article nine, chapter twenty-two of this code  
5 as a mine foreman-fire boss. Each applicant for certification  
6 as a mine foreman-fire boss shall, at the time he is issued a  
7 certificate of competency: (1) Be a resident or employed in a  
8 mine in this state; (2) have had at least five years' experience  
9 in the underground working, ventilation and drainage of a coal  
10 mine, which shall include at least eighteen months' experience  
11 on or at a working section of an underground mine or be a  
12 graduate of the school of mines at West Virginia University  
13 or of another accredited mining engineering school or be a  
14 graduate of an accredited engineering school with a bachelor's

15 degree in mining engineering technology, electrical, mechanical  
16 or civil engineering; and have had at least two years' practical  
17 experience in an underground mine, which shall include at  
18 least eighteen months' experience on or at a working section  
19 of an underground mine; or be a graduate of an accredited  
20 college or university with an associate degree in mining,  
21 electrical, mining engineering technology, mechanical engineer-  
22 ing or civil engineering and have had at least four years'  
23 practical experience in an underground mine, which shall  
24 include at least eighteen months' experience on or at a working  
25 section of an underground mine; and (3) have demonstrated  
26 his knowledge of dangerous mine gases and their detection,  
27 mine safety, first aid, safety appliances, state and federal  
28 mining laws and regulations and other subjects by completing  
29 such training, education and examinations as may be required  
30 of him under article nine, chapter twenty-two of this code.

31 (b) In mines in which the operations are so extensive that  
32 the duties devolving upon the mine foreman-fire boss cannot  
33 be discharged by one man, one or more assistant mine  
34 foreman-fire bosses may be designated. Such persons shall act  
35 under the instruction of the mine foreman-fire boss, who shall  
36 be responsible for their conduct in the discharge of their duties.  
37 Each assistant so designated shall be certified under the  
38 provisions of article nine, chapter twenty-two of this code.  
39 Each applicant for certification as assistant mine foreman-fire  
40 boss shall, at the time he is issued a certificate of competency,  
41 possess all of the qualifications required of a mine foreman-  
42 fire boss: *Provided*, That he shall at the time he is certified  
43 be required to have at least three years' experience in the  
44 underground working, ventilation and drainage of coal mines,  
45 which shall include eighteen months on or at a working section  
46 of an underground mine or be a graduate of the school of  
47 mines at West Virginia University or of another accredited  
48 mining engineering school or be a graduate of an accredited  
49 engineering school with a bachelor's degree in mining  
50 engineering technology, electrical, mechanical or civil  
51 engineering; and have had twelve months' practical experience  
52 in an underground mine, all of which shall have been on or  
53 at a working section or be a graduate of an accredited college  
54 or university with an associate degree in mining, electrical,  
55 mining engineering technology, mechanical or civil engineering  
56 and have had at least two years' practical experience in an

57 underground mine, which shall include at least eighteen  
58 months' experience on or at a working section of an  
59 underground mine.

60 (c) Until the first day of January, one thousand nine  
61 hundred seventy-seven, in mines in which the operations are  
62 so extensive that all the duties devolving upon the mine  
63 foreman-fire boss cannot be discharged by one man, compe-  
64 tent persons having had at least three years' experience in coal  
65 mines may be designated as assistants, who shall act under the  
66 mine foreman-fire boss' instructions and the mine foreman-fire  
67 boss shall be responsible for their conduct in the discharge of  
68 their duties under such designation.

69 (d) Any person holding a mine foreman's certificate issued  
70 by any other state may act in the capacity of mine foreman-  
71 fire boss in any mine in this state until the next regular mine  
72 foreman-fire boss' examination held by the division, but not  
73 to exceed a maximum of ninety days.

74 (e) After the first day of July, one thousand nine hundred  
75 seventy-four, all duties heretofore performed by persons  
76 certified as mine foreman, assistant mine foreman or fire boss  
77 shall be performed by persons certified as underground mine  
78 foreman-fire boss or an assistant underground mine foreman-  
79 fire boss.

80 After the first day of July, one thousand nine hundred  
81 seventy-four, every certificate heretofore issued to an assistant  
82 mine foreman or fire boss shall be deemed to be of equal value  
83 to a certificate issued hereafter to an assistant mine foreman-  
84 fire boss, and every certificate heretofore issued to a mine  
85 foreman shall be deemed to be of equal value to a certificate  
86 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.**

1 (a) The duties of the mine foreman shall be to keep a careful  
2 watch over the ventilating apparatus, the airways, traveling  
3 ways, pumps and drainage. He shall see that, as the miners  
4 advance their excavations, proper breakthroughs are made so  
5 as to ventilate properly the mine; that all loose coal, slate and  
6 rock overhead in the working places and along the haulways

7 are removed or carefully secured so as to prevent danger to  
 8 persons employed in such mines, and that sufficient suitable  
 9 props, caps, timbers, roof bolts, or other approved methods  
 10 of roof supports are furnished for the places where they are  
 11 to be used and delivered at suitable points. The mine foreman  
 12 shall have all water drained or hauled out of the working  
 13 places where practicable, before the miners enter, and such  
 14 working places shall be kept dry as far as practicable while  
 15 the miners are at work. It shall be the duty of the mine  
 16 foreman to see that proper crosscuts are made, and that the  
 17 ventilation is conducted by means of such crosscuts through  
 18 the rooms by means of checks or doors placed on the entries  
 19 or other suitable places, and he shall not permit any room to  
 20 be opened in advance of the ventilation current. The mine  
 21 foreman or other certified persons designated by him, shall  
 22 measure the air current with an anemometer or other approved  
 23 device at least weekly at the inlet and outlet at or near the  
 24 faces of the advanced headings, and shall keep a record of such  
 25 measurements in a book or upon a form prescribed by the  
 26 director. Signs directing the way to outlets or escapeways shall  
 27 be conspicuously placed throughout the mine.

28 (b) After the first day of July, one thousand nine hundred  
 29 seventy-one, hinged man doors, at least thirty inches square  
 30 or the height of the coal seam, shall be installed between the  
 31 intake and return at intervals of three hundred feet when the  
 32 height of the coal is below forty-eight inches and at intervals  
 33 of five hundred feet when the height of the coal is above forty-  
 34 eight inches.

35 (c) The duties of the mine foreman and assistant mine  
 36 foreman shall include the instruction of apprentice miners in  
 37 the hazards incident to any new work assignments; to assure  
 38 that any individual given a work assignment in the working  
 39 face without prior experience on the face is instructed in the  
 40 hazards incident thereto and supervised by a miner with  
 41 experience in the tasks to be performed.

**§22A-2-9. Slopes, incline planes and haulage roads.**

1 The mine foreman shall require that all slopes, incline planes  
 2 and haulage roads used by any person in the mine shall  
 3 conform to the provisions of this article.

**§22A-2-10. Signals on haulways; lights at mouth and bottom of**

**shaft; operation of cages.**

1 On all haulways, where hauling is done by machinery of any  
2 kind, the mine foreman shall provide for a proper system of  
3 signals, and a conspicuous light or approved trip reflector on  
4 the rear of every trip or train of cars when in motion in a  
5 mine. When hoisting or lowering of miners occurs in the  
6 morning before daylight, or in the evening after darkness, at  
7 any mine operated by shaft, the mine foreman shall provide  
8 and maintain at the shaft mouth a light of stationary character,  
9 sufficient to show the landing and all surrounding objects  
10 distinctly, and sufficient light of a stationary character shall  
11 be located at the bottom of the shaft so that persons coming  
12 to the bottom may clearly discern the cages and other objects  
13 contiguous thereto. The mine foreman shall require that no  
14 cages on which miners are riding shall be lifted or lowered at  
15 a rate of speed greater than one thousand feet per minute and  
16 that no mine cars, either empty or loaded, shall be hoisted  
17 while miners are being lowered, and no cage having an  
18 unstable self-dump platform shall be used for the carrying of  
19 miners unless the same is provided with some device by which  
20 it may be securely locked when miners are being hoisted or  
21 lowered into the mine: *Provided, however,* That during the  
22 initial development of a mine, and only until the shafts are  
23 joined, miners shall be permitted to ride cages with one empty  
24 car which has been bolted or strapped to the cage.

**§22A-2-11. Boreholes.**

1 It shall further be the duty of the mine foreman to have  
2 boreholes kept not less than twenty feet in advance of the face,  
3 one each twenty feet on sides of the working places that are  
4 being driven toward and in dangerous proximity to an  
5 abandoned mine or part of a mine which may contain  
6 inflammable gases or which is filled with water. These holes  
7 shall be drilled whenever any working place in an underground  
8 mine approaches within fifty feet of abandoned workings in  
9 such mine, as shown by surveys made and certified by a  
10 competent engineer or surveyor, or within two hundred feet  
11 of any abandoned workings of such mine which cannot be  
12 inspected.

**§22A-2-12. Instruction of employees and supervision of apprentices;  
annual examination of persons using flame safety**

**lamps; records of examination; maintenance of methane detectors, etc.**

1 The division shall prescribe and establish a course of  
2 instruction in mine safety and particularly in dangers incident  
3 to such employment in mines and in mining laws and rules,  
4 which course of instruction shall be successfully completed  
5 within twelve weeks after any person shall be first employed  
6 as a miner. It shall further be the duty and responsibility of  
7 the division to see that such course shall be given to all persons  
8 as above provided after their first being employed in any mine  
9 in this state.

10 It shall be the duty of the mine foreman or the assistant  
11 mine foreman of every coal mine in this state to see that every  
12 person employed to work in such mine shall, before beginning  
13 work therein, be instructed in the particular danger incident  
14 to his work in such mine, and be furnished a copy of the  
15 mining laws and rules of such mine. It shall be the duty of  
16 every mine operator who employs apprentices, as that term is  
17 used in sections three and four, article ten, chapter twenty-two  
18 of this code to ensure that the apprentices are effectively  
19 supervised with regard to safety practices and to instruct  
20 apprentices in safe mining practices. Every apprentice shall  
21 work under the direction of the mine foreman or his assistant  
22 mine foreman and they shall be responsible for his safety. The  
23 mine foreman or assistant mine foreman may delegate the  
24 supervision of an apprentice to an experienced miner, but the  
25 foreman and his assistant mine foreman shall remain  
26 responsible for the apprentice. During the first ninety days of  
27 employment in a mine, the apprentice shall work within sight  
28 and sound of the mine foreman, assistant mine foreman, or  
29 an experienced miner, and in such a location that the mine  
30 foreman, assistant mine foreman or experienced miner can  
31 effectively respond to cries for help of the apprentice. Such  
32 location shall be on the same side of any belt, conveyor or  
33 mining equipment.

34 Persons whose duties require them to use a flame safety  
35 lamp or other approved methane detectors shall be examined  
36 at least annually as to their competence by a qualified official  
37 from the division and a record of such examination shall be  
38 kept by the operator and the division. Flame safety lamps and  
39 other approved methane detectors shall be given proper

40 maintenance and shall be tested before each working shift.  
41 Each operator shall provide for the proper maintenance and  
42 care of the permissible flame safety lamp or any other  
43 approved device for detecting methane and oxygen deficiency  
44 by a person trained in such maintenance, and, before each  
45 shift, care shall be taken to ensure that such lamp or other  
46 device is in a permissible condition.

**§22A-2-13. Daily inspection of working places; records.**

1 Before the beginning of any shift upon which they shall  
2 perform supervisory duties, the mine foreman or his assistant  
3 shall review carefully and countersign all books and records  
4 reflecting the conditions and the areas under their supervision,  
5 exclusive of equipment logs, which the operator is required to  
6 keep under this chapter. The mine foreman, assistant mine  
7 foreman or fire boss shall visit and carefully examine each  
8 working place in which miners will be working at the  
9 beginning of each shift before any face equipment is energized  
10 and shall examine each working place in the mine at least once  
11 every two hours each shift while such miners are at work in  
12 such places, and shall direct that each working place shall be  
13 secured by props, timbers, roof bolts, or other approved  
14 methods of roof support or both where necessary to the end  
15 that the working places shall be made safe. The mine foreman  
16 or his assistants upon observing a violation or potential  
17 violation of article two of this chapter or any regulation or  
18 any plan or agreement promulgated or entered into thereunder  
19 shall arrange for the prompt correction thereof. The foreman  
20 shall not permit any miner other than a certified foreman, fire  
21 boss, assistant mine foreman, assistant mine foreman-fire boss  
22 or pumper to be on a working section by himself. Should the  
23 mine foreman or his assistants find a place to be in a  
24 dangerous condition, they shall not leave the place until it is  
25 made safe, or shall remove the persons working therein until  
26 the place is made safe by some competent person designated  
27 for that purpose.

28 He shall place his initials, time and the date at or near each  
29 place he examines. He shall also record any dangerous  
30 conditions and practices found during his examination in a  
31 book provided for that purpose.

**§22A-2-14. Safety inspections; removal of gases.**

1 It shall be the duty of the mine foreman, assistant mine  
2 foreman or fire boss to examine all working places under his  
3 supervision for hazards at least once every two hours during  
4 each coal-producing shift, or more often if necessary for safety.  
5 In all mines such examinations shall include tests with an  
6 approved detector for methane and oxygen deficiency and may  
7 also include tests with a permissible flame safety lamp. It shall  
8 also be his duty to remove as soon as possible after its  
9 discovery any accumulations of explosive or noxious gases in  
10 active workings, and where practicable, any accumulations of  
11 explosive or noxious gases in the worked out and abandoned  
12 portions of the mine. It shall be the duty of the mine foreman,  
13 assistant mine foreman or fire boss to examine each mine  
14 within three hours prior to the beginning of a shift and before  
15 any miner in such shift enters the active workings of the mine.

**§22A-2-15. Dangerous places.**

1 The mine foreman shall direct and see that all dangerous  
2 places and the entrance or entrances to worked out and  
3 abandoned places in all mines are properly dangered off across  
4 the openings.

**§22A-2-16. Examinations of reports of fire bosses.**

1 The mine foreman shall also, each day, read carefully and  
2 countersign with ink or indelible pencil all reports entered in  
3 the record book of the fire bosses, and he shall supervise the  
4 fire boss or fire bosses, except as hereinafter provided in  
5 section twenty-one of this article.

**§22A-2-17. Ascertainment, record and removal of all dangers.**

1 The mine foreman shall give prompt attention to the  
2 removal of all dangers reported to him by his assistants, the  
3 fire boss, or any other person working in the mine, and in  
4 case it is impracticable to remove the danger at once, he shall  
5 notify all persons whose safety is menaced thereby to remain  
6 away from the area where the dangerous condition exists. He  
7 or his assistants or certified persons designated by him, shall  
8 at least once each week travel and examine the air courses,  
9 roads and openings that give access to old workings or falls,  
10 and make a record of the condition of all places where danger  
11 has been found, with ink or indelible pencil in a book provided  
12 for that purpose.



**§22A-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.**

1 The mine foreman shall notify, in writing, the operator or  
2 superintendent of the mine, and the director, of his inability  
3 to comply with any of the requirements of this law, and it shall  
4 then become the duty of such operator or superintendent  
5 promptly to attend to the matter complained of by the mine  
6 foreman so as to enable him to comply with the provisions  
7 hereof. Every operator of a mine shall furnish all supplies  
8 necessary for the mine foreman to comply with the require-  
9 ments of this law after being requested to do so in writing by  
10 the mine foreman.

**§22A-2-19. Death or resignation of mine foreman; successor.**

1 In case of the death or resignation of a mine foreman, the  
2 superintendent or manager shall appoint a certified man to act  
3 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.**

1 It shall be the duty of the fire boss, or a certified person  
2 acting as such, to prepare a danger signal (a separate signal  
3 for each shift) with red color at the mine entrance at the  
4 beginning of his shift or prior to his entering the mine to make  
5 his examination and, except for those persons already on  
6 assigned duty, no person except the mine owner, operator, or  
7 agent, and only then in the case of necessity, shall pass beyond  
8 this danger signal until the mine has been examined by the  
9 fire boss or other certified person and the mine or certain parts  
10 thereof reported by him to be safe. When reported by him to  
11 be safe, the danger sign or color thereof shall be changed to  
12 indicate that the mine is safe in order that employees going  
13 on shift may begin work. Each person designated to make such  
14 fire boss examinations shall be assigned a definite underground  
15 area of such mine, and, in making his examination shall  
16 examine all active working places in the assigned area and  
17 make tests with a permissible flame safety lamp for accum-  
18 ulations of methane and oxygen deficiency; examine seals and  
19 doors; examine and test the roof, face, and ribs in the working

20 places and on active roadways and travelways, approaches to  
21 abandoned workings and accessible falls in active sections. He  
22 shall place his initials and the date at or near the face of each  
23 place he examines. Should he find a condition which he  
24 considers dangerous to persons entering such areas, he shall  
25 place a conspicuous danger sign at all entrances to such place  
26 or places. Only persons authorized by the mine management  
27 to enter such places for the purpose of eliminating the  
28 dangerous condition shall enter such place or places while the  
29 sign is posted. Upon completing his examination he shall  
30 report by suitable communication system or in person the  
31 results of this examination to a certified person designated by  
32 mine management to receive and record such report, at a  
33 designated station on the surface of the premises of the mine  
34 or underground, before other persons enter the mine to work  
35 in such coal-producing shifts. He shall also record the results  
36 of his examination with ink or indelible pencil in a book  
37 prescribed by the director kept for such purpose at a place  
38 on the surface of the mine designated by mine management.  
39 All records of daily and weekly reports, as prescribed herein,  
40 shall be open for inspection by interested persons.

**§22A-2-21. Fire bosses to have no superior officers.**

1 In the performance of the duties devolving upon fire bosses,  
2 or certified persons acting as such, they shall have no superior  
3 officers, but all the employees working inside of such mine or  
4 mines shall be subordinate to them in their particular work.

**§22A-2-22. Unlawful to enter mine until fire boss reports it safe; exceptions.**

1 No person shall enter such mine or mines for any purpose  
2 at the beginning of work upon shift therein until such signal  
3 or warning has been given by the fire boss or bosses as to  
4 the safety thereof, as by statute provided, except under the  
5 direction of the fire boss or bosses, and then for the purpose  
6 of assisting in making the mine safe: *Provided, however,* That  
7 miners regularly employed on a shift during which the mine  
8 is being preshift examined by a fire boss or certified person  
9 shall be permitted to leave or enter the mine in the  
10 performance of their duties.

**§22A-2-23. Authority of fire boss to perform other duties.**

1 Notwithstanding any other provision in this article con-  
2 tained, any person who holds a certificate issued by the  
3 division certifying his competency to act as fire boss may  
4 perform the duties of a fire boss and any other duties,  
5 statutory or otherwise, for which he is qualified, in the same  
6 mine or section and on the same day or shift.

### COAL DUST AND ROCK DUST

#### §22A-2-24. Control of coal dust; rock dusting.

1 (a) In all mines, dangerous accumulations of fine, dry coal  
2 and coal dust shall be removed from the mine, and all dry  
3 and dusty operating sections and haulageways and conveyors  
4 and back entries shall be rock dusted or dust allayed by such  
5 other methods as may be approved by the director.

6 (b) All mines or locations in mines that are too wet or too  
7 high in incombustible content for a coal dust explosion to  
8 initiate or propagate are not required to be rock dusted during  
9 the time any of these conditions prevail. Coal dust and other  
10 dust in suspension in unusual quantities shall be allayed by  
11 sprinkling or other dust allaying devices.

12 (c) In all dry and dusty mines or sections thereof, rock dust  
13 shall be applied and maintained upon the roof, floor and sides  
14 of all operating sections, haulageways and parallel entries  
15 connected thereto by open crosscuts. Back entries shall be rock  
16 dusted. Rock dust shall be so applied to include the last open  
17 crosscut of rooms and entries, and to within forty feet of faces.  
18 Rock dust shall be maintained in such quantity that the  
19 incombustible content of the mine dust that could initiate or  
20 propagate an explosion shall not be less than sixty-five  
21 percent, but the incombustible content in back entries shall not  
22 be less than eighty percent.

23 (d) Rock dust shall not contain more than five percent by  
24 volume of quartz or free silica particles and shall be pulverized  
25 so that one hundred percent will pass through a twenty mesh  
26 screen and seventy percent or more will pass through a two  
27 hundred mesh screen.

### ROOF—FACE—RIBS

#### §22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

1 (a) Each operator shall undertake to carry out on a  
2 continuing basis a program to improve the roof control system  
3 of each coal mine and the means and measures to accomplish  
4 such system. The roof and ribs of all active underground  
5 roadways, travelways, and working places shall be supported  
6 or otherwise controlled adequately to protect persons from  
7 falls of the roof or ribs. A roof control plan and revisions  
8 thereof suitable to the roof conditions and mining systems of  
9 each coal mine and approved by the director, in consultation  
10 with the deputy directors of permitting and safety, health and  
11 training, shall be adopted and set out in printed form before  
12 new operations. The safety committee of the miners of each  
13 mine where such committee exists shall be afforded the  
14 opportunity to review and submit comments and recommen-  
15 dations to the director and operator concerning the develop-  
16 ment, modification or revision of such roof control plans. The  
17 plan shall show the type of support and spacing approved by  
18 the director. Such plan shall be reviewed periodically, at least  
19 every six months by the director, taking into consideration any  
20 falls of roof or rib or inadequacy of support of roof or ribs.  
21 A copy of the plan shall be furnished to the director or his  
22 authorized representative and shall be available to the miners  
23 and their representatives.

24 (b) The operator, in accordance with the approved plan,  
25 shall provide at or near each working face and at such other  
26 locations in the coal mine, as the director may prescribe, an  
27 ample supply of suitable materials of proper size with which  
28 to secure the roof thereof of all working places in a safe  
29 manner. Safety posts, jacks, or other approved devices shall  
30 be used to protect the workmen when roof material is being  
31 taken down, crossbars are being installed, roof bolt holes are  
32 being drilled, roof bolts are being installed, and in such other  
33 circumstances as may be appropriate. Loose roof and over  
34 hanging or loose faces and ribs shall be taken down or  
35 supported. When overhangs or brows occur along rib lines  
36 they shall be promptly removed. All sections shall be  
37 maintained as near as possible on center. Except in the case  
38 of recovery work, supports knocked out shall be replaced  
39 promptly. Apprentice miners shall not be permitted to set  
40 temporary supports on a working section without the direct

41 immediate supervision of a certified miner.

42 (c) The operator of a mine has primary responsibility to  
43 prevent injuries and deaths resulting from working under  
44 unsupported roof. Every operator shall require that no person  
45 may proceed beyond the last permanent support unless  
46 adequate temporary support is provided or temporary support  
47 is not required under an approved roof control plan and  
48 absence of such support will not pose a hazard to the miners.

49 (d) The immediate supervisor of any area in which  
50 unsupported roof is located shall not direct or knowingly  
51 permit any person to proceed beyond the last permanent  
52 support unless adequate temporary support is provided or  
53 temporary support is not required under an approved roof  
54 control plan and absence of such support will not pose a  
55 hazard to the miners.

56 (e) No miner shall proceed beyond the last permanent  
57 support in violation of a direct or standing order of an  
58 operator, a foreman or an assistant foreman, unless adequate  
59 temporary support is provided or temporary support is not  
60 required under an approved roof control plan and absence of  
61 such support will not pose a hazard to the miner.

62 (f) The immediate supervisor of each miner who will be  
63 engaged in any activity involving the securing of roof or rib  
64 during a shift shall, at the onset of any such shift, orally review  
65 those parts of the roof control plan relevant to the type of  
66 mining and roof control to be pursued by such miner. The  
67 time, and parts of the plan reviewed shall be recorded in a  
68 log book kept for such purpose. Each log book entry so  
69 recorded shall be signed by such immediate supervisor making  
70 such entry.

71 (g) Any action taken against a miner due in whole or in  
72 part to his refusal to work under unsupported roof, where such  
73 work would constitute a violation of this section, is prohibited  
74 as an act of discrimination pursuant to section twenty, article  
75 one-a of this chapter. Upon a finding of discrimination by the  
76 appeals board pursuant to subsection (b) section twenty, article  
77 one-a of this chapter, the miner shall be awarded by the  
78 appeals board all reliefs available pursuant to subsections (b)  
79 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.**

1 (a) The method of mining followed in any coal mine shall  
2 not expose the miner to unusual dangers from roof falls. The  
3 width of roadways shall not exceed fourteen feet unless  
4 additional support is added cross sectional. During the  
5 development of intersections, the roof between the tangents of  
6 the arches in the entry or room shall be supported with  
7 artificial roof supports prior to the development of such  
8 intersections. All areas where the arch is broken shall be  
9 considered as having unsupported roof and such roof should  
10 have artificial roof supports installed prior to any other work  
11 being performed in the area.

12 (b) Where miners are exposed to danger from falls of roof,  
13 face, and ribs, the operator shall examine and test the roof  
14 face, and ribs before any work or machine is started, and as  
15 frequently thereafter as may be necessary to insure safety. When  
16 dangerous conditions are found, they shall be corrected  
17 immediately.

18 (c) Roof bolts shall not be recovered where complete  
19 extraction of pillars is attempted, where adjacent to clay veins  
20 or at the locations of other irregularities, whether natural or  
21 otherwise, that induce abnormal hazards. Where roof bolt  
22 recovery is permitted, it shall be conducted only in accordance  
23 with methods prescribed in the approved roof control plan,  
24 and shall be conducted by experienced miners and only where  
25 adequate temporary support is provided.

**§22A-2-27. Canopies or cabs; electric face equipment.**

1 An authorized representative of the director may require in  
2 any coal mine where the height of the coal bed permits that  
3 electric face equipment, including shuttle cars, be provided  
4 with substantially constructed canopies or cabs to protect the  
5 miners operating such equipment from roof falls and from rib  
6 and face rolls.

**§22A-2-28. Equipment to conform with height of seam.**

1 The use of underground mining equipment of a size that  
2 does not conform to the height of the seam being mined, which  
3 creates unsafe working conditions for the miner operating the  
4 equipment or others, is prohibited. The board of coal mine

5 health and safety shall promulgate such rules and regulations  
6 as are necessary to effectuate this section.

### **EXPLOSIVES AND BLASTING**

#### **§22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.**

1 Permissible explosives or permissible blasting devices only  
2 shall be used in blasting coal or other material in underground  
3 coal mines. It shall be unlawful to have, use or store any  
4 nonpermissible explosive or nonpermissible blasting devices in  
5 any coal mine or on the premises of the mine, without a permit  
6 from the director.

#### **§22A-2-30. Surface magazines for explosives.**

1 Separate surface magazines shall be provided for storage of  
2 explosives, detonators and blasting heater elements. Surface  
3 magazines shall be constructed of incombustible materials, be  
4 reasonably bulletproof and with no metal or sparking material  
5 exposed inside the magazine. Surface magazines shall be  
6 provided with doors constructed of at least one-fourth inch  
7 steel plate lined with a two-inch thickness of wood or the  
8 equivalent, properly screened ventilators, and with no openings  
9 except for entrances and ventilation, and shall be kept locked  
10 securely when unattended. The area for a distance of at least  
11 twenty-five feet in all directions shall be kept free of materials  
12 of a combustible nature; suitable warning signs shall be  
13 erected, so located that a bullet passing directly through the  
14 face of the sign will not strike the magazine. The location of  
15 magazines shall be not less than two hundred feet from any  
16 mine openings, occupied buildings or public roads unless  
17 barricaded. If magazines are illuminated electrically, the lamps  
18 shall be of vapor-proof type, properly installed and wired, and  
19 smoking and open lights shall be prohibited in or near any  
20 magazine.

#### **§22A-2-31. Transportation of explosives.**

1 Individual containers used to carry permissible explosives or  
2 detonators shall be constructed of substantial, nonconductive  
3 materials, kept closed and maintained in good condition.  
4 When explosives or detonators are transported underground  
5 in cars moved by means of locomotives, ropes, or other motive

6 power, they shall be in substantially covered cars or in special  
7 substantially built covered containers used specifically for  
8 transporting detonators or explosives. Any container used for  
9 transportation or storage of explosives shall be properly  
10 identified or marked. Explosives or detonators shall not be  
11 hauled into or out of a mine within five minutes preceding  
12 or following a man trip. Where explosives and detonators are  
13 transported underground by belts, they shall be handled in the  
14 following manner: In the original and unopened cases, in  
15 special closed cases constructed of nonconductive material, or  
16 in suitable, individual containers. Clearance requirements shall  
17 be a minimum of eighteen inches; stop controls shall be  
18 provided at loading and unloading points, and an attendant  
19 shall supervise the loading and unloading. Neither explosives  
20 nor detonators shall be transported on flight or shaking  
21 conveyors, mechanical loading machines, locomotives,  
22 scrapers, cutting machines, drill trucks, or any self-propelled  
23 mobile equipment. If explosives and detonators are trans-  
24 ported in the same explosives car or in the same special  
25 container, they shall be separated by at least four inches of  
26 hardwood partition or the equivalent; the bodies of such cars  
27 or containers shall be constructed or lined with nonconductive  
28 material. No hand loader shall take into any mine any larger  
29 quantity of explosives or detonators than he may reasonably  
30 expect to use in any one shift.

**§22A-2-32. Underground storage of explosives.**

1 Explosives and detonators stored underground shall be kept  
2 in section boxes or magazines of substantial construction with  
3 no metal exposed on the inside, and be located at least fifteen  
4 feet from roadways and power wires in a well rock-dusted  
5 location, protected from falls of roof. If not kept in separate  
6 boxes or magazines not less than five feet apart, they may be  
7 kept in the same box or magazine if separated by at least a  
8 four-inch hardwood partition or the equivalent. Not more than  
9 a forty-eight hour supply of explosives or detonators shall be  
10 stored underground in section boxes or magazines. These  
11 boxes or magazines shall be kept at least one hundred feet  
12 from the faces and out of the direct line of blasting.

**§22A-2-33. Preparation of shots; blasting practices.**

1 (a) Only a certified "shot firer" designated by mine



2 management shall be permitted to handle explosives and do  
3 blasting. Only electric detonators of proper strength fired with  
4 permissible shot firing units shall be used except under special  
5 permits as hereinafter provided, and drill holes shall be  
6 stemmed with at least twenty-four inches of incombustible  
7 material, or at least one half of the length of the hole shall  
8 be stemmed if the hole is less than four feet in depth, unless  
9 other permissible stemming devices or methods are used. Drill  
10 holes shall not be drilled beyond the limits of the cut, and as  
11 far as practicable, cuttings and dust shall be cleaned from the  
12 holes before the charge is inserted. Charges of explosives  
13 exceeding one and one-half pounds, but not exceeding three  
14 pounds, shall be used only if drill holes are six feet or more  
15 in depth. Ample warning shall be given before shots are fired,  
16 and care shall be taken to determine that all persons are in  
17 the clear before firing. Miners shall be removed from adjoining  
18 places and other places when there is danger of shots blowing  
19 through. No shots shall be fired in any place known to liberate  
20 explosive gas, until such place has been properly examined by  
21 a competent person who is designated by mine management  
22 for that purpose, and no shots shall be fired in any place where  
23 gas is detected with a permissible flame safety lamp until such  
24 gas has been removed by means of ventilation. After firing any  
25 shot, or shots, the person firing the same shall not return to  
26 the working the face until the smoke has been cleared away <sup>the</sup>  
27 and then he shall make a careful examination of working face <sup>OK</sup>  
28 before leaving the place or before performing any other work <sup>EN</sup>  
29 in the place.

30 (b) Multiple shooting in coal or rock or both is authorized  
31 only under permit issued by the director. Permission to shoot  
32 more than ten shots simultaneously may be granted by the  
33 director only after consultation with interested persons, and  
34 the deputy director of safety, health and training, and such  
35 shooting will be performed by special methods and under  
36 precautions prescribed by the director. All multiple shooting  
37 in bottom or roof rock shall be performed in intake air, except  
38 by special permit from the director, after consultation with  
39 interested persons and the deputy director of safety, health and  
40 training, as heretofore provided. Multiple blasting of more  
41 than ten shots performed under any permit granted by the  
42 director under this section shall be done only on noncoal-  
43 producing shifts or idle days, except as may be provided as

44 a condition of the permit granted.

45 (c) Regular or short interval delay detonators may be used  
 46 for blasting purposes with written permission from the director  
 47 after consultation with the deputy director of safety, health  
 48 and training. Regular delay detonators shall not be used for  
 49 blasting coal, but may be used for grading above ~~of~~ below coal <sup>OK</sup> <sub>E.H.</sub>  
 50 seams and during shaft, slope, tunnel work and in faults or  
 51 wants. Where short-interval delay detonators are permitted by  
 52 said director to be used, the shot firing circuit must be tested  
 53 with a blasting galvanometer before firing, and the leg wires  
 54 connected in series. No instantaneous, regular, or zero-delay  
 55 detonators are to be fired in conjunction with short-interval  
 56 delay detonators. The delay interval between dependent rows  
 57 must not be less than twenty-five milliseconds or more than  
 58 one hundred milliseconds, and the entire series of any one  
 59 round shall not provide a delay of more than five hundred  
 60 milliseconds between the first and last shot. The total number  
 61 of charged holes to be fired during any one round must not  
 62 exceed the limit permitted by the director. Misfires must be  
 63 tested with a blasting galvanometer before removing.

64 (d) Electrical equipment shall not be operated in the face  
 65 areas, and only work in connection with timbering and general  
 66 safety shall be performed while boreholes are being charged.  
 67 Shots shall be fired promptly after charging. Mudcaps  
 68 (adobes) or any other unconfined shots shall not be permitted  
 69 in any coal mine. No solid shooting shall be permitted without  
 70 written permission of the division.

71 (e) Blasting cables shall be well insulated and shall be as  
 72 long as may be necessary to permit persons authorized to fire  
 73 shots to get in a safe place out of the line of fire. The cable,  
 74 when new, shall be at least one hundred twenty-five feet in  
 75 length and never less than one hundred feet. Shooting cables  
 76 shall be kept away from power wires and all other sources of  
 77 electric current, connected to the leg wires by the person who  
 78 fires the shot, staggered as to length or well separated at the  
 79 detonator leg wires, and shunted at the battery until ready to  
 80 connect to the blasting unit.

**§22A-2-34. Misfires of explosives.**

1 (a) Where misfires occur with electric detonators, a waiting  
 2 period of at least five minutes shall elapse before anyone

3 returns to the shot. After such failure, the blasting cable shall  
4 be disconnected from the source of power and the battery ends  
5 short-circuited before electric connections are examined.

6 (b) Explosives shall be removed by firing a separate charge  
7 at least two feet away from and parallel to the misfired charge  
8 or by washing ~~and~~ the stemming and the charge from the  
9 borehole with water, or by inserting and firing a new primer  
10 after the stemming has been washed out.

11 (c) A careful search of the working place, and, if necessary,  
12 of the coal after it reaches the tippie shall be made after  
13 blasting a misfired hole, to recover any undetonated explosive.

14 (d) The handling of a misfired shot shall be under the direct  
15 supervision of the mine foreman or a certified person  
16 designated by him.

**§22A-2-35. Other blasting devices.**

1 (a) The provisions governing the handling, storage, trans-  
2 portation and use of permissible explosives shall apply to all  
3 other blasting devices employing a heater element when used  
4 underground.

5 (b) Where compressed air is used for blasting, the airlines  
6 shall be grounded at the compressor and, if practical, at other  
7 low-resistance ground connections along the lines. They shall  
8 not be connected in any way to rails, waterlines, or other  
9 electric return conductors and shall be adequately insulated  
10 and protected where they cross electric wires, underneath  
11 track, or at places where equipment passes over or under.  
12 Steel, copper, or other airlines connected therewith shall not  
13 be handled or repaired when air pressure is in the line. Shutoff  
14 valves shall be installed every thousand feet in all compressed-  
15 air blasting lines and at all points where branch lines leave  
16 the main line and blowdown valves shall not be less than fifty  
17 feet from the face and shall be around a corner.

18 (c) When misfires occur with any other blasting devices,  
19 they shall be handled in a safe manner and under the  
20 supervision of the mine foreman or a certified person  
21 designated by him.

**HOISTING**

**§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.**

1 (a) The operator of every coal mine worked by shaft shall  
2 provide and maintain a metal tube, telephone or other  
3 approved means of communication from the top to the bottom  
4 and intermediate landings of such shafts, suitably adapted to  
5 the free passage of sound, through which conversation may  
6 be held between persons at the top and at the bottom of the  
7 shaft; a standard means of signaling; an approved safety catch,  
8 bridle chains, automatic stopping device, or automatic  
9 overwind; a sufficient cover overhead on every cage used for  
10 lowering or hoisting persons; an approved safety gate at the  
11 top of the shaft; and an adequate brake on the drum of every  
12 machine used to lower or hoist persons in such shaft. Such  
13 operator shall have the machinery used for lowering and  
14 hoisting persons into or out of the mine kept in safe condition,  
15 equipped with a reliable indicator, and inspected once in each  
16 twenty-four hours by a qualified electrician. Where a hoisting  
17 engineer is required, he shall be readily available at all times  
18 when men are in the mine. He shall operate the empty cage  
19 up and down the shaft at least one round trip at the beginning  
20 of each shift, and after the hoist has been idle for one hour  
21 or more before hoisting or lowering men; there shall be cut  
22 out around the side of the hoisting shaft or driven through  
23 the solid stata at the bottom thereof, a traveling way, not less  
24 than five feet high and three feet wide to enable a person to  
25 pass the shaft in going from one side of it to the other without  
26 passing over or under the cage or other hoisting apparatus.  
27 Positive stop blocks or derails shall be placed near the top and  
28 at all intermediate landings of slopes and surface inclines and  
29 at approaches to all shaft landings. A waiting station with  
30 sufficient room, ample clearance from moving equipment, and  
31 adequate seating facilities shall be provided where men are  
32 required to wait for man trips or man cages, and the miners  
33 shall remain in such station until the man trip or man cage  
34 is available.

35 (b) No operator of any coal mine worked by shaft, slope  
36 or incline, shall place in charge of any engine or drum used  
37 for lowering or hoisting persons employed in such mine any  
38 but competent and sober engineers or drum runners; and no  
39 engineer or drum runner in charge of such machinery shall

40 allow any person, except such as may be designated for this  
41 purpose by the operator, to interfere with any part of the  
42 machinery; and no person shall interfere with any part of the  
43 machinery; and no person shall interfere with or intimidate the  
44 engineer or drum runner in the discharge of his duties. Where  
45 the mine is operated or worked by shaft or slope, a minimum  
46 space of two and one-half square feet per person shall be  
47 available for each person on any cage or car where men are  
48 transported. In no instance shall more than twenty miners be  
49 transported on a cage or car without the approval of the  
50 director, in consultation with the deputy director of safety,  
51 health and training. No person shall ride on a loaded cage or  
52 car in any shaft, slope, or incline: *Provided*, That this shall  
53 not prevent any trip rider from riding in the performance of  
54 his authorized duties. No engineer shall be required for  
55 automatically operated cages, elevators, or platforms. Cages  
56 and elevators shall have an emergency power source unless  
57 provided with other escapeway facilities.

58 (c) Each automatic elevator shall be provided with a  
59 telephone or other effective communication system by which  
60 aid or assistance can be obtained promptly.

61 (d) A "stop" switch shall be provided in the automatic  
62 elevator compartment that will permit the elevator to be  
63 stopped at any location in the shaft.

### TRANSPORTATION

#### §22A-2-37. **Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.**

1 (a) The roadbed, rails, joints, switches, frogs and other  
2 elements of all haulage roads shall be constructed, installed  
3 and maintained in a manner consistent with speed and type  
4 of haulage operations being conducted to ensure safe  
5 operation. Where transportation of personnel is exclusively by  
6 rail, track shall be maintained to within five hundred feet of  
7 the nearest working face.

8 (b) Track switches, except room and entry development  
9 switches, shall be provided with properly installed throws,  
10 bridle bars and guard rails; switch throws and stands, where  
11 possible, shall be placed on the clearance side.

12 (c) Haulage roads on entries developed after the first day

13 of July, one thousand nine hundred and seventy-one, shall  
14 have a continuous, unobstructed clearance of at least twenty-  
15 four inches from the farthest projection of any moving  
16 equipment on the clearance side.

17 (d) On haulage roads where trolley lines are used, the  
18 clearance shall be on the side opposite the trolley lines.

19 (c) On the trolley wire or "tight" side, after the effective date  
20 of this article, there shall be at least twelve inches of clearance  
21 from the farthest projection of any moving equipment.

22 (f) Warning lights or reflective signs or tapes shall be  
23 installed along haulage roads at locations of abrupt or sudden  
24 changes in the overhead clearance.

25 (g) The clearance space on all haulage roads shall be kept  
26 free of loose rock, coal, supplies or other material: *Provided,*  
27 That not more than twenty-four inches need be kept free of  
28 such obstructions.

29 (h) Ample clearance shall be provided at all points where  
30 supplies are loaded or unloaded along haulage roads or  
31 conveyors, which in no event shall be less than twenty-four  
32 inches.

33 (i) Shelter holes shall be provided along haulage entries  
34 driven after the first day of July, one thousand nine hundred  
35 seventy-one, where locomotive, rope or animal haulage is used.  
36 Such shelter holes shall be spaced not more than one hundred  
37 feet apart; they shall be on the side of the entry opposite the  
38 trolley wire: *Provided,* That where belt haulage and secondary  
39 track haulage are located in the same entry, shelter holes may  
40 be on the trolley wire and feeder wire side if the trolley wire  
41 and feeder wire are guarded in a manner approved by the  
42 director.

43 (j) Shelter holes made after the effective date of this article  
44 shall be at least five feet in depth, not more than four feet  
45 in width, and as high as the traveling space. Room necks and  
46 crosscuts may be used as shelter holes even though their width  
47 exceeds four feet.

48 (k) Shelter holes shall be kept clear of refuse and other  
49 obstructions.

50 (l) After the effective date of this article, shelter holes shall

51 be provided at switch throws and manually operated  
52 permanent doors.

53 (m) No steam locomotive shall be used in mines where  
54 miners are actually employed in the extraction of coal, but this  
55 shall not prevent operation of a steam locomotive through any  
56 tunnel haulway or part of a mine that is not in actual  
57 operation and producing coal.

58 (n) Underground equipment powered by internal combus-  
59 tion engines using petroleum products, alcohol, or any other  
60 compound shall not be used in a coal mine.

61 (o) Locomotives, personnel carriers, mine cars, supply cars,  
62 shuttle cars, and all other haulage equipment shall be  
63 maintained in a safe operating condition. Each locomotive,  
64 personnel carrier, barrier tractor and other related equipment  
65 shall be equipped with a suitable lifting jack and handle. An  
66 audible warning device and headlights shall be provided on  
67 each locomotive and each shuttle car. All other mobile  
68 equipment, using the face areas of the mine, purchased after  
69 the first day of July, one thousand nine hundred seventy-one,  
70 shall be provided with a conspicuous light or other approved  
71 device so as to reduce the possibility of collision.

72 (p) No persons other than those necessary to operate a trip  
73 or car shall ride on any loaded car or on the outside of any  
74 car. Where pusher locomotives are not used, the locomotive  
75 operator shall have an assistant to assist him in his duties.

76 (q) The pushing of trips, except for switching purposes, is  
77 prohibited on main haulage roads: *Provided*, That nothing  
78 herein shall prohibit the use of a pusher locomotive to assist  
79 the locomotive pulling a trip. Motormen and trip riders shall  
80 use care in handling locomotives and cars. It shall be their duty  
81 to see that there is a conspicuous light on the front and rear  
82 of each trip or train of cars when <sup>in</sup> motion: *Provided*, That trip  
83 lights need not be used on cars being shifted to and from  
84 loading machines, on cars being handled at loading heads  
85 during gathering operations at working faces, or on trips being  
86 pulled by animals. No person except the operator or his  
87 assistant shall ride on locomotives or loaded cars. An empty  
88 car or cars shall be used to provide a safe distance between  
89 the locomotive and the material car when rail, pipe or long  
90 timbers are being hauled. A safe clearance shall be maintained

91 between the end car of trips placed on side tracks and moving  
92 traffic. On haulage roads the clearance point shall be marked  
93 with an approved device.

94 (r) No motorman, trip rider or brakeman shall get on or  
95 off cars, trips or locomotives while they are in motion, except  
96 that a trip rider or brakeman may get on or off the rear end  
97 of a slowly moving trip or the stirrup of a slowly moving  
98 locomotive to throw a switch, align a derail or open or close  
99 a door.

100 (s) Flying or running switches and riding on the front  
101 bumper of a car or locomotive are prohibited. Back poling  
102 shall be prohibited except with precaution to the nearest  
103 turning point (not over eighty feet), or when going up  
104 extremely steep grades and then only at slow speed. The  
105 operator of a shuttle car shall face in the direction of travel  
106 except during the loading operation when he shall face the  
107 loading machine.

108 (t) (1) A system of signals, methods or devices shall be used  
109 to provide protection for trips, locomotives and other  
110 equipment coming out onto tracks used by other equipment.

111 (2) In any coal mine where more than three hundred fifty  
112 tons of coal are produced on any shift in each twenty-four  
113 hour period, a dispatcher shall be on duty when there are  
114 movements of track equipment underground, including time  
115 when there is no production of coal. Such traffic shall move  
116 only at the direction of the dispatcher.

117 (3) The dispatcher's only duty shall be to direct traffic.  
118 Where a dispatcher is employed, no person shall move a  
119 locomotive, personnel carrier or self-propelled equipment on  
120 or onto haulageways without instructions from the dispatcher.

121 (4) Any dispatcher's station provided after the effective date  
122 of this article shall be on the surface.

123 (5) All self-propelled track equipment shall be equipped  
124 with two-way communications.

125 (u) Motormen shall inspect locomotives, and report any  
126 mechanical defects found to the proper supervisor before a  
127 locomotive is put in operation.

128 (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  
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

25 shall proceed in an orderly manner to and from man trips.

26 (e) When belts are used for transporting miners, a minimum  
27 clearance of eighteen inches shall be maintained between the  
28 belt and the roof or crossbars, projecting equipment, cap  
29 pieces, overhead cables, wiring and other objects. Visible  
30 reflectors shall be placed where projected equipment, cap  
31 pieces, overhead cables, wiring or other pieces cross the belt  
32 line. Where the height of the coal seam permits, the clearance  
33 shall not be less than twenty-four inches.

34 (f) The belt speed shall not exceed two hundred fifty feet  
35 per minute where the minimum overhead clearance is eighteen  
36 inches, or three hundred feet per minute where the minimum  
37 overhead clearance is twenty-four inches, while miners are  
38 loading, unloading, or being transported. A signaling system  
39 or method shall be provided for stopping the belt and miners  
40 shall ride not less than six feet apart.

41 (g) An assistant mine foreman or some other person  
42 designated by the mine foreman shall supervise the loading and  
43 unloading of belts and man trips. Where miners are required  
44 to cross over belts, adequate and safe facilities shall be  
45 provided.

46 (h) Positive-acting stop controls shall be installed along all  
47 belt conveyors used to transport miners, and such controls  
48 shall be readily accessible, and maintained so that the belt can  
49 be stopped or started at any location.

50 (i) Belt conveyors used for man trips shall be stopped while  
51 men are loading or unloading.

52 (j) There shall be at least thirty-six inches of side clearance  
53 where miners board or leave such belt conveyors.

54 (k) Adequate illumination including colored lights or  
55 reflective signs shall be installed at all loading and unloading  
56 stations. Such colored lights and reflective signs shall be so  
57 located as to be observable to all persons riding the belt  
58 conveyor.

59 (l) Telephone or other suitable communications shall be  
60 provided at points where miners are regularly loaded on or  
61 unloaded from belt conveyors.

62 (m) After supplies have been transported on man trip cars,

63 such cars shall be examined for unsafe conditions prior to the  
64 transportation of miners.

65 (n) While trackmen are working on haulageways, the  
66 dispatcher, or if there is no dispatcher, such other person  
67 responsible for communications with haulage crews shall give  
68 notice to haulage crews to maintain traffic under a slow and  
69 safe operating speed at the point of construction or repair.

**§22A-2-39. Belt conveyor; installation; maintenance.**

1 (a) On or after the first day of July, one thousand nine  
2 hundred seventy-one, all conveyor belts acquired for use  
3 underground shall be flame-resistant conveyor belts.

4 (b) A clear travelway at least twenty-four inches wide shall  
5 be provided on both sides of all belt conveyors installed after  
6 the first day of July, one thousand nine hundred seventy-one.  
7 Where roof supports are installed within twenty-four inches of  
8 a belt conveyor, a clear travelway at least twenty-four inches  
9 wide shall be provided on the side of such support farthest  
10 from the conveyor.

11 (c) On belt conveyors that do not transport men, stop and  
12 start controls shall be installed at intervals not to exceed one  
13 thousand feet. Such controls shall be properly installed and  
14 positioned so as to be readily accessible.

15 (d) Persons shall not cross moving belt conveyors, except  
16 where suitable crossing facilities are provided.

17 (e) All belt conveyors shall be inspected for frozen rollers,  
18 rock falls, and fires, following the last production shift each  
19 week, also before holidays, vacation periods, and each  
20 production shift, with records kept of daily inspection.

21 (f) Deluge-type water sprays, water sprinklers, dry chemical  
22 sprinkler system or foam generators (designed to be automati-  
23 cally activated in the event of a fire or rise in the temperature  
24 at or near the belt drive) shall be installed at each main and  
25 secondary conveyor drive.

26 (g) All underground belt conveyors shall be equipped with  
27 slippage and sequence switches.

28 (h) Telephones or other suitable communications shall be  
29 provided at points where supplies are regularly loaded or

30 unloaded from the belt conveyors.

31 (i) After supplies have been transported on belt conveyors,  
32 such belts shall be examined for unsafe conditions prior to the  
33 transportation of miners.

### ELECTRICITY

#### §22A-2-40. General provisions.

1 Operators of coal mines in which electricity is used as a  
2 means of power shall comply with the following provisions:

3 (1) All surface transformers, unless of a construction which  
4 will eliminate shock hazards, or unless installed at least eight  
5 feet above ground, shall be enclosed in a house or surrounded  
6 by a fence at least six feet high. If the enclosure is of metal,  
7 it shall be grounded effectively. The gate or door to the  
8 enclosure shall be kept locked at all times, unless authorized  
9 persons are present.

10 (2) Underground transformers shall be air cooled or cooled  
11 with noninflammable liquid or inert gas.

12 (3) Underground stations containing circuit breakers filled  
13 with inflammable liquids shall be put on a separate split of  
14 air or ventilated to the return air, and shall be of fireproof  
15 construction.

16 (4) Transformers shall be provided with adequate overload  
17 protection.

18 (5) "Danger -- High Voltage" signs with the voltage  
19 indicated shall be posted conspicuously on all transformer  
20 enclosures, high-potential switchboards and other high-  
21 potential installations.

22 (6) Dry insulating platforms of rubber or other suitable  
23 nonconductive material shall be kept in place at each  
24 switchboard and at stationary machinery where shock hazards  
25 exist.

26 (7) Capacitors used for power factor connection shall be  
27 noninflammable liquid filled. Suitable drain-off resistors or  
28 other means to protect miners against electric shock following  
29 removal of power shall be provided.

30 (8) All unattended underground loading points where  
31 electric driven hydraulic systems are used shall utilize a

32 fireproof oil or emulsion.

33 (9) Before electrical changes are made to permissible  
34 equipment for use in a mine, they shall be approved by the  
35 director.

36 (10) Reverse current protection shall be provided at storage  
37 battery charging stations to prevent the storage batteries from  
38 energizing the power circuits in the event of power failure.

39 (11) In all mines all junction or distribution boxes used for  
40 making multiple power connections inby the last open crosscut  
41 shall be permissible.

42 (12) All hand-held electric drills, blower and exhaust fans,  
43 electric pumps, and such other low horsepower electric face  
44 equipment which are taken into or used inby the last open  
45 crosscut of any coal mine shall be permissible.

46 (13) All electric face equipment which is taken into or used  
47 inby the last open crosscut of any coal mine shall be  
48 permissible.

49 (14) In mines operated in coal seams which are located at  
50 elevations above the water table, the phrase "coal seams above  
51 the water table" means coal seams in a mine which are located  
52 at an elevation above a river or the tributary of a river into  
53 which a local surface water system naturally drains.

54 (15) The operator of each coal mine shall maintain in  
55 permissible condition all electric face equipment, which is  
56 taken into or used inby the last open crosscut of any mine.

57 (16) Except where permissible power connection units are  
58 used, all power-connection points outby the last open crosscut  
59 shall be in intake air.

60 (17) All power circuits and electric equipment shall be  
61 deenergized before work is done on such circuits and  
62 equipment, except when necessary for trouble shooting or  
63 testing.

64 (18) Energized trolley wires may be repaired only by a  
65 person trained to perform electrical work and to maintain  
66 electrical equipment and the operator of a mine shall require  
67 that such persons wear approved and tested insulated shoes  
68 and wireman's gloves.

69 (19) No electrical work shall be performed on low-,  
70 medium-, or high-voltage distribution circuits or equipment,  
71 except by a qualified person or by a person trained to perform  
72 electrical work and to maintain electrical equipment under the  
73 direct supervision of a qualified person. Disconnecting devices  
74 shall be locked out and suitably tagged by the persons who  
75 perform such work, except that in cases where locking out is  
76 not possible, such devices shall be opened and suitably tagged  
77 by such persons who installed them, or, if such persons are  
78 unavailable, by persons authorized by the operator or his  
79 agent.

80 (20) All electric equipment shall be examined weekly, tested,  
81 and properly maintained by a qualified person to assure safe  
82 operating conditions. When a potentially dangerous condition  
83 is found on electric equipment, such equipment shall be  
84 removed from service until such condition is corrected. A  
85 record of such examinations shall be kept and made available  
86 to an authorized representative of the director and to the  
87 miners in such mine.

88 (21) All electric conductors shall be sufficient in size and  
89 have adequate current-carrying capacity and be of such  
90 construction that <sup>rise</sup> in temperature resulting from normal  
91 operation will not damage the insulating material.

92 (22) All electrical connections or splices in conductors shall  
93 be mechanically and electrically efficient, and suitable  
94 connectors shall be used. All electrical connections or splices  
95 in insulated wire shall be reinsulated at least to the same degree  
96 of protection as the remainder of the wire.

97 (23) Cables shall enter metal frames of motors, splice boxes,  
98 and electric compartment only through proper fittings. When  
99 insulated wire, other than cables pass through metal frames,  
100 the holes shall be substantially bushed with insulated bushings.

101 (24) All power wire (except trailing cables on mobile  
102 equipment, specially designed cables conducting high-voltage  
103 power to underground rectifying equipment or transformers,  
104 or bare or insulated ground and return wires) shall be  
105 supported on well-installed insulators and shall not contact  
106 combustible material, roof or ribs.

107 (25) Power wires and cables, including but not limited to

108 phone communication and control wires, except trolley wires,  
109 trolley feeder wires and bare signal wires, shall be insulated  
110 adequately and fully protected. The provisions of this  
111 subdivision shall not become effective until the first day of  
112 January, one thousand nine hundred seventy-eight.

113 (26) Automatic circuit-breaking devices or fuses of the  
114 correct type and capacity shall be installed so as to protect  
115 all electric equipment and circuits against short circuit and  
116 overloads. Three-phase motors on all electric equipment shall  
117 be provided with overload protection that will deenergize all  
118 three phases in the event that any phase is overloaded.

119 (27) Incandescent lamps installed along haulageways and at  
120 other locations shall not contact combustible material, and if  
121 powered from trolley or direct current feeder circuits, need not  
122 be provided with separate short circuits or overload protection,  
123 if the lamp is not more than eight feet in distance from such  
124 circuits.

125 (28) In all main power circuits, disconnecting switches shall  
126 be installed underground within five hundred feet of the  
127 bottoms of shafts and boreholes through which main power  
128 circuits enter the underground area of the mine and within five  
129 hundred feet of all other places where main power circuits  
130 enter the underground area of the mine.

131 (29) All electric equipment shall be provided with switches  
132 or other controls that are safely designed, constructed and  
133 installed.

134 (30) Each underground, exposed power conductor that  
135 leads underground shall be equipped with suitable lightning  
136 arrestors of approved type within one hundred feet of the point  
137 where the circuit enters the mine. Lightning arrestors shall be  
138 connected to a low-resistance grounding medium on the  
139 surface which shall be separated from neutral ground by a  
140 distance of not less than twenty-five feet.

141 (31) Except for areas of a coal mine inby the last open  
142 crosscut, incandescent lamps may be used to illuminate  
143 underground areas. When incandescent lamps are used in a  
144 track entry or belt entry or near track entries to illuminate  
145 special areas other than structures, the lamps shall be installed  
146 in weatherproof sockets located in positions such that the

147 lamps will not come in contact with any combustible material.  
148 Lamps used in all other places must be of substantial  
149 construction and be fitted with a glass enclosure.

150 (32) An authorized representative of the director may  
151 require in any mine that electric face equipment be provided  
152 with devices that will permit the equipment to be deenergized  
153 quickly in the event of an emergency.

154 (33) An authorized representative of the director shall  
155 require manually operated emergency stop switches, designed  
156 to deenergize the traction motor circuit when the contractors  
157 or controller fail to open, to be installed on all battery powered  
158 tractors, taken into or used in by the last open crosscut of any  
159 entry or room.

160 (34) Trailing cables used in coal mines shall meet the  
161 requirements for flame-resistant cables.

162 (35) Short circuit protection for trailing cables shall be  
163 provided by an automatic circuit breaker or other no less  
164 effective device approved by the director of adequate current-  
165 interrupting capacity in each ungrounded conductor.  
166 Disconnecting devices used to disconnect power from trailing  
167 cables shall be plainly marked and identified and such devices  
168 shall be equipped or designed in such a manner that it can  
169 be determined by visual observation that the power is  
170 disconnected.

171 (36) When two or more trailing cables junction to the same  
172 distribution center, means shall be provided to assure against  
173 connecting a trailing cable to the wrong size circuit breaker.

174 (37) One temporary splice may be made in any trailing  
175 cable. Such trailing cable may only be used for the next  
176 twenty-four hour period. No temporary splice shall be made  
177 in a trailing cable within twenty-five feet of the machine,  
178 except cable reel equipment. Temporary splices in trailing  
179 cables shall be made in a workmanlike manner and shall be  
180 mechanically strong and well insulated. Trailing cables or hand  
181 cables which have exposed wires or which have splices that  
182 heat or spark under load shall not be used. As used in this  
183 section, the term "splice" means a mechanical joining of one  
184 or more conductors that have been severed.

185 (38) When permanent splices in trailing cables are made,



186 they shall be:

187 (A) Mechanically strong with adequate electrical conductiv-  
188 ity and flexibility,

189 (B) Effectively insulated and sealed so as to exclude  
190 moisture, and

191 (C) Vulcanized or otherwise treated with suitable materials  
192 to provide flame-resistant qualities and good bonding to the  
193 outer jacket.

194 (39) Trailing cables shall be clamped to machines in a  
195 manner to protect the cables from damage and to prevent  
196 strain on the electrical connections. No cables will be hung in  
197 a manner which will damage the insulation or conductors.

198 (40) Trailing cables shall be adequately protected to prevent  
199 damage by mobile equipment.

200 (41) Trailing cable and power cable connections to junction  
201 boxes and to electrical equipment shall not be made or broken  
202 under load.

203 (42) All metallic sheaths, armors and conduits enclosing  
204 power conductors shall be electrically continuous throughout  
205 and shall be grounded by methods approved by an authorized  
206 representative of the director.

207 (43) Except where waived by the director, metallic frames,  
208 casings and other enclosures of electric equipment that can  
209 become alive through failure of insulation or by contact with  
210 energized parts shall be grounded, and on or before the first  
211 day of January, one thousand nine hundred seventy-eight,  
212 shall have a ground monitoring system.

213 (44) In instance where single-phase 110-220 volt circuits are  
214 used to feed electrical equipment, the only method of  
215 grounding that will be approved is the connection of all  
216 metallic frames, casings and other enclosure of such equipment  
217 to a separate grounding conductor which establishes a  
218 continuous connection to a grounded center tap of the  
219 transformer.

220 (45) The attachment of grounding wires to a mine tract or  
221 other grounded power conductor will be approved if separate  
222 clamps, suitable for such purpose, are used and installed to

223 provide a solid connection.

224 (46) The frames of all offtrack direct-current machines and  
225 the enclosures of related detached components shall be  
226 effectively grounded or otherwise maintained at no less safe  
227 voltages.

228 (47) Installation of silicon diodes shall be restricted to  
229 electric equipment receiving power from a direct-current  
230 system with one polarity grounded. Where such diodes are  
231 used on circuits having a nominal voltage rating of two  
232 hundred fifty, they must have a forward current rating of four  
233 hundred amperes or more, and have a peak inverse voltage  
234 rating of four hundred or more. Where such diodes are used  
235 on circuits having nominal voltage rating of five hundred fifty,  
236 they must have a forward current rating of two hundred fifty  
237 amperes or more, and have a peak inverse voltage rating of  
238 eight hundred or more.

239 (48) In addition to the grounding diode, a polarizing diode  
240 must be installed in the machine control circuit to prevent  
241 operation of the machine when the polarity of a trailing cable  
242 is reversed.

243 (49) When installed on permissible equipment, all grounding  
244 diodes, over-current devices, and ~~polarizing~~ <sup>reference</sup> diodes must be  
245 placed in explosion-proof compartments. OK  
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246 (50) High-voltage lines, both on the surface and under-  
247 ground, shall be deenergized and grounded before work is  
248 performed on them, except that repairs may be permitted, in  
249 the case of energized surface high-voltage lines, if such repairs  
250 are made by a qualified person in accordance with procedures  
251 and safeguards, including, but not limited to, a requirement  
252 that the operator of such mine provide, test and maintain  
253 protective devices in making such repairs.

254 (51) When two or more persons are working on an  
255 energized high-voltage surface line simultaneously, and any  
256 one of them is within reach of another, such persons shall not  
257 be allowed to work on different phases or on equipment with  
258 different potentials.

259 (52) All persons performing work on energized high-voltage  
260 surface lines shall wear protective rubber gloves, sleeves, and  
261 climber guards if climbers are worn. Protective rubber gloves

262 shall not be worn wrong side out or without protective leather  
263 gloves. Protective devices worn by a person assigned to  
264 perform repairs on high-voltage surface lines shall be worn  
265 continuously from the time he leaves the ground until he  
266 returns to the ground, and, if such devices are employed for  
267 extended periods, such person shall visually inspect the  
268 equipment assigned him for defects before each use, and, in  
269 no case, less than twice each day.

270 (53) Disconnecting or cutout switches on energized high-  
271 voltage surface lines shall be operated only with insulated  
272 sticks, fuse tongs or pullers which are adequately insulated and  
273 maintained to protect the operator from the voltage to which  
274 he is exposed. When such switches are operated from the  
275 ground, the person operating such devices shall wear protective  
276 rubber gloves.

277 (54) Solely for purposes of grounding ungrounded high-  
278 voltage power systems, grounded messenger wires used to  
279 suspend the cables of such systems may be used as a grounding  
280 medium.

281 (55) When not in use, power circuits underground shall be  
282 deenergized on idle days and idle shifts, except that rectifiers  
283 and transformers may remain energized.

284 (56) High-voltage circuits entering the underground area of  
285 any coal mine shall be protected by suitable circuit breakers  
286 of adequate interrupting capacity. Such breakers shall be  
287 equipped with devices to provide protection against undervol-  
288 tage, grounded phase, short circuit and overcurrent.

289 (57) Circuit breakers protecting high-voltage circuits  
290 entering an underground area of any coal mine shall be located  
291 on the surface and in no case installed either underground or  
292 within a drift.

293 (58) One circuit breaker may be used to protect two or more  
294 branch circuits, if the circuit breaker is adjusted to afford  
295 overcurrent protection for the smallest conductor.

296 (59) The grounding resistor, where required, shall be of the  
297 proper ohmic value to limit the voltage drop in the grounding  
298 circuit external to the resistor to not more than one hundred  
299 volts under fault conditions. The grounding resistor shall be  
300 rated for maximum fault current continuously and insulated

301 from ground for a voltage equal to the phase-to-phase voltage  
302 of the system.

303 (60) High-voltage circuits extending underground and  
304 supplying portable mobile or stationary high-voltage equip-  
305 ment shall contain either a direct or derived neutral which shall  
306 be grounded through a suitable resistor at the source  
307 transformers, and a grounding circuit, originating at the  
308 grounded side of the grounding resistor, shall extend along  
309 with the power conductors and serve as a grounding conductor  
310 for the frames of all high-voltage equipment supplied power  
311 from the circuit, except that the director or his authorized  
312 representative may permit ungrounded high-voltage circuits to  
313 be extended underground to feed stationary electrical  
314 equipment if such circuits are either steel armored or installed  
315 in grounded, rigid steel conduit throughout their entire length,  
316 and upon his finding that such exception does not pose a  
317 hazard to the miners. Within one hundred feet of the point  
318 on the surface where high-voltage circuits enter the under-  
319 ground portion of the mine, disconnecting devices shall be  
320 installed and so equipped or designed in such a manner that  
321 it can be determined by visual observation that the power is  
322 disconnected, except that the director or his authorized  
323 representative may permit such devices to be installed at a  
324 greater distance from such area of the mine if he determines,  
325 based on existing physical conditions, that such installation  
326 will be more accessible at a greater distance and will not pose  
327 any hazard to the miners.

328 (61) High-voltage resistance grounded systems serving  
329 portable or mobile equipment shall include a fail-safe ground  
330 check circuit to monitor continuously the grounding circuit to  
331 assure continuity, and the fail-safe ground check circuit shall  
332 cause the circuit breaker to open when either the ground or  
333 pilot check wire is broken, or other no less effective device  
334 approved by the director or his authorized representative to  
335 assure such continuity.

336 (62) Underground high-voltage cables used in resistance  
337 grounded systems shall be equipped with metallic shields  
338 around each power conductor with one or more ground  
339 conductors having a total cross-sectional area of not less than  
340 one half the power conductor, and with an insulated internal  
341 or external conductor not smaller than No. 10 (A.W.G.) for

342 the ground continuity check circuit.

343 (63) All such cables shall be adequate for the intended  
344 current and voltage. Splices made in such cables shall provide  
345 continuity of all components.

346 (64) Single-phase loads, such as transformer primaries, shall  
347 be connected phase-to-phase.

348 (65) All underground high-voltage transmission cables shall  
349 be installed only in regularly inspected air courses and  
350 haulageways, and shall be covered, buried, or placed so as to  
351 afford protection against damage, guarded where men  
352 regularly work or pass under them unless they are six and one-  
353 half feet or more above the floor or rail, securely anchored,  
354 properly insulated, and guarded at ends, and covered,  
355 insulated, or placed to prevent contact with trolley wires and  
356 other low-voltage circuits.

357 (66) Disconnecting devices shall be installed at the begin-  
358 ning of branch lines in underground high-voltage circuits and  
359 equipped or designed in such a manner that it can be  
360 determined by visual observation that the circuit is deenergized  
361 when the switches are open.

362 (67) Circuit breakers and disconnecting switches under-  
363 ground shall be marked for identification.

364 (68) In the case of high-voltage cables used as trailing  
365 cables, temporary splices shall not be used and all permanent  
366 splices shall be made in accordance with the manufacturers'  
367 specifications.

368 (69) Frames, supporting structures and enclosures of  
369 stationary, portable, or mobile underground high-voltage  
370 equipment and all high-voltage equipment supplying power to  
371 such equipment receiving power from resistance grounded  
372 systems shall be effectively grounded to the high-voltage  
373 ground.

374 (70) Low- and medium-voltage power circuits serving three-  
375 phase alternating current equipment serving portable or mobile  
376 equipment shall be protected by suitable circuit breakers of  
377 adequate interrupting capacity which are properly tested and  
378 maintained as prescribed by the director. Such breakers shall  
379 be equipped with devices to provide protection against under

380 voltage, grounded phase, short circuit and overcurrent.

381 (71) Power centers and portable transformers shall be  
382 deenergized before they are moved from one location to  
383 another, except that, when equipment powered by sources  
384 other than such centers or transformers is not available, the  
385 director may permit such centers and transformers to be  
386 moved while energized, if he determines that another  
387 equivalent or greater hazard may otherwise be created, and if  
388 they are moved under the supervision of a qualified person,  
389 and if such centers and transformers are examined prior to  
390 such movement by such person and found to be grounded by  
391 methods approved by an authorized representative of the  
392 director and otherwise protected from hazards to the miner.  
393 A record shall be kept of such examinations. High-voltage  
394 cables, other than trailing cables, shall not be moved or  
395 handled at any time while energized, except that when such  
396 centers and transformers are moved while energized as  
397 permitted under this section, energized high-voltage cables  
398 attached to such centers and transformers may be moved only  
399 by a qualified person and the operator of such mine shall  
400 require that such person wear approved and tested insulated  
401 wireman's gloves.

402 (72) Low- and medium-voltage three-phase alternating-  
403 current circuits used underground shall contain either a direct  
404 or derived neutral which shall be grounded through a suitable  
405 resistor at the power center, and a grounding circuit,  
406 originating at the grounded side of the grounding resistor, shall  
407 extend along with the power conductors and serve as a  
408 grounding conductor for the frames of all the electrical  
409 equipment supplied power from the circuit, except that the  
410 director or his authorized representative may permit under-  
411 ground low- and medium-voltage circuits to be used under-  
412 ground to feed such stationary electrical equipment if such  
413 circuits are either steel armored or installed in grounded rigid  
414 steel conduit throughout their entire length. The grounding  
415 resistor, where required, shall be of the proper ohmic value  
416 to limit the ground fault current to twenty-five amperes. The  
417 grounding resistor shall be rated for maximum fault current  
418 continuously and insulated from ground for a voltage equal  
419 to the phase-to-phase voltage of the system.

420 (73) Low- and medium-voltage resistance grounded systems

421 serving portable or mobile equipment shall include a fail-safe  
422 ground check circuit to monitor continuously the grounding  
423 circuit to assure continuity which ground check circuit shall  
424 cause the circuit breaker to open when either the ground or  
425 pilot check wire is broken, or other not less effective device  
426 approved by the director or his authorized representative to  
427 assure such continuity, except that an extension of time, not  
428 in excess of twelve months, may be permitted by the director  
429 on a mine-to-mine basis if he determines that such equipment  
430 is not available. Cable couplers shall be constructed so that  
431 the ground check continuity conductor shall be broken first  
432 and the ground conductors shall be broken last when the  
433 coupler is being uncoupled.

434 (74) Disconnecting devices shall be installed in conjunction  
435 with circuit breakers serving portable or mobile equipment to  
436 provide visual evidence that the power is connected.

437 (75) Circuit breakers shall be marked for identification.

438 (76) Single-phase loads shall be connected phase-to-phase.

439 (77) Trailing cables for medium-voltage circuits shall  
440 include grounding conductors, a ground check conductor, and  
441 grounded metallic shields around each power conductor or a  
442 ground metallic shield over the assembly, except that on  
443 equipment employing cable reels, cables without shields may  
444 be used if the insulation is rated two thousand volts or more.

445 (78) Trolley wires and trolley feeder wires shall be provided  
446 with cutout switches at intervals of not more than two  
447 thousand feet and near the beginning of all branch lines.

448 (79) Trolley wires and trolley feeder wires shall be provided  
449 with overcurrent protection.

450 (80) Trolley wires and trolley feeder wires, high-voltage  
451 cables, and transformers shall not be located within fifteen feet  
452 of the last open crosscut and shall be kept at least one hundred  
453 fifty feet from pillar workings.

454 (81) Trolley wires, trolley feeder wires, and bare signal wires  
455 shall be insulated adequately where they pass through doors  
456 and stoppings and where they cross other power wires and  
457 cables. Trolley wires and trolley feeder wires shall be guarded  
458 adequately:

459 (A) At all points where men are required to work or pass  
460 regularly under the wires.

461 (B) On both sides of all doors and stoppings.

462 (C) At man-trip stations.

463 (82) Temporary guards shall be provided where trackmen  
464 and other persons work in close proximity to trolley wires and  
465 trolley feeder wires.

466 (83) Adequate precaution shall be taken to ensure that  
467 equipment being moved along haulageways will not come in  
468 contact with trolley wires or trolley feeder wires.

469 (84) Trolley wires and feeder wires shall be installed as  
470 follows: Where installed on permanent haulage, they shall be:

471 (A) At least six inches outside the track gauge line.

472 (B) Kept taut and not permitted to touch the roof, rib or  
473 ~~crossbars~~ <sup>crossbars</sup>. Particular care shall be taken where they pass  
474 through door openings to preclude bare wires from coming in  
475 contact with combustible material.

476 (C) Installations of trolley wire hangers shall be provided  
477 within three feet of each splice in a trolley wire.

**§22A-2-41. Bonding track used as power conductor.**

1 Where track is used as a power conductor, rails and switches  
2 on main entries shall be bonded and cross-bonded in such  
3 manner as to assure adequate return. At least one rail on  
4 secondary track-haulage roads shall be welded or bonded at  
5 every joint, and cross bonds shall be installed at intervals of  
6 not more than two hundred feet: *Provided, however,* That rail  
7 joints in such secondary haulage roads need not be bonded  
8 where a copper feeder adequate in size parallels the track and  
9 is electrically connected thereto at intervals of not more than  
10 two hundred feet by cross bonds.

**§22A-2-42. Telephone service or communication facilities.**

1 Telephone service or equivalent two-way communication  
2 facilities shall be provided in all mines at least one of which  
3 shall be in service at all times as follows:

4 (a) A telephone or equivalent two-way communication  
5 facility shall be located on the surface within five hundred feet



6 of all main portals, and shall be installed either in a building  
7 or in a box-like structure designed to protect the facilities from  
8 damage by inclement weather. At least one of these commun-  
9 ication facilities shall be at a location where a responsible  
10 person who is always on duty when miners are underground  
11 can hear the facility and respond immediately in the event of  
12 an emergency. "Two-way communication facility" shall mean  
13 a system maintained to allow voice contact to come in and  
14 out of the working section at all times.

15 (b) (1) Telephones or equivalent two-way communication  
16 facilities provided at each working section shall be located not  
17 more than five hundred feet outby the last open crosscut and  
18 not more than eight hundred feet from the farthest point of  
19 penetration of the working places on such section.

20 (2) The incoming communication signal shall activate an  
21 audible alarm, distinguishable from the surrounding noise  
22 level, or a visual alarm that can be seen by a miner regularly  
23 employed on the working section.

24 (3) If a communication system other than telephones is used  
25 and its operation depends entirely upon power from the mine  
26 electric system, means shall be provided to permit continued  
27 communication in the event the mine electric power fails or  
28 is cut off: *Provided*, That where trolley phones and telephones  
29 are both used, an alternate source of power for the trolley  
30 phone system is not required.

31 (4) Telephones or equivalent two-way communication  
32 facilities shall be maintained in good operating condition at  
33 all times. In the event of any failure in the system that results  
34 in loss of communication, repairs shall be started immediately,  
35 and the system restored to operating condition as soon as  
36 possible.

37 (5) Where required by the director, trucks used for haulage  
38 of coal, miners, or supplies by an operator shall be equipped  
39 with two-way communication instruments.

40 (c) On or after the first day of January, one thousand nine  
41 hundred seventy-eight, unless the director for good cause  
42 grants a waiver, all such telephones or equivalent two-way  
43 communications shall be connected to regular telephonic and  
44 other means of communication available in the community so

45 that in the event of an emergency, emergency medical  
46 attendants or other personnel can communicate from within  
47 the mine directly to health care facilities.

48 (d) Telephone lines and cables shall be carried on insulators  
49 installed on the opposite side from power or trolley wires, and  
50 where they cross power or trolley wires, they shall be insulated  
51 adequately. Lightning arrestors shall be provided at the points  
52 where telephone circuits enter the mine.

**§22A-2-43. Electric equipment in mines.**

1 (a) Electric equipment shall not be taken into or operated  
2 in any place where methane can be detected with a flame safety  
3 lamp or other approved methane detector at any point not less  
4 than eight inches from the roof, face, or rib.

5 (b) In all mines, electric haulage locomotives operated from  
6 trolley wire and other electrical equipment or devices which  
7 may ignite gas shall not be used in return air, unless permission  
8 is granted by the director for a specified area. For the purpose  
9 of this provision, air used to ventilate a section of a mine shall  
10 not be considered return air until such time as the air has  
11 ventilated all of the workings in the section.

12 (c) No person shall be placed in charge of a coal-cutting  
13 machine in any mine who is not a qualified person, capable  
14 of determining the safety of the roof and sides of the working  
15 places and of detecting the presence of explosive gas, unless  
16 they are accompanied by a certified or qualified person who  
17 has passed such an examination.

18 (d) In any mine no machine shall be brought in by the last  
19 breakthrough next to the working face until the machine man  
20 shall have made an inspection for gas in the place where the  
21 machine is to work. If explosive gas in excess of one percent  
22 is found in the place, the machine shall not be taken in until  
23 the danger is removed.

24 (e) In working places a safety lamp, or other suitable  
25 approved apparatus for the detection of explosive gas, shall  
26 be provided for use with each mining machine when working,  
27 and should any indication of explosive gas in excess of one  
28 percent appear on the flame of the safety lamp, or on other  
29 apparatus used for the detection of explosive gas, the person  
30 in charge shall immediately stop the machine, cut off the

31 current at the nearest switch and report the condition to the  
32 mine foreman or supervisor. The machine shall not again be  
33 started in such place until the condition found has been  
34 corrected and been pronounced safe by a certified person.

35 (f) No electric equipment shall be operated in a mine for  
36 a longer period than twenty minutes without an examination  
37 as above described being made for gas; and if gas is found  
38 in excess of one percent, the current shall at once be switched  
39 off the machine, and the trailing cable shall forthwith be  
40 disconnected from the power supply until the place is  
41 pronounced safe.

42 (g) Machine runners and helpers shall use care while  
43 operating mining machines. They shall not permit any person  
44 to remain near the machine while it is in operation. They shall  
45 examine the roof of the working place to see that it is safe  
46 before starting to operate the machine. They shall not move  
47 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  
2 intended to be held in the hand shall have the electric switch  
3 constructed so as to break the circuit when the hand releases  
4 the switch and shall be equipped with friction or safety  
5 clutches.

**§22A-2-45. Installation of lighting.**

1 Electric lights or other approved methods of lighting shall  
2 be installed so that they do not come in contact with  
3 combustible materials, and the wires shall be supported by  
4 suitable insulators and fastened securely to the power  
5 conductors.

**§22A-2-46. Welding and cutting.**

1 (a) A record shall be kept of oxygen and gas tanks or  
2 cylinders taking into a mine and the date shall be recorded  
3 when they are removed from the mine. No more tanks or  
4 cylinders than necessary to perform efficiently the work shall  
5 be permitted underground at one time.

6 (b) Propane torches may be used in lieu of blowtorches.

7 (c) Welding and cutting may be done in mines: *Provided*,  
8 That all equipment and gauges are maintained in safe  
9 condition and not abused, that suitable precautions are taken  
10 against ignition of methane, coal dust, or combustible  
11 materials, that means are provided for prompt extinguishment  
12 of fires accidentally started, and that only persons who have  
13 demonstrated competency in welding and cutting are entrusted  
14 to do this work. Adequate eye protection shall be used by all  
15 persons doing welding or cutting, and precautions shall be  
16 taken to prevent other persons from exposure that might be  
17 harmful to their eyes.

18 (d) Transportation of oxygen and gas tanks or cylinders  
19 shall be permitted on self-propelled machinery or belt  
20 conveyors specially equipped for safe holding of the containers  
21 in transportation. In no instance, shall such transportation be  
22 permitted in conjunction with any man trip.

23 (e) Empty oxygen and gas tanks or cylinders shall be  
24 marked "empty" and shall be removed from the mine promptly  
25 in safe containers provided for transportation of the same.

26 (f) When tanks and cylinders are not in use and when they  
27 are being transported, valve protection caps and plugs shall  
28 be placed on all tanks or cylinders for which caps and plugs  
29 are available. No oxygen tanks, gas tanks or cylinders shall  
30 be transported with the hoses and gauges attached ~~hereto~~. <sup>OK</sup>

31 (g) In all mines a certified person shall examine for gas with <sup>OK</sup>  
32 permissible flame safety lamps or other approved detectors  
33 before and during welding or cutting in, at or near working  
34 faces. The safety of the equipment and methods used in such  
35 cases shall be subject to approval of the director. If equipment  
36 is mobile, it shall be removed outby the last open break-  
37 through before cutting and welding may be performed on such  
38 equipment.

**§22A-2-47. Responsibility for care and maintenance of face equipment.**

1 Mine operators shall maintain face equipment in safe  
2 operating condition. Equipment operators shall exercise  
3 reasonable care in the operation of the equipment entrusted  
4 to them and shall promptly report defects known to them.

**§22A-2-48. When respiratory equipment to be worn; control of dust.**

1 Miners exposed for short periods to gas-, dust-, fume-, and  
2 mist-inhalation hazards shall wear permissible respiratory  
3 equipment. Dust shall be controlled by the use of permissible  
4 dust collectors or other approved methods.

### **SAFEGUARDS FOR MECHANICAL EQUIPMENT**

#### **§22A-2-49. Safeguards for mechanical equipment.**

1 (a) The cutter chains of mining machines shall be locked  
2 securely by mechanical means or electrical interlocks while  
3 such machines are parked or being trammed. Loading  
4 machines shall not be trammed with loading arms in motion,  
5 except when loading materials.

6 (b) Belt, chain or rope drives and the moving parts of  
7 machinery which are within seven feet of the floor, ground or  
8 platform level, unless isolated, shall be guarded adequately.  
9 Repair pits shall be kept covered or guarded at all times when  
10 not in use. Machinery shall not be lubricated or repaired while  
11 in motion, except where safe remote lubricating devices are  
12 used. Machinery shall not be started until the person  
13 lubricating or repairing it has given a clear signal. Guards  
14 which have been removed shall be replaced before the  
15 machinery is again put into use. Provision shall be made to  
16 prevent accumulations of spilled lubricants.

17 (c) Mechanically operated grinding wheels shall be equipped  
18 with safety washers, substantial retaining hoods, and, unless  
19 goggles are used, eye shields.

20 (d) No person shall stand along the side of the boom, or  
21 pass or stand along the loading head or cutting head, on a  
22 continuous miner or loading machine in operation.

23 (e) Braking devices shall be guarded to prevent accidental  
24 release. When required by the director, track-mounted mobile  
25 equipment shall be equipped with workable sanding devices.

26 (f) On and after the first day of January, one thousand nine  
27 hundred seventy-eight, all battery powered equipment shall be  
28 equipped with an under-voltage indicator which will indicate  
29 when the voltage is less than three fourths of its rated capacity,  
30 at which time such equipment shall be withdrawn from use

31 except for the purpose of returning the vehicle to the  
32 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.**

1 (a) In unusually dusty locations, electric motors, switches  
2 and controls shall be of dust-tight construction or enclosed  
3 with reasonably dust-tight housings or enclosures.

4 (b) After the first day of July, one thousand nine hundred  
5 seventy-one, all structures erected on the surface within one  
6 hundred feet of any mine opening shall be of fireproof  
7 construction.

8 (c) Means and methods shall be provided to assure that  
9 structures and the immediate area surrounding the same shall  
10 be reasonably free of coal dust accumulations.

11 (d) Where coal is dumped at or near air intake openings,  
12 reasonable provisions shall be made to prevent dust from  
13 entering the mine.

14 (e) Where repairs are being made to the plant, proper  
15 scaffolding and proper overhead protection shall be provided  
16 for workmen wherever necessary.

17 (f) Welding shall not be done in dusty atmospheres and  
18 dusty locations shall be well cleaned, and fire-fighting  
19 apparatus shall be readily available during welding.

20 (g) Stairways, elevated platforms and runways shall be  
21 equipped with handrails. Railroad car trimmer platforms are  
22 excepted from such requirement.

23 (h) Elevated platforms and stairways shall be provided with  
24 toeboards where necessary, and they shall be kept clear of  
25 refuse and ice and maintained in good repair.

26 (i) Personnel who are required frequently and regularly to  
27 travel on belts or chain conveyors extended to heights of more  
28 than ten feet shall be provided with adequate space and

29 protection in order that they may work safely. Permanent  
30 ladders extending more than ten feet shall be provided with  
31 back guards. Walkways around thickeners that are less than  
32 four feet above the walkway shall be adequately guarded.  
33 Employees required to work over thickeners shall wear a safety  
34 harness adequately secured, unless walkways or other suitable  
35 safety devices are provided.

**§22A-2-51. Housekeeping.**

1 Good housekeeping shall be practiced in and around mine  
2 buildings and yards. Such practices include cleanliness, orderly  
3 storage of materials, and the removal of possible sources of  
4 injury, such as stumbling hazards, protruding nails and broken  
5 glass.

**§22A-2-52. Storage of flammable liquids in lamphouse.**

1 Naphtha or other flammable liquids in lamphouses shall be  
2 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  
2 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  
2 use an approved distinct audible signaling device to give  
3 warning when cars are in motion. Where required by rule or  
4 regulation, safety belts shall be worn and properly attached  
5 by all car droppers handling railroad cars. All dumping ramps  
6 shall be of a sufficient width to ensure safe operation of  
7 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,  
2 supervisors, mine examiners, and other officials to comply  
3 with and to see that others comply with the provisions of this  
4 article.

5 (b) It shall be the duty of all employees and checkweighmen

6 to comply with this article and to cooperate with management  
7 and the department of energy and division of mines and  
8 minerals in carrying out the provisions hereof.

9 (c) Reasonable rules and regulations of an operator for the  
10 protection of employees and preservation of property that are  
11 in harmony with the provisions of this article and other  
12 applicable laws shall be complied with. They shall be printed  
13 on cardboard or in book form in the English language and  
14 posted at some conspicuous place about the mine or mines,  
15 and given to each employee upon request.

**§22A-2-55. Protective equipment and clothing.**

1 (a) Welders and helpers shall use proper shields or goggles  
2 to protect their eyes. All employees shall have approved  
3 goggles or shields and use the same where there is a hazard  
4 from flying particles, or other eye hazards.

5 (b) Employees engaged in haulage operations and all other  
6 persons employed around moving equipment on the surface  
7 and underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which  
9 may injure hands is handled, but gloves with gauntleted cuffs  
10 shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all  
12 persons while in or around a mine.

13 (e) Approved safety goggles or eyeshields shall be worn by  
14 all persons while being transported in open-type man trips.

15 (f) A self-rescue device approved by the director shall be  
16 worn by each person underground or kept within his  
17 immediate reach, and such device shall be provided by the  
18 operator. The self-rescue device shall be adequate to protect  
19 such miner for one hour or longer. Each operator shall train  
20 each miner in the use of such device, and refresher training  
21 courses for all underground employees shall be held during  
22 each calendar year.

**§22A-2-55a. Safety helmets.**

1 All surface mine employees shall be required to wear safety  
2 helmets when working in areas where there is a possible danger  
3 of head injury from impact, or from falling or flying objects,



4 or from electrical shock and burns: *Provided*, That such  
5 employees shall not be required to wear such safety helmet  
6 while operating machinery equipped with a falling object  
7 protective structure which satisfies the impact and penetration  
8 requirements established by the American National Standards  
9 Institute, Safety Requirements for Industrial Head Protection,  
10 Standard Z89.1, unless the director finds that the dangers set  
11 forth herein may be present: *Provided, however*, That such  
12 employees shall be required to wear safety helmets while not  
13 operating such equipment including period of travel to and  
14 from such equipment.

15 The safety helmets required hereunder shall meet the  
16 specifications for such helmets as prescribed by the mine health  
17 and safety administration.

**§22A-2-56. Checking systems.**

1 Each mine shall have a check-in and check-out system that  
2 will provide positive identification upon the person of every  
3 individual underground. An accurate record of the people in  
4 the mine, which shall consist of a written record, a check  
5 board, or a time-clock record, shall be kept on the surface in  
6 a place that will not be affected in the event of an explosion.  
7 Said record shall bear a number or name identical to the  
8 identification check fastened to the belt of all persons going  
9 underground.

**§22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.**

1 (a) No miner, worker or other person shall knowingly injure  
2 any shaft, lamp, instrument, air course, or brattice, or obstruct  
3 or throw open airways, or carry matches or open lights in the  
4 places worked by safety lights, or disturb any part of the  
5 machinery or appliances, open a door closed for directing  
6 ventilation and not close it again, or enter any part of a mine  
7 against caution, or disobey any order of any mine foreman  
8 or assistant mine foreman given in carrying out any of the  
9 provisions of this section.

10 (b) Open lights, smoking, and smokers' articles, including  
11 matches, are prohibited in all mines. No person shall at any  
12 time enter mines with or carry therein any matches, pipes,  
13 cigars, cigarettes, or any device for making lights or fire not

14 authorized or approved. The operator shall at frequent  
 15 intervals search, <sup>or</sup> cause to be searched, any person, including  
 16 his clothing and material belongings, entering or about to enter  
 17 the mine, or inside the mine, to prevent such person from  
 18 taking or carrying therein any of the above-mentioned articles.

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19 (c) No person shall at any time carry into any mine any  
 20 intoxicants or enter any mine while under the influence of  
 21 intoxicants.

**§22A-2-58. Fire protection.**

1 (a) Suitable fire protection shall be provided at surface  
 2 installations of fans, shops, tipples, and preparation plants,  
 3 substations, hoist rooms and compressor stations.

4 (b) Fire drills and demonstration of various types of  
 5 available fire-fighting equipment shall be held for employees  
 6 at least every six months.

7 (c) The location of pipelines, location of valves, and fire  
 8 taps shall be shown on a map of the mine and kept available  
 9 at the mine office at all times.

10 (d) Each coal mine shall be provided with suitable fire-  
 11 fighting equipment adapted for the size and condition of the  
 12 mine. Fire-fighting equipment required under this article shall  
 13 meet the following requirements:

14 (1) Waterlines shall be capable of delivering fifty gallons  
 15 of water at a nozzle pressure of fifty pounds per square inch.

16 (2) A portable water car shall be of at least one thousand  
 17 gallons capacity, and shall have at least three hundred feet of  
 18 fire hose with nozzles. A portable water car shall be capable  
 19 of providing a flow through the hose of fifty gallons of water  
 20 per minute at a nozzle pressure of fifty pounds per square inch.

21 (3) A portable chemical car shall carry enough chemicals to  
 22 provide a fire extinguishing capacity equivalent to that of a  
 23 portable water car.

24 (4) A portable foam-generating machine shall have facilities  
 25 and equipment for supplying the machine with thirty gallons  
 26 of water per minute at thirty pounds per square inch for a  
 27 period of thirty-five minutes.

28 (5) A portable fire extinguisher shall be either a multipur-

29 pose dry chemical type, containing a nominal weight of five  
30 pounds of dry powder and enough expellant to apply the  
31 powder; or a foam-producing type containing at least two and  
32 one-half gallons of foam-producing liquid and enough  
33 expellant to supply the foam. Only fire extinguishers approved  
34 by the Underwriters Laboratories, Inc. or Factor Mutual  
35 Laboratories, carrying appropriate labels as to type and  
36 purpose shall be used after the first day of July, nineteen  
37 hundred seventy-one, and all new portable fire extinguishers  
38 acquired for use in a coal mine shall be of the multipurpose  
39 dry chemical type, having a 2A 10BC or higher rating.

40 (6) The fire hose shall be rubber-lined, mildew-proof and  
41 the cover shall be of flame-resistant qualities, meeting  
42 requirements for hose in Bureau of Mines Schedule 2G, except  
43 that the test flame shall be applied to the outer surface rather  
44 than to an open end. The bursting pressure shall be at least  
45 four times higher than the static water at the mine location;  
46 the maximum water pressure in the hose nozzle shall not  
47 exceed 100 p.s.i.g.

48 (e) Each working section of coal mines producing three  
49 hundred tons or more per shift shall be provided with two  
50 portable fire extinguishers and two hundred forty pounds of  
51 bagged rock dust; waterlines shall extend to each section  
52 loading point and be equipped with enough fire hose to reach  
53 each working face unless the section loading point is provided  
54 with one of the following: (1) Two portable water cars or (2)  
55 two portable chemical cars, or (3) one portable water car or  
56 one portable chemical car and either a portable foam-  
57 generating machine or a portable high-pressure rock-dusting  
58 machine, fitted with at least two hundred fifty feet of hose and  
59 supplied with at least sixty sacks of rock dust.

60 (f) In all coal mines, waterlines shall be installed parallel to  
61 the entire length of belt conveyors and shall be equipped with  
62 fire hose outlets with valves at three-hundred-foot intervals  
63 along each belt conveyor and at tailpieces. At least five  
64 hundred feet of fire hose with fittings suitable for connection  
65 with each belt conveyor waterline system shall be stored at  
66 strategic locations along the belt conveyor. Waterlines may be  
67 installed in entries adjacent to the conveyor entry belt as long  
68 as the outlets project into the belt conveyor entry. Each  
69 working section of coal mines producing less than three

70 hundred tons of coal per shift shall be provided with two  
71 portable fire extinguishers, two hundred forty pounds of  
72 bagged rock dust and at least five hundred gallons of water  
73 and at least three pails of ten-quart capacity. In lieu of the  
74 five hundred gallon water supply, a waterline with sufficient  
75 hose to reach the working places, a portable water car of five  
76 hundred fifty gallons capacity, or a portable all-purpose dry  
77 powder chemical car of at least one hundred twenty-five  
78 pounds capacity may be provided.

79 (g) In mines producing three hundred tons of coal or more  
80 per shift, waterlines shall be installed parallel to all haulage  
81 tracks using mechanized equipment in the track or adjacent  
82 entry and shall extend to the loading point of each working  
83 section. Waterlines shall be equipped with outlet valves at  
84 intervals of not more than five hundred feet, and five hundred  
85 feet of fire hose with fittings suitable for connection with such  
86 waterlines shall be provided at strategic locations. Two  
87 portable water cars, readily available, may be used in lieu of  
88 waterlines prescribed under this subsection.

89 (h) In mines producing less than three hundred tons of coal  
90 per shift, there shall be provided at five-hundred-foot intervals  
91 in all main and secondary haulage roads: (1) A tank of water  
92 of at least fifty-five gallon capacity with at least three pails  
93 of not less than ten-quart capacity, or (2) not less than two  
94 hundred forty pounds of bagged rock dust.

95 (i) Each track or off-track locomotive, self-propelled  
96 mantrip car, or personnel carrier shall be equipped with one  
97 portable fire extinguisher.

98 (j) Two portable fire extinguishers shall be provided at each  
99 permanent electrical installation. One portable fire extin-  
100 guisher and two hundred forty pounds of rock dust shall be  
101 provided at each temporary electrical installation.

102 (k) Two portable fire extinguishers and two hundred forty  
103 pounds of rock dust shall be provided at each permanent  
104 underground oil storage station. One portable fire extinguisher  
105 shall be provided at each working section where twenty-five  
106 gallons or more of oil are stored in addition to extinguishers  
107 required under subsection (e) of this section.

108 (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

5 close proximity to the mine entry.

6 (2) At the bottom of each regularly traveled slope or shaft;  
7 however, where the bottom of such slope or shaft is not more  
8 than one thousand feet from the surface, such first-aid supplies  
9 may be maintained on the surface at the entrance of the mine.

10 (3) At a point in each working section not more than five  
11 hundred feet outby the active working face or faces.

12 (b) The first-aid equipment required to be maintained shall  
13 include at least the following:

14 (1) One stretcher

15 (2) One broken-back board

16 (3) Twenty-four triangular bandages

17 (4) Eight four-inch bandage compresses

18 (5) Sixteen two-inch bandage compresses

19 (6) Twelve one-inch adhesive compresses

20 (7) One foille

21 (8) Two cloth blankets

22 (9) One rubber blanket

23 (10) Two tourniquets

24 (11) One one-ounce bottle of aromatic spirits of ammonia

25 (12) Two inflatable plastic arm splints

26 (13) Two inflatable plastic leg splints

27 (14) Six small splints, metal or wooden

28 (15) Two cold packs

29 (c) All first-aid supplies required to be maintained under the  
30 section shall be stored in suitable sanitary, dust-tight,  
31 moisture-proof containers and such supplies shall be accessible  
32 to the miners.

33 (d) No first-aid material shall be removed or diverted  
34 without authorization, except in case of accident in or about  
35 the mine.

36 (e) On all occasions when a person becomes sick or injured

37 underground to the extent that he must go to the surface, he  
38 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.**

1 (a) No operator or mine foreman of any coal mine shall  
2 employ any person to work in such mine, or permit any  
3 persons to be in the mine for the purpose of working therein  
4 unless they are provided with two openings or outlets to each  
5 seam, separated by natural strata, such openings to be not less  
6 than three hundred feet apart, if the mine be worked by shaft;  
7 if the mine be worked by shaft and slope, such openings shall  
8 be separated by one hundred feet of natural strata; and not  
9 less than fifty feet apart at the outlets, if worked by slope or  
10 drift; but this requirement of a distance of three hundred feet  
11 between openings or outlets to shaft mines shall not apply  
12 where such openings or outlets have been made prior to the  
13 first day of July, one thousand nine hundred and seventy-one.  
14

15 (b) At least two separate and distinct travelable passageways  
16 designated as escapeways shall be maintained to ensure  
17 passage at all times to any person, including disabled persons.  
18 The escapeway openings to the surface shall be separated in  
19 such manner as shall be prescribed by the director. If at least  
20 two escapeways are not available for any reason, all miners  
21 in the affected area other than those requisite to remedy the  
22 situation shall be withdrawn from the affected area until such  
23 time as the escapeway is made passable. Where the height of  
24 the coal bed is more than five feet, the escapeways shall be  
25 maintained at a height of at least five feet excluding necessary  
26 roof support, and the travelway in such escapeway shall be  
27 maintained at a width of at least six feet, excluding necessary  
28 roof support and in those situations where the height of the  
29 coal bed is less than five feet the escapeway should be  
30 maintained to the height of the coal bed excluding any  
31 necessary roof support, and the travelway in such escapeway  
32 shall be maintained at a width of at least six feet. At least  
33 one escapeway ventilated with intake air, maintained to the  
34 last open crosscut, shall be provided from each working  
35 section continuously to the nearest available opening on the  
36 surface, and shall be maintained in safe condition and properly

37 marked. Mine openings shall be adequately protected to  
38 prevent the entrance into the underground area of the mine  
39 of floodwater. Escape facilities approved by the director,  
40 properly maintained and frequently tested, shall be present at  
41 or in each escape shaft or slope to allow all persons, including  
42 disabled persons, to escape quickly to the surface in event of  
43 an emergency. Return airways entries designated as escape-  
44 ways shall be provided with permissible two-way communica-  
45 tion systems to the surface, and such systems shall be located  
46 at points not to exceed every four thousand feet. On or after  
47 the first day of April, one thousand nine hundred seventy-  
48 eight, each operator shall provide lifeline cords, with reflective  
49 material at twenty-five foot intervals, from the last open  
50 crosscut to the surface along a designated escapeway ventilated  
51 by return air: *Provided*, That in case of a shaft mine such  
52 lifeline cords shall extend from the last open crosscut to the  
53 bottom of the designated escape shaft. Such lifeline cord shall  
54 be of durable construction sufficient to allow miners to see and  
55 to use effectively to guide themselves out of the mine in the  
56 event of an emergency.

57 (c) Escapeways shall be inspected and traveled at least once  
58 each week by a certified mine examiner who shall place his  
59 initials and the date in a conspicuous place or places and who  
60 shall file a written report thereon which shall be kept on the  
61 surface.

62 (d) When new coal mines are opened, not more than twenty  
63 miners shall be allowed at any one time in any mine until a  
64 connection has been made between the two mine openings, and  
65 such connection shall be made as soon as possible.

66 (e) When only one opening is available because of final  
67 mining of pillars, not more than twenty miners shall be  
68 allowed in such mine at any one time, and the distance  
69 between the mine opening and working face shall not exceed  
70 five hundred feet.

71 (f) First-aid materials and such other equipment as the  
72 director may require shall be maintained within five hundred  
73 feet of each area in which miners are regularly working to  
74 which they may have access in case of an emergency and for  
75 protection against hazards.

76 (g) Each working area of the mine not serviced by track-



77 mounted or rubber-tired vehicles which uses conveyor belts for  
78 removal of coal shall be equipped with a special capsule in  
79 which an injured person can be placed and transported on the  
80 belt to the surface or to other transportation facilities. The  
81 director shall within nine months of the eighth day of July,  
82 one thousand nine hundred seventy-seven, promulgate  
83 standards and guidelines, or allow to continue in effect any  
84 present standards and guidelines, as to what such "special  
85 capsule" as used in this subsection shall include. Each section  
86 of the mine using or serviced by track-mounted or rubber-tired  
87 equipment shall have readily available a vehicle which can be  
88 used to promptly remove a person in case of injury.

**§22A-2-6l. Coal storage bins; recovery tunnels; coal storage piles.**

1 (a) Coal storage bins hereafter constructed with vertical  
2 sides fifty feet or over in height shall be provided with  
3 ventilators or louvers or both to provide adequate ventilation.  
4 Where roofs are constructed over coal storage bins, adequate  
5 ventilation shall be provided by stacks, ventilators, louvers or  
6 mechanical means.

7 (b) Where cutting or welding is performed at any location  
8 where coal is stored, means of prompt extinguishment of any  
9 fire accidentally started shall be provided, and the area where  
10 cutting or welding is performed shall be adequately watered  
11 down and rock-dusted.

12 (c) A qualified person shall test for methane with a methane  
13 detector prior to and during cutting and welding operations  
14 inside or underneath a coal storage bin.

15 (d) Electric motors, switches and controls for coal storage  
16 bins hereafter acquired shall be of dust-tight construction.

17 (e) Repairs to electric equipment shall not be made when  
18 the surrounding atmosphere contains dangerous amounts of  
19 gas or dust.

20 (f) Where electric lights are used in recovery tunnels of over  
21 one hundred feet in length, the wiring shall be in rigid conduit  
22 and shall be enclosed in waterproof receptacles.

23 (g) An escapeway shall be provided from any recovery  
24 tunnel hereafter constructed to a safe place on the surface;  
25 such escapeway shall be at least thirty inches in diameter and

26 where inclined, a ladder shall be provided to extend full length  
27 of the escapeway to facilitate emergency exit.

28 (h) Extreme caution shall be exercised by all employees  
29 required to work at or near coal storage piles during coal  
30 recovery operations to avoid injury by coal slides or by being  
31 in or drawn into a chute.

**§22A-2-62. Thermal coal dryers and plants.**

1 Thermal coal dryer plants shall be hereafter constructed,  
2 maintained and operated in compliance with the following  
3 provisions:

4 (1) Good housekeeping shall be practiced in and around  
5 thermal dryer plants.

6 (2) Adequate fire-fighting facilities shall be provided on all  
7 floors.

8 (3) When welding and cutting operations are to be  
9 performed in a dryer structure, the area shall be wetted down  
10 thoroughly and adequate fire-fighting apparatus shall be  
11 readily available during the operation.

12 (4) Only qualified persons shall be permitted to operate  
13 dryers; however, this provision shall not prohibit qualified  
14 persons from training other persons to become qualified  
15 operators.

16 (5) Dryer control panels shall be provided with audible and  
17 visible alarm devices; such devices should be adjusted to  
18 function at somewhat less than maximum dryer temperature.

19 (6) A bypass or relief stack equipped with an automatically  
20 operated damper shall be provided for bypassing gases from  
21 the heating units to the outside atmosphere during emergency  
22 or normal shutdown operations.

23 (7) Thermal coal dryers hereafter installed shall not be  
24 enclosed except that roofs may be used. Whenever it is deemed  
25 necessary to enclose thermal dryers, such equipment shall be  
26 in a fireproof structure.

27 (8) Dryer installations and discharge stacks shall be  
28 protected with adequate explosion release vents that open to  
29 the outside atmosphere.

30 (9) Thermal coal dryers shall be located at a safe distance  
31 from tipples, cleaning plants, mine openings and surface  
32 buildings, such as oil storage areas, explosive magazines, and  
33 other buildings where coal dust, sparks and flames are likely  
34 to enter and become ignited or otherwise cause danger of fires.

35 (10) Dryers shall be equipped with quick-response heat  
36 control devices which, in the event of superelevated temper-  
37 atures, will automatically divert the hot inlet gases into a  
38 bypass stack, thereby bypassing the drying chamber and at the  
39 same time stopping the fuel from being supplied to the air  
40 heater.

41 (11) All dryers, conveyors and other fine coal transporting  
42 machines shall be constructed as dust-tight as practicable.  
43 Where necessary, such equipment shall be provided with  
44 removable covers for inspection and cleaning and shall be  
45 provided with vent pipes to the outside atmosphere to permit  
46 the escape of distilled gases,

47 (12) Dryers shall be examined thoroughly after normal and  
48 emergency shutdown for fires and coal dust accumulations.

49 (13) Dryer controls, valves, and mechanical equipment shall  
50 be frequently inspected, and no dryer shall be operated with  
51 defective mechanical equipment.

52 (14) The gauges of temperature control instruments shall be  
53 of the recording type.

54 (15) Operating rules suitable for the characteristics of each  
55 dryer system and the materials processed shall be developed  
56 and shall be available at the control panel.

57 (16) Electrical equipment, electrical wiring and lighting  
58 fixtures shall be of dust-tight construction.

59 (17) Adequate illumination shall be provided.

60 (18) Dryers shall not be operated beyond their rated  
61 evaporation capacity.

62 (19) Fluid bed dryers shall be provided with water sprays  
63 of sufficient capacity for use in event of fire.

64 (20) After shutdowns, thermal dryers shall be cleared of hot  
65 coals so as to minimize ignitions on succeeding startups.

66 (21) Thermal coal dryers previously installed in a tippie or  
 67 cleaning plant shall be separated where practicable from other  
 68 working areas by substantial partitions capable of providing  
 69 greater resistance to explosion pressures than an exterior wall  
 70 or walls.

71 (22) When it is necessary to use extension cables for  
 72 emergency illumination, such lighting devices shall be dust-  
 73 tight and adequately guarded. When it becomes necessary to  
 74 perform work in dryer system bins or any other dusty areas,  
 75 permissible 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.**

1 (a) After the first day of July, one thousand nine hundred  
 2 seventy-one, no mine shall be opened or reopened unless prior  
 3 approval has been obtained from the commissioner of the  
 4 department of energy, which approval shall not be unreason-  
 5 ably withheld. The operator shall pay for such approval a fee  
 6 of ten dollars, which payment shall be tendered with the  
 7 operator's application for such approval: *Provided*, That mines  
 8 producing coal solely for the operator's use shall be issued a  
 9 permit without charge if coal production will be less than fifty  
 10 tons a year.

11 (b) Within thirty days after the first day of January of each  
 12 year, the operator of each mine holding a certificate evidencing  
 13 approval of the commissioner to open a mine shall apply for  
 14 the extension of such certificate of approval for an additional  
 15 year. Such approval, evidenced by a certificate of the  
 16 commissioner, shall be granted as a matter of right and  
 17 without charge if, at the time such application is made, the  
 18 operator is in compliance with the provisions of section  
 19 seventy-two of this article and has paid or otherwise appealed  
 20 all coal mine assessments imposed under article one-a, chapter  
 21 twenty-two-a of this code. Applications for extension of such  
 22 certificates of approval not submitted within the time required  
 23 shall be processed as an application to open or reopen a mine  
 24 and shall be accompanied by a fee of ten dollars.

25 (c) Certificates of approval issued pursuant to this section

26 shall not be transferable.

27 (d) The provisions of this section shall be printed on the  
28 reverse side of every certificate issued hereunder.

29 (e) The district mine inspector shall be contacted for a  
30 preinspection of the area proposed for underground mining  
31 prior to the issuance of any new opening approval.

**§22A-2-64. Sealing; permanently closed or abandoned mines.**

1 (a) After the first day of July, one thousand nineteen  
2 hundred seventy-one, when any coal mine is worked out or  
3 indefinitely closed, such mine openings shall be properly sealed  
4 within ninety days after the mine is abandoned.

5 (b) Mines temporarily inactive for less than ninety days  
6 shall be adequately fenced with conspicuous signs prohibiting  
7 the possible entrance of unauthorized persons.

8 (c) Shaft openings shall be effectively capped or filled.  
9 Filling shall be for the entire depth of the shaft. Caps shall  
10 consist of a six inch thick concrete cap or other equivalent  
11 means approved by the director.

12 (d) Caps shall be equipped with a vent pipe at least two  
13 inches in diameter extending for a distance of at least fifteen  
14 feet above the surface shaft.

**§22A-2-65. Mining close to abandoned workings.**

1 Any operator working up to an abandoned coal mine may  
2 be permitted to work to his property line, if approved by the  
3 director, but in such cases precaution must be taken as  
4 provided in this article.

**§22A-2-66. Explosion or accident; notice; investigation by division of mines and minerals.**

1 Whenever, by reason of any explosion or other accident in  
2 or about any coal mine or the machinery connected therewith,  
3 loss of life, or serious personal injury shall occur, it shall be  
4 the duty of the superintendent of the mine, and in his absence,  
5 the mine foreman in charge of the mine, to give immediate  
6 notice to the director and the inspector of the district, stating  
7 the particulars of such accident. If anyone is killed, the  
8 inspector shall immediately go the scene of such accident and  
9 make such recommendations and render such assistance as he

10 may deem necessary for the future safety of the men, and  
 11 investigate the cause of such explosion or accident and make  
 12 a record thereof which he shall preserve with the other records  
 13 in his office, the cost of such records to be paid by the division,  
 14 and a copy shall be furnished to the operator and other  
 15 interested parties. To enable him to make such investigation,  
 16 he shall have the power to compel the attendance of witnesses  
 17 and to administer oaths or affirmations. The director shall  
 18 have the right to appear and testify and to offer any testimony  
 19 that may be relevant to the questions and to cross-examine  
 20 witnesses.

**§22A-2-67. Written report of accident.**

1 Whenever any accident occurs in or about any coal mine  
 2 to any employee or person connected with the mining  
 3 operation, resulting in personal injury or death, the operator  
 4 shall, within twenty-four hours, report the same in writing to  
 5 the director and to the district mine inspector of the district  
 6 in which the accident occurs, giving full details thereof upon  
 7 forms furnished by the director.

**§22A-2-68. Preservation of evidence following accident or disaster.**

1 Following a mine accident resulting in the death of one or  
 2 more persons and following any mine disaster, the evidence  
 3 surrounding such occurrence shall not be disturbed after  
 4 recovery of bodies or injured persons until an investigation by  
 5 the division has been completed.

**§22A-2-69. Fire in and about mine; notification of director and district mine inspector.**

1 The operator or mine foreman, upon the discovery of fire  
 2 in or about a mine, shall immediately notify the director and  
 3 the district mine inspector in whose district the mine is located.

**§22A-2-70. Shafts and slopes.**

1 (a) **When mine examiner to be employed; qualifications.—**  
 2 During the sinking of a shaft or the driving of a slope to a  
 3 coal bed or while engaged in underground construction work,  
 4 or relating thereto, the operator shall assign a mine examiner  
 5 to such project areas. Such mine examiner shall have a  
 6 certificate of competency valid only for the type of work  
 7 stipulated thereon and issued to him by the department of

8 mines after he has passed an examination given by the  
9 department of mines. He shall, at the time he takes the  
10 examination, have a minimum of five years' experience in shaft  
11 sinking, slope driving and underground construction;  
12 moreover, he shall be able to detect methane with a flame  
13 safety lamp and have a thorough knowledge of the ventilation  
14 of shafts, slopes, and mines, and the machinery connected  
15 therewith, and finally, he shall be a person of good moral  
16 character with temperate habits.

17 (b) **Mine examiner or certified person acting as such; duties**  
18 **generally; records open for inspection.**—In all shafts and  
19 slopes within three hours immediately preceding the beginning  
20 of a work shift and before any workmen in such shift, other  
21 than those who may be designated to make the examinations,  
22 enter the underground areas of such shafts or slopes, a certified  
23 foreman or mine examiner, designated by the operator of such  
24 shaft or slope to do so, shall make an examination of such  
25 areas. Each person designated to make such examinations shall  
26 make tests with a permissible flame safety lamp for accum-  
27 ulations of methane and oxygen deficiency, and examine sides  
28 of shafts and ribs and roof of all slopes. Should he find a  
29 condition which he considers dangerous to persons, he shall  
30 place a conspicuous danger sign at all entrances to such places.  
31 He shall record the results of his examination with ink or  
32 indelible pencil in a book prescribed by the director, kept at  
33 a place on the surface designated by mine management. All  
34 records as prescribed herein shall be open for inspection by  
35 interested persons.

36 (c) **Approvals and permits.**—An approval shall be obtained  
37 from the division before work is started. A permit shall be  
38 obtained from the division (1) to stop fan when miners are  
39 in shafts or slopes; (2) to use electrical machinery in shafts or  
40 slopes; (3) to use electric lights in shafts or slopes; (4) to use  
41 welders, torches and like equipment in shafts or slopes; (5) to  
42 hoist more than four miners at one time in buckets or cars;  
43 (6) to shoot more than fifteen shots in one series.

44 (d) **Records.**—The foreman in charge on each shift shall  
45 keep a daily report of conditions and practices. The forman  
46 in charge on each shift shall read and countersign the reports  
47 of the previous shift. Unsatisfactory conditions and practices  
48 reported shall be repeated on daily reports until corrected.

49 Hoists, buckets, cars, ropes and appliances thereto shall be  
50 examined by a qualified person before the start of each shift  
51 and a written record kept. Deaths from accidents or previous  
52 injuries shall be reported immediately by wire to the office of  
53 the director and to the district mine inspector or the inspector-  
54 at-large. A written report of all injuries and deaths shall be  
55 mailed to the division and district mine inspector promptly.  
56 Immediate notice shall be given the office of the director, the  
57 district mine inspector and the inspector-at-large in the event  
58 of an ignition of gas, or serious accident to miners or  
59 equipment. All permits and approvals must be available for  
60 inspection by all interested persons.

61 (e) **General.**—The foreman on shift shall have at least five  
62 years' experience in shafts or slopes. New employees shall be  
63 instructed in the dangers and rules incident to their work.  
64 Conspicuous bulletin boards and warning signs shall be  
65 maintained. Unauthorized persons shall not be permitted  
66 around shafts or slopes. First-aid material shall be maintained  
67 at the operation as required by section fifty-nine of this article.  
68 The scene of a fatal accident shall be left unchanged until an  
69 investigation is made by all interested persons. All employees  
70 and others around the operation shall wear hard-toe shoes and  
71 hard-top hats. Goggles or other eye protection shall be worn  
72 when cutting, welding, or striking where particles may fly.  
73 Gears, belts, and revolving parts of machinery shall be  
74 properly guarded. Hand tools shall be in good condition. Sides  
75 of shafts, ribs and roof of all slopes shall be closely observed  
76 for loose and dangerous conditions. Loose brows, ribs and top  
77 in slopes shall be taken down or supported; loose ribs in shafts  
78 shall be scaled. Miners shall be hoisted and lowered under  
79 power in shafts and slopes. All hoists must have two positive  
80 breaking devices. At least three wraps of rope shall remain on  
81 the hoist drum at all times. Wire ropes shall not be less than  
82 three-fourths inches in diameter, and of a design to prevent  
83 excessive spinning or turning when hoisting.

84 When heavy materials are hoisted, a large rope shall be used  
85 if necessary. A hoisting engineer shall be in constant  
86 attendance while men are in shaft. Head frames shall be  
87 constructed substantially. Noise from machinery shall not  
88 interfere with signals. The standard signal code, whistle or bell  
89 shall be used for hoisting:



90	One signal .....	Hoist
91	One signal .....	Stop
92	Two signals .....	Lower
93	Three signals .....	Man cage
94	One signal from hoisting engineer .....	Miners
95		board cage

96 Hoist signals shall be posted in front of the hoisting  
97 engineer. The shaft opening shall be enclosed by a fence five  
98 feet high. Buckets shall not be loaded within six inches of the  
99 top rim. Buckets shall have a positive lock on the handle or  
100 bale to prevent bucket from crumpling while being hoisted.  
101 Positive coupling devices shall be used on buckets or cars  
102 (hooks with safety catches or threaded clevis). Emergency  
103 devices for escape shall be provided while shafts are under  
104 construction. Miners shall not ride on or work from rims of  
105 buckets. Buckets or cars shall not be lowered without a signal  
106 from working area. Only sober and competent engineers shall  
107 be permitted to operate hoists. No intoxicating liquors or  
108 intoxicated persons shall be permitted in or around any shaft,  
109 slope or machinery. Lattice type platforms shall be used.

110 (f) **Explosives.**—Explosives and blasting caps being taken  
111 into or removed from the operation shall be transported and  
112 kept in approved nonconducting receptacles (unopened cartons  
113 or cases are permissible). Explosives shall not be primed until  
114 ready to be inserted into holes. Handling of explosives and  
115 loading of holes shall be under the strict supervision of a  
116 qualified person or shotfirer. No more explosives or caps than  
117 are required to shoot one round shall be taken into shafts.  
118 Adobe, mudcapped or unconfined shots shall not be fired.  
119 Holes shall be stemmed tightly and full into the mouth.  
120 Blasting caps shall be inserted in line with the explosive. Leg  
121 wires of blasting caps and buss wires shall be kept shunted  
122 until connected. Shooting cables shall be shunted at firing  
123 devices and before connecting to leg wires. Only approved  
124 shooting devices shall be used. Shots shall be fired promptly  
125 after the round of holes are charged. Warnings shall be given  
126 before shots are fired by shouting "Fire" three times slowly  
127 after those notified have withdrawn. The blasting circuit shall  
128 be wired in series or parallel series. All shooting circuits shall  
129 be tested with a galvanometer by a qualified person before  
130 shooting. A careful examination for misfires shall be made

131 after each shot. Persons shall not return to the face until  
132 smoke and dust have cleared away. The shooting cable shall  
133 be adequately insulated and have a substantial covering; be  
134 connected by the person firing the shot; and be kept away from  
135 power circuits. Misfires shall be removed by firing separate  
136 holes or by washing; shall not be drilled out; and shall be  
137 removed under supervision of a foreman or qualified person.  
138 Separate magazines for the storage of explosives and  
139 detonators shall be located not less than three hundred feet  
140 from openings or other structures. Magazines for the storage  
141 of explosives and detonators shall be separated at least fifty  
142 feet. Magazines shall be located behind barricades. The outside  
143 of magazines shall be constructed of incombustible material.  
144 Rubbish and combustible material shall not be permitted to  
145 accumulate around or in magazine. Warning signs, to be seen  
146 in all directions, shall be posted near magazines.

147 (g) **Electrical.**—Power cables installed in slopes shall be  
148 placed in conduit away from the belt as far as possible. Surface  
149 transformers shall be elevated at least eight feet from the  
150 ground or enclosed by a fence six feet high, grounded if metal;  
151 shall be properly grounded; shall be installed so that they will  
152 not present a fire hazard; and shall be guarded by sufficient  
153 danger signs.

154 Electric equipment shall be in good condition, clean and  
155 orderly; shall be equipped with guards around moving parts;  
156 and shall be grounded with effective frame grounds on motors  
157 and control boxes.

158 All electric wires shall be installed and supported on  
159 insulators. All electric equipment shall be protected by dual  
160 element fuse or circuit breakers.

161 (h) **Ventilation.**—Ventilating fans shall be offset from portal  
162 at least fifteen feet; shall be installed so that the ventilating  
163 current is not contaminated by dust, smoke or gases; shall be  
164 effectively frame grounded; and shall be provided with fire  
165 extinguishers.

166 All shafts and slopes shall be ventilated adequately and  
167 continuously with fresh air. Air tubing shall deliver not less  
168 than nine thousand feet per minute at the working area or as  
169 much more as the inspector may require.

170 (i) **Gases.**—A foreman shall be in attendance at all times in  
171 shafts and slopes who has passed an examination given by the  
172 division as to his competency in the use of flame safety lamps.

173 An examination shall be made before and after shooting by  
174 the foreman on shift. The foreman shall have no superior in  
175 the performance of his duties. A lighted flame safety lamp or  
176 other approved detector shall be carried at all times by the  
177 foreman when in the working area and weekly gas analysis  
178 made. In all shafts and slopes within three hours immediately  
179 preceding the beginning of a work shift and before any  
180 workmen in such shift, other than those who may be  
181 designated to make the examinations, enter the underground  
182 areas of such shafts or slopes, a certified mine foreman or mine  
183 examiner designated by the operator of such shaft or slope to  
184 do so, shall make an examination of such area. Evidence of  
185 official examination shall be left at the face by marking date  
186 and initials.

187 Gases should be removed under the supervision of the  
188 foreman in charge. Smoking shall not be permitted inside of  
189 shafts or slopes.

190 (j) **Drilling.**—Dust allaying or dust collecting devices shall  
191 be used while drilling.

192 (k) **Lights to be used in shafts.**—Only approved electric cap  
193 lights shall be used in shafts. Other lights shall be of explosive-  
194 proof type. Lights shall be suspended in shafts by cable or  
195 chain other than the power conductor. In slopes lights must  
196 be substantially installed. Power cables shall be of an approved  
197 type. Power cables shall not be taut from shaft collar to light.  
198 Power cables shall be in good condition and free of improper  
199 splices. Lights shall be suspended not less than twenty feet  
200 above where miners are working. Lights shall be removed from  
201 shaft and power cut off when shooting. In slopes lights must  
202 be removed a safe distance when shots are fired. Lights shall  
203 not be replaced in shafts or slopes until examination has been  
204 made for gas by the mine examiner and found clear. Front  
205 of light shall be protected by a substantial metal type guard.  
206 Lights shall be protected from falling objects from above by  
207 a metal hood. The lighting circuit shall be properly fused.  
208 Electric lights shall not be used in gaseous atmospheres. A  
209 lighted flame safety lamp or approved detector shall be kept

210 for use at the face while miners are at work.

**§22A-2-71. Right of miner to refuse to operate unsafe equipment; procedures; discrimination.**

1 No miner shall be required to operate unsafe equipment. On  
2 or before the first day of January, one thousand nine hundred  
3 eighty-one, the board of coal mine health and safety shall by  
4 rule or regulation establish a procedure for resolving disputes  
5 arising out of the refusal by a miner to operate such alleged  
6 unsafe equipment. No action shall be taken against a miner  
7 by an operator unless such miner is found to have acted in  
8 bad faith and without good cause by the director or his  
9 authorized representative.

**§22A-2-72. Longwall and short wall mining.**

1 (a) The legislature finds that new methods of extracting coal  
2 known as longwall or short wall mining is being used in this  
3 state. The board of coal mine health and safety shall  
4 investigate or cause to be investigated the technology,  
5 procedures and techniques used in such mining methods and  
6 shall promulgate by the first day of January, one thousand  
7 nine hundred eighty-one, and continuously update the same,  
8 rules and regulations governing longwall and short wall  
9 mining, which rules and regulations shall have as their  
10 paramount objective, the health and safety of the persons  
11 involved in such operations, and which said regulations shall  
12 include, but not be limited to, the certification of personnel  
13 involved in such operation.

14 (b) The commissioner may modify the application of any  
15 provision of this section to a mine if the commissioner  
16 determines that an alternative method of achieving the result  
17 of such provision exists which will at all times guarantee no  
18 less than the same measure of protection afforded the miners  
19 of such mine by such provision, or that the application of such  
20 provision to such mine will result in a ~~diminution~~<sup>diminution</sup> of the health OK  
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21 of, or safety to, the miners in such mine. The commissioner  
22 shall give notice to the operator and the representative of  
23 miners in the affected mine, as appropriate, and shall cause  
24 such investigation to be made as he deems appropriate. Such  
25 investigation shall provide an opportunity for a hearing, at the  
26 request of such operator or representative or other interested  
27 party, to enable the operator and the representative of miners

28 in such mine or other interested party to present information  
29 relating to the modification of such provision. The commis-  
30 sioner shall issue a decision incorporating his findings of fact  
31 therein, and send a copy thereof to the operator and the  
32 representative of the miners, as appropriate. Any such hearing  
33 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.**

1 The board of coal mine health and safety shall investigate  
2 or cause to be investigated the technology, procedures and  
3 techniques used in the construction of shafts, slopes, surface  
4 facilities, and the safety hazards, attendant therewith, and shall  
5 promulgate rules and regulations governing the construction  
6 of shafts and slopes; and shall promulgate by the first day of  
7 January, one thousand nine hundred eighty-one, rules and  
8 regulations governing the construction of surface facilities.

9 The board of coal mine health and safety shall continuously  
10 update such rules and regulations governing the construction  
11 of shafts, slopes and surface facilities, which rules and  
12 regulations shall have as their paramount concern, the health  
13 and safety of the persons involved in such operations, and such  
14 rules and regulations shall include, but not be limited to, the  
15 certification of all supervisors, the certification and training of  
16 hoist operators and shaft workers, the certification of blasters,  
17 and approval of plans. The provisions of such rules and  
18 regulations may be enforced against operators and construc-  
19 tion companies in accord with the provisions of article one-  
20 a of this chapter. For purposes of this chapter, a construction  
21 company shall be deemed an operator.

**§22A-2-74. Control of respirable dust.**

1 Each operator shall maintain the concentration of respirable  
2 dust in the mine atmosphere during each shift to which miners  
3 in active workings of such mine are exposed below such level  
4 as the board may establish. The board may promulgate rules  
5 and regulations governing respirable dust, including, but not  
6 limited to, dust standards, sampling procedures, sampling  
7 devices, equipment and sample analysis by using the data

8 gathered by the federal mine safety and health administration  
9 and, or the federal bureau of mines.

10 Any operator found to be in violation of such standards  
11 shall bring itself into compliance with such standards and rules  
12 and regulations of the board or the commissioner may  
13 thereafter order such operator to discontinue such opera-  
14 tion.

**§22A-2-75. Coal Operators—Procedure before operating near oil  
and gas wells.**

1 (a) Before a coal operator conducts underground mining  
2 operations within five hundred feet of any well, including the  
3 driving of an entry or passageway, or the removal of coal or  
4 other material, the coal operator shall file with the division  
5 of mines and minerals and forward to the well operator by  
6 certified mail, return receipt requested, its mining maps and  
7 plans (which it is required to prepare, file and update to and  
8 with the regulatory authority) for the area within five hundred  
9 feet of the well, together with a notice, on a form furnished  
10 by the director, informing them that the mining maps and  
11 plans are being filed or mailed pursuant to the requirements  
12 of this section.

13 Once these mining maps and plans are filed with the division  
14 the coal operator may proceed with its underground mining  
15 operations in the manner and as projected on such plans or  
16 maps, but shall not remove, without the consent of the  
17 director, any coal or other material or cut any passageway  
18 nearer than two hundred feet of any completed well or well  
19 that is being drilled. The coal operator shall, at least every six  
20 months while mining within the five hundred foot area, update  
21 its mining maps and plans and file the same with the director  
22 and the well operator.

23 (b) Application may be made at any time to the director  
24 by a coal operator for leave to conduct underground mining  
25 operations within two hundred feet of any well or to mine  
26 through any well, by petition, duly verified, showing the  
27 location of the well, the workings adjacent to the well and the  
28 mining operations contemplated within two hundred feet of  
29 the well or through such well, and praying the approval of  
30 the same by the director and naming the well operator as a

31 respondent. The coal operator shall file such petition with the  
32 director and mail a true copy to the well operator by certified  
33 mail, return receipt requested.

34 The petition shall notify the well operator that it may answer  
35 the petition within five days after receipt, and that in default  
36 of an answer the director may approve the proposed  
37 operations as requested if it be shown by the petitioner or  
38 otherwise to the satisfaction of the director that such  
39 operations are in accordance with the law and with the  
40 provisions of this article. If the well operator files an answer  
41 which requests a hearing, one shall be held within ten days  
42 of such answer and the director shall fix a time and date and  
43 give both the coal operator and well operator five days' written  
44 notice of the same by certified mail, return receipt requested.  
45 At the hearing, the well operator and coal operator, as well  
46 as the director, shall be permitted to offer any competent and  
47 relevant evidence. Upon conclusion of the hearing, the director  
48 shall grant the same, or make such other decision with respect  
49 to such proposed underground operation as in its judgment  
50 is just and reasonable under all circumstances and in  
51 accordance with law and the provisions of this article:  
52 *Provided*, That a grant by the director of a request to mine  
53 through a well shall require an acceptable test to be conducted  
54 by the coal operator establishing that such mining through can  
55 be done safely.

request of the coal operator  
or refuse to grant the

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56 If a hearing is not requested by the well operator or if the  
57 well operator gives, in writing, its consent to the coal operator  
58 to mine within closer than two hundred feet of the specified  
59 well, the director shall grant the request of the coal operator  
60 within five days after the petition's original five day answer  
61 period if the director determines that such operations are just,  
62 reasonable and in accordance with law and the provisions of  
63 this article.

64 The director shall docket and keep a record of all such  
65 proceedings. From any such final decision or order of the  
66 director, either the well operator or coal operator, or both,  
67 may, within ten days, appeal to the circuit court of the county  
68 in which the well subject to said petition is located. The  
69 procedure in the circuit court shall be substantially as provided  
70 in section four, article five, chapter twenty-nine-a of this code,

71 with the director being named as a respondent. From any final  
72 order or decree of circuit court, an appeal may be taken to  
73 the supreme court of appeals as heretofore provided.

74 A copy of the document or documents evidencing the action  
75 of the director with respect to such petition shall promptly be  
76 filed with the director of the division of oil and gas.

77 (c) Before a coal operator conducts surface or strip mining  
78 operations as defined in this chapter, within two hundred feet  
79 of any well, including the removal of coal and other material,  
80 the operator shall file with the director and furnish to the well  
81 operator by certified mail, return receipt requested, its mining  
82 maps and plans (which it is required to prepare, file and  
83 update to and with the regulatory authority) for the area  
84 within two hundred feet of the well, together with a notice,  
85 on a form furnished by the director, informing them that the  
86 mining maps and plans are being filed or mailed pursuant to  
87 the requirements of this section, and representing that the  
88 planned operations will not unreasonably interfere with access  
89 to or operation of the well and will not damage the well. In  
90 addition, the coal operator shall furnish the well operator with  
91 evidence that it has in force public liability insurance, with at  
92 least the minimum coverage required by article three, of this  
93 chapter and the rules and regulations promulgated thereto and  
94 thereunder.

95 Once these mining maps and plans are filed with the  
96 director, the coal operator may proceed with its surface or  
97 strip mining operations in the manner and as projected on such  
98 plans or maps, so long as such surface mining operations do  
99 not unreasonably interfere with access to, or operation of, the  
100 well or do not damage the well.

101 (d) The filing of petitions and notices with the director as  
102 herein provided may be complied with by mailing such petition  
103 or notice to the director by certified mail, return receipt  
104 requested.

## GENERAL PROVISIONS

### §22A-2-76. Reopening old or abandoned mines.

1 No person, without first giving to the commissioner ten



2 days' written notice thereof, shall reopen for any purposes any  
3 old or abandoned mine wherein water or mine seepage has  
4 collected or become impounded or exists in such manner or  
5 quantity that upon the opening of such mine, such water or  
6 seepage may drain into any stream or watercourse. Such notice  
7 shall state clearly the name or names of the owner or owners  
8 of the mine proposed to be opened, its exact location, and the  
9 time of the proposed opening thereof.

10 Upon receipt of such notice, the commissioner shall have  
11 his representative present at the mine at the time designated  
12 in the notice for such opening, who shall have full supervision  
13 of the work of opening such mine with full authority to direct  
14 the work in such manner as to him seems proper and necessary  
15 to prevent the flow of mine water or seepage from such mine  
16 in such manner or quantity as will kill or be harmful to the  
17 fish in any stream or watercourse into which such mine water  
18 seepage may flow directly or indirectly.

**§22A-2-77. Monthly report by operator of mine.**

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

**§22A-2-78. Examinations to determine compliance with permits.**

1 Whenever permits are issued by the department of energy,  
2 frequent examinations shall be made by the mine inspector  
3 during the tenure of the permit to determine that the  
4 requirements and limitations of the permit are complied with.

**§22A-2-79. Provisions of article severable.**

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 3. WEST VIRGINIA SURFACE COAL MINING AND RECLA-  
MATION ACT.**

§22A-3-1. **Short Title.**

1 This article shall be known and cited as the “West Virginia  
2 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; apportion-  
ment of responsibility; interdepartmental cooperation.**

1 (a) The legislature finds that it is essential to the economic  
2 and social well-being of the citizens of the state of West  
3 Virginia to strike a careful balance between the protection of  
4 the environment and the economical mining of coal needed to  
5 meet energy requirements.

6 Further, the legislature finds that there is great diversity in  
7 terrain, climate, biological, chemical and other physical  
8 conditions in parts of this nation where mining is conducted;  
9 that the state of West Virginia in particular needs an  
10 environmentally sound and economically healthy mining  
11 industry; and by reason of the above it may be necessary for  
12 the commissioner, as provided in article four, chapter twenty-  
13 two, of this code to promulgate regulations which vary from  
14 federal regulations as is provided for in sections 101 (f) and  
15 201 (c) (9) of the Surface Mining Control and Reclamation  
16 Act of 1977 “Public Law 95-87.”

17 Further, the legislature finds that unregulated surface coal  
18 mining operations may result in disturbances of surface and  
19 underground areas that burden and adversely affect commerce,  
20 public welfare and safety by destroying or diminishing the  
21 utility of land for commercial, industrial, residential,  
22 recreational, agricultural and forestry purposes; by causing  
23 erosion and landslides; by contributing to floods; by polluting  
24 the water and river and stream beds; by destroying fish,  
25 aquatic life and wildlife habitats; by impairing natural beauty;  
26 by damaging the property of citizens; by creating hazards  
27 dangerous to life and property; and by degrading the quality  
28 of life in local communities, all where proper mining and  
29 reclamation is not practiced.

30 (b) Therefore, it is the purpose of this article to:

31 (1) Expand the established and effective statewide program

32 to protect the public and the environment from the adverse  
33 affects of surface-mining operations;

34 (2) Assure that the rights of surface and mineral owners and  
35 other persons with legal interest in the land or appurtenances  
36 to land are adequately protected from such operations;

37 (3) Assure that surface-mining operations are not conducted  
38 where reclamation as required by this article is not feasible;

39 (4) Assure that surface-mining operations are conducted in  
40 a manner to adequately protect the environment;

41 (5) Assure that adequate procedures are undertaken to  
42 reclaim surface areas as contemporaneously as possible with  
43 the surface-mining operations;

44 (6) Assure that adequate procedures are provided for public  
45 participation where appropriate under this article;

46 (7) Assure the exercise of the full reach of state common  
47 law, statutory and constitutional powers for the protection of  
48 the public interest through effective control of surface-mining  
49 operations; and

50 (8) Assure that the coal production essential to the nation's  
51 energy requirements and to the state's economic social well-  
52 being is provided.

53 (c) In recognition of these findings and purposes, the  
54 Legislature hereby vests authority in the commissioner of the  
55 department of energy to:

56 (1) Administer and enforce the provisions of this article as  
57 it relates to surface mining to accomplish the purposes of this  
58 article;

59 (2) Conduct hearings and conferences or appoint persons to  
60 conduct them in accordance with this article;

61 (3) Promulgate, administer and enforce regulations pursu-  
62 ant to this article;

63 (4) Enter into a cooperative agreement with the secretary of  
64 the United States department of the interior to provide for  
65 state regulations of surface-mining operations on federal lands

66 within West Virginia consistent with section 523 of Public Law  
67 95-87; and

68 (5) Administer and enforce regulations promulgated  
69 pursuant to this chapter to accomplish the requirements of  
70 programs under Public Law 95-87.

71 (d) The commissioner of the department of energy and the  
72 director of the division of mines and minerals shall cooperate  
73 with respect to departmental programs and records to effect  
74 an orderly and harmonious administration of the provisions  
75 of this article. The commissioner of the department of energy  
76 may avail himself of any services which may be provided by  
77 other state agencies in this state and other states or by agencies  
78 of the federal government, and may reasonably compensate  
79 them for such services. Also, he may receive any federal funds,  
80 state funds or any other funds, and enter into cooperative  
81 agreements, for the reclamation of land affected by surface  
82 mining.

### §22A-3-3. Definitions.

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

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

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

18 (c) "Adjacent areas" means, for the purpose of permit  
19 application, renewal, revision, review and approval, those land  
20 and water resources, contiguous to or near a permit area, upon

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

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

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

43 (f) "Assessment officer" means an employee of the depart-  
44 ment, other than a surface-mining reclamation supervisor,  
45 inspector, or inspector-in-training, appointed by the commis-  
46 sioner to issue proposed penalty assessments and to conduct  
47 informal conferences to review notices, orders and proposed  
48 penalty assessments.

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

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

59 (i) "Commissioner" means the commissioner of the depart-  
60 ment of energy or commissioner of energy.

61 (j) "Department" means the department of energy.

62 (k) "Director" means the director of the division of mines  
63 and minerals.

64 (l) "Disturbed area" means an area where vegetation,  
65 topsoil, or overburden has been removed or placed by surface-  
66 mining operations, and reclamation is incomplete.

67 (m) "Division" means the division of mines and minerals of  
68 the department of energy.

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

80 (o) "Minerals" means clay, coal, flagstone, gravel, limes-  
81 tone, maganese, sand, sandstone, shale, iron ore and any other  
82 metal or metallurgical ore.

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

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

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

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

95 (t) "Permittee" means a person holding a permit issued  
96 under this article.

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

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

108 (w) "Surface mine," "surface mining" or "surface-mining  
109 operations" means:

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

123 (2) The areas upon which the above activities occur or  
124 where such activities disturb the natural land surface. Such  
125 areas shall also include any adjacent land, the use of which  
126 is incidental to any such activities; all lands affected by the  
127 construction of new roads or the improvement or use of  
128 existing roads to gain access to the site of such activities and  
129 for haulage; and excavations, workings, impoundments, dams,  
130 ventilation shafts, entryways, refuse banks, dumps, stockpiles,  
131 overburden piles, spoil banks, culm banks, tailings, holes or  
132 depressions, repair areas, storage areas, processing areas,  
133 shipping areas and other areas upon which are sited structures,

134 facilities, or other property or materials on the surface,  
 135 resulting from or incident to such activities: *Provided*, That  
 136 such activities do not include the extraction of coal incidental  
 137 to the extraction of other minerals where coal does not exceed  
 138 sixteen and two-thirds percent of the tonnage of minerals  
 139 removed for purposes of commercial use or sale, or coal  
 140 prospecting subject to section seven of this article: *Provided*,  
 141 *however*, That permanent facilities not within the area being  
 142 mined and not directly involved in the excavation, loading,  
 143 storage, or processing of the coal shall not be subject to the  
 144 provisions of this article. Such facilities include, but are not  
 145 limited to, offices, garages, bathhouses, parking areas, and  
 146 maintenance and supply areas.

147 (x) "Underground mine" means the surface effects asso-  
 148 ciated with the shaft, slopes, drifts or inclines connected with  
 149 excavations penetrating coal seams or strata and the  
 150 equipment connected therewith which contribute directly or  
 151 indirectly to the mining, preparation or handling of coal.

152 (y) "Significant, imminent environmental harm to land, air  
 153 or water resources" means the existence of any condition or  
 154 practice, or any violation of a permit or other requirement of  
 155 this article, which condition, practice or violation could  
 156 reasonably be expected to cause significant and imminent  
 157 environmental harm to land, air or water resources. The term  
 158 "environmental harm" means any adverse impact on land, air  
 159 or water resources, including, but not limited to, plant, wildlife  
 160 and fish, and the environmental harm is imminent if a  
 161 condition or practice exists which is causing such harm or may  
 162 reasonably be expected to cause such harm at any time before  
 163 the end of the abatement time set by the commissioner. Any  
 164 environmental harm is significant if that harm is appreciable  
 165 and not immediately repairable.

**§22A-3-4. Reclamation; duties and functions of commissioner.**

1 (a) The commissioner shall administer the provisions of this  
 2 article relating to surface-mining operations. The commis-  
 3 sioner shall have within his jurisdiction and supervision all  
 4 lands and areas of state, mined or susceptible of being mined,  
 5 for the removal of coal and all other lands and areas of the  
 6 state deforested, burned over, barren or otherwise denuded,  
 7 unproductive and subject to soil erosion and waste. Included



8 within such lands and areas shall be lands seared and denuded  
9 by chemical operations and processes, abandoned coal mining  
10 areas, swamplands, lands and areas subject to flowage  
11 easements and backwaters from river locks and dams, and  
12 river, streams, lake and pond shore areas subject to soil  
13 erosion and waste. The jurisdiction and supervision exercised  
14 by the commissioner shall be consistent with other provisions  
15 of this chapter.

16 (b) The commissioner shall have the authority to:

17 (1) Promulgate rules and regulations, in accordance with the  
18 provisions of chapter twenty-nine-a of this code, to implement  
19 the provisions of this article: *Provided*, That the commissioner  
20 shall give notice by publication of the public hearing required  
21 in article three, chapter twenty-nine-a of this code: *Provided*,  
22 *however*, That any forms, handbooks or similar materials  
23 having the effect of a rule or regulation as defined in article  
24 three, chapter twenty-nine-a of this code were issued,  
25 developed or distributed by the commissioner pursuant to or  
26 as a result of a rule or regulation, shall be subject to the  
27 provisions of article three, chapter twenty-nine-a of this code;

28 (2) Make investigations or inspections necessary to insure  
29 complete compliance with the provisions of this code;

30 (3) Conduct hearings or appoint persons to conduct  
31 hearings under provisions of this article or rules and  
32 regulations adopted by the commissioner; and for the purpose  
33 of any investigation or hearing hereunder, the commissioner,  
34 or his designated representative, may administer oaths or  
35 affirmations, subpoena witnesses, compel their attendance,  
36 take evidence and require production of any books, papers,  
37 correspondence, memoranda, agreements or other documents  
38 or records relevant or material to the inquiry;

39 (4) Enforce, the provisions of this article as provided herein;  
40 and

41 (5) Appoint such advisory committees as may be of  
42 assistance to the commissioner in the development of programs  
43 and policies: *Provided*, That such advisory committees shall,  
44 in each instance, include members representative of the general  
45 public.

46 (c)(1) After the commissioner has adopted the regulations  
47 required by this article, any person may petition the  
48 commissioner to initiate a proceeding for the issuance,  
49 amendment or appeal of a rule under this article.

50 (2) The petition shall be filed with the commissioner and  
51 shall set forth the facts which support the issuance, amendment  
52 or appeal of a rule under this article.

53 (3) The commissioner may hold a public hearing or may  
54 conduct such investigation or proceeding as he considers  
55 appropriate in order to determine whether the petition should  
56 be granted or denied.

57 (4) Within ninety days after filing of a petition described in  
58 subdivision (1) of this subsection, the commissioner shall either  
59 grant or deny the petition. If the commissioner grants the  
60 petition, he shall promptly commence an appropriate  
61 proceeding in accordance with the provisions of chapter  
62 twenty-nine-a of this code. If the commissioner denies the  
63 petition, he shall notify the petitioner in writing setting forth  
64 the reasons for the denial.

**§22A-3-5. Surface-mining reclamation supervisors and inspectors;  
appointment and qualifications; salary.**

1 The commissioner shall determine the number of surface-  
2 mining reclamation supervisors and inspectors needed to carry  
3 out the purposes of this article and appoint them as such. All  
4 such appointees shall be qualified civil service employees, but  
5 no person shall be eligible for such appointment until he has  
6 served in a probationary status for a period of one year to  
7 the satisfaction of the commissioner.

8 Every surface-mining reclamation supervisor shall be paid  
9 not less than thirty thousand dollars per year. Every surface  
10 mining reclamation inspector shall be paid not less than  
11 twenty-five thousand dollars per year.

**§22A-3-6. Duties of surface-mining reclamation inspectors and  
inspectors in training.**

1 Except as otherwise provided in this article, surface-mining  
2 reclamation inspectors and inspectors in training shall make  
3 all necessary surveys and inspections of surface-mining

4 operations required by the provisions of this article, shall  
5 administer and enforce all surface-mining laws, rules and  
6 regulations, and shall perform such other duties and services  
7 as may be prescribed by the commissioner. Such inspectors  
8 shall give particular attention to all conditions of each permit  
9 to ensure complete compliance therewith. Such inspectors shall  
10 note and describe all violations of this article and immediately  
11 report such violations to the commissioner in writing,  
12 furnishing at the same time a copy of such report to the  
13 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.**

1 (a) Any person intending to prospect for coal in an area not  
2 covered by a surface-mining permit, in order to determine the  
3 location, quantity or quality of a natural coal deposit, making  
4 feasibility studies or for any other purpose shall file with the  
5 commissioner, at least fifteen days prior to commencement of  
6 any disturbance associated with prospecting, a notice of  
7 intention to prospect, which notice shall include a description  
8 of the prospecting area, the period of supposed prospecting  
9 and such other information as required by rules or regulations  
10 promulgated pursuant to this section: *Provided*, That prior to  
11 the commencement of such prospecting, the commissioner may  
12 issue an order denying or limiting permission to prospect  
13 where he finds that prospecting operations will damage or  
14 destroy a unique natural area, or will cause serious harm to  
15 water quality, or that the operator has failed to satisfactorily  
16 reclaim other prospecting sites, or that there has been an abuse  
17 of prospecting by previous prospecting operations in the area.

18 (b) Notice of intention to prospect shall be made in writing  
19 on forms prescribed by the commissioner and shall be signed  
20 and verified by the applicant. The notice shall be accompanied  
21 by (1) a United States geological survey topographic map  
22 showing by proper marking the crop line and the name, where  
23 known, of the seam or seams to be prospected, and (2) a bond,  
24 or cash, or collateral securities or certificates of the same type  
25 and form and in the same manner as provided in section eleven  
26 of this article, in the amount of five hundred dollars per acre  
27

27 or fraction thereof for the total estimated disturbed area. If  
28 such bond is used, it shall be payable to the state of West  
29 Virginia and conditioned that the operator shall faithfully  
30 perform the requirements of this article as they relate to  
31 backfilling and revegetation of the disturbed area.

32 (c) Any person prospecting under the provisions of this  
33 section shall ensure that such prospecting is conducted in  
34 accordance with the performance standards in section twelve  
35 of this article for all lands disturbed in explorations, including  
36 excavations, roads, drill holes, and the removal of necessary  
37 facilities and equipment.

38 (d) Information submitted to the commissioner pursuant to  
39 this section as confidential, concerning trade secrets or  
40 privileged commercial or financial information, which relates  
41 to the competitive rights of the person or entity intended to  
42 prospect the described area, shall not be available for public  
43 examination.

44 (e) Any person who conducts any prospecting activities  
45 which substantially disturb the natural land surface in  
46 violation of this section or regulations issued pursuant thereto  
47 shall be subject to the provisions of sections sixteen and  
48 seventeen of this article.

49 (f) No operator shall remove more than two hundred and  
50 fifty tons of coal without the specific written approval of the  
51 commissioner.

52 (g) The bond accompanying said notice of intention to  
53 prospect shall be released by the commissioner when the  
54 operator demonstrates that a permanent species of vegetation  
55 cover is established.

56 (h) In the event an operator desires to mine the area  
57 currently being prospected, and has requested and received an  
58 appropriate surface mine application (S.M.A.) number, the  
59 commissioner may permit the postponement of the reclama-  
60 tion of the area prospected. Any part of a prospecting  
61 operation, where reclamation has not been postponed as  
62 provided above, shall be reclaimed within a period of three  
63 months from disturbance.

64 (i) For the purpose of this section, the word "prospect" or

65 "prospecting" does not include core drilling related solely to  
66 taxation or highway construction.

**§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.**

1 No person may engage in surface-mining operations unless  
2 such person has first obtained a permit from the commissioner  
3 in accordance with the following:

4 (a) Within two months after the secretary of the interior  
5 approves a permanent state program for West Virginia, all  
6 surface-mining operators shall file an application for a permit  
7 or modification of a valid existing permit or underground  
8 opening approval relating to those lands to be mined eight  
9 months after that approval.

10 (b) No later than eight months after the secretary's approval  
11 of a permanent state program for West Virginia, no person  
12 may engage in or carry out, on lands within this state, any  
13 surface-mining operations unless such person has first obtained  
14 a permit from the commissioner: *Provided*, That those persons  
15 conducting such operations under a permit or underground  
16 opening approval issued in accordance with section 502 (c) of  
17 Public Law 95-87, and in compliance therewith, may conduct  
18 such operations beyond such period if an application for a  
19 permit or modification of a valid existing permit or under-  
20 ground opening approval was filed within two months after  
21 the secretary's approval, and the administrative decision  
22 pertaining to the granting or denying of such permit has not  
23 been made by the commissioner.

24 (c) All permits issued pursuant to the requirements of this  
25 article shall be issued for a term not to exceed five years:  
26 *Provided*, That if the applicant demonstrates that a specified  
27 longer term is reasonably needed to allow the applicant to  
28 obtain necessary financing for equipment and the opening of  
29 the operation, and if the application is full and complete for  
30 such specified longer term, the commissioner may extend a  
31 permit for such longer term: *Provided, however*, That subject  
32 to the prior approval of the commissioner, a successor in  
33 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 (d) Proof of insurance shall be required on an annual basis.

41 (e) A permit shall terminate if the permittee has not  
42 commenced the surface-mining operations covered by such  
43 permit within three years of the date the permit was issued:  
44 *Provided*, That the commissioner may grant reasonable  
45 extensions of time upon a showing that such extensions are  
46 necessary by reason of litigation precluding such commence-  
47 ment, or threatening, substantial economic loss to the  
48 permittee, or by reason of conditions beyond the control and  
49 without the fault or negligence of the permittee: *Provided*,  
50 *however*, That with respect to coal to be mined for use in a  
51 synthetic fuel facility or specific major electric generating  
52 facility, the permittee shall be deemed to have commenced  
53 surface-mining operations at such time as the construction of  
54 the synthetic fuel or generating facility is initiated.

55 (f) Each application for a new surface-mining permit filed  
56 pursuant to this article shall be accompanied by a fee of five  
57 hundred dollars. All permit fees provided for in this section  
58 or elsewhere in this article shall be collected by the commis-  
59 sioner and deposited with the treasurer of the state of West  
60 Virginia to the credit of the operating permit fees fund and  
61 shall be used, upon requisition of the commissioner, for the  
62 administration of this article.

63 (g) Prior to the issuance of any permit, the commissioner  
64 of energy shall ascertain from the commissioner of labor  
65 compliance with section fourteen, article five, chapter twenty-  
66 one of this code. Upon issuance of the permit, the commis-  
67 sioner of energy shall forward a copy to the commissioner of  
68 labor, who shall assure continued compliance under such  
69 permit.

**§22A-3-9. Permit application requirements and contents.**

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

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

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

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

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

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

41 (6) A copy of the applicant's advertisement to be published

42 in a newspaper of general circulation in the locality of the  
43 proposed permit area at least once a week for four successive  
44 weeks. The advertisement shall contain in abbreviated form the  
45 information required by this section including the ownership  
46 and map of the tract location and boundaries of the proposed  
47 site so that the proposed operation is readily locatable by local  
48 residents, the location of the office of the department of energy  
49 where the application is available for public inspection and  
50 stating that written protests will be accepted by the commis-  
51 sioner until a certain date which shall be at least thirty days  
52 after the last publication of the applicant's advertisement;

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

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

60 (9) A description of the legal documents upon which the  
61 applicant bases his legal right to enter and conduct surface-  
62 mining operations on the proposed permit area and whether  
63 that right is the subject of pending court litigation: *Provided,*  
64 That nothing in this article may be construed as vesting in the  
65 commissioner the jurisdiction to adjudicate property-rights  
66 disputes;

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

70 (11) A determination of the probable hydrologic consequen-  
71 ces of the mining and reclamation operations, both on and off  
72 the mine site, with respect to the hydrologic regime, quantity  
73 and quality of water in surface and ground water systems,  
74 including the dissolved and suspended solids under seasonal  
75 flow conditions and the collection of sufficient data for the  
76 mine site and surrounding areas so that an assessment can be  
77 made by the commissioner of the probable cumulative impacts  
78 of all anticipated mining in the area upon the hydrology of  
79 the area, and particularly upon water availability: *Provided,*  
80 That this determination shall not be required until such time  
81 as hydrologic information on the general area prior to mining



82 is made available from an appropriate federal or state agency  
83 or, if existing and in the possession of the applicant, from the  
84 applicant: *Provided, however,* That the permit application  
85 shall not be approved until the information is available and  
86 is incorporated into the application;

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

101 (13) Cross-section maps or plans of the proposed affected  
102 area, including the actual area to be mined, prepared by or  
103 under the direction of and certified by a person approved by  
104 the commissioner, showing pertinent elevation and location of  
105 test borings or core samplings, where required by the  
106 commissioner, and depicting the following information: (A)  
107 The nature and depth of the various strata or overburden; (B)  
108 the location of subsurface water, if encountered, and its  
109 quality; (C) the nature and thickness of any coal or rider seams  
110 above the seam to be mined; (D) the nature of the stratum  
111 immediately beneath the coal seam to be mined; (E) all mineral  
112 crop lines and the strike and dip of the coal to be mined,  
113 within the area of land to be affected; (F) existing or previous  
114 surface-mining limits; (G) the location and extent of known  
115 workings of any underground mines, including mine openings  
116 to the surface; (H) the location of any significant aquifers;  
117 (I) the estimated elevation of the water table; (J) the location  
118 of spoil, waste or refuse areas and topsoil preservation areas;  
119 (K) the location of all impoundments for waste or erosion  
120 control; (L) any settling or water treatment facility or drainage  
121 system; (M) constructed or natural drainways and the location  
122 of any discharges to any surface body of water on the area

123 of land to be affected or adjacent thereto; and (N) adequate  
124 profiles at appropriate cross sections of the anticipated final  
125 surface configuration that will be achieved pursuant to the  
126 operator's proposed reclamation plan;

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

138 (15) For those lands in the permit application which a  
139 reconnaissance inspection suggests may be prime farm lands,  
140 a soil survey shall be made or obtained according to standards  
141 established by the secretary of agriculture in order to confirm  
142 the exact location of such prime farm lands;

143 (16) A reclamation plan as presented in section ten of this  
144 article;

145 (17) Information pertaining to coal seams, test borings, core  
146 samplings or soil samples as required by this section shall be  
147 made available to any person with an interest which is or may  
148 be adversely affected: *Provided*, That information which  
149 pertains only to the analysis of the chemical and physical  
150 properties of the coal, except information regarding mineral  
151 or elemental content which is potentially toxic to the  
152 environment, shall be kept confidential and not made a matter  
153 of public record;

154 (18) When requested by the commissioner, the climatolog-  
155 ical factors that are peculiar to the locality of the land to be  
156 affected, including the average seasonal precipitation, the  
157 average direction and velocity of prevailing winds, and the  
158 seasonal temperature ranges; and

159 (19) Other information that may be required by rules and  
160 regulations reasonably necessary to effectuate the purposes of  
161 this article.

162 (b) If the commissioner finds that the probable total annual  
163 production at all locations of any coal surface-mining operator  
164 will not exceed one hundred thousand tons, the determination  
165 of probable hydrologic consequences and the statement of the  
166 result of test borings or core samplings shall, upon the written  
167 request of the operator, be performed by a qualified public  
168 or private laboratory designated by the commissioner and a  
169 reasonable cost of the preparation of such determination and  
170 statement shall be assumed by the department from funds  
171 provided by the United States department of the interior  
172 pursuant to Public Law 95-87.

173 (c) Before the first publication of the applicant's advertise-  
174 ment, each applicant for a surface-mining permit shall file,  
175 except for that information pertaining to the coal seam itself,  
176 a copy of the application for public inspection in the nearest  
177 office of the department of energy as specified in the  
178 applicant's advertisement.

179 (d) Each applicant for a permit shall be required to submit  
180 to the commissioner as part of the permit application a  
181 certificate issued by an insurance company authorized to do  
182 business in this state covering the surface-mining operation for  
183 which the permit is sought, or evidence that the applicant has  
184 satisfied state self-insurance requirements. The policy shall  
185 provide for personal injury and property damage protection  
186 in an amount adequate to compensate any persons damaged  
187 as a result of surface coal mining and reclamation operations,  
188 including use of explosives, and entitled to compensation  
189 under the applicable provisions of state law. The policy shall  
190 be maintained in full force and effect during the terms of the  
191 permit or any renewal, including the length of all reclamation  
192 operations.

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

198 (f) The applicant shall file as part of his permit application  
199 a schedule listing all notices of violation, bond forfeitures,  
200 permit revocations, cessation orders or permanent suspension  
201 orders resulting from a violation of Public Law 95-87, this

202 article or any law or regulation of the United States or any  
 203 department or agency of any state pertaining to air or  
 204 environmental protection received by the applicant in  
 205 connection with any surface-mining operation during the  
 206 three-year period prior to the date of application, and  
 207 indicating the final resolution of any notice of violation,  
 208 forfeiture, revocation, cessation or permanent suspension.

209 (g) Within five working days of receipt of an application for  
 210 a permit, the commissioner shall notify the operator in writing,  
 211 stating whether the application is complete and whether the  
 212 operator's advertisement may be published. If the application  
 213 is not complete, the commissioner shall state in writing why  
 214 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.**

1 (a) Application for a permit to engage in surface mining of  
 2 two acres or less shall be made in writing on forms prescribed  
 3 by the director and shall be signed and verified by the  
 4 applicant. The application shall be accompanied by:

5 (1) Accurate maps prepared by or under the direction of  
 6 and certified by a person approved by the director, to an  
 7 appropriate scale clearly showing: The land to be affected as  
 8 of the date of application; the area of land within the permit  
 9 area upon which the applicant has the legal right to enter and  
 10 conduct surface-mining operations; and all types of informa-  
 11 tion set forth on enlarged topographical maps of the United  
 12 States geological survey of a scale of 1:24,000 or larger,  
 13 including all man-made features and significant known  
 14 archaeological sites existing on the date of application. In  
 15 addition to other things specified by the director, the map shall  
 16 show: The boundary lines and names of present owners of  
 17 record of all surface areas abutting the proposed permit area;  
 18 the location of all structures within one thousand feet of the  
 19 proposed area; and cross-section maps or plans of the  
 20 proposed affected area, including the actual area to be mined;

21 (2) The name of owner of the surface of the land to be  
 22 mined;

23 (3) The name of owner of the coal to be mined;

24 (4) A reasonable estimate of the number of acres of coal  
25 that would be mined: *Provided*, That in no event may such  
26 number of acres to be mined exceed two acres;

27 (5) Representative cross-sections showing existing and  
28 proposed site conditions;

29 (6) A reclamation plan as presented in section eleven of this  
30 article;

31 (7) A certificate of insurance certifying that the applicant  
32 has in force a public liability insurance policy issued by an  
33 insurance company authorized to do business in this state  
34 affording personal injury protection in accordance with  
35 subsection (d), section ten of this article;

36 (8) A bond, or cash or collateral securities or certificates of  
37 the same type, in the form as prescribed by the director and  
38 in the minimum amount of five thousand dollars per acre, for  
39 a maximum disturbance of two acres, exclusive of roadways  
40 and temporary spoil placement. The bond shall be payable to  
41 the state of West Virginia and conditioned that the applicant  
42 shall complete regrading to approximate original contour and  
43 revegetation of all disturbed areas; and

44 (9) A copy of the applicant's advertisement to be published  
45 for at least one week in a newspaper of general circulation in  
46 the locality of the proposed permit area.

47 (b) A filing fee for the permit in the amount of five hundred  
48 dollars. The permit is valid for a period of five years.

49 (c) A permittee under this section shall conduct surface-  
50 mining operations so as to minimize the disturbances to the  
51 prevailing hydrologic balance at the mine site and in associated  
52 off-site areas and to the quality and quantity of water in  
53 surface and ground water systems both during and after  
54 surface mining operations and during reclamation by:  
55 Avoiding acid or other toxic mine drainage; and conducting  
56 surface-mining operations so as to prevent to the extent  
57 possible, using the best technology currently available,  
58 additional contributions of suspended solids to streamflow or  
59 runoff outside the permit area, but in no event may  
60 contributions be in excess of requirements set by applicable

61 state law.

62 (d) Due to the two acre maximum of ~~disturbed~~ <sup>disturbed</sup> area, the OK  
E.N.  
63 director shall promulgate rules <sup>to</sup> authorize the director to  
64 tentatively approve permits. Such rules shall also provide that  
65 final approval shall be granted or denied within thirty days  
66 of submission of the application.

67 (e) Two or more operations will have to meet all three of  
68 the following components before being considered related:

69 (1) They must occur within twelve months of each other;

70 (2) They are physically related in that drainage from both  
71 operations flow into the same watershed at or before a point  
72 within five aerial miles of either operation; and

73 (3) They are under common ownership or control, directly  
74 or indirectly.

**§22A-3-10. Reclamation plan requirements.**

1 (a) Each reclamation plan submitted as part of a surface-  
2 mining permit application shall include, in the degree of detail  
3 necessary to demonstrate that reclamation required by this  
4 article can be accomplished, a statement of:

5 (1) The identification of the lands subject to surface mining  
6 over the estimated life of these operations and the size,  
7 sequence and timing of the operations for which it is  
8 anticipated that individual permits for mining will be sought;

9 (2) The condition of the land to be covered by the permit  
10 prior to any mining, including: (A) The uses existing at the  
11 time of the application and, if such land has a history of  
12 previous mining, the uses which preceded any mining; (B) the  
13 capability of the land prior to any mining to support a variety  
14 of uses, giving consideration to soil and foundation charac-  
15 teristics, topography and vegetation cover and, if applicable,  
16 a soil survey prepared pursuant to subdivision (15), subsection  
17 (a), section nine of this article; and (C) the best information  
18 available on the productivity of the land prior to mining,  
19 including appropriate classification as prime farm lands, and  
20 the average yield of food, fiber, forage or wood products from  
21 such lands obtained under high levels of management;

22 (3) The use which is proposed to be made of the land

23 following reclamation, including a discussion of the utility and  
24 capacity of the reclaimed land to support a variety of  
25 alternative uses and the relationship of such use to existing  
26 land use policies and plans, and the comments of any owner  
27 of the surface, other state agencies and local governments,  
28 which would have to initiate, implement, approve or authorize  
29 the proposed use of the land following reclamation;

30 (4) A detailed description of how the proposed post mining  
31 land use is to be achieved and the necessary support activities  
32 which may be needed to achieve the proposed land use;

33 (5) The engineering techniques proposed to be used in  
34 mining and reclamation and a description of the major  
35 equipment; a plan for the control of surface water drainage  
36 and of water accumulation; a plan where appropriate, for  
37 backfilling, soil stabilization and compacting, grading,  
38 revegetation and a plan for soil reconstruction, replacement  
39 and stabilization pursuant to the performance standards in  
40 subdivision (7), subsection (b), section twelve of this article for  
41 those food, forage and forest lands identified therein; and a  
42 statement as to how the operator plans to comply with each  
43 of the applicable requirements set out in section twelve or  
44 thirteen of this article;

45 (6) A detailed estimated timetable for the accomplishment  
46 of each major step in the reclamation plan;

47 (7) The consideration which has been given to conducting  
48 surface-mining operations in a manner consistent with surface  
49 owner plans and applicable state and local land use plans and  
50 programs;

51 (8) The steps to be taken to comply with applicable air and  
52 water quality laws and regulations and any applicable health  
53 and safety standards;

54 (9) The consideration which has been given to developing  
55 the reclamation plan in a manner consistent with local physical  
56 environmental and climatological conditions;

57 (10) All lands, interests in lands or options on such interests  
58 held by the applicant or pending bids on interests in lands by  
59 the applicant, which lands are contiguous to the area to be  
60 covered by the permit;

61 (11) A detailed description of the measures to be taken  
62 during the surface-mining and reclamation process to assure  
63 the protection of: (A) The quality of surface and ground water  
64 systems, both on- and off-site, from adverse effects of the  
65 surface-mining operation; (B) the rights of present users to  
66 such water; and (C) the quantity of surface and ground water  
67 systems, both on- and off-site, from adverse effects of the  
68 surface-mining operation or to provide alternative sources of  
69 water where such protection of quantity cannot be assured;

70 (12) The results of tests borings which the applicant has  
71 made at the area to be covered by the permit, or other  
72 equivalent information and data in a form satisfactory to the  
73 commissioner, including the location of subsurface water, and  
74 an analysis of the chemical properties, including acid forming  
75 properties of the mineral and overburden: *Provided*, That  
76 information which pertains only to the analysis of the chemical  
77 and physical properties of the coal, except information  
78 regarding such mineral or elemental contents which are  
79 potentially toxic in the environment, shall be kept confidential  
80 and not made a matter of public record;

81 (13) The consideration which has been given to maximize  
82 the utilization and conservation of the solid fuel resource being  
83 recovered so that re-affecting the land in the future can be  
84 minimized; and

85 (14) Such other requirements as the commissioner may  
86 prescribe by regulation.

87 (b) The reclamation plan shall be available to the public for  
88 review except for those portions thereof specifically exempted  
89 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.**

1 (a) After a surface-mining permit application has been  
2 approved pursuant to this article, but before a permit has been  
3 issued, each operator shall furnish bond, on a form to be  
4 prescribed and furnished by the commissioner, payable to the  
5 state of West Virginia and conditioned upon the operator  
6 faithfully performing all of the requirements of this article and  
7 of the permit. The amount of the bond shall be one thousand



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

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

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

49 shall be entitled from time to time to receive from the state  
50 treasurer, upon the written approval of the commissioner, the  
51 whole or any portion of any cash, securities or certificates so  
52 deposited, upon depositing with him in lieu thereof, cash or  
53 other securities or certificates of the classes herein specified  
54 having value equal to or greater than the sum of the bond.

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

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

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

72 (f) All bond releases shall be accomplished in accordance  
73 with the provisions of section twenty-three of this article.

74 (g) All special reclamation taxes deposited by the commis-  
75 sioner with the treasurer or the state of West Virginia to the  
76 credit of the special reclamation fund prior to the effective date  
77 of this article shall be transferred to the special reclamation  
78 fund created by this section and shall be expended pursuant  
79 to the provisions of this subsection: *Provided*, That no taxes  
80 transferred into the special reclamation fund created by this  
81 section shall be subject to refund. The fund shall be  
82 administered by the commissioner, and he is authorized to  
83 expend the moneys in the fund for the reclamation and  
84 rehabilitation of lands which were subjected to permitted  
85 surface-mining operations and abandoned after the third day  
86 of August, one thousand nine hundred seventy-seven, where  
87 the amount of the bond posted and forfeited on such land is  
88 less than the actual cost of reclamation. The commissioner

89 may also expend such amounts as are reasonably necessary to  
90 implement and administer the provisions of this chapter and  
91 chapters twenty-two-a and twenty-two-b of this code.

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

**§22A-3-12. General environmental protection performance standards for surface mining; variances.**

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

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

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

12 (2) Restore the land affected to a condition capable of  
13 supporting the uses which it was capable of supporting prior  
14 to any mining, or higher or better uses of which there is  
15 reasonable likelihood so long as the use or uses do not present

16 any actual or probable hazard to public health or safety or  
17 pose any actual or probable threat of water diminution or  
18 pollution, and the permit applicants' declared proposed land  
19 use following reclamation is not deemed to be impractical or  
20 unreasonable, inconsistent with applicable land use policies  
21 and plans, involves unreasonable delay in implementation, or  
22 is violative of federal, state or local law;

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

58 requirements of this article: *Provided, further,* That the  
59 commissioner shall promulgate rules and regulations governing  
60 variances to the requirements for return to approximate  
61 original contour or highwall elimination and where adequate  
62 material is not available from surface-mining operations  
63 permitted after the effective date of this article for (A)  
64 underground mining operations existing prior to the third day  
65 of August, one thousand nine hundred seventy-seven, or (B)  
66 for areas upon which surface mining prior to the first day of  
67 July, one thousand nine hundred seventy-seven, created  
68 highwalls;

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

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

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

88 (7) Ensure that all prime farm lands are mined and  
89 reclaimed in accordance with the specifications for soil  
90 removal, storage, replacement and reconstruction established  
91 by the United States secretary of agriculture and the soil  
92 conservation service pertaining thereto. The operator, as a  
93 minimum, shall be required to: (A) Segregate the A horizon  
94 of the natural soil, except where it can be shown that other  
95 available soil materials will create a final soil having a greater  
96 productive capacity, and if not utilized immediately, stockpile  
97 this material separately from other spoil, and provide needed

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

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

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

128 (10) Minimize the disturbances to the prevailing hydrologic  
129 balance at the mine site and in associated off-site areas and  
130 to the quality and quantity of water in surface and ground  
131 water systems both during and after surface-mining operations  
132 and during reclamation by: (A) Avoiding acid or other toxic  
133 mine drainage; (B) conducting surface-mining operations so as  
134 to prevent to the extent possible, using the best technology  
135 currently available, additional contributions of suspended  
136 solids to streamflow or runoff outside the permit area, but in  
137 no event shall contributions be in excess of requirements set  
138 by applicable state or federal law; (C) constructing an

139 approved drainage system pursuant to subparagraph (B) of  
140 this subdivision prior to commencement of surface-mining  
141 operations, such system to be certified by a person approved  
142 by the commissioner to be constructed as designed and as  
143 approved in the reclamation plan; (D) avoiding channel  
144 deepening or enlargement in operations requiring the discharge  
145 of water from mines; (E) unless otherwise authorized by the  
146 commissioner, cleaning out and removing temporary or large  
147 settling ponds or other siltation structures after disturbed areas  
148 are revegetated and stabilized, and depositing the silt and  
149 debris at a site and in a manner approved by the commis-  
150 sioner; (F) restoring recharge capacity of the mined area to  
151 approximate premining conditions; and (G) such other actions  
152 as the commissioner may prescribe;

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

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

169 (13) Refrain from surface mining within five hundred feet  
170 of any active and abandoned underground mines in order to  
171 prevent breakthroughs and to protect health or safety of  
172 miners: *Provided*, That the commissioner shall permit an  
173 operator to mine near, through or partially through an  
174 abandoned underground mine or closer to an active under-  
175 ground mine if: (A) The nature, timing and sequencing of the  
176 approximate coincidence of specific surface-mine activities  
177 with specific underground mine activities are coordinated  
178 jointly by the operators involved and approved by the  
179 commissioner and (B) the operations will result in improved

180 resource recovery, abatement of water pollution or elimination  
181 of hazards to the health and safety of the public: *Provided*,  
182 That any breakthrough which does occur shall be sealed;

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

191 (15) Ensure that explosives are used only in accordance with  
192 existing state and federal law and the regulations promulgated  
193 by the commissioner, which shall include provisions to: (A)  
194 Provide adequate advance written notice to local governments  
195 and residents who might be affected by the use of the  
196 explosives by publication of the planned blasting schedule in  
197 a newspaper of general circulation in the locality and by  
198 mailing a copy of the proposed blasting schedule to every  
199 resident living within one-half mile of the proposed permit area  
200 excluding drainage structures, haulroads and access roads  
201 unless there will be blasting on or near such structures or  
202 roads: *Provided*, That this notice shall suffice as daily notice  
203 to residents or occupants of the areas; (B) maintain for a  
204 period of at least three years and make available for public  
205 inspection, upon written request, a log detailing the location  
206 of the blasts, the pattern and depth of the drill holes, the  
207 amount of explosives used per hole and the order and length  
208 of delay in the blasts; (C) limit the type of explosives and  
209 detonating equipment, the size, the timing and frequency of  
210 blasts based upon the physical conditions of the site so as to  
211 prevent (i) injury to persons; (ii) damage to public and private  
212 property outside the permit area; (iii) adverse impacts on any  
213 underground mine; and (iv) change in the course, channel or  
214 availability of ground or surface water outside the permit area;  
215 (D) require that all blasting operations be conducted by  
216 persons certified by the director of the division of mines and  
217 minerals; and (E) provide that upon written request of a  
218 resident or owner of a man-made dwelling or structure within  
219 one-half mile of any portion of the area identified in  
220 subparagraph (A) of this subdivision, the applicant or



221 permittee shall conduct a preblasting survey or other  
222 appropriate investigation of the structures and submit the  
223 results to the commissioner and a copy to the resident or  
224 owner making the request. The area of the survey shall be  
225 determined by the commissioner in accordance with regula-  
226 tions promulgated by him;

227 (16) Ensure that all reclamation efforts proceed in an  
228 environmentally sound manner and as contemporaneously as  
229 practicable with the surface-mining operations. Time limits  
230 shall be established by the commissioner requiring backfilling,  
231 grading and planting to be kept current: *Provided*, That where  
232 surface-mining operations and underground mining operations  
233 are proposed on the same area, which operations must be  
234 conducted under separate permits, the commissioner may  
235 grant a variance from the requirement that reclamation efforts  
236 proceed as contemporaneously as practicable to permit under  
237 ground mining operations prior to reclamation;

238 (A) If the commissioner finds in writing that:

239 (i) The applicant has presented, as part of the permit  
240 application, specific, feasible plans for the proposed under-  
241 ground mining operations;

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

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

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

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

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

259 (B) If the commissioner has promulgated specific regula-  
260 tions to govern the granting of such variances in accordance  
261 with the provisions of this subparagraph and has imposed such  
262 additional requirements as he deems necessary;

263 (C) If variances granted under the provisions of this  
264 subsection are to be reviewed by the commissioner not more  
265 than three years from the date of issuance of the permit; and

266 (D) If liability under the bond filed by the applicant with  
267 the commissioner pursuant to subsection (b), section eleven of  
268 this article shall be for the duration of the underground mining  
269 operations and until the requirements of subsection (g), section  
270 eleven and section twenty-three of this article have been fully  
271 complied with.

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

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

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

295 (20) Assume the responsibility for successful revegetation, as  
296 required by subdivision (19) of this subsection, for a period  
297 of not less than five growing seasons, as defined by the

298 commissioner, after the last year of augmented seeding,  
299 fertilizing, irrigation or other work in order to assure  
300 compliance with subdivision (19) of this subsection: *Provided*,  
301 That when the commissioner issues a written finding approving  
302 a long-term agricultural postmining land use as part of the  
303 mining and reclamation plan, the commissioner may grant  
304 exception to the provisions of subdivision (19) of this  
305 subsection: *Provided, however*, That when the commissioner  
306 approves an agricultural postmining land use, the applicable  
307 five growing seasons of responsibility for revegetation shall  
308 commence at the date of initial planting for such agricultural  
309 postmining land use;

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

317 (22) Place all excess spoil material resulting from surface  
318 mining activities in such a manner that: (A) Spoil is  
319 transported and placed in a controlled manner in position for  
320 concurrent compaction and in a way as to assure mass stability  
321 and to prevent mass movement; (B) the areas of disposal are  
322 within the bonded permit areas and all organic matter shall  
323 be removed immediately prior to spoil placements; (C)  
324 appropriate surface and internal drainage system or diversion  
325 ditches are used to prevent spoil erosion and movement; (D)  
326 the disposal area does not contain springs, natural water  
327 courses or wet weather seeps, unless lateral drains are  
328 constructed from the wet areas to the main underdrains in a  
329 manner that filtration of the water into the spoil pile will be  
330 prevented; (E) if placed on a slope, the spoil is placed upon  
331 the most moderate slope among those upon which, in the  
332 judgment of the commissioner, the spoil could be placed in  
333 compliance with all the requirements of this article, and shall  
334 be placed, where possible, upon, or above, a natural terrace,  
335 bench or berm, if placement provides additional stability and  
336 prevents mass movement; (F) where the toe of the spoil rests  
337 on a downslope, a rock toe buttress, of sufficient size to  
338 prevent mass movement, is constructed; (G) the final

339 configuration is compatible with the natural drainage pattern  
340 and surroundings and suitable for intended uses; (H) design  
341 of the spoil disposal area is certified by a qualified registered  
342 professional engineer in conformance with professional  
343 standards; and (I) all other provisions of this article are met:  
344 *Provided*, That where the excess spoil material consists of at  
345 least eighty percent, by volume, sandstone, limestone or other  
346 rocks that do not slake in water, the commissioner may  
347 approve alternate methods for disposal of excess spoil  
348 material, including fill placement by dumping in a single lift,  
349 on a site specific basis: *Provided, however*, That the services  
350 of a qualified registered professional engineer experienced in  
351 the design and construction of earth and rockfill embankment  
352 are utilized: *Provided, further*, That such approval shall not  
353 be unreasonably withheld if the site is suitable;

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

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

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

376 (c) (1) The commissioner may prescribe procedures pursu-  
377 ant to which he may permit surface-mining operations for the  
378 purposes set forth in subdivision (3) of this subsection.

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

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

419 (4) In granting any permit pursuant to this subsection, the

420 commissioner shall require that: (A) A natural barrier be  
421 retained to inhibit slides and erosion on permit areas where  
422 outcrop barriers are required: *Provided*, That constructed  
423 barriers may be allowed where (i) natural barriers do not  
424 provide adequate stability, (ii) natural barriers would result in  
425 potential future water quality deterioration, and (iii) natural  
426 barriers would conflict with the goal of maximum utilization  
427 of the mineral resource: *Provided, however*, That, at a  
428 minimum, the constructed barrier must be sufficient width and  
429 height to provide adequate stability and the stability factor  
430 must equal or exceed that of the natural outcrop barrier:  
431 *Provided further*, That where water quality is paramount, the  
432 constructed barrier must be composed of impervious material  
433 with controlled discharge points; (B) the reclaimed area is  
434 stable; (C) the resulting plateau or rolling contour drains  
435 inward from the outcrops except at specific points; (D) no  
436 damage will be done to natural watercourses; (E) spoil will be  
437 placed on the mountaintop bench as is necessary to achieve  
438 the planned postmining land use: *Provided*, That all excess  
439 spoil material not retained on the mountaintop shall be placed  
440 in accordance with the provisions of subdivision (22),  
441 subsection (b) of this section; and (F) ensure stability of the  
442 spoil retained on the mountaintop and meet the other  
443 requirements of this article.

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

450 (d) In addition to those general performance standards  
451 required by this section, when surface mining occurs on slopes  
452 of twenty degrees or greater, or on such lesser slopes as may  
453 be defined by regulation after consideration of soil and  
454 climate, no debris, abandoned or disabled equipment, spoil  
455 material or waste mineral matter will be placed on the natural  
456 downslope below the initial bench or mining cut: *Provided*,  
457 That soil or spoil material from the initial cut of earth in a  
458 new surface-mining operation may be placed on a limited  
459 specified area of the downslope below the initial cut if the  
460 permittee can establish to the satisfaction of the commissioner

461 that the soil or spoil will not slide and that the other  
462 requirements of this section can still be met.

463 (e) The commissioner may permit variances from the  
464 requirements of this section: *Provided*, That the watershed  
465 control of the area is improved: *Provided, however*, That  
466 complete backfilling with spoil material shall be required to  
467 completely cover the highwall, which material will maintain  
468 stability following mining and reclamation.

469 (f) The commissioner shall promulgate regulations for the  
470 design, location, construction, maintenance, operation,  
471 enlargement modification, removal and abandonment of new  
472 and existing coal mine waste piles. In addition to engineering  
473 and other technical specifications, the standards and criteria  
474 developed pursuant to this subsection must include provisions  
475 for review and approval of plans and specifications prior to  
476 construction, enlargement, modification, removal or abandon-  
477 ment; performance of periodic inspections during construction;  
478 issuance of certificates of approval upon completion of  
479 construction; performance of periodic safety inspections; and  
480 issuance of notices and orders for required remedial or  
481 maintenance work or affirmative action: *Provided*, That  
482 whenever the commissioner finds that any coal processing  
483 waste pile constitutes an imminent danger to human life, he  
484 may, in addition to all other remedies and without the  
485 necessity of obtaining the permission of any person prior or  
486 present who operated or operates a pile or the landowners  
487 involved, enter upon the premises where any such coal  
488 processing waste pile exists and ~~make~~<sup>make</sup> take or order to be taken  
489 such remedial action as may be necessary or expedient to  
490 secure the coal processing waste pile and to abate the  
491 conditions which cause the danger to human life: *Provided*,  
492 *however*, That the cost reasonably incurred in any remedial  
493 action taken by the commissioner under this subsection may  
494 be paid for initially by funds appropriated to the department  
495 of energy for these purposes, and the sums so expended shall  
496 be recovered from any responsible operator or landowner,  
497 individually or jointly, by suit initiated by the attorney general  
498 at the request of the commissioner. For purposes of this  
499 subsection "operates" or "operated" means to enter upon a  
500 coal processing waste pile, or part thereof, for the purpose of  
501 disposing, depositing, dumping coal processing wastes thereon

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502 or removing coal processing waste therefrom, or to employ a  
503 coal processing waste pile for retarding the flow of or for the  
504 impoundment of water.

**§22A-3-13. Pilot program for the growing of grapes on reclaimed areas.**

1 In furtherance of the purposes set forth in subdivision  
2 twenty, section twelve of this article, the commissioner is  
3 hereby authorized and directed to establish and maintain a  
4 pilot program to determine the best procedures for propagating  
5 the growth of grapevines and bushes on reclaimed surface-  
6 mined areas. Such program shall investigate and implement  
7 selections of the best variety of grapes for reclamation  
8 purposes based upon environmental considerations and soil  
9 quality, the most desirable methods of planting and tending  
10 grapes and any other related matters deemed desirable by the  
11 commissioner. The cost of such program shall be paid from  
12 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.**

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

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

13 (1) Adopt measures consistent with known technology in  
14 order to prevent subsidence causing material damage to the  
15 extent technologically and economically feasible, maximize  
16 mine stability and maintain the value and reasonably  
17 foreseeable use of overlying surface lands, except in those



18 instances where the mining technology used requires planned  
19 subsidence in a predictable and controlled manner: *Provided*,  
20 That this subsection does not prohibit the standard method  
21 of room and pillar mining;

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

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

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

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

53 (6) Establish on regraded areas and all other disturbed areas  
54 a diverse and permanent vegetative cover capable of self-  
55 regeneration and plan succession and at least equal in extent  
56 of cover to the natural vegetation of the area within the time  
57 period prescribed in subdivision (20), subsection (b), section

58 twelve of this article;

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

61 (8) Eliminate fire hazards and otherwise eliminate condi-  
62 tions which constitute a hazard to health and safety of the  
63 public;

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

87 (10) With respect to other surface impacts of underground  
88 mining not specified in this subsection, including the  
89 construction of new roads or the improvement or use of  
90 existing roads to gain access to the site of such activities and  
91 for haulage, repair areas, storage areas, processing areas,  
92 shipping areas, and other areas upon which are sited  
93 structures, facilities or other property or materials on the  
94 surface, resulting from or incident to such activities, operate  
95 in accordance with the standards established under section  
96 twelve of this article for such effects which result from surface-  
97 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  
100 difference between surface and underground mining in West  
101 Virginia;

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

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

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

**§22A-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs, progress maps.**

1 (a) The commissioner shall cause to be made such inspec-  
2 tions of surface-mining operations as are necessary to  
3 effectively enforce the requirements of this article and for such  
4 purposes the commissioner or his authorized representative  
5 shall without advance notice and upon presentation of  
6 appropriate credentials: (A) Have the right of entry to, upon  
7 or through surface-mining operations or any premises in which  
8 any records required to be maintained under subdivision (1),

9 subsection (b) of this section are located; and (B) at reasonable  
10 times and without delay, have access to and copy any records  
11 and inspect any monitoring equipment or method of operation  
12 required under this article.

13 (b) For the purpose of enforcement under this article, in the  
14 administration and enforcement of any permit under this  
15 article, or for determining whether any person is in violation  
16 of any requirement of this article:

17 (1) The commissioner shall at a minimum require any  
18 operator to: (A) Establish and maintain appropriate records;  
19 (B) make monthly reports to the department; (C) install, use  
20 and maintain any necessary monitoring equipment or methods  
21 consistent with subdivision (11), subsection (a), section ten of  
22 this article; (D) evaluate results in accordance with such  
23 methods, at such locations, intervals and in such manner as  
24 the commissioner shall prescribe; and (E) provide such other  
25 information relative to surface-mining operations as the  
26 commissioner deems reasonable and necessary;

27 (2) For those surface-mining operations which remove or  
28 disturb strata that serve as aquifers which significantly ensure  
29 the hydrologic balance of water use either on or off the mining  
30 site, the commissioner shall require that: (A) Monitoring sites  
31 be established to record the quantity and quality of surface  
32 drainage above and below the mine site as well as in the  
33 potential zone of influence; (B) monitoring sites be established  
34 to record level, amount and samples of ground water and  
35 aquifers potentially affected by the surface mining and also  
36 below the lower most mineral seam to be mined; (C) records  
37 or well logs and boreholed data be maintained; and (D)  
38 monitoring sites be established to record precipitation. The  
39 monitoring data collection and analysis required by this  
40 section shall be conducted according to standards and  
41 procedures set forth by the commissioner in order to assure  
42 their reliability and validity.

43 (c) All surface-mining operations shall be inspected at least  
44 once every thirty days. Such inspections shall be made on an  
45 irregular basis without prior notice to the operator or his  
46 agents or employees, except for necessary on-site meetings with  
47 the operator. The inspections shall include the filing of  
48 inspection reports adequate to enforce the requirements, terms

49 and purposes of this article.

50 (d) Each permittee shall maintain at the entrances to the  
51 surface-mining operations a clearly visible monument which  
52 sets forth the name, business address and telephone number  
53 of the permittee and the permit number of the surface-mining  
54 operations.

55 (e) Copies of any records, reports, inspection materials or  
56 information obtained under this article by the commissioner  
57 shall be made immediately available to the public at central  
58 and sufficient locations in the county, multi-county or state  
59 area of mining so that they are conveniently available to  
60 residents in the areas of mining unless specifically exempted  
61 by this article.

62 (f) Within thirty days after service of a copy of an order  
63 of the commissioner upon an operator by registered or  
64 certified mail, the operator shall furnish to the commissioner  
65 five copies of a progress map prepared by or under the  
66 supervision of a person approved by the commissioner  
67 showing the disturbed area to the date of such map. Such  
68 progress map shall contain information identical to that  
69 required for both the proposed and final maps required by this  
70 article, and shall show in detail completed reclamation work  
71 as required by the commissioner. Such progress map shall  
72 include a geologic survey sketch showing the location of the  
73 operation, shall be properly referenced to a permanent  
74 landmark, and shall be within such reasonable degree of  
75 accuracy as may be prescribed by the commissioner. If no land  
76 has been disturbed by operations during the preceding year,  
77 the operator shall notify the commissioner of that fact.

78 (g) Whenever on the basis of available information,  
79 including reliable information from any person, the commis-  
80 sioner has cause to believe that any person is in violation of  
81 this article, any permit condition or any regulation promul-  
82 gated under this article, the commissioner shall immediately  
83 order state inspection of the surface-mining operation at which  
84 the alleged violation is occurring unless the information is  
85 available as a result of a prior state inspection. The  
86 commissioner shall notify any person who supplied such  
87 reliable information when the state inspection will be carried  
88 out. Such person may accompany the inspector during the

89 inspection: *Provided*, That except for deliberate and willful  
 90 acts, the permittee, his authorized agent or employees, and the  
 91 inspector whom such person is accompanying, shall not be  
 92 held civilly liable for any injury to such person during the  
 93 inspection trip. Any such person accompanying an inspector  
 94 on an inspection shall be responsible for supplying any safety  
 95 equipment required for his use.

**§22A-3-16. Cessation of operation by order of inspector; informal  
 conference; imposition of affirmative obligations;  
 appeal.**

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

25 (b) The cessation order shall remain in effect until the  
 26 commissioner determines that the condition, practice or  
 27 violation has been abated, or until modified, vacated or  
 28 released by the commissioner. Where the commissioner finds  
 29 that the order cessation of any portion of a surface coal mining  
 30 operation will not completely abate the imminent danger to  
 31 health or safety of the public or the significant imminent

32 environmental harm to land, air or water resources, the  
33 commissioner shall, in addition to the cessation order, impose  
34 affirmative obligations on the operator requiring him to take  
35 whatever steps the commissioner deems necessary to abate the  
36 imminent danger or the significant environmental harm.

37 (c) Any cessation order issued pursuant to this section or  
38 any other provision of this article may be released by any  
39 inspector. An inspector shall be readily available to terminate  
40 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.**

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

29 subsection the commissioner shall determine the steps  
30 necessary to abate the violation in the most expeditious  
31 manner possible and shall include the necessary measures in  
32 the order.

33 (b) If the commissioner determines that a pattern of  
34 violations of any requirement of this article or any permit  
35 condition exists or has existed, as a result of the operator's  
36 lack of reasonable care and diligence, or that the violations  
37 are willfully caused by the operator, the commissioner shall  
38 immediately issue an order directing the operator to show  
39 cause why the permit should not be suspended or revoked and  
40 giving the operator thirty days in which to request a public  
41 hearing. If a hearing is requested, the commissioner shall  
42 inform all interested parties of the time and place of the  
43 hearing. Any hearing under this section shall be recorded and  
44 subject to the provisions of chapter twenty-nine-a of this code.  
45 Within sixty days following the public hearing, the commis-  
46 sioner shall issue and furnish to the permittee and all other  
47 parties to the hearing a written decision, and the reasons  
48 therefor, concerning suspension or revocation of the permit.  
49 Upon the operator's failure to show cause why the permit  
50 should not be suspended or revoked, the commissioner shall  
51 immediately revoke the operator's permit, forfeit the operator's  
52 bond or other security posted pursuant to section eleven of  
53 this article, and give notice to the attorney general, who shall  
54 collect the forfeiture without delay: *Provided*, That the entire  
55 proceeds of such forfeiture shall be deposited with the  
56 treasurer of the state of West Virginia to the credit of the  
57 special reclamation fund. All forfeitures collected prior to the  
58 effective date of this article shall be deposited in the special  
59 reclamation fund and shall be expended back upon the areas  
60 for which the bond was posted: *Provided, however*, That any  
61 excess therefrom shall remain in the special reclamation fund.

62 (c) Any person engaged in surface-mining operations who  
63 violates any permit condition or who violates any other  
64 provision of this article or rules and regulations promulgated  
65 pursuant thereto may also be assessed a civil penalty. The  
66 penalty shall not exceed five thousand dollars. Each day of  
67 continuing violation may be deemed a separate violation for  
68 purposes of penalty assessments. In determining the amount  
69 of the penalty, consideration shall be given to the operator's



70 history of previous violations at the particular surface-mining  
71 operation, the seriousness of the violation, including any  
72 irreparable harm to the environment and any hazard to the  
73 health or safety of the public, whether the operator was  
74 negligent, and the demonstrated good faith of the operator  
75 charged in attempting to achieve rapid compliance after  
76 notification of the violation.

77 (d) (1) Upon the issuance of a notice or order pursuant to  
78 this section, the assessment officer shall, within thirty days, set  
79 a proposed penalty assessment and notify the operator in  
80 writing of such proposed penalty assessment. The proposed  
81 penalty assessment must be paid in full within thirty days of  
82 receipt or, if the operator wishes to contest either the amount  
83 of the penalty or the fact of violation, an informal conference  
84 with the assessment officer may be requested within fifteen  
85 days or a formal hearing before the reclamation board of  
86 review may be requested within thirty days. The notice of  
87 proposed penalty assessment shall advise the operator of the  
88 right to an informal conference and a formal hearing pursuant  
89 to this section. When an informal conference is requested, the  
90 operator shall have fifteen days from receipt of the assessment  
91 officer's decision to request a formal hearing before the board.  
92 (A) When an informal conference is held, the assessment  
93 officer shall have authority to affirm, modify or vacate the  
94 notice, order or proposed penalty assessment. (B) When a  
95 formal hearing is requested, the amount of the proposed  
96 penalty assessment shall be forwarded to the commissioner for  
97 placement in an escrow account. Formal hearings shall be of  
98 record and subject to the provisions of article five, chapter  
99 twenty-nine-a of this code. Following the hearing the board  
100 shall affirm, modify or vacate the notice, order or proposed  
101 penalty assessment and, when appropriate, incorporate an  
102 assessment order requiring that the assessment be paid.

103 (2) Civil penalties owed under this section may be recovered  
104 by the commissioner in the circuit court of Kanawha County.  
105 Civil penalties collected under this article shall be deposited  
106 with the treasurer of the state of West Virginia to the credit  
107 of the special reclamation fund established in section eleven  
108 of this article. If, through the administrative or judicial review  
109 of the proposed penalty it is determined that no violation  
110 occurred or that the amount of the penalty should be reduced,

111 the commissioner shall within thirty days remit the appropriate  
112 amount to the person, with interest at the rate of six percent  
113 or at the prevailing United States department of the treasury  
114 rate, whichever is greater. Failure to forward the money to the  
115 commissioner within thirty days shall result in a waiver of all  
116 legal rights to contest the violation or the amount of the  
117 penalty.

118 (3) Any person having an interest which is or may be  
119 adversely affected by any order of the commissioner or the  
120 board may file an appeal only in accordance with the  
121 provisions of article four, chapter twenty-two of this code,  
122 within thirty days after receipt of the order.

123 (4) The filing of an appeal provided for in this section shall  
124 not stay execution of the order appeal from. Pending  
125 completion of the investigation and hearing required by this  
126 section, the applicant may file with the commissioner a written  
127 request that the commissioner grant temporary relief from any  
128 notice or order issued under section sixteen or seventeen of  
129 this article, together with a detailed statement giving reasons  
130 for granting such relief. The commissioner shall issue an order  
131 or decision granting or denying such relief expeditiously:  
132 *Provided*, That where the applicant requests relief from an  
133 order for cessation of surface-mining and reclamation  
134 operations, the decision on the request shall be issued within  
135 forty-eight hours of its receipt. The commissioner may grant  
136 such relief, under such conditions as he may prescribe if:

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

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

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

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

149 (e) Any person who willfully and knowingly violates a

150 condition of a permit issued pursuant to this article or  
151 regulations promulgated pursuant thereto, or fails or refuses  
152 to comply with any order issued under said article and  
153 regulations or any order incorporated in a final decision issued  
154 by the commissioner, is guilty of a misdemeanor, and, upon  
155 conviction thereof, shall be fined not less than one hundred  
156 dollars nor more than ten thousand dollars, or imprisoned in  
157 the county jail not more than one year, or both fined and  
158 imprisoned.

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

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

178 (h) Whenever any person: (A) Violates or fails or refuses  
179 to comply with any order or decision issued by the commis-  
180 sioner under this article; or (B) interferes with, hinders or  
181 delays the commissioner in carrying out the provisions of this  
182 article; or (C) refuses to admit the commissioner to the mine;  
183 or (D) refuses to permit inspection of the mine by the  
184 commissioner; or (E) refuses to furnish any reasonable  
185 information or report requested by the commissioner in  
186 furtherance of the provisions of this article; or (F) refuses to  
187 permit access to, and copying of, such records as the  
188 commissioner determines necessary in carrying out the  
189 provisions of this article; or (G) violates any other provisions  
190 of this article, the regulations promulgated pursuant thereto,

191 or the terms and conditions of any permit, the commissioner,  
 192 the attorney general or the prosecuting attorney of the county  
 193 in which the major portion of the permit area is located may  
 194 institute a civil action for relief, including a permanent or  
 195 temporary injunction, restraining order or any other approp-  
 196 priate order, in the circuit court of Kanawha County or any  
 197 court of competent jurisdiction to compel compliance with and  
 198 enjoin such violations, failures or refusals. The court or the  
 199 judge thereof may issue a preliminary injunction in any case  
 200 pending a decision on the merits of any application filed  
 201 without requiring the filing of a bond or other equivalent  
 202 security.

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

**§22A-3-18. Approval, denial, revision and prohibition of permit.**

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

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

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

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

19 (3) The assessment of the probable cumulative impact of all

20 anticipated mining in the area on the hydrologic balance, as  
21 specified in section nine of this article, has been made by the  
22 commissioner and the proposed operation has been designed  
23 to prevent material damage to the hydrologic balance outside  
24 the permit area;

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

30 (5) In cases where the private mineral estate has been  
31 severed from the private surface estate, the applicant has  
32 submitted: (A) The written consent of the surface owner to  
33 the extraction of coal by surface mining; or (B) a conveyance  
34 that expressly grants or reserves the right to extract the coal  
35 by surface mining; or (C) if the conveyance does not expressly  
36 grant the right to extract coal by surface mining, the surface-  
37 subsurface legal relationship shall be determined in accordance  
38 with applicable law: *Provided*, That nothing in this article shall  
39 be construed to authorize the commissioner to adjudicate  
40 property rights disputes.

41 (c) Where information available to the department indicates  
42 that any surface-mining operation located in the state of West  
43 Virginia, owned or controlled by the applicant, is currently in  
44 violation of this article or other environmental laws or  
45 regulations, the permit shall not be issued until the applicant  
46 submits proof that such violation has been corrected or is in  
47 the process of being corrected to the satisfaction of the  
48 commissioner or the department or agency which has  
49 jurisdiction over the violation, and no permit may be issued  
50 to any applicant after a finding by the commissioner, after an  
51 opportunity for hearing, that the applicant or the operator  
52 specified in the application controls or has controlled mining  
53 operations with a demonstrated pattern of willful violations of  
54 this article of such nature and duration with such irreparable  
55 damage to the environment as to indicate an intent not to  
56 comply with the provisions of this article: *Provided*, That if  
57 the commissioner finds that the applicant is or has been  
58 affiliated with, or managed or controlled by, or is or has been  
59 under the common control of, other than as an employee, a  
60 person who has had a surface-mining permit revoked or bond

61 or other security forfeited for failure to reclaim lands as  
62 required by the laws of this state, he shall not issue a permit  
63 to the applicant: *Provided, however,* That subject to the  
64 discretion of the commissioner and based upon a petition for  
65 reinstatement, permits may be issued to any applicant if, after  
66 the revocation or forfeiture, the operator whose permit has  
67 been revoked or bond forfeited shall have paid into the special  
68 reclamation fund any additional sum of money determined by  
69 the commissioner to be adequate to reclaim the disturbed area,  
70 and the commissioner is satisfied that the petitioner will  
71 comply with this article.

72 (d) (1) In addition to finding the application in compliance  
73 with subsection (b) of this section, if the area proposed to be  
74 mined contains prime farmland, the commissioner may,  
75 pursuant to regulations promulgated hereunder, grant a permit  
76 to mine on prime farmland if the operator affirmatively  
77 demonstrates that he has the technological capability to restore  
78 such mined area, within a reasonable time, to equivalent or  
79 higher levels of yield as nonmined prime farmland in the  
80 surrounding area under equivalent levels of management, and  
81 can meet the soil reconstruction standards in subdivision  
82 seven, subsection (b), section twelve of this article. Except for  
83 compliance with subsection (b) of this section, the require-  
84 ments of subdivision (1) of this subsection shall apply to all  
85 permits issued after the third day of August, one thousand nine  
86 hundred seventy-seven.

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

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

1 (a) (1) Any valid permit issued pursuant to this article  
2 shall carry with it the right of successive renewal upon  
3 expiration with respect to areas within the boundaries of the  
4 existing permit. The holders of the permit may apply for  
5 renewal and the renewal shall be issued: *Provided*, That on  
6 application for renewal, the burden shall be on the opponents  
7 of renewal, unless it is established that and written findings  
8 by the commissioner are made that: (A) The terms and  
9 conditions of the existing permit are not being satisfactorily  
10 met: *Provided*, That if the permittee is required to modify  
11 operations pursuant to mining or reclamation requirements  
12 which become applicable after the original date of permit  
13 issuance, the permittee shall be provided an opportunity to  
14 submit a schedule allowing a reasonable period to comply with  
15 such revised requirements; (B) the present surface-mining  
16 operation is not in compliance with the applicable environmen-  
17 tal protection standards of this article; (C) the renewal  
18 requested substantially jeopardizes the operator's continuing  
19 responsibility on existing permit areas; (D) the operator has  
20 not provided evidence that the performance bond in effect for  
21 said operation will continue in effect for renewal requested as  
22 required pursuant to section eleven of this article; or (E) any  
23 additional revised or updated information as required pursuant  
24 to rules and regulations promulgated by the commissioner has  
25 not been provided.

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

36 (3) Any permit renewal shall be for a term not to exceed  
37 the period of time for which the original permit was issued.  
38 Application for permit renewal shall be made at least one

39 hundred twenty days prior to the expiration of the valid  
40 permit.

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

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

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

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

54 (c) The commissioner shall review outstanding permits of a  
55 five-year term before the end of the third year of the permit.  
56 Other permits shall be reviewed within the time established by  
57 regulations. The commissioner may require reasonable revision  
58 or modification of the permit following review: *Provided*, That  
59 such revision or modification shall be based upon written  
60 findings and shall be preceded by notice to the permittee and  
61 opportunity for hearing.

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

**§22A-3-20. Public notice; written objections; public hearings;  
informal conferences.**

1 (a) At the time of submission of an application for a  
2 surface-mining permit or a significant revision of an existing  
3 permit pursuant to the provisions of this article, the applicant  
4 shall submit to the department a copy of the required  
5 advertisement. At the time of submission, the applicant shall  
6 place the advertisement in a local newspaper of general  
7 circulation in the county of the proposed surface-mining  
8 operation at least once a week for four consecutive weeks. The  
9 commissioner shall notify various appropriate federal and state  
10 agencies as well as local governmental bodies, planning



11 agencies and sewage and water treatment authorities or water  
12 companies in the locality in which the proposed surface-mining  
13 operation will take place, notifying them of the operator's  
14 intention to mine on a particularly described tract of land and  
15 indicating the application number and where a copy of the  
16 proposed mining and reclamation plan may be inspected.  
17 These local bodies, agencies, authorities or companies may  
18 submit written comments within a reasonable period estab-  
19 lished by the commissioner on the mining application with  
20 respect to the effect of the proposed operation on the  
21 environment which is within their area of responsibility. Such  
22 comments shall be immediately transmitted by the commis-  
23 sioner to the applicant and to the appropriate office of the  
24 department. The commissioner shall provide the name and  
25 address of each applicant to the commissioner of labor who  
26 shall within fifteen days from receipt notify the commissioner  
27 as to the applicant's compliance, if necessary, with section  
28 fourteen, article five, chapter twenty-one of this code.

29 (b) Any person having an interest which is or may be  
30 adversely affected, or the officer or head of any federal, state  
31 or local governmental agency, shall have the right to file  
32 written objections to the proposed initial or revised permit  
33 application for a surface-mining operation with the commis-  
34 sioner within thirty days after the last publication of the  
35 advertisement required in subsection (a) of this section. Such  
36 objections shall be immediately transmitted to the applicant  
37 by the commissioner and shall be made available to the public.  
38 If written objections are filed and an informal conference  
39 requested within thirty days of the last publication of the  
40 above notice, the commissioner shall then hold a conference  
41 in the locality of the proposed mining within three weeks after  
42 the close of the public comment period. Those requesting the  
43 conference shall be notified and the date, time and location  
44 of the informal conference shall also be advertised by the  
45 commissioner in a newspaper of general circulation in the  
46 locality at least two weeks prior to the scheduled conference  
47 date. The commissioner may arrange with the applicant, upon  
48 request by any party to the conference proceeding, access to  
49 the proposed mining area for the purpose of gathering  
50 information relevant to the proceeding. An electronic or  
51 stenographic record shall be made of the conference proceed-  
52 ing unless waived by all parties. Such record shall be

53 maintained and shall be accessible to the parties at their  
 54 respective expense until final release of the applicant's  
 55 performance bond or other security posted in lieu thereof. The  
 56 commissioner's authorized agent will preside over the  
 57 conference. In the event all parties requesting the informal  
 58 conference stipulate agreement prior to the conference and  
 59 withdraw their request, a conference need not be held.

**§22A-3-21. Decision of commissioner on permit application;  
 hearing thereon.**

1 (a) If an informal conference has been held the commis-  
 2 sioner shall issue and furnish the applicant for a permit and  
 3 persons who were parties to the informal conference with the  
 4 written finding granting or denying the permit in whole or in  
 5 part and stating the reasons therefor within thirty days of the  
 6 informal conference, notwithstanding the requirements of  
 7 subsection (a), section eighteen of this article.

8 (b) If the application is approved, the permit shall be issued.  
 9 If the application is disapproved, specific reasons therefor must  
 10 be set forth in the notification. Within thirty days after the  
 11 applicant is notified of the commissioner's decision, the  
 12 applicant or any person with an interest which is or may be  
 13 adversely affected may request a hearing before the reclama-  
 14 tion board of review as provided in article four, chapter  
 15 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.**

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

9 (i) Upon petition pursuant to subsection (b) of this section,  
 10 the commissioner shall designate an area as unsuitable for all  
 11 or certain types of surface-mining operations, if it determines

12 that reclamation pursuant to the requirements of this article  
13 is not technologically and economically feasible.

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

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

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

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

49 (b) The commissioner, or any person having an interest  
50 which is or may be adversely affected, shall have the right to  
51 petition the commissioner to have an area designated as

52 unsuitable for surface-mining operations or to have such a  
53 designation terminated. The petition shall contain allegations  
54 of fact with supporting evidence which would tend to establish  
55 the allegations. After receipt of the petition, the commissioner  
56 shall immediately begin an administrative study of the area  
57 specified in the petition. Within ten months after receipt of  
58 the petition, the commissioner shall hold a public hearing in  
59 the locality of the affected area after appropriate notice and  
60 publication of the date, time and location of the hearing. After  
61 the commissioner or any person having an interest which is  
62 or may be adversely affected has filed a petition and before  
63 the hearing required by this subsection, any person may  
64 intervene by filing allegations of fact with supporting evidence  
65 which would tend to establish the allegations. Within sixty  
66 days after the hearing, the commissioner shall issue and furnish  
67 to the petitioner and any other party to the hearing, a written  
68 decision regarding the petition and the reasons therefor. In the  
69 event that all the petitioners stipulate agreement prior to the  
70 requested hearing and withdraw their request, the hearing need  
71 not be held.

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

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

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

89 (2) Which will adversely affect any publicly owned park or  
90 places included in the national register of historic sites, or  
91 national register of natural landmarks unless approved jointly

92 by the commissioner and the federal, state or local agency with  
93 jurisdiction over the park, the historic site or natural  
94 landmarks;

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

104 (4) Within three hundred feet from any occupied dwelling,  
105 unless waived by the owner thereof, or within three hundred  
106 feet of any public building, school, church, community or  
107 institutional building, public park, or within one hundred feet  
108 of a cemetery; or

109 (5) On any federal lands within the boundaries of any  
110 national forest: *Provided*, That surface coal mining operations  
111 may be permitted on the lands if the secretary of the interior  
112 finds that there are no significant recreational, timber,  
113 economic or other values which may be incompatible with the  
114 surface-mining operations: *Provided, however*, That the  
115 surface operations and impacts are incident to an underground  
116 coal mine.

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

**§22A-3-23. Release of performance bond or deposits; application;  
notice; duties of commissioner; public hearings; final  
maps on grade release.**

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

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

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

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

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

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

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

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

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

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

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

117 (h) For the purpose of such hearing, the commissioner has  
118 the authority and is hereby empowered to administer oaths,  
119 subpoena witnesses and written or printed materials, compel  
120 the attendance of witnesses, or production of materials, and  
121 take evidence including, but not limited to, inspections of the



122 land affected and other surface-mining operations carried on  
123 by the applicant in the general vicinity. A verbatim record of  
124 each public hearing required by this section shall be made and  
125 a transcript made available on the motion of any party or by  
126 order of the commissioner at the cost of the person requesting  
127 the transcript.

**§22A-3-24. Water rights and replacement; waiver of replcement.**

1 (a) Nothing in this article shall be construed as affecting in  
2 any way the rights of any person to enforce or protect, under  
3 applicable law, his interest in water resources affected by a  
4 surface-mining operation.

5 (b) Any operator shall replace the water supply of an owner  
6 of interest in real property who obtains all or part of his supply  
7 of water for domestic, agricultural, industrial or other  
8 legitimate use from an underground or surface source where  
9 such supply has been affected by contamination, diminution  
10 or interruption proximately caused by such surface-mining  
11 operation, unless waived by said owner.

**§22A-3-25. Citizen suits; order of court; damages.**

1 (a) Except as provided in subsection (b) of this section, any  
2 person having an interest which is or may be adversely affected  
3 may commence a civil action in the circuit court of the county  
4 to which the surface-mining operation is located on his own  
5 behalf to compel compliance with this article:

6 (1) Against the state of West Virginia or any other  
7 governmental instrumentality or agency thereof, to the extent  
8 permitted by the West Virginia constitution and by law, which  
9 is alleged to be in violation of the provisions of this article  
10 or any rule, regulation, order or permit issued pursuant  
11 thereto, or against any other person who is alleged to be in  
12 violation of any rule, regulation, order or permit issued  
13 pursuant to this article; or

14 (2) Against the commissioner, department, division,  
15 reclamation board of review or appropriate department  
16 employees, to the extent permitted by the West Virginia  
17 Constitution and by law, where there is alleged a failure of  
18 the above to perform any act or duty under this article which  
19 is not discretionary.

20 (b) No action may be commenced:

21 (1) Under subdivision (1), subsection (a) of this section: (A)  
22 prior to sixty days after the plaintiff has given notice in writing  
23 of the violation to the commissioner or to any alleged violator,  
24 or (B) if the commissioner has commenced and is diligently  
25 prosecuting a civil action in a circuit court to require  
26 compliance with the provisions of this article or any rule or  
27 regulation, order or permit issued pursuant to this article; or

28 (2) Under subdivision (2), subsection (a) of this section prior  
29 to sixty days after the plaintiff has given notice in writing of  
30 such action to the commissioner, except that such action may  
31 be brought immediately after such notification in the case  
32 where the violation or order complained of constitutes an  
33 imminent threat to the health or safety of the plaintiff or  
34 would immediately affect a legal interest of the plaintiff.

35 (c) Any action respecting a violation of this article or the  
36 regulations thereunder may be brought in any appropriate  
37 circuit court. In such action under this section, the commis-  
38 sioner, if not a party, may intervene as a matter of right.

39 (d) The court in issuing any final order in any action  
40 brought pursuant to subsection (a) of this section may award  
41 costs of litigation, including reasonable attorney and expert  
42 witness fees, to any party whenever the court determines such  
43 award is appropriate. The court may, if a temporary  
44 restraining order or preliminary injunction is sought, require  
45 the filing of a bond or equivalent security.

46 (e) Nothing in this section shall restrict any right which any  
47 person or class of persons may have under any statute or  
48 common law to seek enforcement of any of the provisions of  
49 this article and the regulations thereunder or to seek any other  
50 relief.

51 (f) Any person or property who is injured in his person  
52 through the violation by any operator of any rule, regulation,  
53 order or permit issued pursuant to this article may bring an  
54 action for damages, including reasonable attorney and expert  
55 witness fees, in any court of competent jurisdiction. Nothing  
56 in this subsection shall affect the rights established by or limits  
57 imposed under state worker's compensation laws.

58 (g) This section shall apply to violations of this article and

59 the regulations promulgated thereto, or orders or permits  
60 issued pursuant to said article insofar as said violations,  
61 regulations, orders and permits relate to surface-mining  
62 operations.

**§22A-3-26. Surface-mining operations not subject to article.**

1 The provisions of this article do not apply to any of the  
2 following activities:

3 (a) The extraction of coal by a landowner for his own  
4 noncommercial use from land owned or leased by him.

5 (b) The extraction of coal by a landowner engaged in  
6 construction, which construction does not require the  
7 disturbance of more than one acre of privately owned land:  
8 *Provided*, That prior to the extraction of coal by such  
9 landowner, he shall affirmatively demonstrate that such  
10 construction will occur within a reasonable time after surface  
11 disturbance.

12 (c) Notwithstanding any other provision of this article, a  
13 person or operator shall not be subject to the reclamation  
14 requirements of this article when engaged in the removal of  
15 borrow and fill material for grading in federal and state  
16 highway or other construction projects: *Provided*, That the  
17 provisions of the construction contract require the furnishing  
18 of a suitable bond which provides for reclamation, wherever  
19 practicable, of the area affected by such recovery activity.

20 (d) The extraction of coal for commercial purposes where  
21 the surface mining operation affects two acres or less:  
22 *Provided*, That the entity conducting or planning to conduct  
23 said operation complies with the provisions of section ten-a  
24 of this article.

**§22A-3-27. Leasing of lands owned by state for surface mining of coal.**

1 No land or interest in land owned by the state may be  
2 leased, and no present lease may be renewed by the state, nor  
3 any agency of the state, for the purpose of conducting surface-  
4 mining operations thereon unless said lease or renewal shall  
5 have been first authorized by an act of the legislature:  
6 *Provided*, That the provisions of this section shall not apply  
7 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.**

1 (a) Except where exempted by section twenty-six of this  
2 article, it shall hereafter be unlawful for any person to engage  
3 in surface mining as defined in this article as an incident to  
4 the development of land for commercial, residential, industrial  
5 or civic use without having first obtained from the commis-  
6 sioner a permit therefor as provided in section eight of this  
7 article, unless a special permit therefor shall have been first  
8 obtained from the commissioner as provided in this section.

9 Application for a special permit to engage in surface mining  
10 as an incident to the development of land for commercial,  
11 residential, industrial or civic use shall be made in writing on  
12 forms prescribed by the commissioner and shall be signed and  
13 verified by the applicant. The application shall be accompanied  
14 by:

15 (1) A site preparation plan, prepared and certified by or  
16 under the supervision of a person approved by the commis-  
17 sioner, showing the tract of land which the applicant proposes  
18 to develop for commercial, residential, industrial or civic use;  
19 the probable boundaries and areas of the coal deposit to be  
20 mined and removed from said tract of land incident to the  
21 proposed commercial, residential, industrial or civic use  
22 thereof; and such other information as prescribed by the  
23 commissioner;

24 (2) A development plan for the proposed commercial,  
25 residential, industrial or civic use of said land;

26 (3) The name of owner of the surface of the land to be  
27 developed;

28 (4) The name of owner of the coal to be mined incident to  
29 the development of the land;

30 (5) A reasonable estimate of the number of acres of coal  
31 that would be mined as a result of the proposed development  
32 of said land: *Provided*, That in no event may such number  
33 of acres to be mined, excluding roadways, exceed five acres;  
34 and

35 (6) Such other information as the commissioner may require  
36 to satisfy and assure the commissioner that the surface mining  
37 under special permit is incidental or secondary to the proposed  
38 commercial, residential industrial or civic use of said land.

39 (b) There shall be attached to the application for the special  
40 permit a certificate of insurance certifying that the applicant  
41 has in force a public liability insurance policy issued by an  
42 insurance company authorized to do business in this state  
43 affording personal injury protection in accordance with  
44 subsection (d), section nine of this article.

45 The application for the special permit shall also be  
46 accompanied by a bond, or cash or collateral securities or  
47 certificates of the same type, in the form as prescribed by the  
48 commissioner and in the minimum amount of two thousand  
49 dollars per acre, for a maximum disturbance of five acres.

50 The bond shall be payable to the state of West Virginia and  
51 conditioned that the applicant shall complete the site  
52 preparation for the proposed commercial, residential,  
53 industrial or civic use of said land. At the conclusion of the  
54 site preparation, in accordance with the site preparation plan  
55 submitted with the application, the bond conditions shall be  
56 satisfied and the bond and any cash, securities or certificates  
57 furnished with said bond may be released and returned to the  
58 applicant. The filing fee for the special permit shall be five  
59 hundred dollars. The special permit shall be valid until work  
60 permitted is completed.

61 (c) The purpose of this section is to vest jurisdiction in the  
62 commissioner, where the surface mining is incidental or  
63 secondary to the preparation of land for commercial,  
64 residential, industrial or civic use and where, as an incident  
65 to such preparation of land, minerals must be removed,  
66 including, but not limited to, the building and construction of  
67 railroads, shopping malls, factory and industrial sites,  
68 residential and building sites, and recreational areas. Anyone  
69 who has been issued a special permit shall not be issued an  
70 additional special permit on the same or adjacent tract of land  
71 unless satisfactory evidence has been submitted to the  
72 commissioner that such permit is necessary to subsequent  
73 development or construction. As long as the operator complies  
74 with the purpose and provisions of this section, the other

75 sections of this article shall not be applicable to the operator  
 76 holding a special permit: *Provided*, That the commissioner  
 77 shall promulgate regulations establishing applicable perfor-  
 78 mance standards for operations permitted under this section.

79 (d) The commissioner may, in the exercise of his sound  
 80 discretion, when not in conflict with the purposes and findings  
 81 of this article and to bring about a more desirable land use  
 82 or to protect the public and the environment, issue a special  
 83 permit solely for the reprocessing of existing abandoned coal  
 84 processing waste piles. The commissioner shall promulgate  
 85 specific regulations for such operations: *Provided*, That a bond  
 86 and a reclamation plan shall be required for such operations.

**§22A-3-29. Existing permits and performance bond conversion;  
 exemption from design criteria.**

1 (a) All surface disturbance reclamation bonds submitted  
 2 pursuant to the requirements of chapter twenty-two of this  
 3 code by the department of mines for operations which  
 4 continue to operate eight months after the approval of the  
 5 state program shall be released upon notification by the  
 6 commissioner that the disturbed areas have been bonded in  
 7 accordance with the provisions of this article: *Provided*, That  
 8 for those operations permitted after the first day of July, one  
 9 thousand nine hundred seventy-six, and which do not continue  
 10 operation eight months after the approval of the state  
 11 program, the commissioner upon reclamation of the site in  
 12 accordance with the underground opening approval reclama-  
 13 tion plan, shall release such bonds: *Provided, however*, That  
 14 forfeiture proceedings shall begin upon failure of the operator  
 15 to reclaim within a reasonable time the disturbed area  
 16 pursuant to a plan approved after the first day of July, one  
 17 thousand nine hundred seventy-six.

18 (b) With regard to existing structures and facilities, persons  
 19 need not comply with design criteria if such structures and  
 20 facilities meet the environmental performance standards of this  
 21 article.

**§22A-3-30. Experimental practices.**

1 In order to encourage advances in surface mining and  
 2 reclamation practices or to allow postmining land use for  
 3 industrial, commercial, residential, agricultural or public use,

4 including recreational facilities, the commissioner may  
5 authorize departures, in individual cases and on an experimen-  
6 tal basis, from the environmental protection performance  
7 standards promulgated under this article. Such departures may  
8 be authorized if the experimental practices are potentially  
9 more or at least as environmentally protective during and after  
10 surface-mining operations as those required by promulgated  
11 standards; the surface-mining operations approved for  
12 particular land use or other purposes are not larger or more  
13 numerous than necessary to determine the effectiveness and  
14 economic feasibility of the experimental practices; and the  
15 experimental practices do not reduce the protection afforded  
16 health or safety of the public below that provided by  
17 promulgated standards.

**§22A-3-31. Certification and training of blasters.**

1 The director of the division of mines and minerals shall be  
2 responsible for the training, examination and certification of  
3 persons engaging in or directly responsible for blasting or use  
4 of explosives in surface-mining operations.

**§22A-3-32. Surface miner certification required.**

1 After the first day of July, one thousand nine hundred  
2 seventy-six, certification shall be required of all surface miners  
3 in accordance with the provisions of articles nine and ten,  
4 chapter twenty-two of this code and the regulations promul-  
5 gated thereunder.

**§22A-3-33. Certification of surface-mine foremen.**

1 (a) In every surface mine where five or more persons are  
2 employed in a period of twenty-four hours, the operator shall  
3 employ at least one person certified in accordance with the  
4 provisions of article nine, chapter twenty-two of this code as  
5 a mine foreman. Each applicant for certification as a mine  
6 foreman shall, at the time he is issued a certificate of  
7 competency: (1) Be a resident or employed in a mine in this  
8 state; (2) have had at least three years' experience in surface  
9 mining, which shall include at least eighteen months'  
10 experience on or at a working section of a surface mines, or  
11 be a graduate of the School of Mines at West Virginia  
12 University or of another accredited mining engineering school  
13 and have had at least two years' practical experience in a

14 surface mine, which shall include at least eighteen months'  
 15 experience on or at a working section of a surface mine; and  
 16 (3) have demonstrated his knowledge of mine safety, first aid,  
 17 safety appliances, emergency procedures relative to all  
 18 equipment, state and federal mining laws and regulations and  
 19 other subjects, by completing such training, education and  
 20 examinations as may be required of him under article nine,  
 21 chapter twenty-two of this code.

22 (b) In surface mines in which the operations are so extensive  
 23 that the duties devolving upon the mine foreman cannot be  
 24 discharged by one person, one or more assistant mine foreman  
 25 may be designated. Such persons shall act under the  
 26 instruction of the mine foreman who shall be responsible for  
 27 their conduct in the discharge of their duties. Each assistant  
 28 so designated shall be certified under the provisions of article  
 29 nine, chapter twenty-two of this code. Each applicant for  
 30 certification as assistant mine foreman shall, at the time he is  
 31 issued a certificate of competency, possess all of the  
 32 qualifications required of a mine foreman: *Provided*, That he  
 33 shall, at the time he is certified, be required to have at least  
 34 two years' experience in surface mining, which shall include  
 35 eighteen months on or at a working section of a surface mine  
 36 or be a graduate of the School of Mines at West Virginia  
 37 University or of another accredited mining engineering school  
 38 and have had twelve months' practical experience in a surface  
 39 mine, all of which shall have been on or at a working section.

40 (c) The director of the division of mines and minerals shall  
 41 promulgate such rules and regulations as may be necessary to  
 42 carry out the provisions of this section.

**§22A-3-34. Monthly report by operator.**

1 The operator of every surface mine shall, on or before the  
 2 end of each calendar month, file with the director of the  
 3 division of mines and minerals a report covering the preceding  
 4 calendar month on forms furnished by said director. Such  
 5 reports shall state the number of accidents which have  
 6 occurred, the number of persons employed, the days worked  
 7 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.**



1 All provisions of the mining laws of this state intended to  
2 safeguard life and property shall extend to all surface mining  
3 operations insofar as such laws are applicable thereto. The  
4 commissioner shall promulgate reasonable regulations in  
5 accordance with the provisions of chapter twenty-nine-a of this  
6 code to protect the safety of those employed in and around  
7 surface mines. The enforcement of all laws and regulations  
8 relating to the safety of those employed in and around surface  
9 mines is hereby vested in the division of mines and minerals  
10 and shall be enforced according to the provisions of chapter  
11 twenty-two-a of this code.

**§22A-3-36. Conflicting provisions.**

1 In the event of any inconsistency or conflict between any  
2 provision of this article and any provision of this chapter, the  
3 provisions of this article shall control.

**§22A-3-37. Conflict of interest prohibited; criminal penalties therefor; employee protection.**

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

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

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

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

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

**§22A-3-38. Severability.**

1 If any provision of this article or the application thereof to  
2 any person or circumstance is held invalid, such invalidity shall  
3 not affect other provisions or applications of this article, and  
4 to this end the provisions of this article are declared to be  
5 severable: *Provided*, That in promulgating rules pursuant to  
6 the provisions of this article, the commissioner shall note  
7 relevant administrative and judicial decisions from both state

8 and federal systems and action by the United States Congress  
9 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.**

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

18 (b) Permits granted under this article shall be subject to rules  
19 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.**

1 (a) Notwithstanding any provisions of this chapter to the  
2 contrary, all powers, duties and responsibilities of the chief of  
3 the division of water resources under article five-a, chapter  
4 twenty of this code with respect to all coal mines, preparation  
5 plants and all refuse and waste therefrom subject to said article  
6 five-a, chapter twenty of this code are hereby transferred to  
7 the commissioner. The commissioner shall have sole authority  
8 to issue, amend, transfer, renew or revoke all permits required  
9 under article five-a, chapter twenty-two of this code with  
10 respect to all coal mines, preparation plants and all refuse and  
11 waste therefrom subject to said article five-a. The procedures  
12 for issuance, amendment, transferral, renewal and revocation

13 of such permits shall be governed by regulations promulgated  
14 pursuant to subsection (b). The commissioner shall consolidate  
15 the various permit programs under article five-a, chapter  
16 twenty of this code and article three of this chapter applicable  
17 to all coal mines, preparation plants and all refuse and waste  
18 therefrom. All provisions of article five-a, chapter twenty of  
19 this code heretofore applicable to coal mines, preparation  
20 plants and all refuse and waste therefrom shall be continued  
21 under this section.

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

38 (c) Notwithstanding any provisions of this chapter to the  
39 contrary, the commissioner shall have the sole authority to  
40 enforce and shall enforce the rules and regulations promul-  
41 gated under this article by the commissioner and the rules and  
42 regulatons of the water resources board setting water quality  
43 standards for the waters of the state as they apply to all coal  
44 mines, preparation plants and all refuse and waste therefrom.  
45 Rules and regulations adopted by the commissioner, pursuant  
46 to the requirements of article five-a of chapter twenty, of this  
47 code shall be enforceable by the commissioner under the  
48 provisions of sections seventeen and nineteen, article five-a,  
49 chapter twenty of this code, as though the regulations were  
50 promulgated by the water resources board: *Provided*, That the  
51 commissioner's authority to enforce such rules and regulations  
52 under article five-a, chapter twenty of this code shall not  
53 preclude the commissioner or any person from invoking the

54 remedies otherwise provided by article three of this chapter  
55 and shall not preclude the commissioner from enforcing the  
56 provisions of this article.

57 (d) Notwithstanding any provisions of this chapter to the  
58 contrary, any permit of the commissioner issued pursuant to  
59 subsection (a) of this section, or any order issued under article  
60 five-a of chapter twenty, of this code, or for the purpose of  
61 implementing the "National Pollutant Discharge Elimination  
62 System" established under the federal Clean Water Act, shall  
63 be appealable only to the state water resources board and such  
64 appeal shall be governed by the provisions of section fifteen,  
65 article five-a of chapter twenty of this code.

66 (e) This section shall become effective upon a proclamation  
67 by the governor stating that final approval of the partial  
68 transfer of the National Pollutant Discharge Elimination  
69 System established under the federal Clean Water Act  
70 contemplated by this section has been given by the Admin-  
71 istrator of the United States Environmental Protection  
72 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.**

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

8 The Legislature finds that, although surface mining provides  
9 much needed employment and has produced good safety  
10 records, unregulated surface mining causes soil erosion, pyritic  
11 shales and materials landslides, noxious materials, stream  
12 pollution and accumulation of stagnant water, increases the  
13 likelihood of floods and slides, destroys the value of some  
14 lands for agricultural purposes and some lands for recreational  
15 purposes, destroys aesthetic values, counteracts efforts for the  
16 conservation of soil, water and other natural resources, and

17 destroys or impairs the health, safety, welfare and property  
18 rights of the citizens of West Virginia, where proper mining  
19 and reclamation is not practiced.

20 The Legislature also finds that there are wide variations  
21 regarding location and terrain conditions surrounding and  
22 arising out of the surface mining primarily in topographical  
23 and geological conditions, and by reason thereof, it is  
24 necessary to provide the most effective, beneficial and  
25 equitable solution to the problems involved.

26 The Legislature further finds that authority should be vested  
27 in the commissioner of the department of energy to administer  
28 and enforce the provisions of this article.

29 The commissioner of the department of energy and the  
30 director of the division of mines and minerals shall cooperate  
31 with respect to departmental programs and records so as to  
32 effect an orderly and harmonious administration of the  
33 provisions of this article. The commissioner of energy may  
34 avail himself of any services which may be provided by other  
35 state agencies in this state and other states or by agencies of  
36 the federal government, and may reasonably compensate them  
37 for such services. He may also receive any federal funds, state  
38 funds or any other funds for the reclamation of land affected  
39 by surface mining.

40 No public officer or employee in the department of energy,  
41 the division of mines and minerals, or the office of attorney  
42 general, having any responsibility or duty either directly or of  
43 a supervisory nature with respect to the administration or  
44 enforcement of this article shall (1) engage in surface mining  
45 as a sole proprietor or as a partner or (2) be an officer,  
46 director, stockholder, owner or part owner of any corporation  
47 or other business entity engaged in surface mining or (3) be  
48 employed as an attorney, agent or in any other capacity by  
49 any person, partnership, firm, association, trust or corporation  
50 engaged in surface mining. Any violation of this paragraph by  
51 any such public officer or employee shall constitute grounds  
52 for his removal from office or dismissal from his employment,  
53 as the case may be.

**§22A-4-2. Definitions.**

1 Unless the context in which used clearly requires a different

2 meaning, as used in this article:

3 (a) "Adequate treatment" means treatment of water by  
4 physical, chemical or other approved methods in a manner  
5 that will cause the analyzed pH level of the treated water to  
6 be 6.0 - 9.0 and analyzed content of iron of the treated water  
7 to be seven milligrams per liter or less, or approved treatment  
8 which will not lower the water quality standards established  
9 for the river, stream or drainway into which such water is  
10 released.

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

14 (c) "Commissioner" means the commissioner of the  
15 department of energy or his authorized agents.

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

23 (e) "Minerals" means clay, flagstone, gravel, limestone,  
24 maganese, sand, sandstone, shale, iron ore and any other metal  
25 or metallurgical ore: *Provided*, That the term minerals does  
26 not include coal.

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

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

34 (h) "Permit area" means the area of land indicated on the  
35 approved map submitted by the operator with the reclamation  
36 plan as specified in section eight of this article showing the  
37 exact location of end strip markers, permit markers and  
38 monuments.

39 (i) "Person" means any individual, partnership, firm,

40 association, trust or corporation.

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

45 (k) "Surface mining" means all activity for the recovery of  
46 minerals, and all plants and equipment used in processing said  
47 minerals: *Provided*, That the bonding and reclamation  
48 provisions of this article shall not apply to surface mining of  
49 limestone, sandstone and sand: *Provided, however*, That the  
50 surface mining of limestone, sandstone and sand shall be  
51 subject to separate rules and regulations to be promulgated by  
52 the commissioner.

53 (l) "Surface of a regraded bench" means the top portion or  
54 part of any regraded area.

**§22A-4-3. Department of energy; duties and functions.**

1 Except as otherwise provided in this article, the commis-  
2 sioner shall administer all of the laws of this state relating to  
3 surface mining and shall exercise all of the powers and perform  
4 all of the duties by law vested in and imposed upon him in  
5 relation to said operations. The jurisdiction, supervision and  
6 enforcement authority granted the commissioner in this article  
7 shall be in addition to the jurisdiction, supervision and  
8 enforcement authority granted in this chapter.

**§22A-4-4. Surface-mining reclamation supervisors and inspectors;  
appointment and qualifications; salary.**

1 The commissioner shall determine the number of surface-  
2 mining reclamation supervisors and inspectors needed to carry  
3 out the purposes of this article and appoint them as such. All  
4 such appointees shall be eligible civil service employees, but  
5 no person shall be qualified for such appointment until he has  
6 served in a probationary status for a period of one year to  
7 the satisfaction of the commissioner of energy: *Provided*, That  
8 the provisions of this section shall not affect the status of  
9 persons employed on the effective date of this article as  
10 reclamation inspectors under the former provisions of chapter  
11 twenty, if such persons are qualified civil service employees.

12 Every surface-mining reclamation supervisor or inspector



13 shall be paid not less than sixteen thousand dollars per year.

**§22A-4-5. Duties of surface-mining reclamation inspectors.**

1 The surface-mining reclamation inspectors shall make all  
2 necessary surveys and inspections of surface-mining opera-  
3 tions, shall administer and enforce all surface-mining laws,  
4 rules and regulations, and shall perform such other duties and  
5 services as may be prescribed by the commissioner. Such  
6 inspectors shall give particular attention to all conditions of  
7 each permit to insure complete compliance therewith. The  
8 commissioner shall cause inspections to be made of each active  
9 surface-mining operation in this state by a surface-mining  
10 reclamation inspector at least once every fifteen days. Said  
11 inspector shall note and describe violations of this article and  
12 immediately report such violations to the commissioner in  
13 writing, furnishing at the same time a copy of such report to  
14 the operator concerned.

**§22A-4-6. Permit required; applications; issuance and renewals; fees and use of proceeds.**

1 It shall hereafter be unlawful for any person to engage in  
2 surface mining without having first obtained from the  
3 department of energy a permit therefor as provided in this  
4 section. Application for a surface-mining permit shall be made  
5 in writing on forms prescribed by the commissioner of energy,  
6 and shall be signed and verified by the applicant. The  
7 application, in addition to such other information as may be  
8 reasonably required by the commissioner, shall contain the  
9 following information: (1) The common name and geologic  
10 title, where applicable, of the mineral or minerals to be  
11 extracted; (2) maps and plans as provided in section seven  
12 hereof; (3) the owner or owners of the surface of the land to  
13 be mined; (4) the owner or owners of the mineral to be mined;  
14 (5) the source of the operator's legal right to enter and conduct  
15 operations on the land to be covered by the permit; (6) a  
16 reasonable estimate of the number of acres of land that will  
17 be disturbed by mining on the area to be covered by the  
18 permit; (7) the permanent and temporary post-office addresses  
19 of the applicant and of the owners of the surface and the  
20 mineral; (8) whether any surface-mining permits are now held  
21 and the numbers thereof; (9) the names and post-office  
22 addresses of every officer, partner, director (or person

23 performing a similar function), of the applicant, together with  
24 all persons, if any, owning of record or beneficially (alone or  
25 with associates), if known, ten percent or more of any class  
26 of stock of the applicant: *Provided*, That if such list be so large  
27 as to cause undue inconvenience, the commissioner may waive  
28 the requirements that such list be made a part of such  
29 application, except the names and current addresses of every  
30 officer, partner, director and applicant must accompany such  
31 application; (10) if known, whether applicant, any subsidiary  
32 or affiliate or any person controlled by or under common  
33 control with applicant, or any person required to be identified  
34 by item (9) above, has ever had a surface-mining permit issued  
35 under the laws of this state revoked or has ever had a surface-  
36 mining bond, or security deoposited in lieu of bond, forfeited;  
37 and (11) names and addresses of the reputed owner or owners  
38 of all surface area within five hundred feet of any part of  
39 proposed disturbed land, which such owners shall be notified  
40 by registered or certified mail of such application and such  
41 owners shall be given ten days within which to file written  
42 objections thereto, if any, with the commissioner. There shall  
43 be attached to the application a true copy of an original policy  
44 of insurance issued by an insurance company authorized to do  
45 business in this state covering all surface-mining operations of  
46 the applicant in this state and affording personal injury  
47 protection in an amount not less than one hundred thousand  
48 dollars and property damage, including blasting damage,  
49 protection in an amount of not less than three hundred  
50 thousand dollars.

51 The commissioner shall upon receipt of the application for  
52 a permit cause to be published, as a Class III legal advertise-  
53 ment in accordance with the provisions of article three, chapter  
54 fifty-nine of this code, a notice of the application for the  
55 permit. Such notice shall contain in abbreviated form the  
56 information required by this section, together with the  
57 commissioner's statement that written protests to such  
58 application will be received by him until a specified date, which  
59 date shall be at least thirty days after the first publication of  
60 the notice.

61 The publication area of the notices required by this section  
62 shall be the county or counties in which the proposed permit  
63 area is located. The cost of all publications required by this

64 section shall be borne by the applicant.

65 Upon the filing of an application in proper form, accom-  
66 panied by the fees and bond required by this article and said  
67 true copy of the policy of insurance, and after consideration  
68 of the merits of the application and written protests, if any,  
69 the commissioner may issue the permit applied for if the  
70 applicant has complied with all of the provisions of this article.  
71 If the commissioner finds that the applicant is or has been  
72 affiliated with or managed or controlled by, or is or has been  
73 under the common control of, other than as an employee, a  
74 person who or which has had a surface-mining permit revoked  
75 or bond or other security forfeited for failure to reclaim lands  
76 as required by the laws of this state, he shall not issue a permit  
77 to the applicant: *Provided*, That no surface-mining permit  
78 shall be refused because of any past revocation of a permit  
79 and forfeiture of a bond or other security if such revocation  
80 and forfeiture occurred before the first day of July, one  
81 thousand nine hundred seventy-one, and if, after such  
82 revocation and forfeiture, the operator whose permit has been  
83 revoked and bond forfeited shall have paid into the surface-  
84 mining reclamation fund the full amount of the bond so  
85 forfeited, and any additional sum of money determined by the  
86 commissioner to be adequate to reclaim the land covered by  
87 such forfeited bond: *Provided, however*, That in no event shall  
88 such additional sum be less than sixty dollars per acre.

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

96 The registration fee for all permits for surface mining, shall  
97 be five hundred dollars. The annual renewal fee for permits  
98 for surface mining shall be one hundred dollars payable on  
99 the anniversary date of said permit upon renewal.

100 The permit of any operator who fails to pay any fees  
101 provided for in this article shall be revoked.

102 All registration and renewal fees for surface mining shall be  
103 collected by the commissioner and shall be deposited with the

104 treasurer of the state of West Virginia to the credit of the  
105 operating permit fees fund and shall be used, upon requisition  
106 of the commissioner, for the administration of this article.

**§22A-4-7. Preplans.**

1 Under the provisions of this article, and rules and  
2 regulations adopted by the commissioner, the operator shall  
3 prepare a complete reclamation and mining plan for the area  
4 of land to be disturbed. Said reclamation and mining plan  
5 shall include a proposed method of operation, prepared by a  
6 registered professional engineer or a person approved by the  
7 director, for grading, backfilling, soil preparation, mining and  
8 planting and such other proposals as may be necessary to  
9 develop the complete reclamation and mining plan contem-  
10 plated by this article. In developing this complete reclamation  
11 and mining plan all reasonable measures shall be taken to  
12 eliminate damages to members of the public, their real and  
13 personal property, public roads, streams and all other public  
14 property from soil erosion, rolling stones and overburden,  
15 water pollution and hazards dangerous to life and property.  
16 The plan shall be submitted to the commissioner and the  
17 commissioner shall notify the applicant by certified mail within  
18 thirty days after receipt of the plan and complete application  
19 if it is or is not acceptable. If the plan is not acceptable, the  
20 commissioner shall set forth the reasons why the plan is not  
21 acceptable, and he may proposed modifications, delete areas  
22 or reject the entire plan. Should the applicant disagree with  
23 the decision of the commissioner, he may, by written notice,  
24 request a hearing before the commissioner. The commissioner  
25 shall hold such hearing within thirty days after receipt of this  
26 notice. When a hearing is held by the commissioner, he shall  
27 notify the applicant of his decision by certified mail within  
28 twenty days after the hearing. Any person aggrieved by a final  
29 order of the commissioner made after the hearing or without  
30 a hearing may appeal to the reclamation board of review.

31 The application for a permit shall be accompanied by copies  
32 of an enlarged United States geological survey topographic  
33 map meeting the requirements of the subdivisions below.  
34 Aerial photographs of the area shall be acceptable if the plan  
35 for reclamation can be shown to the satisfaction of the  
36 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 (b) Identify the areas to correspond with application;

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

48 (d) Be of such scale as may be prescribed by the  
49 commissioner;

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

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

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

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

72 (i) Show the presence of any acid-producing materials which  
73 when present in the overburden, may cause spoil with a pH  
74 factor below 3.5, preventing effective revegetation. The

75 presence of such materials, wherever occurring in significant  
76 quantity, shall be indicated on the map, filed with the  
77 application for permit. The operator shall also indicate the  
78 manner in which acid-bearing spoil will be suitably prepared  
79 for revegetation and stabilization, whether by application of  
80 mulch or suitable soil material to the surface or by some other  
81 type of treatment, subject to approval of the commissioner.

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

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

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

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

99 Upon an order of the commissioner, the operator shall,  
100 within thirty days after service of a copy of said order upon  
101 said operator by certified United States mail, furnished to the  
102 department of energy four copies of a progress map prepared  
103 by or under the supervision of a registered professional civil  
104 engineer or registered professional mining engineer, or by a  
105 registered land surveyor, showing the area disturbed by  
106 operations to the date of such map. Such progress map shall  
107 contain information identical to that required for both the  
108 proposed and final maps, required by this article, and shall  
109 show in detail completed reclamation work, as required by the  
110 commissioner. Such progress map shall include a geologic  
111 survey sketch showing the location of the operation, shall be  
112 properly referenced to a permanent landmark, and shall be  
113 within such reasonable degree of accuracy as may be  
114 prescribed by the commissioner. If no land has been disturbed

115 by operations during the preceding year, the operator shall  
116 notify the commissioner of this fact. A final map shall be  
117 submitted within sixty days after completion of mining  
118 operations. Failure to submit maps or aerial photographs or  
119 notices at specified times shall cause the permit in question  
120 to be suspended.

**§22A-4-8. Installation of drainage system.**

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

**§22A-4-9. Alternative plans; time.**

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

9 By regulations of the commissioner, time limits shall be  
10 established requiring backfilling, grading and planting to be  
11 kept current. All backfilling and grading shall be completed  
12 before equipment necessary for such backfilling and grading  
13 is moved from the operation.

14 If the operator or other person desires to conduct deep  
15 mining upon the premises or use a deep-mining opening for  
16 haulageways or other lawful purposes, the operator may  
17 designate locations to be used for such purposes at which  
18 places it will not be necessary to backfill as herein provided  
19 for until such deep mining or other use is completed, during  
20 which time the bond on file for that portion of that operation  
21 shall not be released. Such locations shall be described and  
22 designated on the map required by the provisions of section  
23 seven of this article.

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

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

37 All fill and cut slopes shall be seeded during the first  
38 planting or seeding season after the construction of a  
39 haulageway to the area. Upon abandonment of any haulage-  
40 way, the haulageway shall be seeded and every effort made  
41 to prevent its erosion by means of culverts, waterbars or other  
42 devices required by the commissioner. In proper season, all fill  
43 and cut slopes of the operation and haulageways shall be  
44 seeded and planted in a manner as prescribed by the  
45 commissioner, as soil tests indicate soil suitability and in  
46 accordance with accepted agricultural and reforestation  
47 practices.

48 In any such area where surface mining is being conducted,  
49 mulch shall be required on all disturbed areas where the  
50 remaining slope exceeds twenty degrees from horizontal as  
51 shown on the preplan map filed with the commissioner as  
52 required by the provisions of section seven of this article.

53 After the operation has been backfilled, graded and  
54 approved by the commissioner, the operator shall prepare or  
55 cause to be prepared a final planting plan for the planting of  
56 trees, shrubs, vines, grasses or legumes upon the area of the  
57 land affected in order to provide a suitable vegetative cover.  
58 The seed or plant mixtures, quantities, method of planting,  
59 type and amount of lime, fertilizer, mulch, and any other  
60 measures necessary to provide a suitable vegetative cover shall  
61 be defined by the rules and regulations of the commissioner.

62 The planting called for by the final planting plan shall be  
63 carried out in a manner so as to establish a satisfactory cover  
64 of trees, shrubs, grasses, legumes or vines upon the disturbed  
65 area covered by the planting plan within a reasonable period  
66 of time. Such planting shall be done by the operator or such



67 operator may contract in writing with the soil conservation  
68 district for the district in which the operation covered by such  
69 permit is located or with a private contractor approved by the  
70 commissioner to have such planting done by such district or  
71 private contractor. The commissioner shall not release the  
72 operator's bond until all haulageways, roads and trails within  
73 the permit area have been abandoned according to the  
74 provisions of this article and the rules and regulations  
75 promulgated thereunder or such operator or any other person  
76 has secured a permit to deep mine such area as required by  
77 chapter twenty-two-a of this code.

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

**§22A-4-10. Limitations; mandamus.**

1 The Legislature finds that there are certain areas in the state  
2 of West Virginia which are impossible to reclaim either by  
3 natural growth or by technological activity and that if surface  
4 mining is conducted in these certain areas such operations may  
5 naturally cause stream pollution, landslides, the accumulation  
6 of stagnant water, flooding, the destruction of land for  
7 agricultural purposes, the destruction of aesthetic values, the  
8 destruction of recreational areas and future use of the area and  
9 surrounding areas, thereby destroying or impairing the health  
10 and property rights of others, and in general creating hazards  
11 dangerous to life and property so as to constitute an imminent  
12 and inordinate peril to the welfare of the state, and that such  
13 areas shall not be mined by the surface-mining process.

14 Therefore, authority is hereby vested in the commissioner  
15 to delete certain areas from all surface-mining operations.

16 No application for a permit shall be approved by the  
17 commissioner if there is found on the basis of the information

18 set forth in the application or from information available to  
19 the commissioner and made available to the applicant that the  
20 requirements of this article or rules and regulations hereafter  
21 adopted will not be observed or that there is not probable  
22 cause to believe that the proposed method of operation,  
23 backfilling, grading or reclamation of the affected area can be  
24 carried out consistent with the purpose of this article.

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

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

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

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

58 conditons.

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

**§22A-4-11. Blasting restriction; formula; filing preplan; penalties;  
notice.**

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

7 (1) The weight in pounds of explosive charge detonated at  
8 any one time shall conform with the following scaled distance  
9 formula:  $W = (D/50)^2$  (to the second power). Where W equals  
10 weight in pounds of explosives detonated at any one instant  
11 time, then D equals distance in feet from nearest point of blast  
12 to nearest residence, building, or structure, other than  
13 operation facilities of the mine: *Provided*, That explosive  
14 charges shall be considered to be detonated at one time if their  
15 detonation occurs within eight milliseconds or less of each  
16 other.

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

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

29 (4) Records of each blast shall be kept in a log to be  
30 maintained for at least three years, which will show for each  
31 blast other than secondary (boulder breaking) blasts the  
32 following information:

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

40 (5) Where inspection by the department of energy estab-  
41 lishes that the scaled distance formula and the approved  
42 preplan are not being adhered to, the following penalties shall  
43 be imposed:

44 (a) For the first offense in any one permit year under this  
45 section, the permit holder shall be assessed not less than five  
46 hundred dollars nor more than one thousand dollars;

47 (b) For the second offense in any one permit year under this  
48 section, the permit holder shall be assessed not less than one  
49 thousand dollars nor more than five thousand dollars;

50 (c) For the third offense in any one permit year under this  
51 section or for the failure to pay any assessment hereinabove  
52 set forth within a reasonable time established by the  
53 commissioner, the permit shall be revoked.

54 All such assessments as set forth in this section shall be  
55 assessed by the commissioner, collected by him and deposited  
56 with the treasurer of the state of West Virginia, to the credit  
57 of the operating permit fees fund.

58 The commissioner shall promulgate rules and regulations  
59 which shall provide for a warning of impending blasting to  
60 the owners, residents or other persons who may be present on  
61 property adjacent to the blasting area.

**§22A-4-12. Time in which reclamation shall be done.**

1 It shall be the duty of an operator to commence the  
2 reclamation of the area of land disturbed by his operation after  
3 the beginning of surface mining of that area in accordance with  
4 plans previously approved by the commissioner and to  
5 complete such reclamation within twelve months after the

6 permit has expired, except that such grading, backfilling and  
7 water-management practices as are approved in the plans shall  
8 be kept current with the operations as defined by rules and  
9 regulations of the commission and no permit or supplement  
10 to a permit shall be issued or renewed, if in the discretion of  
11 the commissioner, these practices are not current.

**§22A-4-13. Obligations of the operator.**

1 In addition to the method of operation, grading, backfilling  
2 and reclamation requirements of this article and rules and  
3 regulations adopted pursuant thereto, the operator shall be  
4 required to perform the following:

5 (1) Cover the face of the coal and the disturbed area with  
6 material suitable to support vegetative cover and of such  
7 thickness as may be prescribed by the commissioner, or with  
8 a permanent water impoundment.

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

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

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

29 In the case of storm water accumulations or any break-  
30 through of water, adequate treatment shall be undertaken by  
31 the operator so as to prevent pollution occurring from the  
32 release of such water into the natural drainway or stream.

33 Treatment may include check-dams, settling ponds and  
34 chemical or physical treatment. In the case of a breakthrough  
35 of water, where it is possible, the water released shall be  
36 impounded immediately. All water so impounded shall receive  
37 adequate treatment by the operator before it is released into  
38 the natural drainway or stream.

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

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

56 The operator shall show on the map, filed with the  
57 application for a permit, the percent of slope of original  
58 surface within each two-hundred-foot interval along the  
59 contour of the operation, the first measurement to be taken  
60 at the starting point of the operation. The flagged field  
61 measurement shall be made from the estimated crop line or  
62 proposed mineral seam down slope to the estimated toe of the  
63 outer spoil. All reasonable measures shall be taken so as not  
64 to overload the fill bench during the first cut. No overburden  
65 material in excess of the first cut shall be placed over the fill  
66 bench. With the exception of haulageways and auger-mining  
67 operations, trees and brush shall be removed from the upper  
68 one half of all fill sections prior to excavation, and no trees  
69 or brush removed from the cut section shall be placed therein  
70 or thereon.

71 No fill bench shall be produced on slopes of more than  
72 sixty-five percent, except for construction of haulageways, and

73 such haulageways shall not exceed thirty-five feet in width,  
74 with very scattered forty-five-foot passing areas permitted.

75 Lateral drainage ditches connecting to natural or con-  
76 structed waterways shall be constructed to control water runoff  
77 and prevent erosion whenever required by the commissioner.  
78 There shall be no depressions that will accumulate water  
79 except those the commissioner may specify and approve. The  
80 depth and width of natural drainage ditches and any other  
81 diversion ditches may vary depending on the length and degree  
82 of slope.

83 With the exception of limestone, sandstone and sand,  
84 complete backfilling shall be required, not to exceed the  
85 approximate original contour of the land. Such backfilling  
86 shall eliminate highwalls and spoil peaks. Whenever directed  
87 by the commissioner, the operator shall construct, in the final  
88 grading, such diversion ditches or terraces as will control the  
89 water runoff. Additional restoration work may be required by  
90 the commissioner, according to rules and regulations adopted  
91 by the commissioner.

**§22A-4-14. Cessation of operation by inspector.**

1 Notwithstanding any other provisions of this article, a  
2 surface-mining reclamation inspector shall have the authority  
3 to order the immediate cessation of any operation where (1)  
4 any of the requirements of this article or the rules and  
5 regulations promulgated pursuant thereto or the orders of the  
6 commissioner have not been complied with or (2) the public  
7 welfare or safety calls for the immediate cessation of the  
8 operation. Such cessation of operation shall continue until  
9 corrective steps have been started by the operator to the  
10 satisfaction of the surface-mining reclamation inspector. Any  
11 operator who believes he is aggrieved by the actions of the  
12 surface-mining reclamation inspector may immediately appeal  
13 to the commissioner, setting forth reasons why the operation  
14 should not be halted. The commissioner shall determine  
15 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  
2 operator shall file or cause to be filed a planting report with  
3 the commissioner on a form to be prescribed and furnished

4 by the commissioner, providing the following information: (1)  
 5 Identification of the operation; (2) the type of planting or  
 6 seeding, including mixtures and amounts; (3) the date of  
 7 planting or seeding; (4) the area of land planted; and (5) such  
 8 other relevant information as the commissioner may require.  
 9 All planting reports shall be certified by the operator, or by  
 10 the party with whom the operator contracted for such  
 11 planting, as aforesaid.

**§22A-4-16. Performance bonds.**

1 Each operator who shall make application for a permit  
 2 under section six of this article shall, at the time such permit  
 3 is requested, furnish bond, on a form to be prescribed and  
 4 furnished by the commissioner, payable to the state of West  
 5 Virginia and conditioned that the operator shall faithfully  
 6 perform all of the requirements of this article. The amount of  
 7 the bond shall be not less than six hundred dollars for each  
 8 acre or fraction thereof of the land to be disturbed: *Provided*,  
 9 That the commissioner shall have the discretion to determine  
 10 the amount per acre of the bond that shall be required before  
 11 a permit is issued, such amount to be based upon the estimated  
 12 reclamation costs per acre, not to exceed a maximum of one  
 13 thousand dollars per acre or fraction thereof. The minimum  
 14 amount of bond furnished shall be ten thousand dollars. Such  
 15 bond shall be executed by the operator and a corporate surety  
 16 licensed to do business in the state of West Virginia: *Provided*,  
 17 *however*, That in lieu of corporate surety, the operator may  
 18 elect to deposit with the commissioner cash, or collateral  
 19 securities or certificates as follows: Bonds of the United States  
 20 or its possessions, of the federal land banks, or of the home  
 21 owners' loan corporation; full faith and credit general  
 22 obligation bonds of the state of West Virginia, or other states,  
 23 and of any county, district or municipality of the state of West  
 24 Virginia or other states; or certificates of deposit in a bank  
 25 in this state, which certificates shall be in favor of the  
 26 commissioner. The cash deposit or market value of such  
 27 securities <sup>or</sup> certificates shall be equal to or greater than the  
 28 sum of the bond. The commissioner shall, upon receipt of any  
 29 such deposit of cash, securities or certificates, immediately  
 30 place the same with the treasurer of the state of West Virginia  
 31 whose duty it shall be to receive and hold the same in the name  
 32 of the state in trust for the purpose for which such deposit

20.11



33 is made. The operator making the deposit shall be entitled  
34 from time to time to receive from the state treasurer, upon  
35 the written order of the commissioner, the whole or any  
36 portion of any cash, securities or certificates so deposited,  
37 upon depositing with him in lieu thereof, cash of other  
38 securities or certificates of the classes herein specified having  
39 value equal to or greater than the sum of the bond.

40 Is shall be unlawful for the owner or owners of surface rights  
41 or the owner or owners of mineral rights to interfere with the  
42 operator in the discharge of his obligation to the state for the  
43 reclamation of lands disturbed by him. If the owner or owners  
44 of the surface rights or the owner or owners of the mineral  
45 rights desire another operator or other operators to conduct  
46 mining operations on lands disturbed by the operator  
47 furnishing bond hereunder, it shall be the duty of said owner  
48 or owners to require the other operator or operators to secure  
49 the necessary mining permit and furnish suitable bond as  
50 herein provided. The commissioner may then release an  
51 equivalent amount of the bond of the operator originally  
52 furnishing bond on the disturbed area.

53 The commissioner shall not release that portion of any bond  
54 filed by any operator which is designated to assure faithful  
55 performance of, and compliance with, the backfilling and  
56 regrading requirements of the reclamation plan until all acid-  
57 bearing or acid-producing spoil within the permit area has  
58 received adequate treatment as specified in section nine of this  
59 article.

**§22A-4-17. Exception as to highway construction projects for reclamation requirements.**

1 Any provision of this article to the contrary notwithstand-  
2 ing, a person or operator shall not be subject to any duty or  
3 requirement whatever with respect to reclamation requirements  
4 when engaged in the removal of borrow and fill material for  
5 grading in federal and state highway construction projects:  
6 *Provided*, That the provisions of the highway construction  
7 contract require the furnishing of a suitable bond which  
8 provides for reclamation wherever practicable of the area  
9 affected by such recovery activity.

**§22A-4-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.**

1 All provisions of the mining laws of this state intended to  
 2 safeguard life and property shall extend to all surface-mining  
 3 operations insofar as such laws are applicable thereto. The  
 4 commissioner of the department of energy shall promulgate  
 5 reasonable rules and regulations, in accordance with the  
 6 provisions of chapter twenty-nine-a of this code, to protect the  
 7 safety of those employed in and around surface mines. The  
 8 enforcement of all laws, and rules and regulations relating to  
 9 the safety of those employed in and around surface mines is  
 10 hereby vested in the division of mines and minerals and shall  
 11 be enforced according to the provisions of chapter twenty-two-  
 12 a of this code.

**§22A-4-19. Monthly report by operator.**

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

**§22A-4-20. Rules and regulations.**

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

**§22A-4-21. Noncompliance.**

1 If any of the requirements of this article or rules and  
 2 regulations promulgated pursuant thereto or the orders of the  
 3 commissioner have not been complied with within the time  
 4 limits set by the commissioner or by this article, the  
 5 commissioner shall cause a notice of noncompliance to be  
 6 served upon the operator, which notice shall order the  
 7 operation to cease, or where found necessary, the commis-  
 8 sioner shall order the suspension of a permit. A copy of such  
 9 notice or order shall be handed to the operator in person or  
 10 served by certified mail addressed to the operator at the  
 11 permanent address shown on the application for a permit. The  
 12 notice of noncompliance or order of suspension shall specify  
 13 in what respects the operator has failed to comply with this  
 14 article or the rules and regulations of the commission or orders

15 of the commissioner. If the operator has not reached an  
16 agreement with the commissioner or has not complied with the  
17 requirements set forth in the notice of noncompliance or order  
18 of suspension within the time limits set therein, the permit may  
19 be revoked by order of the commissioner and the performance  
20 bond shall then be forfeited. If an agreement satisfactory to  
21 the commissioner has not been reached within thirty days after  
22 suspension of any permit, any and all suspended permits shall  
23 then be declared revoked and the performance bonds with  
24 respect thereto forfeited.

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

**§22A-4-22. Adjudications, findings, etc., to be by written order;  
contents; notice.**

1 Every adjudication, determination or finding by the  
2 commissioner affecting the rights, duties or privileges of any  
3 person subject to this article shall be made by written order  
4 and shall contain a written finding by the commissioner of the  
5 facts upon which the adjudication, determination or finding  
6 is based. Notice of the making of such order shall be given  
7 to the person whose rights, duties or privileges are affected  
8 thereby by mailing a true copy thereof to such person by  
9 certified mail.

**§22A-4-23. Appeals to board; hearing; record; findings and orders  
of board.**

1 Any person claiming to be aggrieved or adversely affected  
2 by any rule and regulation or order of the commissioner or  
3 his failure to enter an order may appeal to the reclamation  
4 board of review for an order vacating or modifying such rule  
5 and regulation or order, or for such order as the commissioner  
6 should have entered.

7 The person so appealing to the board shall be known as the  
8 appellant and the commissioner shall be known as the  
9 appellee. The appellant and the appellee shall be deemed to  
10 be parties to the appeal.

11 Such appeal shall be in writing and shall set forth the rule  
12 and regulation, order or omission complained of and the  
13 grounds upon which the appeal is based. Where the appellant

14 claims to be aggrieved or adversely affected by an order, such  
15 appeal shall be filed with the board within thirty days after  
16 the date upon which the appellant received notice by certified  
17 mail of the making of the order complained of. Where the  
18 appellant claims to be aggrieved or adversely affected by any  
19 rule and regulation or omission, such appeal may be filed with  
20 the board at any time. A notice of the filing of such appeal  
21 shall be filed with the commissioner within three days after  
22 the appeal is filed with the board.

23 Within seven days after receipt of such notice of appeal, the  
24 commissioner shall prepare and certify to the board a complete  
25 record of the proceedings before him, including all documents  
26 and correspondence relating to the matter. The expense of  
27 preparing the record shall be taxed as a part of the costs of  
28 the appeal.

29 Upon the filing of such appeal, the board shall fix the time  
30 and place at which the hearing on the appeal will be held,  
31 which hearing shall be held within twenty days after the notice  
32 of appeal is filed, and shall give the appellant and the  
33 commissioner at least ten days' written notice thereof by  
34 certified mail. The board may postpone or continue any  
35 hearing upon its own motion or upon application of the  
36 appellant or of the commissioner.

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

39 The board shall hear the appeal de novo, and any party to  
40 the appeal may submit evidence.

41 For the purpose of conducting a hearing on an appeal, the  
42 board may require the attendance of witnesses and the  
43 production of books, records and papers, and it may, and at  
44 the request of any party it shall, issue subpoenas for witnesses  
45 or subpoenas duces tecum to compel the production of any  
46 books, records or papers, directed to the sheriff of the county  
47 where such witnesses, books, records or papers are found,  
48 which subpoenas and subpoenas duces tecum shall be served  
49 and returned in the same manner as subpoenas and subpoenas  
50 duces tecum in civil litigation are served and returned. The fees  
51 and allowances for mileage of sheriffs and witnesses shall be  
52 the same as those permitted in civil litigation in trial courts.  
53 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

95 mail.

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

**§22A-4-24. Appeal from order of board.**

1 Any party adversely affected by an order of the reclamation  
2 board of review, other than an order affirming, modifying, or  
3 vacating a rule and regulation of the commissioner, may  
4 obtain judicial review thereof by appealing therefrom either to  
5 the circuit court of Kanawha County or the circuit court of  
6 the county in which the surface-mining operation to which the  
7 order relates is or was conducted or is or was proposed to  
8 be conducted. Any party adversely affected by an order of the  
9 reclamation board of review, which order affirms, modifies or  
10 vacates a rule and regulation of the commissioner, may obtain  
11 judicial review thereof by appealing therefrom either to the  
12 circuit court of Kanawha County or the circuit court of the  
13 county in which the surface-mining operation to which the rule  
14 and regulation in question relates is or was conducted or is  
15 or was proposed to be conducted. Any party desiring to so  
16 appeal shall file with the board a notice of appeal designating  
17 the order appealed from and stating whether the appeal is  
18 taken on questions of law, questions of fact or questions of  
19 law and fact. A copy of such notice shall also be filed by the  
20 appellant with the court and shall be mailed or otherwise  
21 delivered to the appellee. Such notice and copies thereof shall  
22 be filed and mailed or otherwise delivered within thirty days  
23 after the date upon which the appellant received notice from  
24 the board by certified mail of the making of the order appealed  
25 from. No appeal bond shall be required to make an appeal  
26 on questions of law, questions of fact or questions of law and  
27 fact effective.

28 The filing of a notice of appeal shall not automatically  
29 operate as a suspension of the order of the board. If it appears  
30 to the court that an unjust hardship to the appellant will result  
31 from the execution of the board's order pending determination  
32 of the appeal, the court may grant a suspension of such order  
33 and fix its terms.

34 Within fifteen days after receipt of the notice of appeal, the  
35 board shall prepare and file in the court the complete record  
36 of the proceedings out of which the appeal arises, including

37 a transcript of the testimony and other evidence which was  
38 submitted before the board. The expense of preparing and  
39 transcribing such record shall be taxed as a part of the costs  
40 of the appeal. The appellant shall provide security for costs  
41 satisfactory to the court. Upon demand by a party, the board  
42 shall furnish, at the cost of the party requesting the same, a  
43 copy of such record. In the event such complete record is not  
44 filed in the court within the time provided for in this section,  
45 either party may apply to the court to have the case docketed,  
46 and the court shall order such record filed.

47 Appeals taken on questions of law, fact or both, shall be  
48 heard upon assignment of error filed in the case or set out  
49 in the briefs of the appellant. Errors not argued by brief may  
50 be disregarded, but the court may consider and decide errors  
51 which are not assigned or argued.

52 The hearing before the court shall be upon the record made  
53 before the reclamation board of review. The court may set  
54 aside any order of the reclamation board of review which is  
55 clearly erroneous in view of the reliable, probative and  
56 substantial evidence on the whole record, or which is  
57 determined by the court to involve a clearly unwarranted  
58 exercise of discretion. The judgment of the court shall be final  
59 unless reversed, vacated or modified on appeal to the supreme  
60 court of appeals of West Virginia, and jurisdiction is hereby  
61 conferred upon such court to hear and entertain such appeals  
62 upon application made therefor in the manner and within the  
63 time provided for civil appeals generally.

**§22A-4-25. Offenses; penalties; prosecutions; treble damages;  
injunctive relief.**

1 (a) Any person who shall conduct any surface-mining  
2 operation, or any part thereof, without a permit or without  
3 having furnished the required bond, or who shall carry on such  
4 operation or be a party thereto on land not covered by a  
5 permit, or who shall falsely represent any material fact in an  
6 application for a permit or in an application for the renewal  
7 of a permit, or who willfully violates any provision of this  
8 article, shall be guilty of a misdemeanor, and, upon conviction  
9 thereof, shall be punished by a fine of not less than one  
10 hundred nor more than one thousand dollars or by imprison-  
11 ment not exceeding six months, or by both. Any person who

12 deliberately violates any provision of this article or conducts  
13 surface-mining operations without a permit shall be guilty of  
14 a misdemeanor, and, upon conviction thereof, shall be  
15 punished by a fine of not less than one thousand nor more  
16 than ten thousand dollars or by imprisonment not exceeding  
17 six months, or by both. Each day of violation constitutes a  
18 separate offense. It shall be the duty of the commissioner to  
19 institute prosecutions for violations of the provisions hereof.  
20 Any person convicted under the provisions of this section  
21 shall, in addition to any fine imposed, pay to the commissioner  
22 for deposit in the surface-mining reclamation fund an amount  
23 sufficient to reclaim the area with respect to which such  
24 conviction relates. The commissioner shall institute any suit or  
25 other legal action necessary for the effective administration of  
26 the provisions of this article.

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

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



53 An application for an injunction under the provisions of this  
54 section may be filed and injunctive relief granted notwithstand-  
55 ing that all of the administrative remedies provided for in this  
56 article have not been pursued or invoked against the person  
57 or persons against whom such relief is sought and notwith-  
58 standing that the person or persons against whom such relief  
59 is sought have not been prosecuted or convicted under the  
60 provisions of this article.

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

**§22A-4-26. Validity and construction of existing surface-mining permits.**

1 Any valid surface-mining permit existing on the effective  
2 date of this article shall remain in full force and effect until  
3 such permit expires under its terms or is otherwise terminated  
4 under the provisions of this article. The provisions of this  
5 section shall not be construed to require the regrading or  
6 replanting of any area on which such work was satisfactorily  
7 performed prior to the effective date of this article.

**§22A-4-27. Certification of surface miners.**

1 After the first day of July, one thousand nine hundred  
2 seventy-six, certification shall be required of all surface miners  
3 in accordance with the provisions of articles nine and ten,  
4 chapter twenty-two of this code.

**§22A-4-28. Certification of surface mine foremen.**

1 (a) In every surface mine where five or more persons are  
2 employed in a period of twenty-four hours, the operator shall  
3 employ at least one person certified in accordance with the  
4 provisions of article ten, chapter twenty-two of this code as  
5 a mine foreman. Each applicant for certification as a mine  
6 foreman shall, at the time he is issued a certificate of  
7 competency: (1) Be a resident or employed in a mine in this  
8 state; (2) have had at least three years' experience in surface

9 mining, which shall include at least eighteen months'  
 10 experience on or at a working section of a surface mine or  
 11 be a graduate of the school of mines at West Virginia  
 12 University or of another accredited mining engineering school  
 13 and have had as least two years' practical experience in a  
 14 surface mine, which shall include at least eighteen months'  
 15 experience on or at a working section of a surface mine; and  
 16 (3) have demonstrated his knowledge of mine safety, first aid,  
 17 safety appliances, emergency procedures relative to all  
 18 equipment, state and federal mining laws and regulations and  
 19 other subjects by completing such training, education and  
 20 examinations as may be required of him under said article ten.

21 (b) In surface mines in which the operations are so extensive  
 22 that the duties devolving upon the mine foreman cannot be  
 23 discharged by one person, one or more assistant mine foremen  
 24 may be designated. Such persons shall act under the  
 25 instruction of the mine foreman who shall be responsible for  
 26 their conduct in the discharge of their duties. Each assistant  
 27 so designated shall be certified under the provisions of article  
 28 ten, chapter twenty-two of this code. Each applicant for  
 29 certification as assistant mine foreman shall, at the time he is  
 30 issued a certificate of competency, possess all of the  
 31 qualifications required of a mine foreman: *Provided*, That he  
 32 shall, at the time he is certified, be required to have at least  
 33 two years' experience in surface mining, which shall include  
 34 eighteen months on or at a working section of a surface mine  
 35 or be a graduate of the school of mines at West Virginia  
 36 University or of another accredited mining engineering school  
 37 and have had twelve months' practical experience in a surface  
 38 mine, all of which shall have been on or at a working section.

39 (c) The commissioner shall promulgate such rules and  
 40 regulations as may be necessary to carry out the provisions  
 41 of this section.

## ARTICLE 5. UNDERGROUND CLAY MINE.

### §22A-5-1. Definition.

1 In this article the term "mine" includes the shafts, slopes,  
 2 drifts or inclines connected with excavations penetrating clay  
 3 seams or strata, which excavations are ventilated by one  
 4 general air current or division thereof, and the surface  
 5 structures or equipment connected therewith which contribute

6 directly or indirectly to the underground mining of clay.

**§22A-5-2. Clay mine foreman; when to be employed; qualifications; assistants.**

1 In every underground clay mine where five or more persons  
2 are employed in a period of twenty-four hours, the operator  
3 shall employ a mine foreman who shall be a competent and  
4 practical person holding a certificate of competence for said  
5 position issued to him by the division of mines and minerals  
6 after an examination by such division. In order to receive a  
7 certificate of competence qualifying a foreman in an under-  
8 ground clay mine, the applicant shall take an examination  
9 prescribed by the director of the division of mines and  
10 minerals, be a citizen of this state, of good moral character  
11 and temperate habits, having had at least three years'  
12 experience in the underground working of clay mines.

**§22A-5-3. Regulations for protection of health and safety of employees.**

1 The commissioner may from time to time promulgate  
2 reasonable rules and regulations for the protection of the  
3 health and safety of the persons working in or about  
4 underground clay mines, to the extent the same are not more  
5 onerous or restrictive than the laws of this state intended to  
6 safeguard the life and health of persons working in under-  
7 ground 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.**

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

3 (a) "Open-pit mine" means an excavation worked from the  
4 surface and open to daylight.

5 (b) "Underground mine" means subterranean workings for  
6 the purpose of obtaining a desired material or materials.

7 (c) "Sand" means waterworn sandstone fragments trans-  
8 ported and deposited by water.

9 (d) "Gravel" means an occurrence of waterworn pebbles.

10 (e) "Sandstone" means a compacted or cemented sediment  
11 composed chiefly of quartz grains.

12 (f) "Limestone" means a sedimentary rock composed mostly  
13 of calcium carbonate.

14 (g) "Clay" means a natural material of mostly small  
15 fragments of hydrous aluminum silicates and possessing plastic  
16 properties.

17 (h) "Shale" means a laminated sedimentary rock composed  
18 chiefly of small particles of a clay grade.

19 (i) "Iron ore" means a mineral or minerals, and gangue  
20 when treated will yield iron at a profit.

21 (j) "Manganese ore" means a metalliferous mineral when  
22 treated will yield manganese at a profit.

**§22A-6-2. Applicability of mining laws.**

1 All provisions of the mining laws of this state intended for  
2 the protection of the health and safety of persons employed  
3 within or at any coal mine and for the protection of any coal  
4 mining property shall extend to all open-pit mines and any  
5 property used in connection therewith for the mining of  
6 underground limestone and sandstone mines, insofar as such  
7 laws are applicable thereto.

**§22A-6-3. Rules and regulations.**

1 The commissioner of the department of energy shall  
2 promulgate reasonable rules and regulations, in accordance  
3 with and confined to the provisions of chapter twenty-nine-  
4 a of this code, for the effective administration of this article.

**§22A-6-4. Monthly report by operator.**

1 The operator of such mine shall, on or before the end of  
2 each calendar month, file with the director of the division of  
3 mines and minerals a report covering the prededing calendar  
4 month on forms furnished by the director. Such reports shall  
5 state the number of accidents which have occurred, the number  
6 of persons employed, the days worked and the actual tonnage  
7 mined.

**§22A-6-5. Inspectors.**

1 The director of the division of mines and minerals shall  
2 divide the state into not more than two mining districts and  
3 assign one inspector to each district. Such inspector shall be  
4 a citizen of West Virginia, in good health, or good character  
5 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.**

- 1 Unless the context in which used clearly requires a different  
2 meaning, as used in this article;
- 3 (a) "Casing" means a string or strings of pipe commonly  
4 placed in wells drilled for natural gas or petroleum or both;
- 5 (b) "Cement" means hydraulic cement properly mixed with  
6 water;
- 7 (c) "Chairman" means the chairman of the West Virginia  
8 shallow gas well review board as provided for in section four,  
9 article seven, chapter twenty-two of this code;
- 10 (d) "Chief" means chief of the division of water resources  
11 of the department of natural resources;
- 12 (e) "Coal operator" means any person or persons, firm,  
13 partnership, partnership association or corporation that  
14 proposes to or does operate a coal mine;
- 15 (f) "Coal seam" and "workable coal bed" are interchange-  
16 able terms and mean any seam of coal twenty inches or more  
17 in thickness, unless a seam of less thickness is being  
18 commercially worked, or can in the judgment of the  
19 department foreseeably be commercially worked and will  
20 require protection if wells are drilled through it;
- 21 (g) "Commissioner" means commissioner of the department  
22 of energy;
- 23 (h) "Deep well" means any well drilled and completed in a  
24 formation at or below the top of the uppermost member of  
25 the "Onondaga Group" or at a depth of or greater than six  
26 thousand feet, whichever is shallower;
- 27 (i) "Division" means, for purposes of this article and articles  
28 three and four of this chapter, the division of oil and gas of  
29 the department of energy;
- 30 (j) "Director" means, for the purposes of this article and  
31 articles two, three and four of this chapter, the director of the  
32 division of oil and gas of the department of energy;
- 33 (k) "Expanding cement" means any cement approved by the  
34 division of oil and gas which expands during the hardening  
35 process, including, but not limited to, regular oil field cements  
36 with the proper additives;
- 37 (l) "Facility" means any facility utilized in the oil and gas  
38 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 the  
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,

78 including, but not limited to, fracturing, shooting or acidizing,  
79 but excluding cleaning out, bailing or workover operations;

80 (w) "Waste" means (i) physical waste, as the term is  
81 generally understood in the oil and gas industry; (ii) the  
82 locating, drilling, equipping, operating or producing of any oil  
83 or gas well in a manner that causes, or tends to cause a  
84 substantial reduction in the quantity of oil or gas ultimately  
85 recoverable from a pool under prudent and proper operations,  
86 or that causes or tends to cause a substantial or unnecessary  
87 or excessive surface loss of oil or gas; or (iii) the drilling of  
88 more deep wells than are reasonably required to recover  
89 efficiently and economically the maximum amount of oil and  
90 gas from a pool; (iv) substantially inefficient, excessive or  
91 improper use, or the substantially unnecessary dissipation of,  
92 reservoir energy, it being understood that nothing in this  
93 chapter shall be construed to authorize any agency of the state  
94 to impose mandatory spacing of shallow wells except for the  
95 provisions of section eight, article eight, chapter twenty-two  
96 of this code and the provisions of article seven, chapter twenty-  
97 two of this code; (v) inefficient storing of oil or gas: *Provided,*  
98 That storage in accordance with a certificate of public  
99 convenience issued by the federal energy regulatory commis-  
100 sion shall be conclusively presumed to be efficient and (vi)  
101 other underground or surface waste in the production or  
102 storage of oil, gas, or condensate, however caused;

103 (x) "Well" means any shaft or hole sunk, drilled, bored or  
104 dug into the earth or into underground strata for the  
105 extraction or injection or placement of any liquid or gas, or  
106 any shaft or hole sunk or used in conjunction with such  
107 extraction or injection or placement. The term "well" does not  
108 include any shaft or hole sunk, drilled, bored or dug into the  
109 earth for the sole purpose of core drilling or pumping or  
110 extracting therefrom potable, fresh or usable water for  
111 household, domestic, industrial, agricultural or public use;

112 (y) "Well work" means the drilling, redrilling, deepening,  
113 stimulating, pressuring by injection of any fluid, converting  
114 from one type of well to another, combining or physically  
115 changing to allow the migration of fluid from one formation  
116 to another or plugging or replugging of any well;

117 (z) "Well operator" or "operator" means any person or  
118 persons, firm, partnership, partnership association or corpo-



119 ration that proposes to or does locate, drill, operate or  
120 abandon any well as herein defined;

121 (aa) "Pollutant" shall have the same meaning as provided  
122 in subsection x, section two, article five-a, chapter twenty of  
123 this code; and

124 (bb) "Waters of this state" shall have the same meaning as  
125 the term "waters" as provided in subsection e, section two,  
126 article five-a, chapter twenty of this code.

**§22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.**

1 (a) The director of the division of oil and gas shall have  
2 as his duty the supervision of the execution and enforcement  
3 of matters related to oil and gas set out in this article and  
4 in articles three and four of this chapter, subject to review and  
5 approval of the commissioner.

6 (b) The director of the division of oil and gas is authorized  
7 to enact rules and regulations necessary to effectuate the  
8 above-stated purposes, subject to review and approval by the  
9 Commissioner.

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10 (c) The director shall have full charge of <sup>the</sup> oil and gas matters  
11 set out in this article and in article three and four of this  
12 chapter, subject always to the direct supervision and control  
13 of the commissioner of the department of energy. In addition  
14 to all other powers and duties conferred upon him, the director  
15 shall have the power and duty to:

16 (1) Supervise and direct the activities of the division of oil  
17 and gas and see that the purposes set forth in subsections (a)  
18 and (b) of this section are carried out;

19 (2) Employ a supervising oil and gas inspector and oil and  
20 gas inspectors upon approval by the commissioner;

21 (3) Supervise and direct such oil and gas inspectors and  
22 supervising inspector in the performance of their duties;

23 (4) Suspend for good cause any oil and gas inspector or  
24 supervising inspector without compensation for a period not  
25 exceeding thirty days in any calendar year;

26 (5) Prepare report forms to be used by oil and gas  
27 inspectors or the supervising inspector in making their  
28 findings, orders and notices, upon inspections made in  
29 accordance with this chapter;

30 (6) Employ a hearing officer and such clerks, stenographers  
31 and other employees, as may be necessary to carry out his  
32 duties and the purposes of the division of oil and gas and fix  
33 their compensation.

34 (7) Hear and determine applications made by owners, well  
35 operators, and coal operators for the annulment or revision  
36 of orders made by oil and gas inspectors or the supervising  
37 inspector, and to make inspections, in accordance with the  
38 provisions of this article and articles three and four of this  
39 chapter;

40 (8) Cause a properly indexed permanent and public record  
41 to be kept of all inspections made by himself or by oil and  
42 gas inspectors or the supervising inspector;

43 (9) Make annually a full and complete written report to the  
44 commissioner as he may from time to time request, so that  
45 the commissioner can complete the preparation of the  
46 commissioner's annual report to the governor of the state.

47 (10) Conduct such research and studies as the commissioner  
48 shall deem necessary to aid in protecting the health and safety  
49 of persons employed within or at potential or existing oil or  
50 gas production fields within this state, to improve drilling and  
51 production methods and to provide for the more efficient  
52 protection and preservation of oil and gas-bearing rock strata  
53 and property used in connection therewith;

54 (11) Perform any and all acts necessary to carry out and  
55 implement the state requirements established by 92 Statutes at  
56 Large 3352, et seq., the "Natural Gas Policy Act of 1978,"  
57 which are to be performed by a designated state jurisdictional  
58 agency regarding determinations that wells within the state  
59 qualify for a maximum lawful price under certain categories  
60 of natural gas as set forth by the provisions of the said  
61 "Natural Gas Policy Act of 1978";

62 (12) Collect a filing and processing fee of forty dollars for  
63 each well, for which a determination of qualification to receive <sup>the</sup>  
64 a maximum lawful price under the provisions of "Natural Gas <sup>OK</sup>  
65 Policy Act of 1978" sought from the director; all revenues from <sup>E.N.</sup>  
66 such fees to be placed in the general revenue fund of the state;

67 (13) Collect a permit fee of two hundred fifty dollars for  
68 each permit application filed after the tenth day of June, one  
69 thousand nine hundred and eighty three: *Provided*, That no

70 permit application fee shall be required when an application  
71 is submitted solely for plugging or replugging of a well. All  
72 application fees required hereunder shall be in addition to any  
73 other fees required by the provisions of this article;

74 (14) Perform all other duties which are expressly imposed  
75 upon him by the provisions of this chapter, as well as duties  
76 assigned to him by the commissioner;

77 (15) Perform all duties as the permit issuing authority for  
78 the state in all matters pertaining to the exploration,  
79 development, production, storage and recovery of this state's  
80 oil and gas in accordance with section thirteen, of article one,  
81 of chapter twenty-two of this code;

82 (16) Adopt rules and regulations in accordance with section  
83 thirteen, article one, of chapter twenty-two of this code with  
84 respect to the issuance, denial, retention, suspension, or  
85 revocation of permits, authorizations and requirements of this  
86 chapter, which rules and regulations shall assure that the  
87 regulations, permits and authorizations issued by the director  
88 are adequate to satisfy the purposes of this chapter and chapter  
89 twenty-two of this code particularly with respect to the  
90 consolidation of the various state and federal programs which  
91 place permitting requirements on the exploration, develop-  
92 ment, production, storage and recovery of this state's oil and  
93 gas: *Provided*, That notwithstanding any provisions of this  
94 chapter or chapter twenty-two of this code to the contrary,  
95 the water resources board shall have the sole authority  
96 pursuant to section three-a, article five-a of chapter twenty to  
97 promulgate rules and regulations setting standards of water  
98 quality applicable to waters of the state;

99 (17) Perform such acts as may be necessary or appropriate  
100 to secure to this state the benefits of federal legislation  
101 establishing programs relating to the exploration, develop-  
102 ment, production, storage and recovery of this state's oil and  
103 gas, which programs are assumable by the state.

104 (d) The director shall have authority to visit and inspect any  
105 well or well site and any other oil or gas facility in this state  
106 and may call for the assistance of any oil and gas inspector  
107 or inspectors or supervising inspector whenever such assistance  
108 is necessary in the inspection of any such well or well site or  
109 any other oil or gas facility. Similarly, all oil and gas inspectors  
110 and the supervising inspector shall have authority to visit and

111 inspect any well or well site and any other oil or gas facility  
112 in this state. Any well operator, coal operator operating coal  
113 seams beneath the tract of land, or the coal seam owner or  
114 lessee, if any, if said owner or lessee is not yet operating said  
115 coal seams beneath said tract of land may request the director  
116 to have an immediate inspection made. The operator or owner  
117 of every well or well site or any other oil or gas facility shall  
118 cooperate with the director, all oil and gas inspectors and the  
119 supervising inspector in making inspections or obtaining  
120 information.

121 (e) Oil and gas inspectors shall devote their full time and  
122 undivided attention to the performance of their duties, and  
123 they shall be responsible for the inspection of all wells or well  
124 sites or other oil or gas facilities in their respective districts  
125 as often as may be required in the performance of their duties.

126 (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.**

1 (a) If an oil and gas inspector, upon making an inspection  
2 of a well or well site or any other oil or gas facility, finds that  
3 any provision of this article is being violated, he shall also find  
4 whether or not an imminent danger to persons exists, or  
5 whether or not there exists an imminent danger that a fresh  
6 water source or supply will be contaminated or lost. If he finds  
7 that such imminent danger exists, he shall forthwith make an  
8 order requiring the operator of such well or well site or other  
9 oil or gas facility to cease further operations until such  
10 imminent danger has been abated. If he finds that no such  
11 imminent danger exists, he shall determine what would be a  
12 reasonable period of time within which such violation should  
13 be totally abated. Such findings shall contain reference to the  
14 provisions of this article which he finds are being violated, and  
15 a detailed description of the conditions which cause and  
16 constitute such violation.

17 (b) The period of time so found by such oil and gas  
18 inspector to be a reasonable period of time shall not exceed  
19 seven days. Such period may be extended by such inspector,  
20 or by any other oil and gas inspector duly authorized by the  
21 director, from time to time, for good cause, but not to exceed

22 a total of thirty days, upon the making of a special inspection  
23 to ascertain whether or not such violation has been totally  
24 abated: *Provided*, That such thirty day period may be  
25 extended beyond thirty days by such inspectors where  
26 abatement is shown to be incapable of accomplishment  
27 because of circumstances or conditions beyond the control of  
28 the well operator. The director shall cause a special inspection  
29 to be made: (A) Whenever an operator of a well or well site  
30 or any other oil or gas facility, prior to the expiration of any  
31 such period of time, requests him to cause a special inspection  
32 to be made at such well or well site or any other oil or gas  
33 facility; and (B) Upon expiration of such period of time as  
34 originally fixed or as extended, unless the director is satisfied  
35 that the violation has been abated. Upon making such special  
36 inspection, such oil and gas inspector shall determine whether  
37 or not such violation has been totally abated. If he determines  
38 that such violation has not been totally abated, he shall  
39 determine whether or not such period of time as originally  
40 fixed, or as so fixed and extended, should be extended. If he  
41 determines that such period of time should be extended, he  
42 shall determine what a reasonable extension would be. If he  
43 determines that such violation has not been totally abated, and  
44 if such period of time as originally fixed, or as so fixed and  
45 extended, has then expired, and if he also determines that such  
46 period of time should not be further extended, he shall  
47 thereupon make an order requiring the operator of such well  
48 or well site or other oil or gas facility to cease further  
49 operations of such well, well site or facility, as the case may  
50 be. Such findings and order shall contain reference to the  
51 specific provisions of this article which are being violated.

52 (c) Notice of each finding and order made under this section  
53 shall promptly be given to the operator of the well or well  
54 site or other oil or gas facility to which it pertains by the  
55 person making such finding or order.

56 (d) No order shall be issued under the authority of this  
57 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.**

1 (a) Any well operator, complaining coal operator, owner or  
2 lessee, if any, aggrieved by findings or an order made by an  
3 oil or gas inspector pursuant to section three of this article,

4 may within fifteen days apply to the director for annulment  
5 or revision of such order. Upon receipt of such application the  
6 director shall make a special inspection of the well, well site  
7 or other oil and gas facility affected by such order, or cause  
8 two duly authorized oil and gas inspectors, other than the oil  
9 and gas inspector who made such order or the supervising  
10 inspector and one duly authorized oil and gas inspector other  
11 than the oil and gas inspector who made such order, to make  
12 such inspection of such well, or well site or other oil or gas  
13 facility and to report thereon to them. Upon making such  
14 special inspection himself, or upon receiving the report of such  
15 special inspection, as the case may be, the director shall make  
16 an order which shall include his findings and shall annul, revise  
17 or affirm the order of the oil and gas inspector.

18 (b) The director shall cause notice of each finding and order  
19 made under this section to be given promptly to the operator  
20 of the well, well site or other oil or gas facility to which such  
21 findings and order pertain, and the complainant under section  
22 three if any.

23 (c) At any time while an order made pursuant to section  
24 three of this article is in effect, the operator of the well, well  
25 site or other oil or gas facility affected by such order may  
26 apply to the director for annulment or revision of such order.  
27 The director shall thereupon proceed to act upon such  
28 application in the manner provided in this section.

29 (d) In view of the urgent need for prompt decision of  
30 matters submitted to the director under this article, all actions  
31 which he, or oil and gas inspectors, or the supervising  
32 inspector, is required to take under this article, shall be taken  
33 as rapidly as practicable, consistent with adequate consider-  
34 ation 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.**

1 (a) All findings and orders made pursuant to sections three  
2 or four of this article, and all notices required to be given of  
3 the making of such findings and orders, shall be in writing.  
4 All such findings and orders shall be signed by the person  
5 making them, and all such notices shall be signed by the  
6 person charged with the duty of giving the notice. All such  
7 notices shall contain a copy of the findings and orders referred

8 to therein.

9 (b) Notice of any finding or order required by sections three  
10 or four of this article to be given to an operator shall be given  
11 by causing such notice, addressed to the operator of the well,  
12 well site or other oil and/or gas facility to which such finding  
13 or order pertains, to be delivered to such operator by causing  
14 a copy thereof to be sent by registered mail to the permanent  
15 address of such operator as filed with the division and by  
16 causing a copy thereof to be posted upon the drilling rig or  
17 other equipment at the well, well site or other oil and/or gas  
18 facility, as the case may be. The requirement of this article  
19 that a notice shall be "addressed to the operator of the well,  
20 well site or other oil and/or gas facility to which such finding  
21 or order pertains," shall not require that the name of the  
22 operator for whom it is intended shall be specifically set out  
23 in such address. Addressing such notice to "Operator of  
24 .....,," specifying the well, well site or other oil and/or gas  
25 facility sufficiently to identify it, shall satisfy such requirement.

26 (c) Any well operator, complaining coal operator, owner or  
27 lessee, if any, adversely affected by a final order issued by the  
28 director under section four of this article shall be entitled to  
29 judicial review thereof. All of the pertinent provisions of  
30 section four, article five, chapter twenty-nine-a of this code  
31 shall apply to and govern such judicial review with like effect  
32 as if the provisions of said section four were set forth in  
33 extenso in this section.

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

38 (e) Legal counsel and services for the director in all appeal  
39 proceedings in any circuit court and the supreme court of  
40 appeals shall be provided by the attorney general or his  
41 assistants and in any circuit court by the prosecuting attorney  
42 of the county as well, all without additional compensation. The  
43 director, with written approval of the attorney general, may  
44 employ special counsel to represent the director at any such  
45 appeal proceedings.

**§22B-1-6. Permit required for well work; permit fee; application;  
soil erosion control plan.**

1 (a) It is unlawful for any person to commence any well  
2 work, including site preparation work which involves any  
3 disturbance of land, without first securing from the director  
4 a well work permit. An application may propose and a permit  
5 may approve two or more activities defined as well work.

6 (b) The application for a well work permit shall be  
7 accompanied by applicable bond as prescribed section twelve,  
8 fourteen or twenty-three of this article, and the applicable plat  
9 required by section twelve or fourteen of this article.

10 (c) Every permit application filed under this section shall be  
11 verified and shall contain the following:

12 (1) The names and addresses of (i) the well operator, (ii)  
13 the agent required to be designated under subsection (e) of this  
14 section, and (iii) every person whom the applicant must notify  
15 under any section of this article together with a certification  
16 and evidence that a copy of the application and all other  
17 required documentation has been delivered to all such persons;

18 (2) The name and address of every coal operator operating  
19 coal seams under the tract of land on which the well is or may  
20 be located, and the coal seam owner of record and lessee of  
21 record required to be given notice by section twelve, if any,  
22 if said owner or lessee is not yet operating said coal seams;

23 (3) The number of the well or such other identification as  
24 the director may require;

25 (4) The type of well;

26 (5) The well work for which a permit is requested;

27 (6) The approximate depth to which the well is to be drilled  
28 or deepened, or the actual depth if the well has been drilled;

29 (7) Any permit application fee required by law;

30 (8) If the proposed well work will require casing or tubing  
31 to be set, the entire casing program for the well, including the  
32 size of each string of pipe, the starting point and depth to  
33 which each string is to be set, and the extent to which each  
34 such string is to be cemented;

35 (9) If the proposed well work is to convert an oil well or  
36 a combination well or to drill a new well for the purpose of  
37 introducing pressure for the recovery of oil as provided in  
38 section twenty-five of this article, specifications in accordance  
39 with the data requirements of section fourteen of this article;



40 (10) If the proposed well work is to plug or replug the well,  
41 (i) specifications in accordance with the data requirements of  
42 section twenty-three of this article, (ii) a copy of all logs in  
43 the operator's possession as the director may require, and (iii)  
44 a work order showing in detail the proposed manner of  
45 plugging or unplugging the well, in order that a representative  
46 of the director and any interested persons may be present when  
47 the work is done. In the event of an application to drill, redrill  
48 or deepen a well, if the well work is unsuccessful so that the  
49 well must be plugged and abandoned, and if the well is one  
50 on which the well work has been continuously progressing  
51 pursuant to a permit, the operator may proceed to plug the  
52 well as soon as he has obtained the verbal permission of the  
53 director or his designated representative to plug and abandon  
54 the well, except that the operator shall make reasonable effort  
55 to notify as soon as practicable the surface owner and the coal  
56 owner, if any, of the land at the well location, and shall also  
57 timely file the plugging affidavit required by section twenty-  
58 three of this article;

59 (11) If the proposed well work is to stimulate an oil or gas  
60 well, specifications in accordance with the data requirements  
61 of section thirteen of this article;

62 (12) The erosion and sediment control plan required under  
63 subsection (d) of this section for applications for permits to  
64 drill; and

65 (13) Any other relevant information which the director may  
66 require by rule.

67 (d) An erosion and sediment control plan shall accompany  
68 each application for a well work permit except for a well work  
69 permit to plug or replug any well. Such plan shall contain  
70 methods of stabilization and drainage, including a map of the  
71 project area indicating the amount of acreage disturbed. The  
72 erosion and sediment control plan shall meet the minimum  
73 requirements of the West Virginia erosion and sediment  
74 control manual as adopted and from time to time amended  
75 by the division of oil and gas, in consultation with the several  
76 soil conservation districts pursuant to the control program  
77 established in this state through section 208 of the federal  
78 Water Pollution Control Act Amendments of 1972 [33 U.S.C.  
79 1288]. The erosion and sediment control plan shall become

80 part of the terms and conditions of a well work permit, except  
81 for a well work permit to plug or replug any well, which is  
82 issued and the provisions of the plan shall be carried out where  
83 applicable in the operation. The erosion and sediment control  
84 plan shall set out the proposed method of reclamation which  
85 shall comply with the requirements of section thirty of this  
86 article.

87 For the purpose of ascertaining whether or not issuance of  
88 any permit for well work will cause or contribute to a pollution  
89 problem, the director shall consult with the director of the  
90 department of natural resources.

91 (e) The well operator named in such application shall  
92 designate the name and address of an agent for such operator  
93 who shall be the attorney-in-fact for the operator and who  
94 shall be a resident of the State of West Virginia upon whom  
95 notices, orders or other communications issued pursuant to  
96 this article or article five-a, chapter twenty, may be served, and  
97 upon whom process may be served. Every well operator  
98 required to designate an agent under this section shall within  
99 five days after the termination of such designation notify the  
100 division of such termination and designate a new agent.

101 (f) The well owner or operator shall install the permit  
102 number as issued by the director in a legible and permanent  
103 manner to the well upon completion of any permitted work.  
104 The dimensions, specifications and manner of installation shall  
105 be in accordance with the rules of the director.

106 (g) The director may waive the requirements of this section  
107 and sections nine, ten, and eleven of this article in any  
108 emergency situation, if he deems such action necessary. In such  
109 case the director may issue an emergency permit which would  
110 be effective for not more than thirty days, but which would  
111 be subject to reissuance by the director.

112 (h) The director shall deny the issuance of a permit if he  
113 determines that the applicant has committed a substantial  
114 violation of a previously issued permit, including the erosion  
115 and sediment control plan, or a substantial violation of one  
116 or more of the rules promulgated hereunder, and has failed  
117 to abate or seek review of the violation within the time  
118 prescribed by the director pursuant to the provisions of  
119 sections three and four of this article and the rules promul-

120 gated hereunder, which time may not be unreasonable:  
121 *Provided*, That in the event that the director does find that  
122 a substantial violation has occurred and that the operator has  
123 failed to abate or seek review of the violation in the time  
124 prescribed, he may suspend the permit on which said violation  
125 exists, after which suspension the operator shall forthwith  
126 cease all well work being conducted under the permit:  
127 *Provided, however*, That the director may reinstate the permit  
128 without further notice, at which time the well work may be  
129 continued. The director shall make written findings of any  
130 such determination made by him and may enforce the same  
131 in the circuit courts of this state and the operator may appeal  
132 such suspension pursuant to the provisions of section forty of  
133 this article. The director shall make a written finding of any  
134 such determination.

135 (i) Any person who violates any provision of this section  
136 shall be guilty of a misdemeanor, and, upon conviction  
137 thereof, shall be fined not more than five thousand dollars,  
138 or be imprisoned in the county jail not more than twelve  
139 months, or both fined and imprisoned.

**§22B-1-7. Water pollution control permits; powers and duties of the  
director; penalties.**

1 (a) In addition to a permit for well work, the director, after  
2 public notice and an opportunity for public hearings, may  
3 either issue a separate permit, general permit or a permit  
4 consolidated with the well work permit for the discharge or  
5 disposition of any pollutant or combination of pollutants into  
6 waters of this state upon condition that such discharge or  
7 disposition meets or will meet all applicable state and federal  
8 water quality standards and effluent limitations and all other  
9 requirements of the director.

10 (b) It shall be unlawful for any person conducting activities  
11 which are subject to the requirements of this article, unless he  
12 holds a water pollution control permit therefor from the  
13 director, which is in full force and effect to:

14 (1) Allow pollutants or the effluent therefrom, produced by  
15 or emanating from any point source, to flow into the waters  
16 of this state;

17 (2) Make, cause or permit to be made any outlet, or

18 substantially enlarge or add to the load of any existing outlet,  
19 for the discharge of pollutants or the effluent therefrom, into  
20 the waters of this state;

21 (3) Acquire, construct, install, modify or operate a disposal  
22 system or part thereof for the direct or indirect discharge or  
23 deposit of treated or untreated pollutants or the effluent  
24 therefrom, into the waters of this state, or any extension to  
25 or addition to such disposal system;

26 (4) Increase in volume or concentration any pollutants in  
27 excess of the discharges or disposition specified or permitted  
28 under any existing permit;

29 (5) Extend, modify or add to any point source, the  
30 operation of which would cause an increase in the volume or  
31 concentration of any pollutants discharging or flowing into the  
32 waters of the state;

33 (6) Operate any disposal well for the injection or reinjection  
34 underground of any pollutant, including, but not limited to,  
35 liquids or gasses, or convert any well into such a disposal well  
36 or plug or abandon any such disposal well.

37 (c) Notwithstanding any provision of this chapter to the  
38 contrary, the director shall have the same powers and duties  
39 relating to inspection and enforcement as those granted to the  
40 chief of water resources, his authorized agent or any  
41 authorized employee as the case may be under article five-a,  
42 chapter twenty of this code in connection with the issuance  
43 of any water pollution control permit or any person required  
44 to have such permit.

45 (d) Any person who violates any provision of this section,  
46 any order issued under this section or any permit issued  
47 pursuant to this section or any rule or regulation of the  
48 director relating to water pollution or who willfully or  
49 negligently violates any provision of this section or any permit  
50 issued pursuant to this section or any rule or regulation or  
51 order of the director relating to water pollution or who fails  
52 or refuses to apply for and obtain a permit or who ~~intentionally~~ <sup>intentionally</sup>  
53 misrepresents any material fact in an application, record, <sup>OK.</sup>  
54 report, plan or other document files or required to be  
55 maintained under this section shall be subject to the same  
56 penalties for such violations as are provided for in sections

57 seventeen and nineteen of article five-a, chapter twenty of this  
58 code: *Provided*, That the provisions of section twenty, article  
59 five-a, chapter twenty of this code relating to exceptions to  
60 criminal liability shall also apply.

61 All applications for injunction filed pursuant to section  
62 seventeen, article five-a, chapter twenty of the code shall take  
63 priority on the docket of the circuit court in which pending,  
64 and shall take precedence over all other civil cases.

65 (e) Notwithstanding any provisions of this chapter or  
66 chapter twenty-two of this code to the contrary, any water  
67 pollution permit of the director of the division of oil and gas  
68 issued pursuant to this section or any order issued in  
69 connection with it or for the purpose of implementing the  
70 "national pollutant discharge elimination system" established  
71 under the Clean Water Act or the requirements of this section,  
72 shall be appealable only to the state water resources board and  
73 such appeal shall be governed by the provisions of section  
74 fifteen, article five-a of chapter twenty of this code.

75 (f) If any loss of game-fish or aquatic life results from a  
76 person's or persons' failure or refusal to discharge any duty  
77 imposed upon him by this section, the West Virginia  
78 department of natural resources shall have a cause of action  
79 on behalf of the state of West Virginia to recover from such  
80 person or persons causing such a loss a sum equal to the cost  
81 of replacing such game-fish or aquatic life. Any moneys so  
82 collected by the director of the department of natural resources  
83 shall be deposited in a special revenue fund entitled "natural  
84 resources game-fish and aquatic life fund" and shall be  
85 expended as hereinafter provided. The fund shall be expended  
86 to stock waters of this state with game-fish and aquatic life.  
87 Where feasible, the director of the department of natural  
88 resources shall use any sum collected in accordance with the  
89 provisions of this section to stock waters in the area in which  
90 the loss resulting in the collection of such sum occurred. Any  
91 balance of such sum shall remain in the fund and be expended  
92 to stock state-owned and operated fishing lakes and ponds,  
93 wherever located in this state, with game-fish and aquatic life.  
94 The commissioner shall assist the director of the department  
95 of natural resources by providing witnesses, records, reports  
96 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  
3 this state is subject to development pursuant to leases or other  
4 continuing contractual agreements wherein the owners of such  
5 oil and gas are paid upon a royalty or rental basis known in  
6 the industry as the annual flat well royalty basis, in which the  
7 royalty is based solely on the existence of a producing well,  
8 and thus is not inherently related to the volume of the oil and  
9 gas produced or marketed;

10 (2) That continued exploitation of the natural resources of  
11 this state in exchange for such wholly inadequate compensa-  
12 tion is unfair, oppressive, works an unjust hardship on the  
13 owners of the oil and gas in place, and unreasonably deprives  
14 the economy of the state of West Virginia of the just benefit  
15 of the natural wealth of this state;

16 (3) That a great portion, if not all, of such leases or other  
17 continuing contracts based upon or calling for an annual flat  
18 well royalty, have been in existence for a great many years  
19 and were entered into at a time when the techniques by which  
20 oil and gas are currently extracted, produced or marketed,  
21 were not known or contemplated by the parties, nor was it  
22 contemplated by the parties that oil and gas would be  
23 recovered or extracted or produced or marketed from the  
24 depths and horizons currently being developed by the well  
25 operators;

26 (4) That while being fully cognizant that the provisions of  
27 section 10, article I of the United States constitution and of  
28 section 4, article III of the constitution of West Virginia,  
29 proscribe the enactment of any law impairing the obligation  
30 of a contract, the legislature further finds that it is a valid  
31 exercise of the police powers of this state and in the interest  
32 of the state of West Virginia and in furtherance of the welfare  
33 of its citizens, to discourage as far as constitutionally possible  
34 the production and marketing of oil and gas located in this  
35 state under the type of leases or other continuing contacts  
36 described above.

37 (b) In the light of the foregoing findings, the legislature  
38 hereby declares that it is the policy of this state, to the extent  
39 possible, to prevent the extraction, production or marketing  
40 of oil or gas under a lease or leases or other continuing  
41 contract or contracts providing a flat well royalty or any  
42 similar provisions for compensation to the owner of the oil  
43 and gas in place, which is not inherently related to the volume  
44 of oil or gas produced or marketed, and toward these ends,  
45 the legislature further declares that it is the obligation of this  
46 state to prohibit the issuance of any permit required by it for  
47 the development of oil or gas where the right to develop,  
48 extract, produce or market the same is based upon such leases  
49 or other continuing contractual agreements.

50 (c) In addition to any requirements contained in this article  
51 with respect to the issuance of any permit required for the  
52 drilling, redrilling, deepening, fracturing, stimulating, pressur-  
53 ing, converting, combining or physically changing to allow the  
54 migration of fluid from one formation to another, no such  
55 permit shall be hereafter issued unless the lease or leases or  
56 other continuing contract or contracts by which the right to  
57 extract, produce or market the oil or gas is filed with the  
58 application for such permit. In lieu of filing the lease or leases  
59 or other continuing contract or contracts, the applicant for a  
60 permit described herein may file the following:

61 (1) A brief description of the tract of land including the  
62 district and county wherein the tract is located;

63 (2) The identification of all parties to all leases or other  
64 continuing contractual agreements by which the right to  
65 extract, produce or market the oil or gas is claimed;

66 (3) The book and page number wherein each such lease or  
67 contract by which the right to extract, produce or market the  
68 oil or gas is recorded; and

69 (4) A brief description of the royalty provisions of each such  
70 lease or contract.

71 (d) Unless the provisions of subsection (e) are met, no such  
72 permit shall be hereafter issued for the drilling of a new oil  
73 or gas well, or for the redrilling, deepening, fracturing,  
74 stimulating, pressuring, converting, combining or physically  
75 changing to allow the migration of fluid from one formation

76 to another, of an existing oil or gas production well, where  
77 or if the right to extract, produce or market the oil or gas  
78 is based upon a lease or leases or other continuing contract  
79 or contracts providing for flat well royalty or any similar  
80 provision for compensation to the owner of the oil or gas in  
81 place which is not inherently related to the volume of oil and  
82 gas so extracted, produced and marketed.

83 (e) To avoid the permit prohibition of subsection (d), the  
84 applicant may file with such application an affidavit which  
85 certifies that the affiant is authorized by the owner of the  
86 working interest in the well to state that it shall tender to the  
87 owner of the oil or gas in place not less than one eighth of  
88 the total amount paid to or received by or allowed to the  
89 owner of the working interest at the wellhead for the oil or  
90 gas so extracted, produced or marketed before deducting the  
91 amount to be paid to or set aside for the owner of the oil  
92 or gas in place, on all such oil or gas to be extracted, produced  
93 or marketed from the well. If such affidavit be filed with such  
94 application, then such application for permit shall be treated  
95 as if such lease or leases or other continuing contract or  
96 contracts comply with the provisions of this section.

97 (f) The owner of the oil or gas in place shall have a cause  
98 of action to enforce his rights established by this section.

99 (g) The provisions of this section shall not affect or apply  
100 to any lease or leases or other continuing contract or contracts  
101 for the underground storage of gas or any well utilized in  
102 connection therewith or otherwise subject to the provisions of  
103 article four of this chapter.

104 (h) The director shall enforce this requirement irrespective  
105 of whether such lease or other continuing contract was  
106 executed before or after the effective date of this chapter.

107 (i) The provisions of this section shall not adversely affect  
108 any rights to free gas.

**§22B-1-9. Notice to property owners.**

1 (a) No later than the filing date of the application, the  
2 applicant for a permit for any well work shall deliver by  
3 personal service or by certified mail, return receipt requested,  
4 copies of the application, well plat and erosion and sediment  
5 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.

45 (e) Persons entitled to notice may contact the district office  
46 of the division to ascertain the names and location of water  
47 testing laboratories in the area capable and qualified to test  
48 water supplies in accordance with standard accepted methods.  
49 In compiling such list of names the division shall consult with  
50 the state and local health departments.

**§22B-1-10. Procedure for filing comments; certification of notice.**

1 (a) All persons described in subsections (a) and (b), section  
2 nine of this article may file comments with the director as to  
3 the location or construction of the applicant's proposed well  
4 work within fifteen days after the application is filed with the  
5 director.

6 (b) Prior to the issuance of any permit for well work, the  
7 applicant shall certify to the director that the requirements of  
8 section nine of this article have been completed by the  
9 applicant. Such certification may be by affidavit of personal  
10 service or the return receipt card, or other postal receipt for  
11 certified mailing.

**§22B-1-11. Review of application; issuance of permit in the absence  
of objections; copy of permits to county assessor.**

1 The director shall review each application for a well work  
2 permit and shall determine whether or not a permit shall be  
3 issued.

4 No permit shall be issued less than fifteen days after the  
5 filing date of the application for any well work except plugging  
6 or replugging; and no permit for plugging or replugging shall  
7 be issued less than five days after the filing date of the  
8 application except a permit for plugging or replugging a dry  
9 hole: *Provided*, That if the applicant certifies that all persons  
10 entitled to notice of the application under the provisions of  
11 this article have been served in person or by certified mail,  
12 return receipt requested, with a copy of the well work  
13 application, including the erosion and sediment control plan,  
14 if required, and the plat required by section six of this article,  
15 and further files written statements of no objection by all such  
16 persons, the director may issue the well work permit at any  
17 time.

18 The director may cause such inspections to be made of the  
19 proposed well work location as to assure adequate review of

20 the application. The permit shall not be issued, or shall be  
21 conditioned including conditions with respect to the location  
22 of the well and access roads prior to issuance if the director  
23 determines that:

24 (1) The proposed well work will constitute a hazard to the  
25 safety of persons; or

26 (2) The plan for soil erosion and sediment control is not  
27 adequate or effective; or

28 (3) Damage would occur to publicly owned lands or  
29 resources; or

30 (4) The proposed well work fails to protect fresh water  
31 sources or supplies.

32 The director shall promptly review all comments filed. If  
33 after review of the application and all comments received, the  
34 application for a well work permit is approved, and no timely  
35 objection or comment has been filed with the director or made  
36 by the director under the provisions of sections fifteen, sixteen  
37 or seventeen of this article, the permit shall be issued, with  
38 conditions, if any. Nothing in this section shall be construed  
39 to supercede the provisions of section six, twelve, thirteen,  
40 fourteen, fifteen, sixteen and seventeen of this article.

41 The director shall mail a copy of the permit as issued or  
42 a copy of the order denying a permit to any person who  
43 submitted comments to the director concerning said permit  
44 and requested such copy.

45 Upon the issuance of any permit pursuant to the provisions  
46 of this article, the director shall transmit a copy of such permit  
47 to the office of the assessor for the county in which the well  
48 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.**

1 (a) Before drilling for oil or gas, or before fracturing or  
2 stimulating a well on any tract of land, the well operator shall  
3 have a plat prepared by a licensed land surveyor or registered  
4 engineer showing the district and county in which the tract of

5 land is located, the name and acreage of the same, the names  
6 of the owners of adjacent tracts, the proposed or actual  
7 location of the well determined by survey, the courses and  
8 distances of such location from two permanent points or  
9 landmarks on said tract and the number to be given the well  
10 and the date of drilling completion of a well when it is  
11 proposed that such well be fractured and shall forward by  
12 registered or certified mail a copy of the plat to the director.  
13 In the event the tract of land on which the said well proposed  
14 to be drilled or fractured is located is known to be underlaid  
15 with one or more coal seams, copies of the plat shall be  
16 forwarded by registered or certified mail to each and every coal  
17 operator operating said coal seams beneath said tract of land,  
18 who has mapped the same and filed his maps with the division  
19 of mines and minerals in accordance with chapter twenty-two-  
20 a of this code, and the coal seam owner of record and lessee  
21 of record, if any, if said owner or lessee has recorded the  
22 declaration provided in section thirty-six of this article, and  
23 if said owner or lessee is not yet operating said coal seams  
24 beneath said tract of land. With each of such plats there shall  
25 be enclosed a notice (form for which shall be furnished on  
26 request by the director) addressed to the director and to each  
27 such coal operator, owner and lessee, if any, at their respective  
28 addresses, informing them that such plat and notice are being  
29 mailed to them respectively by registered or certified mail,  
30 pursuant to the requirements of this article.

31 (b) If no objections are made, or are found by the director,  
32 to such proposed location or proposed fracturing within fifteen  
33 days from receipt of such plat and notice by the director, the  
34 same shall be filed and become a permanent record of such  
35 location or fracturing subject to inspection at any time by any  
36 interested person, and the director may forthwith issue to the  
37 well operator a permit reciting the filing of such plat, that no  
38 objections have been made by the coal operators, owners and  
39 lessees, if any, or found thereto by the director, and  
40 authorizing the well operator to drill at such location, or to  
41 fracture the well. Unless the director has objections to such  
42 proposed location or proposed fracturing or stimulating, such  
43 permit may be issued prior to the expiration of such fifteen-  
44 day period upon the obtaining by the well operator of the  
45 consent in writing of the coal operator or operators, owners  
46 and lessees, if any, to whom copies of the plat and notice shall

47 have been mailed as herein required, and upon presentation  
48 of such written consent to the director. The notice above  
49 provided for may be given to the coal operator by delivering  
50 or mailing it by registered or certified mail as above to any  
51 agent or superintendent in actual charge of mines.

52 (c) A permit to drill, or to fracture or stimulate an oil or  
53 gas well shall not be issued unless the application therefor is  
54 accompanied by a bond as provided in section twenty-six of  
55 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.**

1 Before fracturing any well the well operator shall, by  
2 registered or certified mail, forward a notice of intention to  
3 fracture such well to the director and to each and every coal  
4 operator operating coal seams beneath said tract of land, who  
5 has mapped the same and filed his maps with the division of  
6 mines and minerals in accordance with chapter twenty-two-a  
7 of this code, and the coal seam owner and lessee, if any, if  
8 said owner of record or lessee of record has recorded the  
9 declaration provided in section thirty-six of this article, and  
10 if said owner or lessee is not yet operating said coal seams  
11 beneath said tract of land.

12 The notice shall be addressed to the director and to each  
13 such coal operator at their respective addresses, shall contain  
14 the number of the drilling permit for such well and such other  
15 information as may be required by the director to enable that  
16 division and the coal operators to locate and identify such well  
17 and shall inform them that such notice is being mailed to them,  
18 respectively, by registered or certified mail, pursuant to the  
19 requirements of this article. (The form for such notice of  
20 intention shall be furnished on request by the director.)

21 If no objections are made, or are found by the director to  
22 such proposed fracturing within fifteen days from receipt of  
23 such notice by the director, the same shall be filed and become  
24 a permanent record of such fracturing, subject to inspection  
25 at any time by any interested person, and the director shall  
26 forthwith issue to the well operator a permit reciting the filing  
27 of such notice, that no objections have been made by the coal

28 operators, or found thereto by the director, and authorizing  
 29 the well operator to fracture such well. Unless the director has  
 30 objections to such proposed fracturing, such permit shall be  
 31 issued prior to the expiration of such fifteen-day period upon  
 32 the obtaining by the well operator of the consent in writing  
 33 of the coal operator or operators, owners or lessees, if any,  
 34 to whom notice of intention to fracture shall have been mailed  
 35 as herein required, and upon presentation of such written  
 36 consent to the director. The notice above provided for may  
 37 be given to the coal operator by delivering or mailing it by  
 38 registered or certified mail as above to any agent or  
 39 superintendent in actual charge of mines.

**§22B-1-14. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information 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.**

1 (a) Before drilling a well for the introduction of liquids for  
 2 the purposes provided for in section twenty-five of this article  
 3 or for the introduction of liquids for the disposal of pollutants  
 4 or the effluent therefrom on any tract of land, or before  
 5 converting an existing well for such purposes, the well operator  
 6 shall have a plat prepared by a registered engineer or licensed  
 7 land surveyor showing the district and county in which the  
 8 tract of land is located, the name and acreage of the same,  
 9 the names of the owners of all adjacent tracts, the proposed  
 10 or actual location of the well or wells determined by a survey,  
 11 the courses and distances of such location from two permanent  
 12 points of land marked on said tract and the number to be  
 13 given to the well, and shall forward by registered or certified  
 14 mail the original and one copy of the plat to the division of  
 15 oil and gas. In addition, the well operator shall provide the  
 16 following information on the plat or by way of attachment  
 17 thereto to the director of the division of oil and gas in the  
 18 manner and form prescribed by the director's rules and  
 19 regulations: (1) The location of all wells, abandoned or  
 20 otherwise located within the area to be affected; (2) where  
 21 available, the casing records of all such wells; (3) where  
 22 available, the drilling log of all such wells; (4) the maximum  
 23 pressure to be introduced; (5) the geological formation into

24 which such liquid or pressure is to be introduced; (6) a general  
25 description of the liquids to be introduced; (7) the location of  
26 all water-bearing horizons above and below the geological  
27 formation into which such pressure, liquid or waste is to be  
28 introduced; and (8) such other information as the director by  
29 rule and regulation may require.

30 (b) In the event the tract of land on which said well  
31 proposed to be drilled or converted for the purposes provided  
32 for in this section is located is known to be underlaid with  
33 coal seams, copies of the plat and all information required by  
34 this section shall be forwarded by the operator by registered  
35 or certified mail to each and every coal operator operating coal  
36 seams beneath said tract of land, who has mapped the same  
37 and filed his maps with the division of mines and minerals in  
38 accordance with chapter twenty-two-a of this code, and the  
39 coal seam owner of record and lessee of record, if any, if said  
40 owner or lessee has recorded the declaration provided in  
41 section thirty-six of this article, and if said owner or lessee is  
42 not yet operating said seams beneath said tract of land. With  
43 each of such plats, there shall be enclosed a notice (form for  
44 which shall be furnished on request by the director) addressed  
45 to the director and to each such coal operator, owner or lessee,  
46 if any, at their respective addresses, informing them that such  
47 plat and notice are being mailed to them, respectively, by  
48 registered or certified mail, pursuant to the requirements of  
49 this section.

50 (c) If no objections are made by any such coal operator,  
51 owner or lessee, or the chief of the division of water resources  
52 of the department of natural resources or are found by the  
53 director of the division of oil and gas to such proposed drilling  
54 or converting of the well or wells for the purposes provided  
55 for in this section within thirty days from the receipt of such  
56 plat and notice by the director, the same shall be filed and  
57 become a permanent record of such location or well, subject  
58 to inspection at any time by any interested person, and the  
59 director may after public notice and opportunity to comment,  
60 issue such permit authorizing the well operator to drill at such  
61 location or convert such existing well or wells for the purposes  
62 provided for in this section. The notice above provided for  
63 may be given to the coal operator by delivering or mailing it  
64 by registered or certified mail as above to any agent or

65 superintendent in actual charge of the mines.

66 (d) A permit to drill a well or wells or convert an existing  
 67 well or wells for the purposes provided for in this section shall  
 68 not be issued until all of the bonding provisions required by  
 69 the provisions of section twelve of this article have been fully  
 70 complied with and all such bonding provisions shall apply to  
 71 all wells drilled or converted for the purposes provided for in  
 72 this section as if such wells had been drilled for the purposes  
 73 provided for in section twelve of this article, except that such  
 74 bonds shall be conditioned upon full compliance with all laws,  
 75 rules and regulations relating to the drilling of a well or the  
 76 converting of an existing well for the purposes provided for  
 77 in said section twenty-five, or introducing of liquids for the  
 78 disposal of pollutants including the re-drilling, deepening,  
 79 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.**

1 (a) When a proposed deep well drilling site or oil well  
 2 drilling site or any site is above a seam or seams of coal, then  
 3 the coal operator operating said coal seams beneath the tract  
 4 of land, or the coal seam owner or lessee, if any, if said owner  
 5 or lessee is not yet operating said coal seams, may within  
 6 fifteen days from the receipt by the director of the plat and  
 7 notice required by section twelve of this article, or within  
 8 fifteen days from the receipt by the director of notice required  
 9 by section thirteen of this article, file objections in writing  
 10 (forms for which will be furnished by the director on request)  
 11 to such proposed drilling or fracturing with the director,  
 12 setting out therein as definitely as is reasonably possible the  
 13 ground or grounds on which such objections are based.

14 If any objection is filed, or if any objection is made by the  
 15 director, the director shall notify the well operator of the  
 16 character of the objections and by whom made and fix a time  
 17 and place, not less than fifteen days from the end of said  
 18 fifteen-day period, at which such objections will be considered  
 19 of which time and place the well operator and all objecting  
 20 coal operators, owners or lessees, if any, shall be given at least



21 ten days' written notice by the director, by registered or  
22 certified mail, and summoned to appear. At the time and place  
23 so fixed the well operator and the objecting coal operators,  
24 owners or lessees, if any, or such of them as are present or  
25 represented, shall proceed to consider the objections. In the  
26 case of proposed drilling, such parties present or represented  
27 may agree upon either the location as made or so moved as  
28 to satisfy all objections and meet the approval of the director,  
29 and any change in the original location so agreed upon and  
30 approved by the director shall be indicated on said plat on  
31 file with the director, and the distance and direction of the  
32 new location from the original location shall be shown, and  
33 as so altered, the plat shall be filed and become a permanent  
34 record, and in the case of proposed fracturing, such parties  
35 present or represented may agree upon conditions under which  
36 the well is to be fractured which will protect life and property  
37 and which will satisfy all objections and meet the approval of  
38 the director, at which time the plat and notice required by  
39 section twelve or the notice required by section thirteen as the  
40 case may be, shall be filed and become a permanent record.  
41 Whereupon the director shall forthwith issue to the well  
42 operator a drilling or fracturing permit, as the case may be,  
43 reciting the filing of the plat and notice required by said  
44 section twelve, or the notice required by said section thirteen,  
45 as the case may be, that at a hearing duly held a location as  
46 shown on the plat or the conditions under which the fracturing  
47 is to take place for the protection of life and property were  
48 agreed upon and approved, and that the well operator is  
49 authorized to drill at such location or to fracture at the site  
50 shown on such plat, or to fracture the well identified in the  
51 notice required by section thirteen, as the case may be.

52 (b) In the event the well operator and the objecting coal  
53 operators, owners or lessees, if any, or such as are present or  
54 represented at such hearing are unable to agree upon a drilling  
55 location, or upon a drilling location that meets the approval  
56 of the director, then the director shall proceed to hear the  
57 evidence and testimony in accordance with sections one and  
58 two, article five, chapter twenty-nine-a of this code, except  
59 where such provisions are inconsistent with the article. The  
60 director shall take into consideration in arriving at his  
61 decision:

62 (1) Whether the drilling location is above or in close  
63 proximity to any mine opening or shaft, entry, travelway,  
64 airway, haulageway, drainageway, or passageway, or to any  
65 proposed extension thereof in any operated or abandoned or  
66 operating coal mine or coal mines already surveyed and  
67 platted, but not yet being operated;

68 (2) Whether the proposed drilling can reasonably be done  
69 through an existing or planned pillar of coal, or in close  
70 proximity to an existing well or such pillar of coal, taking into  
71 consideration the surface topography;

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

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

78 At the close of the hearing or within ten days thereafter the  
79 director shall issue an order stating:

80 (1) That he refuses to issue a permit;

81 (2) That he will issue a permit for the proposed drilling  
82 location;

83 (3) That he will issue a permit for a drilling location  
84 different from that requested by the well operator.

85 The order shall state with particularity the reasons for the  
86 director's order and shall be mailed by registered or certified  
87 mail to the parties present or represented at such hearing. If  
88 the director has ruled that he will issue a permit, he shall issue  
89 a permit effective ten days after he has mailed such order,  
90 except that for good cause shown, the director may stay the  
91 issuance of a permit for a period not to exceed thirty days.

92 If a permit is issued, the director shall indicate the new  
93 drilling location on the plat on file and shall number and keep  
94 an index of and docket each plat and notice mailed to him  
95 as provided in section twelve of this article, and each notice  
96 mailed to him as provided in section thirteen of this article,  
97 entering in such docket the name of the well operator, and  
98 the names and addresses of all persons notified, the dates of  
99 hearings and all actions taken by the director. The director

100 shall also prepare a record of the proceedings, which record  
101 shall include all applications, plats and other documents filed  
102 with the director, all notices given and proof of service thereof,  
103 all orders issued, all permits issued and a transcript of the  
104 hearing. The record prepared by the director shall be open to  
105 inspection by the public.

106 (c) In the event the well operator and the objecting coal  
107 operators, owners or lessees, if any, or such as are present or  
108 represented at such hearing, are unable to agree upon the  
109 conditions under which the well is to be fractured as to protect  
110 life and property, or upon conditions of fracturing that meet  
111 with the approval of the director, then the director shall  
112 proceed to hear the evidence and testimony in accordance with  
113 sections one and two, article five, chapter twenty-nine-a of this  
114 code, except where such provisions are inconsistent with this  
115 article.

116 The director shall take into consideration upon his decision  
117 whether the well can be fractured safely, taking into  
118 consideration the dangers from creeps, squeezes or other  
119 disturbances.

120 At the close of the hearing, or within ten days thereafter,  
121 the director shall issue an order stating the conditions under  
122 which the well is to be fractured, provided the well can be  
123 fractured safely, taking into consideration the dangers from  
124 creeps, squeezes or other disturbances. If such fracturing  
125 cannot be done safely, the director shall issue an order stating  
126 with particularity the reasons for refusing to issue a permit.

127 The order shall state with particularity the reasons for the  
128 director's order and shall be mailed by registered or certified  
129 mail to the parties present or represented at such hearing. If  
130 the director has ruled that he will issue a permit, he shall issue  
131 a permit effective ten days after it has mailed such order,  
132 except that for good cause shown, the director may stay the  
133 issuance of a permit for a period not to exceed thirty days.

134 If a permit is issued, the director shall indicate the well to  
135 be fractured on the plat on file and shall number and keep  
136 an index of and docket each plat and notice mailed to him  
137 as provided in section twelve of this article, and each notice  
138 mailed to him as provided in section thirteen of this article,  
139 entering in such docket the name of the well operator, the

140 names and addresses of all persons notified, the dates of  
 141 hearings and all actions taken by the director. The director  
 142 shall also prepare a record of the proceedings, which record  
 143 shall include all applications, plats and other documents filed  
 144 with the director, all notices given and proof of service thereof,  
 145 all orders issued, all permits issued and a transcript of the  
 146 hearing. The record prepared by the director shall be open to  
 147 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.**

1 (a) When a well is proposed to be drilled or converted for  
 2 the purposes provided for in section fourteen of this article,  
 3 and is above a seam or seams of coal, then the coal operator  
 4 operating said coal seams beneath the tract of land, or the coal  
 5 seam owner or lessee, if any, if said owner or lessee is not  
 6 yet operating said coal seams, may within fifteen days from  
 7 the receipt by the director of the plat and notice required by  
 8 section twelve of this article, file objections in writing (forms  
 9 for which will be furnished by the director on request) to such  
 10 proposed drilling or conversion.

11 (b) In any case wherein a well proposed to be drilled or  
 12 converted for the purposes provided for in section fourteen of  
 13 this article shall, in the opinion of the chief of the division  
 14 of water resources of the department of natural resources,  
 15 affect detrimentally the reasonable standards of purity and  
 16 quality of the waters of the state, such chief shall, within the  
 17 time period established by the director for the receipt of public  
 18 comment on such proposed drilling or conversion, file with the  
 19 director his objections in writing to such proposed drilling or  
 20 conversion, setting out therein as definitely as is reasonably  
 21 possible the ground or grounds upon which such objections  
 22 are based and indicating the conditions, consistent with the  
 23 provisions of this article and the rules or regulations  
 24 promulgated thereunder, as may be necessary for the  
 25 protection of the reasonable standards of the purity and  
 26 quality of such waters under which such proposed drilling or  
 27 conversion may be completed to overcome such objections, if  
 28 any.

29 (c) If any objection or objections are so filed, or are made  
30 by the director, the director shall notify the well operator of  
31 the character of the objections and by whom made and fix  
32 a time and place, not less than thirty days from the end of  
33 said thirty-day period, at which such objections will be  
34 considered, of which time and place the well operator and all  
35 objecting coal operators, the owners or lessees, if any, or such  
36 chief, shall be given at least ten days' written notice by the  
37 director by registered or certified mail, and summoned to  
38 appear. At the time and place so fixed the well operator and  
39 the objecting coal operators, owners or lessees, if any, or such  
40 of them as are present or represented, or such chief, shall  
41 proceed to consider the objections. In the case of proposed  
42 drilling or converting of a well for the purposes provided for  
43 in section fourteen of this article, such parties present or  
44 represented may agree upon either the location as made or so  
45 moved as to satisfy all objections and meet the approval of  
46 the director, and any change in the original location so agreed  
47 upon and approved by the director shall be indicated on said  
48 plat on file with the director, and the distance and direction  
49 of the new location from the original location shall be shown,  
50 and, as so altered, the plat shall be filed and become a  
51 permanent record. In the case of proposed conversion, such  
52 parties present or represented may agree upon conditions  
53 under which the conversion is to take place for the protection  
54 of life and property or for protection of reasonable standards  
55 of purity and quality of the waters of the state. At which time  
56 the plat and notice required by section fourteen shall be filed  
57 and become a permanent record. Whereupon the director may  
58 issue to the well operator a permit to drill or convert, as the  
59 case may be, reciting the filing of the plat and notice required  
60 by said section fourteen that at a hearing duly held a location  
61 as shown on the plat or the conditions under which the  
62 conversion is to take place for the protection of life and  
63 property and reasonable standards of purity and quality of the  
64 waters of the state where agreed upon and approved, and that  
65 the well operator is authorized to drill at such location or to  
66 convert at the site shown on such plat, as the case may be.

67 (d) (1) In the case the well operator and the objecting coal  
68 operators, owners or lessees, if any, and such chief, or such  
69 as are present or represented at such hearing are unable to  
70 agree upon a drilling location, or upon a drilling location that

71 meets the approval of the director, then the director shall  
72 proceed to hear the evidence and testimony in accordance with  
73 sections one and two, article five, chapter twenty-nine-a of this  
74 code, except where such provisions are inconsistent with this  
75 article. The director shall take into consideration upon his  
76 decision:

77 (a) Whether the drilling location is above or in close  
78 proximity to any mine opening or shaft, entry, traveling, air  
79 haulage, drainage or passageway, or to any proposed extension  
80 thereof, in any operated or abandoned or operating coal mine,  
81 or coal mine already surveyed and platted, but not yet being  
82 operated;

83 (b) Whether the proposed drilling can reasonably be done  
84 through an existing or planned pillar of coal, or in close  
85 proximity to an existing well or such pillar of coal, taking into  
86 consideration the surface topography;

87 (c) Whether a well can be drilled safely, taking into  
88 consideration the dangers from creeps, squeezes or other  
89 disturbances, due to the extraction of coal;

90 (d) The extent to which the proposed drilling location  
91 unreasonably interferes with the safe recovery of coal, oil and  
92 gas.

93 (2) At the close of the hearing or within ten days thereafter  
94 the director shall issue an order stating:

95 (a) That he refuses to issue a permit;

96 (b) That he will issue a permit for the proposed drilling  
97 location;

98 (c) That he will issue a permit for a drilling location  
99 different than that requested by the well operator.

100 The order shall state with particularity the reasons for the  
101 director's order and shall be mailed by registered or certified  
102 mail to the parties present or represented at such hearing. If  
103 the director has ruled that he will issue a permit, he shall issue  
104 a permit effective ten days after he has mailed such order:  
105 Except that for good cause shown, the director may stay the  
106 issuance of a permit for a period not to exceed thirty days.

107 (3) If a permit is issued, the director shall indicate the new

108 drilling location on the plat on file with the director and shall  
109 number and keep an index of and docket each plat and notice  
110 mailed to it as provided in section twelve of this article, and  
111 each notice mailed to it as provided in section thirteen of this  
112 article, entering in such docket the name of the well operator,  
113 and the names and addresses of all persons notified, the dates  
114 of hearings and all actions taken by the director, permits issued  
115 or refused, the papers filed and a transcript of the hearing.  
116 This shall constitute a record of the proceedings before the  
117 director and shall be open to inspection of the public.

118 (e) (1) In the case, the well operator and the objecting coal  
119 operators, owners or lessees, if any, and such chief, or such  
120 as are present or represented at such hearing, are unable to  
121 agree upon the conditions under which the well is to be  
122 converted as to protect life and property, and the reasonable  
123 standards of purity and quality of the waters of the state, or  
124 upon conditions of converting that meet with the approval of  
125 the director, then the director shall proceed to hear the  
126 evidence and testimony in accordance with sections one and  
127 two, article five, chapter twenty-nine-a of this code, except  
128 where such provisions are inconsistent with this article. The  
129 director shall take into consideration upon his decision:

130 (a) Whether the well can be converted safely, taking into  
131 consideration the dangers from creeps, squeezes or other  
132 disturbances;

133 (b) Whether the well can be converted, taking into  
134 consideration the reasonable standards of the purity and  
135 quality of the waters of the state.

136 (2) At the close of the hearing, or within ten days thereafter,  
137 the director shall issue an order stating the conditions under  
138 which the conversion is to take place, providing the well can  
139 be converted safely, taking into consideration the dangers from  
140 creeps, squeezes or other disturbances and the reasonable  
141 standards of purity and quality of the waters of this state. If  
142 such converting cannot be done safely, or if the reasonable  
143 standards of purity and quality of such waters will be  
144 endangered, the director shall issue an order stating with  
145 particularity the reasons for refusing to issue a permit.

146 (3) The order shall state with particularity the reasons for  
147 the director's order and shall be mailed by registered or

148 certified mail to the parties present or represented at such  
 149 hearing. If the director has ruled that he will issue a permit,  
 150 he shall issue a permit effective ten days after the division has  
 151 mailed such order: Except for good cause shown, the director  
 152 may stay the issuance of a permit for a period not to exceed  
 153 thirty days.

154 (4) If a permit is issued, the director shall indicate the well  
 155 to be converted on the plat on file with the director, and shall  
 156 number and keep an index of and docket each plat and notice  
 157 mailed to him as provided in section fourteen of this article,  
 158 entering in such docket the name of the well operator, and  
 159 names and addresses of all persons notified, the dates of  
 160 hearings and all actions taken by the director, permits issued  
 161 or refused, the papers filed and a transcript of the hearings.  
 162 This shall constitute a record of the proceedings before the  
 163 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.**

1 When a proposed shallow well drilling site is above a seam  
 2 or seams of coal, then the owner of any such coal seam may,  
 3 within fifteen days from the receipt by the director of the plat  
 4 and notice required by section twelve of this article, file  
 5 objections in writing (forms for which will be furnished by the  
 6 director on request) to such proposed drilling with the director,  
 7 setting out therein as definitely as is reasonably possible the  
 8 ground or grounds on which such objections are based.

9 If any such objection is filed, or if any objection is made  
 10 by the director of the division of oil and gas the director shall  
 11 forthwith mail, by registered or certified mail, to the chairman  
 12 of the review board a notice that an objection to the proposed  
 13 drilling or deepening of a shallow well has been filed with or  
 14 made by the director, and shall enclose in such notice a copy  
 15 of all objections and of the application and plat filed with the  
 16 director in accordance with the provisions of section twelve  
 17 of this article.

18 Thereafter, no further action shall be taken on such  
 19 application by the director until he receives an order from the  
 20 review board directing the director to:



- 21 (a) Refuse a drilling permit; or  
22 (b) Issue a drilling permit for the proposed drilling location;  
23 or  
24 (c) Issue a drilling permit for an alternate drilling location  
25 different from that requested by the well operator; or  
26 (d) Issue a drilling permit either for the proposed drilling  
27 location or for an alternative drilling location different from  
28 that requested by the well operator, but not allow the drilling  
29 of the well for a period of not more than one year from the  
30 date of issuance of such permit.

31 Upon receipt of such board order, the director shall  
32 promptly undertake the action directed by the review board,  
33 except that he shall not issue a drilling permit unless all other  
34 provisions of this article (except section fifteen) pertaining to  
35 the application for and approval of a drilling permit have been  
36 complied with. All permits issued by the director pursuant to  
37 this section shall be effective ten days after issuance unless the  
38 review board orders the director to stay the effectiveness of  
39 a permit for a period not to exceed thirty days from the date  
40 of issuance.

41 If a permit is issued, the director shall indicate the approved  
42 drilling location on the plat filed with the director in  
43 accordance with the provisions of section twelve of this article  
44 and shall number and keep an index of and docket each plat  
45 and notice mailed to him as provided in section twelve of this  
46 article, and each notice mailed to him as provided in section  
47 thirteen of this article, entering in such docket the name of  
48 the well operator, and the names and addresses of all persons  
49 notified, the dates of conferences, hearings and all other  
50 actions taken by the director and the review board. The  
51 director shall also prepare a record of the proceedings, which  
52 record shall include all applications, plats and other documents  
53 filed with the director, all notices given and proof of service  
54 thereof, all orders issued, all permits issued and a transcript  
55 of the hearing. The record prepared by the director shall be  
56 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.**

1 (a) When a well penetrates one or more workable coal beds,  
 2 the well operator shall run and cement a string of casing in  
 3 the hole through the workable coal bed or beds in such a  
 4 manner as will exclude all oil, gas or gas pressure from the  
 5 coal bed or beds, except such oil, gas or gas pressure as may  
 6 be found in such coal bed or beds. Such string of casing shall  
 7 be run to a point at least thirty feet below the lowest workable  
 8 coal bed which the well penetrates and shall be circulated and  
 9 cemented from such point to the surface in such a manner as  
 10 provided for in reasonable rules and regulations promulgated  
 11 by the director in accordance with the provisions of chapter  
 12 twenty-nine-a. After any such string of casing has been so run  
 13 and cemented to the surface, drilling may proceed to the  
 14 permitted depth.

15 (b) In the event that gas is found beneath a workable coal  
 16 bed before the hole has been reduced from the size it had at  
 17 the coal bed, a packer shall be placed below the coal bed, and  
 18 above the gas horizon, and the gas by this means diverted to  
 19 the inside of the adjacent string of casing through perforations  
 20 made in such casing, and through it passed to the surface  
 21 without contact with the coal bed. Should gas be found  
 22 between two workable beds of coal, in a hole, of the same  
 23 diameter from bed to bed, two packers shall be placed, with  
 24 perforations in the casing between them, permitting the gas to  
 25 pass to the surface inside the adjacent casing. In either of the  
 26 cases here specified, the strings of casing shall extend from  
 27 their seats to the top of the well.

**§22B-1-19. Same—Continuance during life of well; dry or abandoned wells.**

1 In the event that a well becomes productive of natural gas  
 2 or petroleum, or is drilled for or converted for the introduction  
 3 of pressure, whether liquid or gas, or for the introduction of  
 4 liquid for the purposes provided for in section twenty-five of  
 5 this article or for the disposal of pollutants or the effluent  
 6 therefrom, all coal-protecting strings of casing and all water-  
 7 protecting strings of casing shall remain in place until the well  
 8 is plugged or abandoned. During the life of the well the  
 9 annular spaces between the various strings of casing adjacent  
 10 to workable beds of coal shall be kept open, and the top ends  
 11 of all such strings shall be provided with casing heads, or such  
 12 other suitable devices as will permit the free passage of gas

13 and prevent filling of such annular spaces with dirt or debris.

14 Any well which is completed as a dry hole or which is not  
15 in use for a period of twelve consecutive months shall be  
16 presumed to have been abandoned and shall promptly be  
17 plugged by the operator in accordance with the provisions of  
18 this article, unless the operator furnishes satisfactory proof to  
19 the director that there is a bona fide future use for such well.

**§22B-1-20. Same—When well is drilled through horizon of coal bed  
from which coal has been removed.**

1 When a well is drilled through the horizon of a coal bed  
2 from which the coal has been removed, the hole shall be drilled  
3 at least thirty feet below the coal bed, of a size sufficient to  
4 permit the placing of a liner which shall start not less than  
5 twenty feet beneath the horizon of the coal bed and extend  
6 not less than twenty feet above it. Within this liner, which may  
7 be welded to the casing to be used, shall be centrally placed  
8 the largest sized casing to be used in the well, and the space  
9 between the liner and casing shall be filled with cement as they  
10 are lowered into the hole. Cement shall be placed in the  
11 bottom of the hole to a depth of twenty feet to form a sealed  
12 seat for both liner and casing. Following the setting of the  
13 liner, drilling shall proceed in the manner provided above.  
14 Should it be found necessary to drill through the horizon of  
15 two or more workable coal beds from which the coal has been  
16 removed, such liner shall be started not less than twenty feet  
17 below the lowest such horizon penetrated and shall extend to  
18 a point not less than twenty feet above the highest such  
19 horizon.

**§22B-1-21. Same—Installation of fresh water casings.**

1 When a permit has been issued for the drilling of an oil or  
2 gas well or both, each well operator shall run and permanently  
3 cement a string of casing in the hole through the fresh water  
4 bearing strata in such a manner and to the extent provided  
5 for in rules and regulations promulgated by the director in  
6 accordance with the provisions of chapter twenty-two and  
7 twenty-nine-a of this code.

8 No oil or gas well shall be drilled nearer than two hundred  
9 feet from an existing water well or dwelling without first  
10 obtaining the written consent of the owner of such water well

11 or dwelling.

**§22B-1-22. Well log to be filed; contents; authority to promulgate regulations.**

1 Within a reasonable time after the completion of the drilling  
2 of a well, the well operator shall file with the director an  
3 accurate log. Such log shall contain the character, depth and  
4 thickness of geological formations encountered, including fresh  
5 water, coal seams, mineral beds, brine, and oil and gas bearing  
6 formations and such other information as the director may  
7 require to effectuate the purposes of this chapter and chapter  
8 twenty-two of this code.

9 The director may promulgate such reasonable rules and  
10 regulations in accordance with article three, chapter twenty-  
11 nine-a of this code, as he may deem necessary to insure that  
12 the character, depth and thickness of geological formations  
13 encountered are accurately logged: *Provided*, That the director  
14 shall not require logging by the use of an electrical logging  
15 device.

**§22B-1-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.**

1 All dry or abandoned wells or wells presumed to be  
2 abandoned under the provisions of section nineteen of this  
3 article shall be plugged and reclaimed in accordance with this  
4 section and the other provisions of this article and in  
5 accordance with the rules and regulations promulgated by the  
6 director.

7 Prior to the commencement of plugging operations and the  
8 abandonment of any well, the well operator shall either (a)  
9 notify, by registered or certified mail, the director and the coal  
10 operator operating coal seams, the coal seam owner of record  
11 or lessee of record, if any, to whom notices are required to  
12 be given by section twelve of this article, and the coal  
13 operators to whom notices are required to be given by section  
14 thirteen of this article, of its intention to plug and abandon  
15 any such well (using such form of notice as the director may  
16 provide), giving the number of the well and its location and  
17 fixing the time at which the work of plugging and filling will  
18 be commenced, which time shall be not less than five days after

19 the day on which such notice so mailed is received or in due  
20 course should be received by the director, in order that a  
21 representative or representatives of the director and such coal  
22 operator, owner or lessee, if any, may be present at the  
23 plugging and filling of the well: *Provided*, That whether such  
24 representatives appear or do not appear, the well operator may  
25 proceed at the time fixed to plug and fill the well in the manner  
26 hereinafter described, or (b) first obtain the written approval  
27 of the director and such coal operator, owner or lessee, if any,  
28 or (c) in the event the well to be plugged and abandoned is  
29 one on which drilling or reworking operations have been  
30 continuously progressing pursuant to authorization granted by  
31 the director, first obtain the verbal permission of the director  
32 or his designated representative to plug and abandon such  
33 well, except that the well operator shall, within a reasonable  
34 period not to exceed five days after the commencement of such  
35 plugging operations, give the written notices required by  
36 subdivision (a) above.

37 No well may be plugged or abandoned unless prior to the  
38 commencement of plugging operations and the abandonment  
39 of any well the director is furnished a bond as provided in  
40 section twenty-six of this article.

41 When the plugging, filling and reclamation of a well have  
42 been completed, an affidavit, in triplicate, shall be made (on  
43 a form to be furnished by the director) by two experienced  
44 persons who participated in the work, the director for oil and  
45 gas or his designated representative, in which affidavit shall  
46 be set forth the time and manner in which the well was plugged  
47 and filled and the land reclaimed. One copy of this affidavit  
48 shall be retained by the well operator, another (or true copies  
49 of same) shall be mailed to the coal operator or operators,  
50 if any, and the third to the director.

**§22B-1-24. Methods of plugging well.**

1 Upon the abandonment or cessation of the operation of any  
2 well drilled for natural gas or petroleum, or drilled or  
3 converted for the introduction of pressure, whether liquid or  
4 gas, or for the introduction of liquid for the purposes provided  
5 for in section twenty-five of this article or for the disposal of  
6 pollutants or the effluent therefrom the well operator, at the  
7 time of such abandonment or cessation, shall fill and plug the

8 well in the following manner:

9 (a) Where the well does not penetrate workable coal beds,  
10 it shall either be filled with mud, clay or other nonporous  
11 material from the bottom of the well to a point twenty feet  
12 above the top of its lowest oil, gas or water-bearing stratum;  
13 or a permanent bridge shall be anchored thirty feet below its  
14 lowest oil, gas or water-bearing stratum, and from such bridge  
15 it shall be filled with mud, clay or other nonporous material  
16 to a point twenty feet above such stratum; at this point there  
17 shall be placed a plug of cement or other suitable material  
18 which will completely seal the hole. Between this sealing plug  
19 and a point twenty feet above the next higher oil, gas or water-  
20 bearing stratum, the hole shall be filled, in the manner just  
21 described; and at such point there shall be placed another plug  
22 of cement or other suitable material which will completely seal  
23 the hole. In like manner the hole shall be filled and plugged,  
24 with reference to each of its oil, gas or water-bearing strata.  
25 However, whenever such strata are not widely separated and  
26 are free from water, they may be grouped and treated as a  
27 single sand, gas or petroleum horizon, and the aforesaid filling  
28 and plugging be performed as though there were but one  
29 horizon. After the plugging of all oil, gas or water-bearing  
30 strata, as aforesaid, a final cement plug shall be placed  
31 approximately ten feet below the bottom of the largest casing  
32 in the well; from this point to the surface the well shall be  
33 filled with mud, clay or other nonporous material. In case any  
34 of the oil or gas-bearing strata in a well shall have been shot,  
35 thereby creating cavities which cannot readily be filled in the  
36 manner above described, the well operator shall follow either  
37 of the following methods:

38 (1) Should the stratum which has been shot be the lowest  
39 one in the well, there shall be placed, at the nearest suitable  
40 point, but not less than twenty feet above the stratum, a plug  
41 of cement or other suitable material which will completely seal  
42 the hole. In the event, however, that the shooting has been  
43 done above one or more oil or gas-bearing strata in the well,  
44 plugging in the manner specified shall be done at the nearest  
45 suitable point, but not less than twenty feet below and above  
46 the stratum shot, or (2), when such cavity shall be in the lowest  
47 oil or gas-bearing stratum in the well, a liner shall be placed  
48 which shall extend from below the stratum to a suitable point,

49 but not less than twenty feet above the stratum in which  
50 shooting has been done. In the event, however, that the  
51 shooting has been done above one or more oil or gas-bearing  
52 strata in the well, the liner shall be so placed that it will extend  
53 not less than twenty feet above, nor less than twenty feet  
54 below, the stratum in which shooting has been done.  
55 Following the placing of the liner in the manner here specified  
56 it shall be compactly filled with cement, mud, clay or other  
57 nonporous sealing material;

58 (b) Where the well penetrates one or more workable coal  
59 beds and a coal protection string of casing has been circulated  
60 and cemented in to the surface, the well shall be filled and  
61 securely plugged in the manner provided in subsection (a) of  
62 this section, except that expanding cement shall be used  
63 instead of regular hydraulic cement, to a point approximately  
64 one hundred feet below the bottom of the coal protection  
65 string of casing. A one hundred foot plug of expanding cement  
66 shall then be placed in the well so that the top of such plug  
67 is located at a point just below the coal protection string of  
68 casing. After such plug has been securely placed in the well,  
69 the coal protection string of casing shall be emptied of liquid  
70 from the surface to a point one hundred feet below the lowest  
71 workable coal bed or to the bottom of the coal protection  
72 string of casing, whichever is shallower. A vent or other device  
73 approved by the director shall then be installed on the top of  
74 the coal protection string of casing in such a manner that will  
75 prevent liquids and solids from entering the well but will  
76 permit ready access to the full internal diameter of the coal  
77 protection string of casing when required. The coal protection  
78 string of casing and the vent or other device approved by the  
79 director shall extend, when finally in place, a distance of not  
80 less than thirty inches above ground level and shall be  
81 permanently marked with the well number assigned by the  
82 director.

83 (c) Where the well penetrates one or more workable coal  
84 beds and a coal protection string of casing has not been  
85 circulated and cemented in to the surface, the well shall be  
86 filled and securely plugged in the manner provided in  
87 subsection (a) of this section to a point fifty feet below the  
88 lowest workable coal bed. Thereafter, a plug of cement shall  
89 be placed in the well at a point not less than forty feet below

90 the lowest workable coal bed. After the cement plug has been  
91 securely placed in the well, the well shall be filled with cement  
92 to a point twenty feet above the lowest workable coal bed.  
93 From this point the well shall be filled with mud, clay or other  
94 nonporous material to a point forty feet beneath the next  
95 overlying workable coal bed, if such there be, and the well  
96 shall then be filled with cement from this point to a point  
97 twenty feet above such workable coal bed, and similarly, in  
98 case there are more overlying workable coal beds. After the  
99 filling and plugging of the well to a point above the highest  
100 workable coal bed, filling and plugging of the well shall  
101 continue in the manner provided in subsection (a) of this  
102 section to a point fifty feet below the surface, and a plug of  
103 cement shall be installed from the point fifty feet below the  
104 surface to the surface with a monument installed therein  
105 extending thirty inches above ground level.

106 (d) (1) Where the well penetrates one or more workable coal  
107 beds and a coal protection string of casing has not been  
108 circulated and cemented in to the surface, a coal operator or  
109 coal seam owner may request that the well be plugged in the  
110 manner provided in subdivision (3) of this subsection rather  
111 than by the method provided in subsection (c) of this section.  
112 Such request (forms for which shall be provided by the  
113 director) must be filed in writing with the director prior to the  
114 scheduled plugging of the well, and must include the number  
115 of the well to be plugged and the name and address of the  
116 well operator. At the time such request is filed with the  
117 director, a copy of such request must also be mailed by  
118 registered or certified mail to the well operator named in the  
119 request.

120 (2) Upon receipt of such request, the director shall issue an  
121 order staying the plugging of the well and shall promptly  
122 determine the cost of plugging the well in the manner provided  
123 in subdivision (3) of this subsection and the cost of plugging  
124 the well in the manner provided in subsection (c) of this  
125 section. In making such determination, the director shall take  
126 into consideration any agreement previously made between the  
127 well operator and the coal operator or coal seam owner  
128 making the request. If the director determines that the cost  
129 of plugging the well in the manner provided in subsection (c)  
130 of this section exceeds the cost of plugging the well in the



131 manner provided in subdivision (3) of this subsection, the  
132 director shall grant the request of the coal operator or owner  
133 and shall issue an order requiring the well operator to plug  
134 the well in the manner provided in subdivision (3) of this  
135 subsection. If the director determines that the cost of plugging  
136 the well in the manner provided in subsection (c) of this section  
137 is less than the cost of plugging the well in the manner  
138 provided in subdivision (3) of this subsection, the director shall  
139 request payment into escrow of the difference between the  
140 determined costs by the coal operator or coal seam owner  
141 making the request. Upon receipt of satisfactory notice of such  
142 payment, or upon receipt of notice that the well operator has  
143 waived such payment, the director shall grant the request of  
144 the coal operator or coal seam owner and shall issue an order  
145 requiring the well operator to plug the well in the manner  
146 provided in subdivision (3) of this subsection. If satisfactory  
147 notice of payment into escrow, or notice that the well operator  
148 has waived such payment, is not received by the director within  
149 fifteen days after the request for payment into escrow, the  
150 director shall issue an order permitting the plugging of the well  
151 in the manner provided in subsection (c) of this section. Copies  
152 of all orders issued by the director shall be sent by registered  
153 or certified mail to the coal operator or coal seam owner  
154 making the request and to the well operator. When the escrow  
155 agent has received certification from the director of the  
156 satisfactory completion of the plugging work and the  
157 reimbursable extra cost thereof (that is, the difference between  
158 the director's determination of plugging cost in the manner  
159 provided in subsection (c) of this section and the well  
160 operator's actual plugging cost in the manner provided in  
161 subdivision (3) of this subsection), he shall pay the reimbur-  
162 sable sum to the well operator or his nominee from the  
163 payment into escrow to the extent available. The amount by  
164 which the payment into escrow exceeds the reimbursable sum  
165 plus the escrow agent's fee, if any, shall be repaid to the coal  
166 owner. If the amount paid to the well operator or his nominee  
167 is less than the actual reimbursable sum, the escrow agent shall  
168 inform the coal owner, who shall pay the deficiency to the well  
169 operator or his nominee within thirty days. If the coal operator  
170 breaches this duty to pay the deficiency, the well operator shall  
171 have a right of action and be entitled to recover damages as  
172 if for wrongful conversion of personalty, and his reasonable

173 attorney fees.

174 (3) Where a request of a coal operator or coal seam owner  
175 filed pursuant to subdivision (1) of this subsection has been  
176 granted by the director, the well shall be plugged in the manner  
177 provided in subsection (a) of this section, except that  
178 expanding cement shall be used instead of regular hydraulic  
179 cement, to a point approximately two hundred feet below the  
180 lowest workable coal bed. A one hundred foot plug of  
181 expanding cement shall then be placed in the well beginning  
182 at the point approximately two hundred feet below the lowest  
183 workable coal bed and extending to a point approximately one  
184 hundred feet below the lowest workable coal bed. A string of  
185 casing with an outside diameter no less than four and one-  
186 half inches shall then be run into the well to a point  
187 approximately one hundred feet below the lowest workable  
188 coal bed and such string of casing shall be circulated and  
189 cemented in to the surface. The casing shall then be emptied  
190 of liquid from a point approximately one hundred feet below  
191 the lowest workable coal bed to the surface, and a vent or  
192 other device approved by the director shall be installed on the  
193 top of the string of casing in such a manner that it will prevent  
194 liquids and solids from entering the well but will permit ready  
195 access to the full internal diameter of the coal protection string  
196 of casing when required. The string of casing and the vent or  
197 other device approved by the director shall extend, when  
198 finally in place, a distance of no less than thirty inches above  
199 ground level and shall be permanently marked with the well  
200 number assigned by the director. Notwithstanding the  
201 foregoing provisions of this subdivision, if under particular  
202 circumstances a different method of plugging is required to  
203 obtain the approval of another governmental agency for the  
204 safe mining through of said well, the director may approve  
205 such different method of plugging if he finds the same to be  
206 as safe for mining through and otherwise adequate to prevent  
207 gas or other fluid migration from the oil and gas reservoirs  
208 as the method above specified.

209 (e) Any person may apply to the director for an order to  
210 clean out and replug a previously plugged well in a manner  
211 which will permit the safe mining through of such well. Such  
212 application shall be filed with the director and shall contain  
213 the well number, a general description of the well location, the

214 name and address of the owner of the surface land upon which  
215 the well is located, a copy of or record reference to a deed,  
216 lease or other document which entitles the applicant to enter  
217 upon the surface land, a description of the methods by which  
218 the well was previously plugged, and a description of the  
219 method by which such applicant proposes to clean out and  
220 replug the well. At the time an application is filed with the  
221 director, a copy shall be mailed by registered or certified mail  
222 to the owner or owners of the land, and the oil and gas lessee  
223 of record, if any, of the site land upon which the well is  
224 located. If no objection to the replugging of the well is filed  
225 by any such landowner or oil and gas lessee within thirty days  
226 after the filing of the application, and if the director determines  
227 that the method proposed for replugging the well will permit  
228 the safe mining through of such well, the director shall grant  
229 the application by an order authorizing the replugging of the  
230 well. Such order shall specify the method by which the well  
231 shall be replugged, and copies thereof shall be mailed by  
232 certified or registered mail to the applicant and to the owner  
233 or owners of the land, and the oil and gas lessee, if any, of  
234 the site upon which such well is located. If any such landowner  
235 or oil and gas lessee objects to the replugging of the well, the  
236 director shall notify the applicant of such objection. Thereaf-  
237 ter, the director shall schedule a hearing to consider the  
238 objection, which hearing shall be held after notice by registered  
239 or certified mail to the objectors and the applicant. After  
240 consideration of the evidence presented at the hearing, the  
241 director shall issue an order authorizing the replugging of the  
242 well if he determines that replugging of the well will permit  
243 the safe mining through of such well. Such order shall specify  
244 the manner in which the well shall be replugged and copies  
245 thereof shall be sent by registered or certified mail to the  
246 applicant and objectors. The director shall issue an order  
247 rejecting the application if he determines that the proposed  
248 method for replugging the well will not permit the safe mining  
249 through of such well.

250 (f) All persons adversely affected by a determination or  
251 order of the director issued pursuant to the provisions of this  
252 section shall be entitled to judicial review in accordance with  
253 the provisions of articles five and six, chapter twenty-nine-a  
254 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  
2 oil or gas may allow such well or wells to remain open for  
3 the purpose of introducing water or other liquid pressure into  
4 and upon the producing strata for the purpose of recovering  
5 the oil contained therein, and may drill additional wells for  
6 like purposes, provided that the introduction of such water or  
7 other liquid pressure shall be controlled as to volume and  
8 pressure and shall be through casing or tubing which shall be  
9 so anchored and packed that no water-bearing strata or other  
10 oil, or gas-bearing sand or producing stratum, above or below  
11 the producing strata into and upon which such pressure is  
12 introduced, shall be affected thereby, fulfilling requirements as  
13 set forth under section fourteen.

**§22B-1-26. Performance bonds; corporate surety or other security.**

- 1 (a) No permit shall be issued pursuant to this article unless  
2 a bond which is required for a particular activity by this article  
3 is or has been furnished as provided in this section.
- 4 (b) A separate bond may be furnished for a particular oil  
5 or gas well, or for a particular well for the introduction of  
6 liquids for the purposes provided in section twenty-five of this  
7 article. A separate bond shall be furnished for each well drilled  
8 or converted for the introduction of liquids for the disposal  
9 of pollutants or the effluent therefrom. Every such bond shall  
10 be in the sum of ten thousand dollars, payable to the State  
11 of West Virginia, conditioned on full compliance with all laws,  
12 rules and regulations relating to the drilling, redrilling,  
13 deepening, casing, and stimulating oil and gas wells (or, if  
14 applicable, with all laws, rules and regulations relating to  
15 drilling or converting wells for the introduction of liquids for  
16 the purposes provided for in section twenty-five of this article  
17 or for the introduction of liquids for the disposal of pollutants  
18 or the effluent therefrom) and to the plugging, abandonment  
19 and reclamation of wells and for furnishing such reports and  
20 information as may be required by the director.
- 21 (c) When an operator makes or has made application for  
22 permits to drill or stimulate a number of oil and gas wells or  
23 to drill or convert a number of wells for the introduction of  
24 liquids for the purposes provided in section twenty-five of this

25 article, the operator may in lieu of furnishing a separate bond  
26 furnish a blanket bond in the sum of fifty thousand dollars,  
27 payable to the state of West Virginia, and conditioned as  
28 aforesaid in subsection (b) of this section.

29 (d) All bonds submitted hereunder shall have a corporate  
30 bonding or surety company authorized to do business in this  
31 state as surety thereon: *Provided, however,* That in lieu of  
32 corporate surety on a separate or blanket bond, as the case  
33 may be, the operator may elect to deposit with the director  
34 cash or the following collateral securities or any combination  
35 thereof: (1) Bonds of the United States or agency thereof, or  
36 those guaranteed by, or for which the credit of the United  
37 States or agency therefor is pledged for the payment of the  
38 principal and interest thereof; (2) direct general obligation  
39 bonds of this state, or any other state, or territory of the  
40 United States, or the District of Columbia, unconditionally  
41 guaranteed as to the principal and interest by such other state  
42 or territory of the United States, or the District of Columbia  
43 if such other state, territory, or the District of Columbia has  
44 the power to levy taxes for the payment of the principal and  
45 interest of such securities, and if at the time of the deposit  
46 such other state, territory, or the District of Columbia is not  
47 in default in the payment of any part of the principal or  
48 interest owing by it upon any part of its funded indebtedness;  
49 (3) direct general obligation bonds of any county, district, city,  
50 town, village, school district or other political subdivision of  
51 this state issued pursuant to law and payable from ad valorem  
52 taxes levied on all taxable property located herein, that the  
53 total indebtedness after deducting sinking funds and all debts  
54 incurred for self-sustaining public works does not exceed five  
55 percent of the assessed value of all taxable property therein  
56 at the time of the last assessment made before the date of such  
57 deposit, and that the issuer has not, within five years prior  
58 to the making thereof, been in default for more than ninety  
59 days in the payment of any part of the principal or interest  
60 on any debt, evidenced by its bonds; (4) revenue bonds issued  
61 by this state or any agency of this state when such bonds are  
62 payable from revenues or earnings specifically pledged for the  
63 payment of principal and interest, and a lawful sinking fund  
64 or reserve fund has been established and is being maintained  
65 for the payment of such bonds; (5) revenue bonds issued by  
66 a municipality in this state for the acquisition, construction,

67 improvement or extension of a waterworks system, or a  
68 sewerage system, or a combined waterworks and sewerage  
69 system, when such bonds are payable from revenue or earnings  
70 specifically pledged for the payment of principal and interest,  
71 and a lawful sinking fund or reserve fund has been established  
72 and is being maintained for the payment of such bonds; (6)  
73 revenue bonds issued by a public service board of a public  
74 service district in this state for the acquisition, construction,  
75 improvement or extension of any public service properties, or  
76 for the reimbursement or payment of the costs and expenses  
77 of creating the district, when such bonds are payable from  
78 revenue or earnings specifically pledged for the payment of  
79 principal and interest, and a lawful sinking fund or reserve  
80 fund has been established and is being maintained for the  
81 payment of such bonds; (7) revenue bonds issued by a board  
82 of trustees of a sanitary district in this state for the corporate  
83 purposes of such district, when such bonds are payable from  
84 revenue or earnings specifically pledged for the payment of  
85 principal and interest, and a lawful sinking fund or reserve  
86 fund has been established and is being maintained for the  
87 payment of such bonds; and (8) bonds issued by a federal land  
88 bank or home owners' loan corporation. The cash deposit or  
89 market value, or both, of the collateral securities shall be equal  
90 to or greater than the penalty of the separate or blanket bond,  
91 as the case may be. Upon receipt of any such deposit or cash  
92 or collateral securities, the director shall immediately deliver  
93 the same to the treasurer of the State of West Virginia. The  
94 treasurer shall determine whether any such securities satisfy the  
95 requirements of this section. If the securities are approved they  
96 shall be accepted by the treasurer. If the securities are not  
97 approved, they shall be rejected and returned to the operator  
98 and no permit shall be issued until a corporate surety bond  
99 is filed or cash or proper collateral securities are filed in lieu  
100 of such surety. The treasurer shall hold any cash or securities  
101 in the name of the state in trust for the purposes for which  
102 the deposit was made. The operator shall be entitled to all  
103 interest and income earned on the collateral securities filed by  
104 such operator so long as the operator is in full compliance with  
105 all laws, rules and regulations relating to the drilling, redrilling,  
106 deepening, casing and fracturing of oil and gas wells (or, if  
107 applicable, with all laws, rules and regulations relating to  
108 drilling or converting wells for the introduction of liquids for

109 the purposes provided for in section twenty-five of this article  
110 for the introduction of liquids for the disposal of pollutants  
111 or the effluent therefrom) and the plugging, abandonment and  
112 reclamation of wells and for furnishing such reports and  
113 information as may be required by the director. The operator  
114 making the deposit shall be entitled from time to time to  
115 receive from the treasurer, upon the written order of the  
116 director, the whole or any portion of such securities upon  
117 depositing with the treasurer in lieu thereof cash equal to or  
118 greater than the penalty of the bond, in other approved  
119 securities of the classes herein specified having a market value  
120 equal to or greater than the penalty of the bond, or a corporate  
121 surety bond.

122 (e) When an operator has furnished a separate bond from  
123 a corporate bonding or surety company to drill, fracture or  
124 stimulate an oil or gas well and the well produces oil or gas  
125 or both, its operator may deposit with the director cash from  
126 the sale of the oil or gas or both until the total deposited is  
127 ten-thousand dollars. When the sum of the cash deposited is  
128 ten-thousand dollars, the separate bond for the well shall be  
129 released by the director. Upon receipt of such cash, the  
130 director shall immediately deliver the same to the treasurer of  
131 the State of West Virginia. The treasurer shall hold such cash  
132 in the name of the state in trust for the purpose for which  
133 the bond was furnished and the deposit was made. The  
134 operator shall be entitled to all interest and income which may  
135 be earned on the cash deposited so long as the operator is in  
136 full compliance with all laws, rules and regulations relating to  
137 the drilling, redrilling, deepening, casing, plugging, abandon-  
138 ment and reclamation of the well for which the cash was  
139 deposited and so long as he has furnished all reports and  
140 information as may be required by the director. If the cash  
141 realized from the sale of oil or gas or both from the well is  
142 not sufficient for the operator to deposit with the director the  
143 sum of ten-thousand dollars within one year of the day the  
144 well started producing, the corporate or surety company which  
145 issued the bond on the well may notify the operator and the  
146 director of its intent to terminate its liability under its bond.  
147 The operator then shall have thirty days to furnish a new bond  
148 from a corporate bonding or surety company or collateral  
149 securities, as provided in the next preceding paragraph of this  
150 section, with the director. If a new bond or collateral securities

151 are furnished by the operator, the liability of the corporate  
152 bonding or surety company under the original bond shall  
153 terminate as to any acts and operations of the operator  
154 occurring after the effective date of the new bond or the date  
155 the collateral securities are accepted by the treasurer of the  
156 State of West Virginia. If the operator does not furnish a new  
157 bond or collateral securities, as provided in the next preceding  
158 paragraph of this section, with the director, he shall  
159 immediately plug, fill and reclaim the well in accordance with  
160 all of the provisions of law, rules and regulations applicable  
161 thereto. In such case, the corporate or surety company which  
162 issued the original bond shall be liable for any plugging, filling  
163 or reclamation not performed in accordance with such laws,  
164 rules and regulations.

165 (f) Any separate bond furnished for a particular well prior  
166 to the effective date of this chapter shall continue to be valid  
167 for all work on the well permitting prior to the effective date  
168 of this chapter; but no permit shall hereafter be issued on such  
169 a particular well without a bond complying with the provisions  
170 of this section. Any blanket bond furnished prior to the  
171 effective date of this chapter shall be replaced with a new  
172 blanket bond conforming to the requirements of this section,  
173 at which time the prior bond shall be discharged by operation  
174 of law; and if the director determines that any operator has  
175 not furnished a new blanket bond, the director shall notify the  
176 operator by certified mail, return receipt requested, of the  
177 requirement for a new blanket bond; and failure to submit a  
178 new blanket bond within sixty days after receipt of the notice  
179 from the director shall work a forfeiture under subsection (h)  
180 of this section of the blanket bond furnished prior to the  
181 effective date of this chapter.

182 (g) Any such bond shall remain in force until released by  
183 the director, and the director shall release the same when it  
184 is satisfied the conditions thereof have been fully performed.  
185 Upon the release of any such bond, any cash or collateral  
186 securities deposited shall be returned by the director to the  
187 operator who deposited same.

188 (h) If any of the requirements of this article or rules and  
189 regulations promulgated pursuant thereto or the orders of the  
190 director have not been complied with within the time limit set  
191 by the violation notice as defined in sections three, four, and



192 five of this article, the performance bond shall then be  
193 forfeited.

194 (i) When any bond is forfeited pursuant to the provisions  
195 of this article or rules and regulations promulgated pursuant  
196 thereto the director shall give notice to the attorney general  
197 who shall collect the forfeiture without delay.

198 (j) All forfeitures shall be deposited in the treasury of the  
199 State of West Virginia in the special reclamation fund as  
200 defined in section twenty-nine of this article.

**§22B-1-27. Cause of action for damages caused by explosions.**

1 Any person suffering personal injury or property damage  
2 due to any explosion caused by any permittee, shall have a  
3 cause of action against such permittee for three years after the  
4 explosion regardless of whether the explosion occurred before  
5 or after the effective date of this article.

**§22B-1-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.**

1 The director shall exercise supervision over the drilling,  
2 casing, plugging, filling and reclamation of all wells and shall  
3 have such access to the plans, maps and other records and to  
4 the properties of the well operators as may be necessary or  
5 proper for this purpose, and, either as the result of its own  
6 investigations or pursuant to charges made by any well  
7 operator or coal operator, the director may himself enter, or  
8 shall permit any aggrieved person to file before him, a formal  
9 complaint charging any well operator with not drilling or  
10 casing, or not plugging or filling, or reclaiming any well in  
11 accordance with the provisions of this article, or to the order  
12 of the director. True copies of any such complaints shall be  
13 served upon or mailed by registered mail to any person so  
14 charged, with notice of the time and place of hearing, of which  
15 the operator or operators so charged shall be given at least  
16 five days' notice. At the time and place fixed for hearing, full  
17 opportunity shall be given any person so charged or  
18 complaining to be heard and to offer such evidence as desired,  
19 and after a full hearing, at which the director may offer in  
20 evidence the results of such investigations as it may have made,  
21 the director shall make his findings of fact and enter such  
22 order as in his judgment is just and right and necessary to

23 secure the proper administration of this article, and if he deems  
24 necessary, restraining the well operator from continuing to  
25 drill or case any well or from further plugging, filling or  
26 reclaiming the same, except under such conditions as the  
27 director may impose in order to insure a strict compliance with  
28 the provisions of this article relating to such matters.

29 Any well operator or coal operator adversely affected by a  
30 final decision or order of the director, may appeal in the  
31 manner prescribed in section four of article five of chapter  
32 twenty-nine-a of this code.

**§22B-1-29. Special reclamation fund; fees.**

1 In addition to any other fees required by the provisions of  
2 this article, every applicant for a permit to drill a well shall,  
3 before the permit is issued, pay to the director a special  
4 reclamation fee of one hundred dollars for each well to be  
5 drilled. Such special reclamation fee shall be paid at the time  
6 the application for a drilling permit is filed with the director  
7 and the payment of such reclamation fee shall be a condition  
8 precedent to the issuance of said permit.

9 There is hereby created within the treasury of the state of  
10 West Virginia a special fund to be known as the oil and gas  
11 reclamation fund, and the director shall deposit with the state  
12 treasurer to the credit of such special fund all special  
13 reclamation fees collected. The proceeds of any bond forfeited  
14 under the provisions of this article shall inure to the benefit  
15 of and shall be deposited in such oil and gas reclamation fund.

16 The oil and gas reclamation fund shall be administered by  
17 the director. The director shall cause to be prepared plans for  
18 the reclaiming and plugging of abandoned wells which have  
19 not been reclaimed or plugged or which have been improperly  
20 reclaimed or plugged. The director, as funds become available  
21 in the oil and gas reclamation fund, shall reclaim and properly  
22 plug wells in accordance with said plans and specifications and  
23 in accordance with the provisions of this article relating to the  
24 reclaiming and plugging of wells and all rules and regulations  
25 promulgated thereunder. Such funds may also be utilized for  
26 the purchase of abandoned wells, where such purchase is  
27 necessary, and for the reclamation of such abandoned wells,  
28 and for any engineering, administrative and research costs as  
29 may be necessary to properly effectuate the reclaiming and

30 plugging of all wells, abandoned or otherwise.

31 The director may avail himself of any federal funds provided  
32 on a matching basis that may be made available for the  
33 purpose of reclaiming or plugging any wells.

34 The director shall make an annual report to the governor  
35 and to the legislature setting forth the number of wells  
36 reclaimed or plugged through the use of the oil and gas  
37 reclamation fund provided for herein. Such report shall  
38 identify each such reclamation and plugging project, state the  
39 number of wells reclaimed or plugged thereby, show the  
40 county wherein such wells are located and shall make a  
41 detailed accounting of all expenditures from the oil and gas  
42 reclamation fund.

43 All wells shall be reclaimed or plugged by contract entered  
44 into by the director on a competitive bid basis as provided  
45 for under the provisions of article three, chapter five-a of this  
46 code and the rules and regulations promulgated thereunder.

**§22B-1-30. Reclamation requirements.**

1 The operator of a well shall reclaim the land surface within  
2 the area disturbed in siting, drilling, completing or producing  
3 the well in accordance with the following requirements:

4 (a) Within six months after the completion of the drilling  
5 process, the operator shall fill all the pits for containing muds,  
6 cuttings, salt water and oil that are not needed for production  
7 purposes, or are not required or allowed by state or federal  
8 law or rule and remove all concrete bases, drilling supplies and  
9 drilling equipment. Within such period, the operator shall  
10 grade or terrace and plant, seed or sod the area disturbed that  
11 is not required in production of the well where necessary to  
12 bind the soil and prevent substantial erosion and sedimenta-  
13 tion. No pit may be used for the ultimate disposal of salt  
14 water. Salt water and oil shall be periodically drained or  
15 removed, and properly disposed of, from any pit that is  
16 retained so the pit is kept reasonably free of salt water and  
17 oil.

18 (b) Within six months after a well that has produced oil or  
19 gas is plugged, or after the plugging of a dry hole, the operator  
20 shall remove all production and storage structures, supplies  
21 and equipment, and any oil, salt water and debris, and fill any

22 remaining excavations. Within such period, the operator shall  
 23 grade or terrace and plant, seed or sod the area disturbed  
 24 where necessary to bind the soil and prevent substantial  
 25 erosion and sedimentation.

26 The director may, upon written application by an operator  
 27 showing reasonable cause, extend the period within which  
 28 reclamation shall be completed, but not to exceed a further  
 29 six-month period.

30 If the director refuses to approve a request for extension,  
 31 he shall do so by order.

32 (c) It shall be the duty of an operator to commence the  
 33 reclamation of the area of land disturbed in siting, drilling,  
 34 completing or producing the well in accordance with soil  
 35 erosion and sediment control plans approved by the director  
 36 or his designate.

37 (d) The director shall promulgate rules setting forth  
 38 requirements for the safe and efficient installation and burying  
 39 of all production and gathering pipelines where practical and  
 40 reasonable except that such rules shall not apply to those  
 41 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.**

1 Natural gas shall not be permitted to waste or escape from  
 2 any well or pipeline, when it is reasonably possible to prevent  
 3 such waste, after the owner or operator of such gas, or well,  
 4 or pipeline, has had a reasonable length of time to shut in such  
 5 gas in the well, or make the necessary repairs to such well or  
 6 pipeline to prevent such waste: *Provided*, That (a) if, in the  
 7 process of drilling a well for oil or gas, or both, gas is found  
 8 in such well, and the owner or operator thereof desires to  
 9 continue to search for oil or gas, or both, by drilling deeper  
 10 in search of lower oil or gas-bearing strata, or (b) if it becomes  
 11 necessary to make repairs to any well producing gas,  
 12 commonly known as "cleaning out," and if in either event it  
 13 is necessary for the gas in such well to escape therefrom during  
 14 the process of drilling or making repairs, as the case may be,  
 15 then the owner or operator of such well shall prosecute such  
 16 drilling or repairs with reasonable diligence, so that the waste

17 of gas from the well shall not continue longer than reasonably  
18 necessary, and if, during the progress of such deeper drilling  
19 or repairs, any temporary suspension thereof becomes  
20 necessary, the owner or operator of such well shall use all  
21 reasonable means to shut in the gas and prevent its waste  
22 during such temporary suspension: *Provided, however,* That  
23 in all cases where both oil and gas are found and produced  
24 from the same oil and gas-bearing stratum, and where it is  
25 necessary for the gas therefrom to waste in the process of  
26 producing the oil, the owner or operator shall use all  
27 reasonable diligence to conserve and save from waste so much  
28 of such gas as it is reasonably possible to save, but in no case  
29 shall such gas from any well be wasted in the process of  
30 producing oil therefrom until the owner or operator of such  
31 well shall have filed with the director a plan of operation for  
32 said well showing, among other things, the gas-oil production  
33 ratio involved in such operation, which plan shall govern the  
34 operation of said well unless the director shall, within ten days  
35 from the date on which such plan is submitted to the director,  
36 make a finding that such plan fails, under all the facts and  
37 circumstances, to propose the exercise of all reasonable  
38 diligence to conserve and save from waste so much of such  
39 gas as it is reasonably possible to save, in which event  
40 production of oil at such well by the wasting of gas shall cease  
41 and determine until a plan of operation is approved by the  
42 director. Successive plans of operation may be filed by the  
43 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.**

1 If the owner or operator of any such well shall neglect or  
2 refuse to drill, case and equip, or plug and abandon, or shut  
3 in and conserve from waste the gas produced therefrom, as  
4 required to be done and performed by the preceding sections  
5 of this article, for a period of twenty days after a written notice  
6 so to do, which notice may be served personally upon the  
7 owner or operator, or may be posted in a conspicuous place  
8 at or near the well, it shall be lawful for the owner or operator  
9 of any adjacent or neighboring lands or the director to enter  
10 upon the premises where such well is situated and properly  
11 case and equip such well, or, in case the well is to be  
12 adandoned, to properly plug and abandon it, or in case the

13 well is wasting gas, to properly shut it in and make such  
 14 needed repairs to the well to prevent the waste of gas, in the  
 15 manner required to be done by the preceding sections of this  
 16 article; and the reasonable cost and expense incurred by an  
 17 owner or operator or the director in so doing shall be paid  
 18 by the owner or operator of such well and may be recovered  
 19 as debts of like amount are by law recoverable.

20 The director may utilize funds and procedures established  
 21 pursuant to section twenty-nine of this article for the purposes  
 22 set out in the section. Amounts recovered by the director  
 23 pursuant to this section shall be deposited in the oil and gas  
 24 reclamation fund established pursuant to section twenty-nine  
 25 of this article.

**§22B-1-33. Restraining waste.**

1 Aside from and in addition to the imposition of any  
 2 penalties under this article, it shall be the duty of any circuit  
 3 court in the exercise of its equity jurisdiction to hear and  
 4 determine any bill or bills in equity which may be filed to  
 5 restrain the waste of natural gas in violation of this article,  
 6 and to grant relief by injunction or by other decrees or orders,  
 7 in accordance with the principles and practice in equity. The  
 8 plaintiff in such bill shall have sufficient standing to maintain  
 9 the same if he shall aver and prove that he is interested in  
 10 the lands situated within the distance of one mile from such  
 11 well, either as an owner of such land, or of the oil or gas,  
 12 or both, thereunder, in fee simple, or as an owner of leases  
 13 thereof or of rights therein for the production of oil and gas  
 14 or either of them or as the director.

**§22B-1-34. Offenses; penalties.**

1 (a) Any person or persons, firm, partnership, partnership  
 2 association or corporation who willfully violates any provision  
 3 of this article or any rule or order promulgated hereunder shall  
 4 be subject to a civil penalty not exceeding two thousand five  
 5 hundred dollars. Each day a violation continues after notice  
 6 by the division of oil and gas constitutes a separate offense.  
 7 The penalty shall be recovered by a civil action brought by  
 8 the division of oil and gas, in the name of the state, before  
 9 the circuit court of the county in which the subject well or  
 10 facility is located. All such civil penalties collected shall be  
 11 credited to the general fund of the state.

12 (b) Any person or persons, firm, partnership, partnership  
13 association or corporation willfully violating any of the  
14 provisions of this article which prescribe the manner of drilling  
15 and casing or plugging and filling any well, or which prescribe  
16 the methods of conserving gas from waste shall be guilty of  
17 a misdemeanor, and, upon conviction thereof, shall be  
18 punished by a fine not exceeding five thousand dollars, or  
19 imprisonment in jail for not exceeding twelve months, or both,  
20 in the discretion of the court, and prosecutions under this  
21 section may be brought in the name of the state of West  
22 Virginia in the court exercising criminal jurisdiction in the  
23 county in which the violation of such provisions of the article  
24 or terms of such order was committed, and at the instance and  
25 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.**

1 In an action for contamination or deprivation of a fresh  
2 water source or supply within one thousand feet of the site  
3 of drilling for an oil or gas well, there shall be a rebuttable  
4 presumption that such drilling, and such oil or gas well, or  
5 either, was the proximate cause of the contamination or  
6 deprivation of such fresh water source or supply.

**§22B-1-36. Declaration of oil and gas notice by owners and lessees  
of coal seams.**

1 For purposes of notification under this article, any owner  
2 or lessee of coal seams shall file a declaration of his interest  
3 in such coal seams with the clerk of the county commission  
4 in the county where such coal seams are located. Said clerk  
5 shall file and index such declaration in accordance with section  
6 two, article one, chapter thirty-nine of this code, and shall  
7 index the name of the owner or lessee of such coal seams in  
8 the grantor index of the record maintained for the indexing  
9 of leases.

10 The declaration shall entitle such owner or lessee to the  
11 notices provided in sections twelve, thirteen, fourteen and  
12 twenty-three of this article: *Provided*, That the declaring owner  
13 shall be the record owner of the coal seam, and the declaring  
14 lessee shall be the record lessee with his source or sources of  
15 title recorded prior to recording such lessee's declaration.

16 The declaration shall be acknowledged by such owner or  
17 lessee, and in the case of a lessee, may be a part of the coal  
18 lease under which the lessee claims. Such declaration may be  
19 in the following language:

20 "DECLARATION OF OIL AND GAS NOTICE"

21 "The undersigned hereby declares:

22 (1) The undersigned is the ('owner' or 'lessee') of one or  
23 more coal seams or workable coal beds as those terms are  
24 defined in section one, article two, chapter twenty-two-a of the  
25 code of West Virginia.

26 (2) The coal seam(s) or workable coal bed(s) owned or  
27 leased partly or wholly by the undersigned lie(s) under the  
28 surface of lands described as follows:

29 (Here insert a description legally adequate for a deed,  
30 whether by metes and bounds or other locational description,  
31 or by title references such as a book and page legally sufficient  
32 to stand in lieu of a locational description.)

33 (3) The undersigned desires to be given all notices of oil and  
34 gas operations provided by sections twelve, thirteen, fourteen  
35 and twenty-three, article one, chapter twenty-two-b of the code  
36 of West Virginia, addressed as follows:

37 (Here insert the name and mailing address of the under-  
38 signed owner or lessee.)

39 .....  
40 (Signature)

41 (Here insert an acknowledgement legally adequate for a  
42 deed)."

43 The benefits of the foregoing declaration shall be personal  
44 to the declaring owner or lessee, and not transferable or  
45 assignable in any way.

**§22B-1-37. Rules, regulations, orders and permits remain in effect.**

1 The rules and regulations promulgated and all orders and  
2 permits in effect upon the effective date of this chapter  
3 pursuant to the provisions of former article four, chapter  
4 twenty-two, of this code, shall remain in full force and effect  
5 as if such rules, regulations, orders and permits were adopted



6 by the director established in this chapter but all such rules,  
7 regulations, orders and permits shall be subject to review by  
8 the director to ensure they are consistent with the purposes  
9 and policies set forth in this chapter.

**§22B-1-38. Application of article; exclusions.**

1 This article shall not apply to or affect any well work  
2 permitted prior to the effective date of this chapter under  
3 former article four, chapter twenty-two of this code, unless  
4 such well is, after completion (whether such completion is  
5 prior to or subsequent to the effective date of this chapter)  
6 deepened subsequent to the effective date of this chapter  
7 through another coal seam to another formation above the top  
8 of the uppermost member of the "Onondaga Group" or to a  
9 depth of less than six thousand feet, whichever is shallower.

**§22B-1-39. Injunctive relief.**

1 (a) In addition to other remedies, and aside from various  
2 penalties provided by law, whenever it appears to the director  
3 that any person is violating or threatening to violate any  
4 provision of this article, any order or final decision of the  
5 director, or any lawful rule or regulation promulgated  
6 hereunder, the director may apply in the name of the state to  
7 the circuit court of the county in which the violations or any  
8 part thereof has occurred, is occurring or is about to occur,  
9 or the judge thereof in vacation, for an injunction against such  
10 persons and any other persons who have been, are or are about  
11 to be, involved in any practices, acts or admissions so in  
12 violation, enjoining such person or persons from any violation  
13 or violations. Such application may be made and prosecuted  
14 to conclusion, whether or not any violation or violations have  
15 resulted or shall result, in prosecution or conviction under the  
16 provisions of this article.

17 (b) Upon application by the director, the circuit courts of  
18 this state may, by mandatory or prohibitory injunction compel  
19 compliance with the provisions of this article, and all orders  
20 and final decisions of the director. The court may issue a  
21 temporary injunction in any case pending a decision on the  
22 merits of any application, filed. Any other section of this code  
23 to the contrary notwithstanding, the state shall not be required  
24 to furnish bond or other undertaking as a prerequisite to  
25 obtaining mandatory, prohibitory or temporary injunctive

26 relief under the provisions of this article.

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

33 (d) The director shall be represented in all such proceedings  
 34 by the attorney general or his assistants or in such proceedings  
 35 in the circuit courts by the prosecuting attorney of the several  
 36 counties as well, all without additional compensation. The  
 37 director with the written approval of the attorney general, may  
 38 employ special counsel to represent the director in any such  
 39 proceedings.

40 (e) If the director shall refuse or fail to apply for an  
 41 injunction to enjoin a violation or threatened violation of any  
 42 provision of this article, any order or final decision of the  
 43 director, or any rules or regulations promulgated hereunder,  
 44 within ten days after receipt of a written request to do so by  
 45 any well operator, coal operator, operating coal seams beneath  
 46 the tract of land, or the coal seam owner or lessee, if any,  
 47 if said owner or lessee is not yet operating said coal seams  
 48 beneath said tract of land, adversely affected by such violation  
 49 or threatened violation, the person making such request may  
 50 apply in his own behalf for an injunction to enjoin such  
 51 violation or threatened violation in any court in which the  
 52 director might have brought suit. The director shall be made  
 53 party defendant in such application in addition to the person  
 54 or persons violating or threatening to violate any provisions  
 55 of this article, any final order or decision of the director, or  
 56 any rule or regulation promulgated hereunder. The application  
 57 shall proceed and injunctive relief may be granted in the same  
 58 manner as if the application had been made by the director:  
 59 Except that the court may require a bond or other undertaking  
 60 from the plaintiff.

**§22B-1-40. Appeal from order of issuance or refusal of permit to  
 drill or fracture; procedure.**

1 Any party to the proceeding under section fifteen of this  
 2 article or section seven, article seven, chapter twenty-two of  
 3 this code, adversely affected by the issuance of a drilling permit

4 or to the issuance of a fracturing permit or the refusal of the  
5 director to grant a drilling permit or fracturing permit is  
6 entitled to judicial review thereof. All of the pertinent  
7 provisions of section four, article five, chapter twenty-nine-a  
8 of this code shall apply to and govern such judicial review with  
9 like effect as if the provisions of said section four were set forth  
10 in extenso in this section.

11 The judgment of the circuit court shall be final unless  
12 reversed, vacated or modified on appeal to the supreme court  
13 of appeals in accordance with the provisions of section one,  
14 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.**

1 Any party to the proceedings under section sixteen of this  
2 article adversely affected by the order of issuance of a drilling  
3 permit or to the issuance of a fracturing permit or the refusal  
4 of the director to grant a drilling permit or fracturing permit  
5 is entitled to judicial review thereof. All of the pertinent  
6 provisions of section four, article five, chapter twenty-nine-a  
7 of this code shall apply to and govern such judicial review with  
8 like effect as if the provisions of section four were set forth  
9 in extenso in this section.

10 The judgment of the circuit court shall be final unless  
11 reversed, vacated or modified on appeal to the supreme court  
12 of appeals in accordance with the provisions of section one,  
13 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.**

- 1 (a) The Legislature finds the following:
  - 2 (1) Exploration for and development of oil and gas reserves  
3 in this state must coexist with the use, agricultural or  
4 otherwise, of the surface of certain land and that each  
5 constitutes a right equal to the other.
  - 6 (2) Modern methods of extraction of oil and gas require the  
7 use of substantially more surface area than the methods  
8 commonly in use at the time most mineral estates in this state

9 were severed from the fee tract; and, specifically, the drilling  
10 of wells by the rotary drilling method was virtually unknown  
11 in this state prior to the year one thousand nine hundred sixty,  
12 so that no person theretofore severing his oil and gas from  
13 his surface land and no person theretofore leasing his oil and  
14 gas with the right to explore for and develop the same could  
15 reasonably have known nor could it have been reasonably  
16 contemplated that rotary drilling operations imposed a greater  
17 burden on the surface than the cable tool drilling method  
18 heretofore employed in this state; and since the year one  
19 thousand nine hundred sixty, the use of rotary drilling  
20 methods has spread slowly but steadily in this state, with  
21 concomitant public awareness of its impact on surface land;  
22 and that the public interest requires that the surface owner be  
23 entitled to fair compensation for the loss of the use of his  
24 surface area during the rotary drilling operation, but  
25 recognizing the right of the oil and gas operator to conduct  
26 rotary drilling operations as allowed by law.

27 (3) Prior to the first day of January, one thousand nine  
28 hundred sixty, the rotary method of drilling oil or gas wells  
29 was virtually unknown to the surface owners of this state nor  
30 was such method reasonably contemplated during the  
31 negotiations which occasioned the severance of either oil or  
32 gas from the surface.

33 (4) The Legislature further finds and creates a rebuttable  
34 presumption that even after the thirty-first day of December,  
35 one thousand nine hundred fifty-nine, and prior to the ninth  
36 day of June, one thousand nine hundred eighty-three, it was  
37 unlikely that any surface owner knew or should have known  
38 of the rotary method of drilling oil or gas wells, but, that such  
39 knowledge was possible and that the rotary method of drilling  
40 oil or gas wells could have, in some instances, been reasonably  
41 contemplated by the parties during the negotiations of the  
42 severance of the oil and gas from the surface. This presump-  
43 tion against knowledge of the rotary drilling method may be  
44 rebutted by a clear preponderance of the evidence showing that  
45 the surface owner or his predecessor of record did in fact know  
46 of the rotary drilling method at the time he or his predecessor  
47 executed a severance deed or lease of oil and gas and that he  
48 fairly contemplated the rotary drilling method, and received  
49 compensation for the same.

50 (b) Any surface owner entitled to claim any finding or any  
51 presumption which is not rebutted as provided in this section  
52 shall be entitled to the compensation and damages of this  
53 article.

54 (c) The Legislature declares that the public policy of this  
55 state shall be that the compensation and damages provided in  
56 this article for surface owners may not be diminished by any  
57 provision in a deed, lease or other contract entered into after  
58 the ninth day of June, one thousand nine hundred eighty-three.

59 (d) It is the purpose of this article to provide constitution-  
60 ally permissible protection and compensation to surface  
61 owners of lands on which oil and gas wells are drilled from  
62 the burden resulting from drilling operations commenced after  
63 the ninth day of June, one thousand nine hundred eighty-three.  
64 This article is to be interpreted in the light of the legislative  
65 intent expressed herein. This article shall be interpreted to  
66 benefit surface owners, regardless of whether the oil and gas  
67 mineral estate was separated from the surface estate and  
68 regardless of who executed the document which gave the oil  
69 and gas developer the right to conduct drilling operations on  
70 the land. Section four of this article shall be interpreted to  
71 benefit all persons.

**§22B-2-2. Definitions.**

1 (a) In this article, unless the context or subject matter  
2 otherwise requires:

3 (1) "Agricultural production" means the production of any  
4 growing grass or crop attached to the surface of the land,  
5 whether or not the grass or crop is to be sold commercially,  
6 and the production of any farm animals, whether or not the  
7 animals are to be sold commercially;

8 (2) "Drilling operations" means the actual drilling or  
9 redrilling of an oil or gas well commenced subsequent to the  
10 ninth day of June, one thousand nine hundred eighty-three,  
11 and the related preparation of the drilling site and access road,  
12 which requires entry, upon the surface estate;

13 (3) "Oil and gas developer" means the person who secures  
14 the drilling permit required by article one of this chapter;

15 (4) "Person" means any natural person, corporation, firm,

16 partnership, partnership association, venture, receiver, trustee,  
17 executor, administrator, guardian, fiduciary or other represen-  
18 tative of any kind, and includes any government or any  
19 political subdivision or agency thereof;

20 (5) "Surface estate" means an estate in or ownership of the  
21 surface of a particular tract of land overlying the oil or gas  
22 leasehold being developed; and

23 (6) "Surface owner" means a person who owns an estate in  
24 fee in the surface of land, either solely or as a co-owner.

**§22B-2-3. Compensation of surface owners for drilling operations.**

1 (a) The oil and gas developer shall be obligated to pay the  
2 surface owner compensation for:

3 (1) Lost income or expenses incurred as a result of being  
4 unable to dedicate land actually occupied by the driller's  
5 operation or to which access is prevented by such drilling  
6 operation to the uses to which it was dedicated prior to  
7 commencement of the activity for which a permit was obtained  
8 measured from the date the operator enters upon the land until  
9 the date reclamation is completed, (2) the market value of  
10 crops destroyed, damaged or prevented from reaching market,  
11 (3) any damage to a water supply in use prior to the  
12 commencement of the permitted activity, (4) the cost of repair  
13 of personal property up to the value of replacement by  
14 personal property of like age, wear and quality, and (5) the  
15 diminution in value, if any, of the surface lands and other  
16 property after completion of the surface disturbance done  
17 pursuant to the activity for which the permit was issued  
18 determined according to the actual use made thereof by the  
19 surface owner immediately prior to the commencement of the  
20 permitted activity.

21 The amount of damages may be determined by any formula  
22 mutually agreeable between the surface owner and the oil and  
23 gas developer.

24 (b) Any reservation or assignment of the compensation  
25 provided in this section apart from the surface estate except  
26 to a tenant of the surface estate is prohibited.

27 (c) In the case of surface lands owned by more than one  
28 person as tenants in common, joint tenants or other co-

29 ownership, any claim for compensation under this article shall  
30 be for the benefit of all such co-owners. The resolution of a  
31 claim for compensation provided in this article shall operate  
32 as a bar to the assertion of additional claims under this section  
33 arising out of the same drilling operations.

**§22B-2-4. Common law right of action preserved; offsets.**

1 (a) Nothing in section three or elsewhere in this article shall  
2 be construed to diminish in any way the common law  
3 remedies, including damages, of a surface owner or any other  
4 person against the oil and gas developer for the unreasonable,  
5 negligent, or otherwise wrongful exercise of the contractual  
6 right, whether express or implied, to use the surface of the land  
7 for the benefit of his mineral interest.

8 (b) An oil and gas developer shall be entitled to offset  
9 compensation agreed to be paid or awarded to a surface owner  
10 under section three of this article against any damages sought  
11 by or awarded to the surface owner through the assertion of  
12 common law remedies respecting the surface land actually  
13 occupied by the same drilling operation.

14 (c) An oil and gas developer shall be entitled to offset  
15 damages agreed to be paid or awarded to a surface owner  
16 through the assertion of common-law remedies against  
17 compensation sought by or awarded to the surface owner  
18 under section three of this article respecting the surface land  
19 actually occupied by the same drilling operation.

**§22B-2-5. Notification of claim.**

1 Any surface owner, to receive compensation under section  
2 three of this article, shall notify the oil and gas developer of  
3 the damages sustained by the person within two years after  
4 the date that the oil and gas developer files notice that he is  
5 commencing reclamation under section thirty, article one of  
6 this chapter. Such notice shall be given to surface owners by  
7 registered or certified mail, return receipt requested, and shall  
8 be complete upon mailing. If more than three tenants in  
9 common or other co-owners hold interests in such lands, the  
10 developer may give such notice to the person described in the  
11 records of the sheriff required to be maintained pursuant to  
12 section eight, article one, chapter eleven-a of this code or  
13 publish in the county in which the well is located or to be

14 located a Class II legal advertisement as described in section  
 15 two, article three, chapter fifty-nine of this code, containing  
 16 such notice and information as the director shall prescribe by  
 17 rule.

**§22B-2-6. Agreement; offer of settlement.**

1 Unless the parties provide otherwise by written agreement,  
 2 within sixty days after the oil and gas developer received the  
 3 notification of claim specified in section five of this article, the  
 4 oil and gas developer shall either make an offer of settlement  
 5 to the surface owner seeking compensation, or reject the claim.  
 6 The surface owner may accept or reject any offer so made.

**§22B-2-7. Rejection; legal action; arbitration; fees and costs.**

1 (a) Unless the oil and gas developer has paid the surface  
 2 owner a negotiated settlement of compensation within sixty  
 3 days after the date the notification of claim was mailed under  
 4 section five of this article, the surface owner may, within eighty  
 5 days after the notification mail date, either (i) bring an action  
 6 for compensation in the circuit court of the county in which  
 7 the well is located, or (ii) elect instead, by written notice  
 8 delivered by personal service or by certified mail, return receipt  
 9 requested, to the designated agent named by the oil and gas  
 10 developer under the provisions of section six of article one of  
 11 this chapter, to have his compensation finally determined by  
 12 binding arbitration pursuant to article ten, chapter fifty-five  
 13 of this code.

14 Settlement negotiations, offers and counter-offers between  
 15 the surface owner and the oil and gas developer shall not be  
 16 admissible as evidence in any arbitration or judicial proceeding  
 17 authorized under this article, or in any proceeding resulting  
 18 from the assertion of common-law remedies.

19 (b) The compensation to be awarded to the surface owner  
 20 shall be determined by a panel of three disinterested  
 21 arbitrators. The first arbitrator shall be chosen by the surface  
 22 owner in his notice of election under this section to the oil  
 23 and gas developer; the second arbitrator shall be chosen by  
 24 the oil and gas developer within ten days after receipt of the  
 25 notice of election; and the third arbitrator shall be chosen  
 26 jointly by the first two arbitrators within twenty days  
 27 thereafter. If they are unable to agree upon the third arbitrator



28 within twenty days, then the two arbitrators are hereby  
29 empowered to and shall forthwith submit the matter to the  
30 court under the provisions of section one, article ten, chapter  
31 fifty-five of this code, so that, among other things, the third  
32 arbitrator can be chosen by the judge of the circuit court of  
33 the county wherein the surface estate lies.

34 (c) The following persons shall be deemed interested and  
35 not be appointed as arbitrators: Any person who is personally  
36 interested in the land on which rotary drilling is being  
37 performed or has been performed, or in any interest or right  
38 therein, or in the compensation and any damages to be  
39 awarded therefor, or who is related by blood or marriage to  
40 any person having such personal interest, or who stands in the  
41 relation of guardian and ward, master and servant, principal  
42 and agent, or partner, real estate broker, or surety to any  
43 person having such personal interest, or who has enmity  
44 against or bias in favor of any person who has such personal  
45 interest or who is the owner of, or interested in, such land  
46 or the oil and gas development thereof. No person shall be  
47 deemed interested or incompetent to act as arbitrator by  
48 reason of his being an inhabitant of the county, district or  
49 municipal corporation wherein the land is located, or holding  
50 an interest in any other land therein.

51 (d) The panel of arbitrators shall hold hearings and take  
52 such testimony and receive such exhibits as shall be necessary  
53 to determine the amount of compensation to be paid to the  
54 surface owner. However, no award of compensation shall be  
55 made to the surface owner unless the panel of arbitrators has  
56 first viewed the surface estate in question. A transcript of the  
57 evidence may be made but shall not be required.

58 (e) Each party shall pay the compensation of his own  
59 arbitrator and one half of the compensation of the third  
60 arbitrator, or his own court costs as the case may be.

**§22B-2-8. Application of article.**

1 The remedies provided by this article shall not preclude any  
2 person from seeking other remedies allowed by law.

**§22B-2-9. Severability.**

1 If any section, subsection, subdivision, subparagraph,  
2 sentence or clause of this article is adjudged to be unconsti-

3 tutional or invalid, such invalidation shall not affect the  
 4 validity of the remaining portions of this article, and, to this  
 5 end, the provisions of this article are hereby declared to be  
 6 severable.

**ARTICLE 3. TRANSPORTATION OF OILS.**

**§22B-3-1. Scope of article.**

1 Every person, corporation or company now engaged, or  
 2 which shall hereafter engage, in the business of transporting  
 3 or storing petroleum, by means of pipeline or lines or storage  
 4 by tanks, shall be subject to the provisions of this article and  
 5 shall conduct such business in conformity herewith: *Provided,*  
 6 That the provisions of this article shall be subject to all federal  
 7 laws regulating interstate commerce on the same subject.

**§22B-3-2. Duty of pipeline companies to accept and transport oil.**

1 Any company heretofore or hereafter organized for the  
 2 purpose of transporting petroleum or other oils or liquids by  
 3 means of pipeline or lines shall be required to accept all  
 4 petroleum offered to it in merchantable order in quantities of  
 5 not less than two thousand gallons at the wells where the same  
 6 is produced, making at its own expense all necessary  
 7 connections with the tanks or receptacles containing such  
 8 petroleum, and to transport and deliver the same at any  
 9 delivery station, within or without the state, on the route of  
 10 its line of pipes, which may be designated by the owners of  
 11 the petroleum so offered.

**§22B-3-3. Oil of 35° Baume at 60° Fahrenheit; inspection, grading and measurement; receipt; deduction for waste.**

1 All petroleum of a gravity of thirty-five degrees Baume or  
 2 under, at a temperature of sixty degrees Fahrenheit, offered  
 3 for transportation by means of pipeline or lines, shall, before  
 4 the same is transported, as provided by section two of this  
 5 article, be inspected, graded and measured at the expense of  
 6 the pipeline company, and the company accepting the same  
 7 for transportation shall give to the owner thereof a receipt  
 8 stating therein the number of barrels or gallons so received,  
 9 and the grade, gravity and measurement thereof, and within  
 10 a reasonable time thereafter, upon demand of the owner or  
 11 his assigns, shall deliver to him at the point of delivery a like  
 12 quantity and grade or gravity of petroleum in merchantable

13 condition as specified in such receipt; except that the company  
14 may deduct for waste one percent of the amount of petroleum  
15 specified in such receipt.

**§22B-3-4. Oil over 35° Baume 60° Fahrenheit; inspection and measurement; loss.**

1 All petroleum of a gravity exceeding thirty-five degrees  
2 Baume, at a temperature of sixty degrees Fahrenheit, offered  
3 for transportation by means of pipeline or lines, shall be  
4 inspected and measured at the expense of the company  
5 transporting the same, before the same is transported. The  
6 company accepting the same for transportation shall give to  
7 the owner thereof, or to the person in charge of the well or  
8 wells from which such petroleum has been produced and run,  
9 a ticket signed by its gauger, stating the number of feet and  
10 inches of petroleum which were in the tank or receptacle  
11 containing the same before the company began to run the  
12 contents from such tank, and the number of feet and inches  
13 of petroleum which remained in the tank after such run was  
14 completed. All deductions made for water, sediment or the like  
15 shall be made at the time such petroleum is measured. Within  
16 a reasonable time thereafter the company shall, upon demand,  
17 deliver from the petroleum in its custody to the owner thereof,  
18 or to his assignee, at such delivery station on the route of its  
19 line of pipes as he may elect, a quantity of merchantable  
20 petroleum, equal to the quantity of petroleum run from such  
21 tank, or receptacle, which shall be ascertained by computation;  
22 except that the company transporting such petroleum may  
23 deduct for evaporation and waste two percent of the amount  
24 of petroleum so run, as shown by such run ticket, and except  
25 that in case of loss of any petroleum while in the custody of  
26 company caused by fire, lightning, storm or other like  
27 unavoidable cause, such loss shall be borne pro rata by all the  
28 owners of such petroleum at the time thereof. But the company  
29 shall be liable for all petroleum that is lost while in its custody  
30 by the bursting of pipes or tanks, or by leakage from pipes  
31 or tanks; and it shall also be liable for all petroleum lost from  
32 tanks at the wells produced before the same has been received  
33 for transportation, if such loss be due to faulty connections  
34 made to such tanks; and the company shall be liable for all  
35 petroleum lost by the overflow of any tanks with which  
36 pipeline connections have been made, if such overflow be due

37 to the negligence of such company, and for all the petroleum  
38 lost by the overflow of any tanks with which pipeline  
39 connections should have been made under the provisions of  
40 this article, but were not so made by reason of negligence or  
41 delay on the part of the company.

**§22B-3-5. Lien for charges.**

1 Any company engaged in transporting or storing petroleum  
2 shall have a lien upon such petroleum until all charges for  
3 transporting and storing the same are paid.

**§22B-3-6. Accepted orders and certificates for oil—Negotiability.**

1 Accepted orders and certificates for petroleum, issued by  
2 any company engaged in the business of transporting and  
3 storing petroleum in this state by means of pipeline or lines  
4 and tanks, shall be negotiable, and may be transferred by  
5 indorsement either in blank or to the order of another, and  
6 any person to whom such accepted orders and certificates shall  
7 be so transferred shall be deemed and taken to be the owner  
8 of the petroleum therein specified.

**§22B-3-7. Same—Further provisions.**

1 No receipt, certificate, accepted order or other voucher shall  
2 be issued or put in circulation, nor shall any order be accepted  
3 or liability incurred for the delivery of any petroleum, crude  
4 or refined, unless the amount of such petroleum represented  
5 in or by such receipt, certificate, accepted order, or other  
6 voucher or liability, shall have been actually received by and  
7 shall then be in the tanks and lines, custody and control of  
8 the company issuing or putting in circulation such receipt,  
9 certificate, accepted order or voucher, or written evidence of  
10 liability. No duplicate receipt, certificate, accepted order or  
11 other voucher shall be issued or put in circulation, or any  
12 liability incurred for any petroleum, crude or refined, while  
13 any former liability remains in force, or any former receipt,  
14 certificate, accepted order or other voucher shall be outstand-  
15 ing and uncanceled, except such original papers shall have  
16 been lost, in which case a duplicate, plainly marked "duplicate"  
17 upon the face, and dated and numbered as the lost original  
18 was dated and numbered, may be issued. No receipt, voucher,  
19 accepted order, certificate or written evidence of liability of  
20 such company on which petroleum, crude or refined, has been

21 delivered, shall be reissued, used or put in circulation. No  
22 petroleum, crude or refined, for which a receipt, voucher,  
23 accepted order, certificate or liability incurred, shall have been  
24 issued or put in circulation, shall be delivered, except upon  
25 the surrender of the receipt, voucher, order or liability  
26 representing such petroleum, except upon affidavit of loss of  
27 such instrument made by the former holder thereof. No  
28 duplicate receipt, certificate, voucher, accepted order or other  
29 evidence of liability, shall be made, issued or put in circulation  
30 until after notice of the loss of the original, and of the  
31 intention to apply for a duplicate thereof, shall have been given  
32 by advertisement over the signature of the owner thereof as  
33 a Class II legal advertisement in compliance with the  
34 provisions of article three, chapter fifty-nine of this code, and  
35 the publication area for such publication shall be the county  
36 where such duplicate is to be issued. Every receipt, voucher,  
37 accepted order, certificate or evidence of liability, when  
38 surrendered or the petroleum represented thereby delivered,  
39 shall be immediately canceled by stamping and punching the  
40 same across the face in large and legible letters with the word  
41 "canceled," and giving the date of such cancellation; and it  
42 shall then be filed and preserved in the principal office of such  
43 company for a period of six years.

**§22B-3-8. Dealing in oil without consent of owner.**

1 No company, its officers or agents, or any person or persons  
2 engaged in the transportation or storage of petroleum, crude  
3 or refined, shall sell or encumber, ship, transfer, or in any  
4 manner remove or procure, or permit to be sold, encumbered,  
5 shipped, transferred, or in any manner removed from the tanks  
6 or pipes of such company engaged in the business aforesaid,  
7 any petroleum, crude or refined, without the written order of  
8 the owner or a majority of the owners in interest thereof.

**§22B-3-9. Monthly statements.**

1 Every company now or hereafter engaged in the business of  
2 transporting by pipelines or storing crude or refined petroleum  
3 in this state shall, on or before the tenth day of each month,  
4 make or cause to be made and posted in its principal business  
5 office in this state, in an accessible and convenient place for  
6 the examination thereof by any person desiring such exami-  
7 nation, and shall keep so posted continuously until the next

8 succeeding statement is so posted, a statement plainly written  
 9 or printed, signed by the officer, agent, person or persons  
 10 having charge of the pipes and tanks of such company, and  
 11 also by the officer or officers, person or persons, having charge  
 12 of the books and accounts thereof, which statement shall show  
 13 in legible and intelligent form the following details of the  
 14 business: (a) How much petroleum, crude or refined, was in  
 15 the actual and immediate custody of such company at the  
 16 beginning and close of the previous month, and where the  
 17 same was located or held; describing in detail the location and  
 18 designation of each tank or place of deposit, and the name  
 19 of its owner; (b) how much petroleum, crude or refined, was  
 20 received by such company during the previous month; (c) how  
 21 much petroleum, crude or refined, was delivered by such  
 22 company during the previous month; (d) for how much  
 23 petroleum, crude or refined, such company was liable for the  
 24 delivery or custody of to other corporations, companies or  
 25 persons at the close of the month; (e) how much of such  
 26 liability was represented by outstanding receipts or certifies,  
 27 accepted orders or other vouchers, and how much was  
 28 represented by credit balances; and (f) that all the provisions  
 29 of this article have been faithfully observed and obeyed during  
 30 the previous month. The statement so required to be made  
 31 shall also be sworn to by such officer, agent, person or persons  
 32 before some officer authorized by law to administer oaths,  
 33 which shall be in writing, and shall assert the familiarity and  
 34 acquaintance of the deponent with the business and condition  
 35 of such company, and with the facts sworn to, and that the  
 36 statements made in such report are true.

**§22B-3-10. Statements of amount of oil.**

1 All amounts in the statements required by this article, when  
 2 the petroleum is handled in bulk, shall be given in barrels and  
 3 hundredths of barrels, reckoning forty-two gallons to each  
 4 barrel, and when such petroleum is handled in barrels or  
 5 packages, the number of such barrels or packages shall be  
 6 given, and such statements shall distinguish between crude and  
 7 refined petroleum, and give the amount of each. Every  
 8 company engaged in the business aforesaid shall at all times  
 9 have in their pipes and tanks an amount of merchantable oil  
 10 equal to the aggregate of outstanding receipts, certificates,  
 11 accepted orders, vouchers, acknowledgements, evidences of

12 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  
2 cause to be made, sign or cause to be signed, issue or cause  
3 to be issued, put in circulation or cause to be put in  
4 circulation, any receipt, accepted order, certificate, voucher or  
5 evidence of liability, or shall sell, transfer or alter the same,  
6 or cause such sale, transfer or alteration, contrary to the  
7 provisions of this article, or shall do or cause to be done any  
8 of the acts prohibited by section seven of this article, or omit  
9 to do any of the acts by said section directed, shall be guilty  
10 of a misdemeanor, and, upon conviction thereof, shall be fined  
11 not exceeding one thousand dollars, and, if the offender be  
12 a natural person, imprisoned not less than ten days nor  
13 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,  
2 encumber, transfer or remove, or cause or procure to be sold,  
3 transferred or removed from the tanks or pipes of such  
4 company, any petroleum, crude or refined, without the written  
5 consent of the owner or a majority of the owners in interest  
6 thereof, shall be guilty of a misdemeanor, and, upon  
7 conviction thereof, shall be fined one thousand dollars and,  
8 if the offender be a natural person, imprisoned in the county  
9 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  
2 pipelines or storing petroleum, crude or refined, and each and  
3 every officer or agent of such company, who shall neglect or  
4 refuse to make the report and statement required by section  
5 nine of this article, within the time and the manner directed  
6 by said section, shall forfeit and pay the sum of one thousand  
7 dollars, and in addition thereto the sum of five hundred dollars  
8 for each day after the tenth day of the month that the report  
9 and statement required by said section nine shall remain  
10 unposted as therein directed.

**ARTICLE 4. UNDERGROUND GAS STORAGE RESERVOIRS.**

**§22B-4-1. Definitions.**

1 In this article unless the context otherwise requires:

2 (1) The term “coal mine” means those operations in a coal  
3 seam which include the excavated and abandoned portions as  
4 well as the places actually being worked; also all underground  
5 workings and shafts, slopes, tunnels, and other ways and  
6 openings and all such shafts, slopes, tunnels, and other  
7 openings in the course of being sunk or driven, together with  
8 all roads and facilities connected with them below the surface.

9 (2) The term “operating coal mine” means (a) a coal mine  
10 which is producing coal or has been in production of coal at  
11 any time during the twelve months immediately preceding the  
12 date its status is put in question under this article and any  
13 worked out or abandoned coal mine connected underground  
14 with or contiguous to such operating coal mine as herein  
15 defined and (b) any coal mine to be established or reestab-  
16 lished as an operating coal mine in the future pursuant to  
17 section four of this article.

18 (3) The term “outside coal boundaries” when used in  
19 conjunction with the term “operating coal mine” means the  
20 boundaries of the coal acreage assigned to such coal mine and  
21 which can be practicably and reasonably expected to be mined  
22 through such coal mine.

23 (4) The term “well” means a borehole drilled or proposed  
24 to be drilled within the storage reservoir boundary or reservoir  
25 protective area for the purpose of or to be used for producing,  
26 extracting or injecting any gas, petroleum or other liquid but  
27 excluding boreholes drilled to produce potable water to be  
28 used as such.

29 (5) The term “gas” means any gaseous substance.

30 (6) The term “storage reservoir” means that portion of any  
31 subterranean sand or rock stratum or strata into which gas  
32 is or may be injected for the purpose of storage or for the  
33 purpose of testing whether said stratum is suitable for storage.

34 (7) The term “bridge” means an obstruction placed in a well  
35 at any specified depth.

36 (8) The term “linear foot” means a unit of measurement in  
37 a straight line on a horizontal plane.



38 (9) The term "person" means any individual, association,  
39 partnership or corporation.

40 (10) The term "reservoir protective area" means all of that  
41 area outside of and surrounding the storage reservoir  
42 boundary but within two thousand linear feet thereof.

43 (11) The term "retreat mining" means the removal of such  
44 coal, pillars, ribs and stumps as remain after the development  
45 mining has been completed in that section of a coal mine.

46 (12) The term "pillar" means a solid block of coal  
47 surrounded by either active mine workings or a mined out  
48 area.

49 (13) The term "inactivate" means to shut off all flow of gas  
50 from a well by means of a temporary plug, or other suitable  
51 device or by injecting aquagel or other such equally nonporous  
52 material into the well.

53 (14) The term "storage operator" means any person as  
54 herein defined who proposes to or does operate a storage  
55 reservoir, either as owner or lessee.

56 (15) The term "workable coal seam" shall have the same  
57 meaning as the term "workable coal bed" as set out in section  
58 one of article one of this chapter.

59 (16) The terms "owner," "coal operator," "well operator,"  
60 "division," "division of mines and minerals," "plat," "casing,"  
61 "oil," and "cement," shall have the meanings set out in section  
62 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.**

1 (a) Any person who, on the eighth day of June, one  
2 thousand nine hundred fifty-five is injecting gas into or storing  
3 gas in a storage reservoir which underlies or is within three  
4 thousand linear feet of an operating coal mine which is  
5 operating in a coal seam that extends over the storage reservoir  
6 or the reservoir protective area shall, within sixty days  
7 thereafter, file with the division a copy of a map and certain  
8 data in the form and manner provided in this subsection.

9 Any person who, on the eighth day of June, one thousand  
10 nine hundred fifty-five, is injecting gas into or storing gas in

11 a storage reservoir which is not at such date under or within  
12 three thousand linear feet, but is less than ten thousand linear  
13 feet from an operating coal mine which is operating in a coal  
14 seam that extends over the storage reservoir or the reservoir  
15 protective area, shall file such map and data within such time  
16 in excess of sixty days as the director may fix.

17 Any person who, after the eighth day of June, one thousand  
18 nine hundred fifty-five, proposes to inject or store gas in a  
19 storage reservoir located as above shall file the required map  
20 and data with the director not less than six months prior to  
21 the starting of actual injection or storage.

22 The map provided for herein shall be prepared by a  
23 competent engineer or geologist. It shall show the stratum or  
24 strata in which the existing or proposed storage reservoir is  
25 or is to be located, the geographic location of the outside  
26 boundaries of the said storage reservoir and the reservoir  
27 protective area, the location of all known oil or gas wells which  
28 have been drilled into or through the storage stratum within  
29 the reservoir or within three thousand linear feet thereof,  
30 indicating which of these wells have been, or are to be cleaned  
31 out and plugged or reconditioned for storage and also  
32 indicating the proposed location of all additional wells which  
33 are to be drilled within the storage reservoir or within three  
34 thousand linear feet thereof.

35 The following information, if available, shall be furnished  
36 for all known oil or gas wells which have been drilled into  
37 or through the storage stratum within the storage reservoir or  
38 within three thousand linear feet thereof; name of the operator,  
39 date drilled, total depth, depth of production if the well was  
40 productive of oil or gas, the initial rock pressure and volume,  
41 the depths at which all coal seams were encountered and a  
42 copy of the driller's log or other similar information. At the  
43 time of the filing of the aforesaid maps and data such person  
44 shall file a detailed statement of what efforts he has made to  
45 determine, (1) that the wells shown on said map are accurately  
46 located thereon, and (2) that to the best of his knowledge they  
47 are all the oil or gas wells which have ever been drilled into  
48 or below the storage stratum within the proposed storage  
49 reservoir or within the reservoir protective area. This statement  
50 shall also include information as to whether or not the initial  
51 injection is for testing purposes, the maximum pressures at

52 which injection and storage of gas is contemplated, and a  
53 detailed explanation of the methods to be used or which  
54 theretofore have been used in drilling, cleaning out, recondi-  
55 tioning or plugging wells in the storage reservoir or within the  
56 reservoir protective area. The map and data required to be  
57 filed hereunder shall be amended or supplemented semiannu-  
58 ally in case any material changes have occurred: *Provided*,  
59 That the director may require a storage operator to amend or  
60 supplement such map or data at more frequent intervals if  
61 material changes have occurred justifying such earlier filing.

62 At the time of the filing of the above maps and data, and  
63 the filing of amended or supplemental maps or data, the  
64 director shall give written notice of said filing to all persons  
65 who may be affected under the provisions of this subsection  
66 by the storage reservoir described in such maps or data. Such  
67 notices shall contain a description of the boundaries of such  
68 storage reservoir. When a person operating a coal mine or  
69 owning an interest in coal properties which are or may be  
70 affected by the storage reservoir, requests in writing a copy  
71 of any map or data filed with the director such copy shall be  
72 furnished by the storage operator.

73 (b) Any person who, on the eighth day of June, one  
74 thousand nine hundred fifty-five, is injecting gas into or storing  
75 gas in any other storage reservoir in this state not subject to  
76 subsection (a) of this section shall, on or before the first day  
77 of July, one thousand nine hundred eighty-three, file with the  
78 division a map in the same detail as the map required for a  
79 storage reservoir subject to subsection (a) of this section; and,  
80 if the initial injection of gas into the storage reservoir by such  
81 person or any predecessor occurred after the thirty-first day  
82 of December, one thousand nine hundred seventy, data in the  
83 same detail as the data required for a storage reservoir shall  
84 be filed subject to subsection (a) of this section: *Provided*, That  
85 in the case of a storage reservoir the operation of which has  
86 been certificated by the federal power commission or the  
87 federal energy regulatory commission under section seven of  
88 the federal Natural Gas Act, the person may, in lieu of the  
89 data, submit copies of the application and all amendments and  
90 supplements of record in the federal docket, together with the  
91 certificate of public convenience and necessity and any  
92 amendments thereto.

93 Any person who, after the eighth day of June, one thousand  
94 nine hundred fifty-five, proposes to inject or store gas in any  
95 other storage reservoir in this state not subject to subsection  
96 (a) of this section shall file with the division a map and data  
97 in the same detail as the map and data required for a storage  
98 reservoir subject to subsection (a) of this section not less than  
99 six months prior to the starting of actual injection or storage:  
100 *Provided*, That in the case of a storage reservoir the operation  
101 of which will be required to be certificated by the federal  
102 energy regulatory commission, the person may, in lieu of the  
103 data, submit copies of the application and all amendments and  
104 supplementals filed in the federal docket, together with the  
105 certificate of public convenience and necessity and any  
106 amendments thereto, within twenty days after the same have  
107 been filed by such person or issued by the federal energy  
108 regulatory commission.

109 At the time of the filing of the above maps and data or  
110 documents in lieu of data and filing of amended or supple-  
111 mental maps or data or documents in lieu of data, or upon  
112 receipt of an application filed with the federal energy  
113 regulatory commission for a new storage reservoir, the director  
114 shall give notice of said filing by a Class II legal advertisement  
115 in accordance with the provisions of article three, chapter fifty-  
116 nine of this code, the publication area for which shall be the  
117 county or counties in which the storage reservoir is located.  
118 Such legal advertisement shall contain a description of the  
119 boundaries of such storage reservoir. The storage operator  
120 shall pay for the legal advertisement upon receipt of the  
121 invoice therefor from the division. When any person owning  
122 an interest in land which is or may be affected by the storage  
123 reservoir requests in writing a copy of any map or data or  
124 documents in lieu of data filed with the division such copy  
125 shall be furnished by the storage operator.

126 (c) The director shall also intervene in the federal docket,  
127 and participate in the proceedings for the purpose of assuring  
128 that the certificate of public convenience and necessity issued  
129 by the federal energy regulatory commission does not  
130 authorize operations or practices in conflict with the provisions  
131 of this article. The director may cooperate with the public  
132 service commission if the commission also intervenes. The  
133 attorney general is hereby directed to provide legal represen-

134 tation to the director to achieve the purposes of this  
135 subsection.

136 (d) For all purposes of this article, the outside boundaries  
137 of a storage reservoir shall be defined by the location of those  
138 wells around the periphery of the storage reservoir which had  
139 no gas production when drilled in said storage stratum:  
140 *Provided*, That the boundaries as thus defined shall be  
141 originally fixed or subsequently changed where, based upon  
142 the number and nature of such wells, upon the geological and  
143 production knowledge of the storage stratum, its character,  
144 permeability, and distribution, and operating experience, it is  
145 determined in a conference or hearing under section ten of this  
146 article that modification should be made.

**§22B-4-3. Filings of maps and data by persons operating coal  
mines.**

1 (a) Any person owning or operating a coal mine, who has  
2 not already done so with respect to the department of mines  
3 pursuant to the former provisions of article seven of chapter  
4 twenty-two of this code, shall, within thirty days from the  
5 effective date of this article, file with the director of the  
6 department of mines and minerals a map, prepared by a  
7 competent engineer, showing the outside coal boundaries of  
8 the said operating coal mine, the existing workings and  
9 exhausted areas and the relationship of said boundaries to  
10 identifiable surface properties and landmarks. Any person who  
11 is storing or contemplating the storage of gas in the vicinity  
12 of such operating coal mines shall, upon written request, be  
13 furnished a copy of the aforesaid map by the coal operator  
14 and such person and the director shall thereafter be informed  
15 of any boundary changes at the time such changes occur. The  
16 director shall keep a record of such information and shall  
17 promptly notify both the coal operator and the storage  
18 operator if it is found that the coal mine and the storage  
19 reservoir are within ten thousand linear feet of each other.

20 (b) Any person owning or operating any coal mine which,  
21 on the tenth day of March, one thousand nine hundred fifty-  
22 five, is or which thereafter comes within ten thousand linear  
23 feet of a storage reservoir, and where the coal seam being  
24 operated extends over the storage reservoir or the reservoir  
25 protective area, shall within forty-five days after he has notice

26 from the director of such fact, file with the director, and  
 27 furnish to the person operating such storage reservoir, a map  
 28 in the form hereinabove provided and showing in addition, the  
 29 existing and projected excavations and workings of such  
 30 operating coal mine for the ensuing eighteen-month period,  
 31 and also the location of any oil or gas wells of which said  
 32 coal operator has knowledge. Such person owning or  
 33 operating said coal mine shall each six months thereafter file  
 34 with the director and the director of the division of mines and  
 35 minerals and furnish to the person operating such storage  
 36 reservoir a revised map showing any additional excavations  
 37 and workings, together with the projected excavations and  
 38 workings for the then ensuing eighteen-month period which  
 39 may be within ten thousand linear feet of said storage  
 40 reservoir: *Provided*, That the director of mines and minerals  
 41 may require a coal operator to file such revised map at more  
 42 frequent intervals if material changes have occurred justifying  
 43 such earlier filing. Such person owning or operating said coal  
 44 mine shall also file with the director and furnish the person  
 45 operating said reservoir prompt notice of any wells which have  
 46 been cut into, together with all available pertinent information.

**§22B-4.4. Notice by persons operating coal mines.**

1 (a) Any person owning or operating a coal mine on the  
 2 eighth day of June, one thousand nine hundred fifty-five, and  
 3 having knowledge that it overlies or is within two thousand  
 4 linear feet of a gas storage reservoir, shall within thirty days  
 5 notify the director and the storage operator of such fact unless  
 6 such notification has already been provided to the director of  
 7 mines pursuant to the provisions of former article seven,  
 8 chapter twenty-two, of this code.

9 (b) When any person owning or operating a coal mine  
 10 hereafter expects that within the ensuing nine-month period  
 11 such coal mine will be extended to a point which will be within  
 12 two thousand linear feet of any storage reservoir, he shall  
 13 notify the director and the storage operator in writing of such  
 14 fact.

15 (c) Any person hereafter intending to establish or reestablish  
 16 an operating coal mine which when established or reestab-  
 17 lished will be over a storage reservoir or within two thousand  
 18 linear feet of a storage reservoir, or which upon being

19 established or reestablished may within nine months thereafter  
20 be expected to be within two thousand linear feet of a storage  
21 reservoir, shall notify the director and the storage operator in  
22 writing before doing so and such notice shall include the date  
23 on which it is intended the operating coal mine will be  
24 established or reestablished.

25 Any person who serves such notice of an intention to  
26 establish or reestablish an operating coal mine under this  
27 subsection, without intending in good faith to establish or  
28 reestablish such mine, shall be liable for continuing damages  
29 to any storage operator injured by the serving of such  
30 improper notice and shall be guilty of a misdemeanor under  
31 this article and subject to the same penalties as set forth in  
32 section twelve of this article.

**§22B-4-5. Obligations to be performed by persons operating storage reservoirs.**

1 (a) Any person who, on or after the eighth day of June,  
2 one thousand nine hundred fifty-five, is operating a storage  
3 reservoir which underlies or is within two thousand linear feet  
4 of an operating coal mine which is operating in a coal seam  
5 that extends over the storage reservoir or the reservoir  
6 protective area, shall:

7 (1) Use every known method which is reasonable under the  
8 circumstances for discovering and locating all wells which have  
9 or may have been drilled into or through the storage stratum  
10 in that acreage which is within the outside coal boundaries of  
11 such operating coal mine and which overlies the storage  
12 reservoir or the reservoir protective area;

13 (2) Plug or recondition, in the manner provided by sections  
14 twenty-three and twenty-four of article one of this chapter and  
15 subsection (e) of this section, all known wells (except to the  
16 extent otherwise provided in subsections (e), (f), (g) and (h)  
17 of this section) drilled into or through the storage stratum and  
18 which are located within that portion of the acreage of the  
19 operating coal mine overlying the storage reservoir or the  
20 reservoir protective area: *Provided*, That where objection is  
21 raised as to the use of any well as a storage well, and after  
22 a conference or hearing in accordance with section ten of this  
23 article it is determined, taking into account all the circumstan-  
24 ces and conditions, that such well should not be used as a

25 storage well, such well shall be plugged: *Provided, however,*  
26 That if, in the opinion of the storage operator, the well to  
27 which such objection has been raised may at some future time  
28 be used as a storage well, the storage operator may recondition  
29 and inactivate such well instead of plugging it, if such  
30 alternative is approved by the director after taking into  
31 account all of the circumstances and conditions.

32 The requirements of clause (2) of this subsection shall be  
33 deemed to have been fully complied with if, as the operating  
34 coal mine is extended, all wells which, from time to time, come  
35 within the acreage described in said clause (2) are recondi-  
36 tioned or plugged as provided in subsection (e) or (f) of this  
37 section and in section twenty-four of article one of this chapter  
38 so that by the time the coal mine has reached a point within  
39 two thousand linear feet of any such wells, they will have been  
40 reconditioned or plugged so as to meet the requirements of  
41 said subsections (e) or (f) and of said section twenty-four of  
42 article one.

43 (b) Any person operating a storage reservoir referred to in  
44 subsection (a) of this section, who has not already done so  
45 with respect to the department of mines pursuant to the  
46 provisions of former article seven of chapter twenty-two of this  
47 code, shall within sixty days after the effective date of this  
48 article file with the director and furnish a copy to the person  
49 operating the affected operating coal mine, a verified statement  
50 setting forth:

51 (1) That the map and any supplemental maps required by  
52 subsection (a) of section two of this article have been prepared  
53 and filed in accordance with section two;

54 (2) A detailed explanation of what the storage operator has  
55 done to comply with the requirements of clauses (1) and (2)  
56 of subsection (a) of this section and the results thereof;

57 (3) Such additional efforts, if any, as the storage operator  
58 is making and intends to make to locate all oil and gas wells;  
59 and

60 (4) Any additional wells that are to be plugged or  
61 reconditioned to meet the requirements of clause (2) of  
62 subsection (a) of this section.

63 If such statement is not filed by the storage reservoir



64 operator within the time specified herein, the director shall  
65 summarily order such operator to file such statement.

66 (c) Within one hundred twenty days after the receipt of any  
67 such statement, the director may, and he shall, if so requested  
68 by either the storage operator or the coal operator affected,  
69 direct that a conference be held in accordance with section ten  
70 of this article to determine whether the information as filed  
71 indicates that the requirements of section two of this article  
72 and of subsection (a) of this section have been fully complied  
73 with. At such conference, if any person shall be of the opinion  
74 that such requirements have not been fully complied with, the  
75 parties shall attempt to agree on what additional things are  
76 to be done and the time within which they are to be completed,  
77 subject to the approval of the director, to meet the said  
78 requirements.

79 If such agreement cannot be reached, the director shall  
80 direct that a hearing be held in accordance with section ten  
81 of this article. At such hearing the director shall determine  
82 whether the requirements of said section two of this article and  
83 of subsection (a) of this section have been met and shall issue  
84 an order setting forth such determination. If the director shall  
85 determine that any of the said requirements have not been met,  
86 the order shall specify, in detail, both the extent to which such  
87 requirements have not been met, and the things which the  
88 storage operator must do to meet such requirements. The  
89 order shall grant to the storage operator such time as is  
90 reasonably necessary to complete each of the things which he  
91 is directed to do. If, in carrying out said order, the storage  
92 operator encounters conditions which were not known to exist  
93 at the time of the hearing and which materially affect the  
94 validity of said order or the ability of the storage operator to  
95 comply with the order, the storage operator may apply for a  
96 rehearing or modification of said order.

97 (d) Whenever, in compliance with subsection (a) of this  
98 section, a storage operator, after the filing of the statement  
99 provided for in subsection (b) of this section, plugs or  
100 reconditions a well, he shall so notify the director and the coal  
101 operator affected in writing, setting forth such facts as will  
102 indicate the manner in which the plugging or reconditioning  
103 was done. Upon receipt thereof, the coal operator affected or  
104 the director may request a conference or hearing in accordance

105 with section ten of this article.

106 (e) In order to meet the requirements of subsection (a) of  
 107 this section, wells which are to be plugged shall be plugged  
 108 in the manner specified in section twenty-four of article one  
 109 of this chapter. When a well located within the storage  
 110 reservoir or the reservoir protective area has been plugged  
 111 prior to the tenth day of March, one thousand nine hundred  
 112 fifty-five, and on the basis of the data, information and other  
 113 evidence submitted to the director, it is determined that: (1)  
 114 Such plugging was done in the manner required in section  
 115 twenty-four of article one of this chapter; and (2) said plugging  
 116 is still sufficiently effective to meet the requirements of this  
 117 article, the obligations imposed by subsection (a) of this  
 118 section as to plugging said well shall be considered fully  
 119 satisfied.

120 (f) In order to meet the requirements of subsection (a) of  
 121 this section, wells which are to be reconditioned shall be  
 122 cleaned out from the surface through the storage horizon and  
 123 the following casing strings shall be pulled and replaced with  
 124 new casing, using the same procedure as is applicable to  
 125 drilling a new well as provided for in sections eighteen,  
 126 nineteen and twenty of article one of this chapter: (1) The  
 127 producing casing; (2) the largest diameter casing passing  
 128 through the lowest workable coal seam unless such casing  
 129 extends at least twenty-five feet below the bottom of such coal  
 130 seam and is determined to be in good physical condition:  
 131 *Provided*, That the storage operator may, instead of replacing  
 132 the largest diameter casing, replace the next largest casing  
 133 string if such casing string extends at least twenty-five feet  
 134 below the lowest workable coal seam; and (3) such other casing  
 135 strings which are determined not to be in good physical  
 136 condition. In the case of wells to be used for gas storage, the  
 137 annular space between each string of casing, and the ~~annular~~ *annular*  
 138 space behind the largest diameter casing to the extent possible, *OK*  
 139 shall be filled to the surface with cement or aquagel or such *E.H.*  
 140 equally nonporous material as is approved by the director  
 141 pursuant to section eight of this article. At least fifteen days  
 142 prior to the time when a well is to be reconditioned the storage  
 143 operator shall give notice thereof to the coal operator or owner  
 144 and to the director setting forth in such notice the manner in  
 145 which it is planned to recondition such well and any pertinent

146 data known to the storage operator which will indicate the  
147 then existing condition of such well. In addition the storage  
148 operator shall give the coal operator or owner and such  
149 representative of the director as the director shall have  
150 designated at least seventy-two hours notice of the time when  
151 such reconditioning is to begin. The coal operator or owner  
152 shall have the right to file, within ten days after the receipt  
153 of the first notice required herein, objections to the plan of  
154 reconditioning as submitted by the storage operator. If no such  
155 objections are filed or if none is raised by the director within  
156 such ten-day period, the storage operator may proceed with  
157 the reconditioning in accordance with the plan as submitted.  
158 If any such objections are filed by the coal operator or owner  
159 or are made by the director, the director shall fix a time and  
160 place for a conference in accordance with section ten of this  
161 article at which conference the well operator and the person  
162 who has filed such objections shall endeavor to agree upon  
163 a plan of reconditioning which meets the requirements herein  
164 and which will satisfy such objections. If no plan is approved  
165 at such conference, the director shall direct that a hearing be  
166 held in accordance with section ten of this article and, after  
167 such hearing, shall by an appropriate order determine whether  
168 the plan as submitted meets the requirements set forth herein,  
169 or what changes, if any, should be made to meet such  
170 requirements. If, in reconditioning a well in accordance with  
171 said plan, physical conditions are encountered which justify or  
172 necessitate a change in said plan, the storage operator or the  
173 coal operator may request that the plan be changed. If the  
174 storage operator and the coal operator cannot agree upon such  
175 change, the director shall arrange for a conference or hearing  
176 in accordance with section ten of this article to determine the  
177 matter in the same manner as set forth herein in connection  
178 with original objections to said plan. Application may be made  
179 to the director in the manner prescribed in section eight of  
180 this article for approval of an alternative method of  
181 reconditioning a well. When a well located within the storage  
182 reservoir or the reservoir protective area has been reconditi-  
183 oned prior to the tenth day of March, one thousand nine  
184 hundred fifty-five, or was so drilled and equipped previously  
185 and on the basis of the data, information and other evidence  
186 submitted to the director, it is determined that: (1) Such  
187 reconditioning or previous drilling and equipping was done in

188 the manner required in this subsection, or in a manner  
189 approved as an alternative method in accordance with section  
190 eight of this article and (2) such reconditioning or previous  
191 drilling and equipping is still sufficiently effective to meet the  
192 requirements of this article, the obligations imposed by  
193 subsection (a) as to reconditioning said well shall be considered  
194 fully satisfied. Where a well requires emergency repairs this  
195 subsection shall not be construed to require the storage  
196 operator to give the notices specified herein before making  
197 such repairs.

198 (g) When a well located within the reservoir protective area  
199 is a producing well in a stratum below the storage stratum the  
200 obligations imposed by subsection (a) of this section shall not  
201 begin until such well ceases to be a producing well.

202 (h) When a well within a storage reservoir or the reservoir  
203 protective area penetrates the storage stratum but does not  
204 penetrate the coal seam being mined by an operating coal mine  
205 the director may, upon application of the operator of such  
206 storage reservoir, exempt such well from the requirements of  
207 this section. Either party affected may request a conference  
208 and hearing with respect to the exemption of any such well  
209 in accordance with section ten of this article.

210 (i) In fulfilling the requirements of clause (2) of subsection  
211 (a) of this section with respect to a well within the reservoir  
212 protective area, the storage operator shall not be required to  
213 plug or recondition such well until he has received from the  
214 coal operator written notice that the mine workings will within  
215 the period stated in such notice, be within two thousand linear  
216 feet of such well. Upon the receipt of such notice the storage  
217 operator shall use due diligence to complete the plugging or  
218 reconditioning of such well in accordance with the require-  
219 ments of this section and of section twenty-four of article one  
220 of this chapter. If the said mine workings do not, within a  
221 period of three years after said well has been plugged, come  
222 within two thousand linear feet of said well, the coal operator  
223 shall reimburse the storage operator for the cost of said  
224 plugging, provided such well is still within the reservoir  
225 protective area as of that time.

226 (j) When retreat mining approaches a point where within  
227 ninety days it is expected that such retreat work will be at the

228 location of the pillar surrounding an active storage well the  
229 coal operator shall give written notice of such approach to the  
230 storage operator and by agreement said parties shall determine  
231 whether it is necessary or advisable to inactivate effectively  
232 said well temporarily. The well shall not be reactivated until  
233 a reasonable period has elapsed, such reasonable period to be  
234 determined by the said parties. In the event that the said  
235 parties cannot agree upon either of the foregoing matters, such  
236 question shall be submitted to the director for decision in  
237 accordance with section ten of this article. The number of wells  
238 required to be temporarily inactivated during the retreat period  
239 shall not be such as to materially affect the efficient operation  
240 of such storage pool. This provision shall not preclude the  
241 temporary inactivation of a particular well where the practical  
242 effect of inactivating such well is to render the pool  
243 temporarily inoperative.

244 (k) The requirements of subsections (a), (l), and (m) of this  
245 section shall not apply to the injection of gas into any stratum  
246 when the sole purpose of such injection (such purpose being  
247 herein referred to as testing) is to determine whether the said  
248 stratum is suitable for storage purposes: *Provided*, That such  
249 testing shall be conducted only in compliance with the  
250 following requirements:

251 (1) The person testing or proposing to test shall comply with  
252 all the provisions and requirements of section two of this  
253 article and shall verify the statement required to be filed  
254 thereby;

255 (2) If any part of the proposed storage reservoir is under  
256 or within two thousand linear feet of an operating coal mine  
257 which is operating in a coal seam that extends over the  
258 proposed storage reservoir or the reservoir protective area, the  
259 storage operator shall give at least six months' written notice  
260 to the director and to the coal operator of the fact that  
261 injection of gas for testing purposes is proposed;

262 (3) The coal operator affected may at any time file  
263 objections with the director in accordance with subsection (d)  
264 of section nine of this article. If any such objections are filed  
265 by the coal operator or if the director shall have any  
266 objections, the director shall fix a time and place for a  
267 conference in accordance with section ten of this article, not

268 more than ten days from the date of the notice to the storage  
269 operator, at which conference the storage operator and the  
270 person who has filed such objections shall attempt to agree,  
271 subject to the approval of the director, on the questions  
272 involved. If such agreement cannot be reached at such  
273 conference, the director shall direct that a hearing be held in  
274 accordance with section ten of this article. At such hearing the  
275 director shall determine and set forth in an appropriate order  
276 the conditions and requirements which he shall deem necessary  
277 or advisable in order to prevent gas from such storage  
278 reservoir from entering any operating coal mine. The storage  
279 operator shall comply with such conditons and requirements  
280 throughout the period of the testing operations. In determining  
281 such conditions and requirements the director shall take into  
282 account the extent to which the matters referred to in  
283 subsection (a) of this section have been performed. If, in  
284 carrying out said order, either the storage operator or the coal  
285 operator encounters or discovers conditions which were not  
286 known to exist at the time of the hearing and which materially  
287 affect said order or the ability of the storage operator to  
288 comply with the order, either operator may apply for a  
289 rehearing or modification of said order;

290 (4) Where, at any time, a proposed storage reservoir being  
291 tested comes under or within two thousand linear feet of an  
292 operating coal mine either because of the extension of the  
293 storage reservoir being tested or because of the extension or  
294 establishment or reestablishment of the operating coal mine,  
295 then and at the time of any such event the requirements of  
296 this subsection shall become applicable to such testing.

297 (1) Any person who, after the effective date of this article,  
298 proposes to establish a storage reservoir under, or within two  
299 thousand linear feet of an operating coal mine which is  
300 operating in a coal seam that extends over the storage reservoir  
301 or the reservoir protective area, shall, prior to establishing such  
302 reservoir, in addition to complying with the requirements of  
303 section two of this article and subsection (a) of this section,  
304 file the verified statement required by subsection (b) of this  
305 section and fully comply with such order or orders, if any, as  
306 the director may issue in the manner provided for under  
307 subsections (b) or (c) of this section before beginning the  
308 operation of such storage reservoir. After the person proposing

309 to operate such storage reservoir shall have complied with such  
310 requirements and shall have thereafter begun to operate such  
311 reservoir, he shall continue to be subject to all of the  
312 provisions of this article.

313 (m) When a gas storage reservoir, (1) was in operation on  
314 the eighth day of June, one thousand nine hundred fifty-five,  
315 and at any time thereafter it is under or within two thousand  
316 linear feet of an operating coal mine, or (2) when a gas storage  
317 reservoir is put in operation after the eighth day of June, one  
318 thousand nine hundred fifty-five, and at any time after such  
319 storage operations begin it is under or within two thousand  
320 linear feet of an operating coal mine, then and in either such  
321 event, the storage operator shall comply with all of the  
322 provisions of this section except that the time for filing the  
323 verified statement under subsection (b) shall be sixty days after  
324 the date stated in the notice filed by the coal operator under  
325 subsections (b) or (c) of section four of this article as to when  
326 the operating coal mine will be at a point within two thousand  
327 linear feet of such reservoir: *Provided*, That if the extending  
328 of the projected workings or the proposed establishment or  
329 reestablishment of the operating coal mine is delayed after the  
330 giving of the notice provided in subsections (b) and (c) of  
331 section four of this article, the coal operator shall give notice  
332 of such delay to the director and the director shall, upon the  
333 request of the storage operator, extend the time for filing such  
334 statement by the additional time which will be required to  
335 extend or establish or reestablish such operating coal mine to  
336 a point within two thousand linear feet of such reservoir. Such  
337 verified statement shall also indicate that the map referred to  
338 in subsection (a) of section two of this article has been  
339 currently amended as of the time of the filing of such  
340 statement. The person operating any such storage reservoir  
341 shall continue to be subject to all of the provisions of this  
342 article.

343 (n) If, in any proceeding under this article, the director shall  
344 determine that any operator of a storage reservoir has failed  
345 to carry out any lawful order of the director issued under this  
346 article, the director shall have authority to require such storage  
347 operator to suspend the operation of such reservoir and to  
348 withdraw the gas therefrom until such violation is remedied.  
349 In such an event the gas shall be withdrawn under the

350 following conditons. The storage operator shall remove the  
 351 maximum amount of gas which is required by the director to  
 352 be removed from the storage reservoir that can be withdrawn  
 353 in accordance with recognized engineering and operating  
 354 procedures and shall proceed with due diligence insofar as  
 355 existing facilities used to remove gas from the reservoir will  
 356 permit.

357 (o) In addition to initial compliance with the other  
 358 provisions of this article and any lawful orders issued  
 359 thereunder, it shall be the duty at all times of the person  
 360 owning or operating any storage reservoir which is subject to  
 361 the provisions of this article to keep all wells drilled into or  
 362 through the storage stratum in such condition and to operate  
 363 the same in such manner as to prevent the escape of gas into  
 364 any coal mine therefrom, and to operate and maintain such  
 365 storage reservoir and its facilities in such manner and at such  
 366 pressures as will prevent gas from escaping from such reservoir  
 367 or its facilities into any coal mine: *Provided*, That this duty  
 368 shall not be construed to include the inability to prevent the  
 369 escape of gas where such escape results from an act of God  
 370 or an act of any person not under the control of the storage  
 371 operator other than in connection with any well which the  
 372 storage operator has failed to locate and to make known to  
 373 the director: *Provided, however*, That if any escape of gas into  
 374 a coal mine does result from an act of God or an act of any  
 375 person not under the control of the storage operator, the  
 376 storage operator shall be under the duty of taking such action  
 377 thereafter as is reasonably necessary to prevent further escape  
 378 of gas into the coal mine.

**§22B-4-6. Inspection of facilities and records; reliance on maps;  
 burden of proof.**

1 (a) In determining whether a particular coal mine or  
 2 operating coal mine is or will be within any distance material  
 3 under this article from any storage reservoir, the owner or  
 4 operator of such coal mine and the storage operator may rely  
 5 on the most recent map of the storage reservoir or coal mine  
 6 filed by the other with the director.

7 (b) In any proceeding under this article where the accuracy  
 8 of any map or data filed by any person pursuant to the  
 9 requirements of this article is in issue, the person filing the



10 same shall at the request of any party to such proceeding be  
11 required to disclose the information and method used in  
12 compiling such map and data and such information as is  
13 available to such person that might affect the current validity  
14 of such map or data. If any material question is raised in such  
15 proceeding as to the accuracy of such map or data with respect  
16 to any particular matter or matters contained therein, the  
17 person filing such map or data shall then have the burden of  
18 proving the accuracy of the map or data with respect to such  
19 matter or matters.

20 (c) The person operating any storage reservoir affected by  
21 the terms of this article shall, at all reasonable times, be  
22 permitted to inspect the applicable records and facilities of any  
23 coal mine overlying such storage reservoir or the reservoir  
24 protective area, and the person operating any such coal mine  
25 affected by the terms of this article, shall similarly, at all  
26 reasonable times, be permitted to inspect the applicable  
27 records and facilities of any such storage reservoir underlying  
28 any such coal mine. In the event that either such storage  
29 operator or coal operator shall refuse to permit any such  
30 inspection of records or facilities, the director shall, on his own  
31 motion, or on application of the party seeking the inspection  
32 after reasonable written notice, and a hearing thereon, if  
33 requested by either of the parties affected, make an order  
34 providing for such inspection.

**§22B-4-7. Exemptions.**

1 (a) The provisions of this article shall not apply to strip  
2 mines and auger mines operating from the surface.

3 (b) Injection of gas for storage purposes in any workable  
4 coal seam, whether or not such seam is being or has been  
5 mined, shall be prohibited. Nothing in this article shall be  
6 construed to prohibit the original extraction of natural gas,  
7 crude oil, or coal. No storage operator shall have authority  
8 to appropriate any coal or coal measure whether or not being  
9 mined, or any interest therein.

**§22B-4-8. Alternative method.**

1 (a) Whenever provision is made in this article by reference  
2 to this section for using an alternative method or material in  
3 carrying out any obligation imposed by the article, the person

4 seeking the authority to use such alternative method or  
5 material shall file an application with the director describing  
6 such proposed alternative method or material in reasonable  
7 detail. Notice of filing of any such application shall be given  
8 by registered mail to any coal operator or operators affected.  
9 Any such coal operator may within ten days following such  
10 notice, file objections to such proposed alternative method or  
11 material. If no objections are filed within said ten-day period  
12 or if none is raised by the director, the director shall forthwith  
13 issue a permit approving such proposed alternative method or  
14 material.

15 (b) If any such objections are filed by any coal operator or  
16 are raised by the director, the director shall direct that a  
17 conference be held in accordance with section ten of this article  
18 within the ten days following the filing of such objections. At  
19 such conferences the person seeking approval of the alternative  
20 method or material and the person who has filed such  
21 objections shall attempt to agree on such alternative method  
22 or material or any modification thereof, and if such agreement  
23 is reached and approved by the director, the director shall  
24 forthwith issue a permit approving the alternative method or  
25 material. If no such agreement is reached and approved, the  
26 director shall direct that a hearing be held in accordance with  
27 section ten of this article: *Provided*, That if the alternative  
28 method or material involves a new development in technology  
29 or technique the director may, before such a hearing is held,  
30 grant such affected parties a period not to exceed ninety days  
31 to study and evaluate said proposed alternative method or  
32 material. Following such hearing, if the director shall find that  
33 such proposed alternative method or material will furnish  
34 adequate protection to the workable coal seams, the director  
35 shall by order approve such alternative method or material;  
36 otherwise the director shall deny the said application.

**§22B-4-9. Powers and duties of director.**

1 (a) The director may review the maps and data filed under  
2 sections two and three hereof for the purpose of determinig  
3 the accuracy thereof. Where any material question is raised by  
4 any interested storage operator or coal operator or owner as  
5 to the accuracy of any such map or data, the director shall  
6 hold hearings thereon and shall by an appropriate order  
7 require the person filing such map or data to correct the same

8 if they are found to be erroneous.

9 (b) It shall be the duty of the director to receive and keep  
10 in a safe place for public inspection any map, data, report,  
11 well log, notice or other writing required to be filed with it  
12 pursuant to the provisions of this article. The director shall  
13 keep such indices of all such information as will enable any  
14 person using the same to readily locate such information either  
15 by the identity of the person who filed the same or by the  
16 person or persons affected by such filing or by the geographic  
17 location of the subject matter by political subdivision. The  
18 director shall also keep a docket for public inspection of all  
19 proceedings, in which shall be entered the dates of any notices,  
20 the names of all persons notified and their addresses, the dates  
21 of hearings, conferences and all orders, decrees, decisions,  
22 determinations, rulings or other actions issued or taken by the  
23 director and such docket shall constitute the record of each  
24 and every proceeding before the director.

25 (c) The director shall have authority to make any inspec-  
26 tions and investigations of records and facilities which he shall  
27 deem necessary or desirable to perform his functions under this  
28 article.

29 (d) Where in any section of this article provision is made  
30 for the filing of objections, such objections shall be filed in  
31 writing with the director, by the person entitled to file the same  
32 or by the director, and shall state as definitely as is reasonably  
33 possible the reasons for such objections. The person filing such  
34 objections shall send a copy thereof by registered mail to the  
35 person or persons affected thereby.

**§22B-4-10. Conferences, hearings and appeals.**

1 (a) The director or any person having a direct interest in  
2 the subject matter of this article may at any time request that  
3 a conference be held for the purpose of discussing and  
4 endeavoring to resolve by mutual agreement any matter arising  
5 under the provisions of this article. Prompt notice of any such  
6 conference shall be given by the director to all such interested  
7 parties. At such conference a representative of the director  
8 shall be in attendance, and the director may make such  
9 recommendations as he deems appropriate. Any agreement  
10 reached at such conference shall be consistent with the  
11 requirements of this article and, if approved by such

12 representative of the director, it shall be reduced to writing  
13 and shall be effective unless reviewed and rejected by the  
14 director within ten days after the close of the conference. The  
15 record of any such agreement approved by the director shall  
16 be kept on file by the director with copies furnished to the  
17 parties. The conference shall be deemed terminated as of the  
18 date any party refuses to confer thereafter. Such a conference  
19 shall be held in all cases prior to conducting any hearing under  
20 this section.

21 (b) Within ten days after termination of the conference  
22 provided for in this section at which no approved agreement  
23 has been reached or within ten days after the rejection by the  
24 director of any agreement approved at any such conference,  
25 any person who has a direct interest in the subject matter of  
26 the conference may submit the matter or matters, or any part  
27 thereof, considered at the conference, to the director for  
28 determination at a public hearing. The hearing procedure shall  
29 be formally commenced by the filing of a petition with the  
30 director upon forms prescribed by the director or by specifying  
31 in writing the essential elements of the petition, including name  
32 and address of the petitioner and of all other persons affected  
33 thereby, a clear and concise statement of the facts involved,  
34 and a specific statement of the relief sought. The hearing shall  
35 thereafter be conducted in accordance with the provisions of  
36 article five, chapter twenty-nine-a of this code and with such  
37 regulations and such provisions as to reasonable notice as the  
38 director may prescribe. Consistent with the requirements for  
39 reasonable notice all hearings under this article shall be held  
40 by the director promptly. All testimony taken at such hearings  
41 shall be under oath and shall be reduced to writing by a  
42 reporter appointed by the director, and the parties shall be  
43 entitled to appear and be heard in person or by attorney. The  
44 director may present at such hearing any evidence which is  
45 material to the matter under consideration and which has  
46 come to the director's attention in any investigation or  
47 inspection made pursuant to provisions of this article.

48 (c) After the conclusion of hearings, the director shall make  
49 and file his findings and order with his opinion, if any. A copy  
50 of such order shall be served by registered mail upon the  
51 person against whom it runs, or his attorney of record, and  
52 notice thereof shall be given to the other parties to the

53 proceedings, or their attorney of record.

54 (d) The director may, at any time after notice and after  
55 opportunity to be heard as provided in this section, rescind  
56 or amend any approved agreement or order made by him. Any  
57 order rescinding or amending a prior agreement or order shall,  
58 when served upon the person affected, and after notice thereof  
59 is given to the other parties to the proceedings, have the same  
60 effect as is herein provided for original orders; but no such  
61 order shall affect the legality or validity of any acts done by  
62 such person in accordance with the prior agreement or order  
63 before receipt by such person of the notice of such change.

64 (e) The director shall have power, either personally or by  
65 any of his authorized representatives, to subpoena witnesses  
66 and take testimony, and administer oaths to any witness in  
67 any hearing, proceeding or examination instituted before the  
68 director or conducted by him with reference to any matter  
69 within the jurisdiction of the director. In all hearings or  
70 proceedings before the director the evidence of witnesses and  
71 the production of documentary evidence may be required at  
72 any designated place of hearing; and in case of disobedience  
73 to a subpoena or other process the director or any party to  
74 the proceedings before the director may invoke the aid of any  
75 circuit court in requiring the evidence and testimony of  
76 witnesses and the production of such books, records, maps,  
77 plats, papers, documents and other writings as he may deem  
78 necessary or proper in and pertinent to any hearing,  
79 proceeding or investigation held or had by it. Such court, in  
80 case of the refusal of any such person to obey the subpoena,  
81 shall issue an order requiring such person to appear before the  
82 director and produce the required documentary evidence, if so  
83 ordered, and give evidence touching the matter in question.  
84 Any failure to obey such order of the court may be punished  
85 by such court as contempt thereof. A claim that any such  
86 testimony or evidence may tend to criminate the person giving  
87 the same shall not excuse such witness from testifying, but  
88 such witness shall not be prosecuted for any offense concerning  
89 which he is compelled hereunder to testify.

90 (f) With the consent of the director, the testimony of any  
91 witness may be taken by deposition at the instance of a party  
92 to any hearing before the director at any time after hearing  
93 has been formally commenced. The director may, of his own

94 motion, order testimony to be taken by deposition at any stage  
95 in any hearing, proceeding or investigation pending before it.  
96 Such deposition shall be taken in the manner prescribed by  
97 the laws of West Virginia for taking depositions in civil cases  
98 in courts of record.

99 (g) Whether or not it be so expressly stated, an appeal from  
100 any final order, decision or action by the director in  
101 administering the provisions of this article may be taken by  
102 any aggrieved person within ten days of notice of such order,  
103 decision or action, to the circuit court of the county in which  
104 the subject matter of such order, decision or action is located,  
105 and in all cases of appeals to the circuit court, that court shall  
106 certify its decisions to the director. The circuit court to which  
107 the appeal is taken shall hear the appeal without a jury on  
108 the record certified by the director. In any such appeal the  
109 findings of the director shall, if supported by substantial  
110 evidence, be conclusive. If the order of the director is not  
111 affirmed, the court may set aside or modify it, in whole or  
112 in part, or may remand the proceedings to the director for  
113 further disposition in accordance with the order of the court.  
114 From all final decisions of the circuit court an appeal shall  
115 lie to the supreme court of appeals as is now provided by law  
116 in cases in equity, by the director as well as by any other party  
117 of record before the circuit court.

118 Any party feeling aggrieved by the final order of the circuit  
119 court affecting him, may present his petition in writing to the  
120 supreme court of appeals, or to a judge thereof in vacation,  
121 within twenty days after the entry of such order, praying for  
122 the suspension or modification of such final order. The  
123 applicant shall deliver a copy of such petition to the director  
124 and to all other parties of record before presenting the same  
125 to the court or judge. The court or judge shall fix a time for  
126 the hearing on the application, but such hearing shall not be  
127 held sooner than seven days after its presentation unless by  
128 agreement of the parties, and notice of the time and place of  
129 such hearing shall be forthwith given to the director and to  
130 all other parties of record. If the court or judge, after such  
131 hearing, be of opinion that such final order should be  
132 suspended or modified, the court or the judge may require  
133 bond, upon such conditions and in such penalty, and impose  
134 such terms and conditions upon the petitioner as are just and

135 reasonable. For such hearing the entire record before the circuit  
136 court, or a certified copy thereof, shall be filed in the supreme  
137 court, and that court, upon such papers, shall promptly decide  
138 the matter in controversy as may seem to it to be just and  
139 right, and may award costs in each case as to it may seem  
140 just and equitable.

**§22B-4-11. Enforcement.**

1 (a) The director or any person having a direct interest in  
2 the subject matter of this article may complain in writing  
3 setting forth that any person is violating or is about to violate,  
4 any provisions of this article, or has done, or is about to do,  
5 any act, matter or thing therein prohibited or declared to be  
6 unlawful, or has failed, omitted, neglected or refused, or is  
7 about to fail, omit, neglect or refuse, to perform any duty  
8 enjoined upon him by this article. Upon the filing of a  
9 complaint against any person, the director shall cause a copy  
10 thereof to be served upon such person by registered mail  
11 accompanied by a notice from the director setting such  
12 complaint for hearing at a time and place specified in such  
13 notice. At least five days' notice of such hearing shall be given  
14 to the parties affected and such hearing shall be held in  
15 accordance with the provisions of section ten of this article.  
16 Following such hearing, the director shall, if he finds that the  
17 matter alleged in the complaint is not in violation of this  
18 article, dismiss the complaint, but if the director shall find that  
19 the complaint is justified, he shall by appropriate order compel  
20 compliance with this article.

21 (b) Whenever the director shall be of the opinion that any  
22 person is violating, or is about to violate, any provisions of  
23 this article, or has done, or is about to do, any act, matter  
24 or thing therein prohibited or declared to be unlawful, or has  
25 failed, omitted, neglected or refused, or is about to fail, omit,  
26 neglect or refuse, to perform any duty enjoined upon him by  
27 this article, or has failed, omitted, neglected or refused, or is  
28 about to fail, omit, neglect or refuse to obey any lawful  
29 requirement or order made by the director, or any final  
30 judgment, order or decree made by any court pursuant to this  
31 article, then and in every such case the director may institute  
32 in the circuit court of the county or counties wherein the  
33 operation is situated, injunction, mandamus or other approp-  
34 riate legal proceedings to restrain such violations of the

35 provisions of this article or of orders of the director to enforce  
 36 obedience therewith. No injunction bond shall be required to  
 37 be filed in any such proceeding. Such persons or corporations  
 38 as the court may deem necessary or proper to be joined as  
 39 parties in order to make its judgment, order or writ effective  
 40 may be joined as parties. The final judgment in any such action  
 41 or proceedings shall either dismiss the action or proceeding or  
 42 direct that the writ of mandamus or injunction or other order,  
 43 issue or be made permanent as prayed for in the petition or  
 44 in such modified or other form as will afford appropriate  
 45 relief. An appeal may be taken as in other civil actions.

46 (c) In addition to the other remedies herein provided, any  
 47 storage operator or coal operator affected by the provisions  
 48 of this article may proceed by injunction or other appropriate  
 49 remedy to restrain violations or threatened violations of the  
 50 provisions of this article or of orders of the director or the  
 51 judgments, orders or decrees of any court or to enforce  
 52 obedience therewith.

53 (d) Each remedy prescribed in this section shall be deemed  
 54 concurrent or contemporaneous with any other remedy  
 55 prescribed herein and the existence or exercise of any one such  
 56 remedy shall not prevent the exercise of any other such  
 57 remedy.

**§22B-4-12. Penalties.**

1 Any person who shall willfully violate any order of the  
 2 director issued pursuant to the provisions of this article shall  
 3 be guilty of a misdemeanor, and, on conviction thereof, shall  
 4 be punished by a fine not exceeding two thousand dollars, or  
 5 imprisoned in jail for not exceeding twelve months, or both,  
 6 in the discretion of the court, and prosecutions under this  
 7 section may be brought in the name of the State of West  
 8 Virginia in the court exercising criminal jurisdiction in the  
 9 county in which the violation of such provisions of the article  
 10 or terms of such order was committed, and at the instance and  
 11 upon the relation of any citizen of this state.

**§22B-4-13. Orders remain in effect.**

1 All orders in effect upon the effective date of this article  
 2 pursuant to the provisions of former article seven, chapter  
 3 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.

*Harold E. Osborne*

Chairman Senate Committee

*Floyd Fuller*

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Judd C. Welles*

Clerk of the Senate

*Donald J. Kopp*

Clerk of the House of Delegates

*Don Touhmanil*

President of the Senate

*Joseph P. Albright*

Speaker of the House of Delegates

The within *approved* this the *2<sup>nd</sup>* day of *May* 1985.

*Arch A. Branch*

Governor



PRESENTED TO THE

GOVERNOR

Date

5/01/85

Time

1:17 p.m.