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No.

**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1988

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**ENROLLED**

*COMMITTEE SUBSTITUTE FOR*  
**SENATE BILL NO. 199**

(By Senator CRAIGO, ET AL)

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**PASSED MARCH 12, 1988**

In Effect APRIL 1, 1988 



# **ENROLLED**

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 199**

(SENATORS CRAIGO, SHARPE AND FANNING, *original sponsors*)

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[Passed March 12, 1988; to take effect April 1, 1988.]

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AN ACT to repeal section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred nine hundred thirty-one, as amended; to amend and reenact sections three, seven, eight, nine, ten, twelve and thirteen of said article one; to further amend said article one by adding thereto three new sections, designated sections eight-a, nine-a and ten-a; to amend and reenact sections four-b and four-c, article six of said chapter twenty-two; to amend and reenact sections one and two, article one, chapter twenty-two-a of said code; to further amend said article one by adding thereto a new section, designated section three; to amend and reenact sections one, two, three, four, five and nineteen, article one-a of said chapter twenty-two-a; to amend and reenact sections seven, eight, nineteen and forty, article three of said chapter; and to amend and reenact sections two and twenty-nine, article one, chapter twenty-two-b of said code, all relating to deputy commissioner of the department of energy; divisions within the department of energy; creation of division of health, safety and training; creation of the division of abandoned mine lands; general powers and duties of the divisions of the department of energy; appointment, training, salary and eligibility of division directors; creation of separate budget accounts in

the general revenue fund for appropriations to the board of coal mine health and safety and the state coal mine safety and technical review committee; divisions of mines and minerals, and health, safety and training; director of the division of mines and minerals; director of the division of health, safety and training; definitions; eligibility, salary; request for approval on prospecting operations to remove more than two hundred fifty tons of coal; application requirements for such requests; application fee for such approval; increasing filing fee for permit applications; establishing a permit renewal fee; establishing amounts for permit and renewal filing fees for NPDES permits; removing the requirement that permit fees be deposited in the general treasury and establishing a special operating permit and processing fund.

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

That section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three, seven, eight, nine, ten, twelve and thirteen of said article one be amended and reenacted; that said article one be further amended by adding thereto three new sections, designated sections eight-a, nine-a and ten-a; that sections four-b and four-c, article six of said chapter twenty-two be amended and reenacted; that sections one and two, article one, chapter twenty-two-a of said code be amended and reenacted; that said article one be further amended by adding thereto a new section, designated section three; that sections one, two, three, four, five and nineteen, article one-a of said chapter twenty-two-a be amended and reenacted; that sections seven, eight, nineteen and forty, article three of said chapter twenty-two-a be amended and reenacted; and that sections two and twenty-nine, article one, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

## **CHAPTER 22. DEPARTMENT OF ENERGY.**

### **ARTICLE 1. TITLE; PURPOSES; DEPARTMENT OF ENERGY.**

#### **§22-1-3. Definitions.**

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

- 4 (1) "Commissioner" means the commissioner of the  
5 department of energy;
- 6 (2) "Department" means the state department of  
7 energy;
- 8 (3) "Division of abandoned mine lands and  
9 reclamation" means the division of abandoned mine lands  
10 and reclamation of the department of energy;
- 11 (4) "Division of health, safety and training" means the  
12 division of health, safety and training of the department of  
13 energy;
- 14 (5) "Division of mines and minerals" means the division  
15 of mines and minerals of the department of energy; and
- 16 (6) "Division of oil and gas" means the division of oil  
17 and gas of the department of energy.
- 18 (b) Unless the context clearly indicates otherwise, the  
19 use of the word "and" and the word "or" shall be  
20 interchangeable, as, for example, "oil and gas" shall mean  
21 oil or gas or both.

**§22-1-7. Divisions within department.**

- 1 (a) Divisions of mines and minerals, abandoned mine  
2 lands and reclamation, oil and gas, and health, safety and  
3 training are hereby created and established within the  
4 department. Subject to provisions of law, the commissioner  
5 shall allocate the functions and services of the department  
6 to the divisions, offices and activities thereof and may from  
7 time to time establish and abolish other divisions, offices  
8 and activities within the department in order to carry out  
9 fully and in an orderly manner the powers, duties and  
10 responsibilities of his office as commissioner. The  
11 commissioner shall select and designate a competent and  
12 qualified person to be director of each division. The director  
13 of a division shall be the principal administrative officer of  
14 that division and shall be accountable and responsible for  
15 the orderly and efficient performance of the duties,  
16 functions and services thereof.
- 17 (b) The division of mines and minerals shall be  
18 responsible for surface and underground mining permits,  
19 administration of the division, and coal reclamation  
20 inspections under the provisions of articles three and four  
21 of chapter twenty-two-a of this code.
- 22 (c) The division of health, safety and training shall be

23 responsible for all matters relating to health, safety and  
24 training for coal mines and other facilities, for  
25 administration of the division, and for surface and  
26 underground safety inspections of coal mines under  
27 provisions of articles one-a, two, five and six of chapter  
28 twenty-two-a of this code.

29 (d) The division of oil and gas shall be responsible for  
30 administration, permits, inspections and for other duties of  
31 the department under the provisions of chapter twenty-  
32 two-b of this code.

33 (e) The division of abandoned mine lands and  
34 reclamation shall be responsible for all duties of the  
35 department under the provisions of article three of this  
36 chapter.

**§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  
3 serve at the will and pleasure of the commissioner and  
4 whose salary shall be set by the commissioner. The director  
5 of the division of mines and minerals shall have full charge  
6 of the administration of the division of mines and minerals  
7 and of such other matters as are delegated and assigned to  
8 the director of the division of mines and minerals by the  
9 commissioner relating to such mines and minerals matters  
10 relating to surface and underground mining permits and  
11 coal mine reclamation inspections set out in this chapter  
12 and in chapter twenty-two-a of this code, subject always to  
13 the direct supervision and control of the commissioner.

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

**§22-1-8a. 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  
2 hereby empowered and it shall be his duty to execute and

3 carry out, administer and enforce such provisions of this  
4 chapter and chapter twenty-two-a of the code relating to  
5 surface and underground mining permits and coal mine  
6 reclamation inspections as are expressly conferred upon  
7 him by such provisions or delegated to him by the  
8 commissioner relating to mines and minerals.

**§22-1-9. Director of the division of health, safety and training;  
appointment; eligibility; salary.**

1 (a) There shall be a director of the division of health,  
2 safety and training who shall be appointed by the  
3 commissioner to serve at the will and pleasure of the  
4 commissioner and whose salary shall be set by the  
5 commissioner. The director of the division of health, safety  
6 and training shall be responsible for surface and  
7 underground safety inspections of coal mines, the  
8 administration of the division of health, safety and training  
9 and of such other matters as are delegated and assigned to  
10 the director of the division of health, safety and training by  
11 the commissioner.

12 (b) The director of the division of health, safety and  
13 training shall be a citizen of West Virginia, shall be a  
14 competent person of good repute and temperate habits with  
15 demonstrated interest and five years experience in  
16 underground coal mining. The director of the division of  
17 health, safety and training shall devote all of his time to his  
18 duties and shall not be directly or indirectly interested  
19 financially in any mine in this state.

**§22-1-9a. General powers and duties of the director of the  
division of health, safety and training.**

1 The director of the division of health, safety and training  
2 is hereby empowered, and it shall be his duty to administer  
3 and enforce such provisions of this chapter and articles  
4 one-a, two, five and six of chapter twenty-two-a of this code  
5 as expressly relate to health and safety inspections and  
6 enforcement and training in surface and underground coal  
7 mines, underground clay mines, open pit mines, cement  
8 manufacturing plants and underground limestone and  
9 sandstone mines. The director of the division of health,  
10 safety and training shall replace the commissioner and the  
11 director of the division of mines and minerals on those  
12 boards as set forth in article eleven of chapter twenty-two.

**§22-1-10. Director of the division of abandoned mine lands and reclamation; appointment; eligibility; salary.**

1 (a) There shall be a director of the division of abandoned  
2 mine lands and reclamation who shall be appointed by the  
3 commissioner to serve at the will and pleasure of the  
4 commissioner and whose salary shall be set by the  
5 commissioner. The director of the division of abandoned  
6 mine lands and reclamation shall be responsible for the  
7 administration of the abandoned mine lands and  
8 reclamation act in article three of this chapter and of such  
9 other matters as are delegated and assigned to the director  
10 by the commissioner.

11 (b) The director of the division of abandoned mine lands  
12 and reclamation shall be a citizen of West Virginia, shall be  
13 a competent person of good repute and temperate habits  
14 with demonstrated interest and experience in land  
15 reclamation. The director of the division of abandoned mine  
16 lands and reclamation shall devote all of his time to his  
17 duties and shall not be directly or indirectly interested  
18 financially in any mine or land reclamation projects in this  
19 state.

**§22-1-10a. General powers and duties of the director of the division of abandoned mine lands and reclamation.**

1 The director of the division of abandoned mine lands and  
2 reclamation is hereby empowered, and it shall be his duty to  
3 execute and carry out, administer and enforce the  
4 provisions of the abandoned mine lands and reclamation  
5 act in article three of this chapter.

**§22-1-12. 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  
2 review board under article seven of this chapter and of the  
3 oil and gas conservation commission under article eight of  
4 this chapter and of the oil and gas inspectors examining  
5 board under article thirteen of this chapter, and subject to  
6 the rule review provisions of subsection (b) of this section  
7 and the appellate review provisions of section fourteen of  
8 this article, the director of the division of oil and gas is  
9 hereby empowered and it shall be his duty to execute and

10 carry out, administer and enforce the provisions of this  
11 chapter and chapter twenty-two-b of the code in the  
12 manner provided herein as they relate to oil and gas.  
13 Subject to the provisions of this chapter and chapter  
14 twenty-two-b of the code, the director of the division of oil  
15 and gas shall have jurisdiction and authority over all  
16 persons and property necessary therefor.

17 (b) The director of the division of oil and gas is  
18 authorized to propose or promulgate such rules and  
19 regulations as are necessary to carry out and implement the  
20 provisions of this chapter and chapter twenty-two-b of this  
21 code as are specifically authorized in said chapter twenty-  
22 two-b of this code. Except where specifically exempted in  
23 chapter twenty-two-b of this code, the provisions of  
24 chapter twenty-nine-a of this code shall apply to the  
25 proposal or promulgation of any such rules and regulations.  
26 No rules and regulations shall be finally proposed or  
27 promulgated by the director of the division of oil and gas for  
28 purposes of chapter twenty-nine-a of this code, unless and  
29 until the commissioner has approved such rules and  
30 regulations as provided herein. To the extent that the  
31 commissioner approves only a portion thereof, only that  
32 portion so approved may be finally proposed or  
33 promulgated by the director of the division of oil and gas.  
34 The commissioner shall determine whether he will review  
35 the rules and regulations within thirty days from the date  
36 the same are filed with the commissioner by the director of  
37 the division of oil and gas. If the commissioner decides to  
38 make such a review, he shall file a notice of review with the  
39 director of the division of oil and gas within the thirty day  
40 time period. Failure by the commissioner to file a notice of  
41 review shall be considered to be commissioner approval of  
42 such rules and regulations, or parts thereof. If the  
43 commissioner files a notice of review, he shall act to  
44 approve, disapprove or rewrite such rules and regulations  
45 or parts thereof within sixty days from the filing of the  
46 notice of review. Failure by the commissioner to act within  
47 the sixty day time period shall be considered to be  
48 commissioner approval of such rules and regulations, or  
49 part thereof. Those rules and regulations specifically  
50 approved, approved by failure to act, or rewritten shall be  
51 proposed or promulgated under the provisions of chapter  
52 twenty-nine-a of this code.



**§22-1-13. Oath and bond.**

1 The directors of the division of mines and minerals, the  
2 division of abandoned mine lands and reclamation, the  
3 division of health, safety and training and the division of oil  
4 and gas, shall, before entering upon the discharge of their  
5 duties, take the oath of office prescribed by section five,  
6 article four of the constitution of West Virginia, and shall  
7 execute a bond in the penalty of two thousand dollars, with  
8 security to be approved by the governor, conditioned upon  
9 the faithful discharge of their duties, a certificate of which  
10 oath and which bond shall be filed in the office of the  
11 secretary of state.

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

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

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

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

26 *Provided*, That the salary of the health and safety  
27 administrator shall not be reduced during his annual term  
28 of employment or upon the renewal of his contract for an  
29 additional term. Such salary shall be fixed for any renewed  
30 term at least ninety days before the commencement thereof.

31 (e) Appropriations for the salaries of the health and  
32 safety administrator and any other employees of the board  
33 and for necessary office and operating expenses shall be  
34 made to a budget account hereby established for those  
35 purposes in the general revenue fund. Such account shall be  
36 separate from any accounts or appropriations for the  
37 department of energy.

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

44 (g) At the direction of the board, the administrator shall  
45 also conduct an annual study of occupational health issues  
46 relating to employment in and around coal mines of this  
47 state and submit a report to the board with findings and  
48 proposals to address the issues raised in such study. The  
49 administrator shall be responsible for preparing the annual  
50 reports required by subsection (f), section four of this article  
51 and section six of this article.

**§22-6-4c. Coal mine safety and technical review committee;  
membership; method of nomination and  
appointment; meetings; quorum; powers and  
duties of the committee; powers and duties of the  
board of coal mine health and safety.**

1 (1) There is hereby established a state coal mine safety  
2 and technical review committee. The purposes of this  
3 committee are to:

4 (a) Assist the board of coal mine health and safety in the  
5 development of technical data relating to mine safety  
6 issues, including related mining technology;

7 (b) Provide suggestions and technical data to the board  
8 and propose rules and regulations with general mining  
9 industry application;

10 (c) Accept and consider petitions submitted by  
11 individual mine operators or miners seeking site-specific

12 rule-making pertaining to individual mines and make  
13 recommendations to the board concerning such rule-  
14 making; and

15 (d) Provide a forum for the resolution of technical issues  
16 encountered by the board.

17 (2) The committee shall consist of two members who  
18 shall be residents of this state, and who shall be appointed  
19 as hereinafter specified in this section:

20 (a) The governor shall appoint one member to represent  
21 the viewpoint of the coal operators in this state from a list  
22 containing one or more nominees submitted by the major  
23 trade association representing coal operators in this state  
24 within thirty days of submission of such nominee or  
25 nominees.

26 (b) The governor shall appoint one member to represent  
27 the viewpoint of the working miners of this state from a list  
28 containing one or more nominees submitted by the highest  
29 ranking official within the major employee organization  
30 representing coal mines within this state within thirty days  
31 of submission of the nominee or the nominees.

32 (c) The members appointed in accordance with the  
33 provisions of subdivision (a) and (b) of this subsection shall  
34 be initially appointed to serve a term of three years.

35 (d) The members appointed in accordance with the  
36 provision of subdivisions (a) and (b) of this subsection may  
37 be, but are not required to be, members of the board of coal  
38 mine health and safety, and shall be compensated on a per  
39 diem basis in the same amount as provided in section seven  
40 of this article, plus all reasonable expenses.

41 (3) The committee shall meet at least once during each  
42 calendar month, or more often as may be necessary.

43 (4) A quorum of the committee shall require both  
44 members, and the committee may only act officially by a  
45 quorum.

46 (5) The committee may review any matter relative to  
47 mine safety and mining technology, and may pursue  
48 development and resolution of issues related thereto. The  
49 committee may make recommendations to the board for the  
50 promulgation of rules and regulations with general mining  
51 industry application. Upon receipt of a unanimous  
52 recommendation for rule-making from the committee and  
53 only thereon, the board may adopt or reject such rule or

54 regulations, without modification except as approved by  
55 the committee: *Provided*, That any adopted rule or  
56 regulation shall not reduce or compromise the level of  
57 safety or protection below the level of safety or protection  
58 afforded by applicable statutes and regulations. When so  
59 promulgated, such rules or regulations shall be effective,  
60 notwithstanding the provisions of applicable statutes or  
61 regulations.

62 (6)(a) Upon application of a coal mine operator, or on its  
63 own motion, the committee has the authority to accept  
64 requests for site-specific rule-making on a mine-by-mine  
65 basis, and make unanimous recommendations to the board  
66 for site-specific rules and regulations thereon. The  
67 committee has authority to approve a request if it concludes  
68 that the request does not reduce or compromise the level of  
69 safety or protection afforded miners below the level of  
70 safety or protection afforded by any applicable statutes or  
71 regulations. Upon receipt of a request for site-specific rule-  
72 making, the committee may conduct an investigation of the  
73 conditions in the specific mine in question, which  
74 investigation shall include consultation with the mine  
75 operator and authorized representatives of the miners.  
76 Such authorized representatives of the miners shall include  
77 any person designated by the employees at the mine,  
78 persons employed by an employee organization  
79 representing one or more miners at the mine, or a person  
80 designated as a representative by one or more persons at the  
81 mine.

82 (b) If the committee determines to recommend a request  
83 made pursuant to subdivision (a), of this subsection, the  
84 committee shall provide the results of its investigation to  
85 the board of coal mine health and safety along with  
86 recommendations for the development of the site-specific  
87 rules and regulations applicable to the individual mine,  
88 which recommendations may include a written proposal  
89 containing draft rules and regulations.

90 (c) Within thirty days of receipt of the committee's  
91 recommendation, the board shall adopt or reject, without  
92 modification, except as approved by the committee, the  
93 committee's recommendation to promulgate site-specific  
94 regulations applicable to an individual mine adopting such  
95 site-specific regulations only if it determines that the

96 application of the requested rule to such mine will not  
97 reduce or compromise the level of safety or protection  
98 afforded miners below that level of safety or protection  
99 afforded by any applicable statutes or regulations. When so  
100 promulgated, such rules or regulations shall be effective  
101 notwithstanding the provisions of applicable statutes or  
102 regulations.

103 (7) The board shall consider all regulations proposed by  
104 the coal mine safety and technical review committee and  
105 adopt or reject, without modification, except as approved  
106 by the committee, such rules and regulations, dispensing  
107 with the preliminary procedures set forth in subdivisions  
108 (1) through (7), subsection (a), section four-a; and, in  
109 addition, with respect to site-specific regulations also  
110 dispensing with the procedures set forth in subdivisions (4)  
111 through (8), subsection (c), section four of this article.

112 (8) In performing its functions, the committee shall have  
113 access to the services of the coal mine health and safety  
114 administrator appointed under section four-b of this  
115 article. The commissioner shall make clerical support and  
116 assistance available in order that the committee can carry  
117 out its duties. Upon the request of both members of the  
118 committee, the health and safety administrator shall draft  
119 proposed regulations and reports or make investigations.

120 (9) The powers and duties provided for in this section  
121 for the committee are not intended to replace or  
122 precondition the authority of the board of coal mine health  
123 and safety to act in accordance with sections one through  
124 four-b and five through seven of this article.

125 (10) Appropriations for the funding of the committee  
126 and to effectuate this section shall be made to a budget  
127 account hereby established for that purpose in the general  
128 revenue fund. Such account shall be separate from any  
129 accounts or appropriations for the department of energy.

## **CHAPTER 22A. MINES AND MINERALS.**

### **ARTICLE 1. DIVISIONS OF MINES AND MINERALS, AND HEALTH, SAFETY AND TRAINING.**

#### **§22A-1-1. Divisions of mines and minerals and health, safety and training.**

1 The divisions of mines and minerals, and health, safety  
2 and training created under the provisions of section seven,

3 article one, chapter twenty-two of this code, are hereby  
 4 charged with the duties and responsibilities set out in  
 5 chapter twenty-two of this code and this chapter, relating  
 6 to the exploration for and development, production and  
 7 conservation of coal and all other minerals, except oil and  
 8 gas and those minerals found in association therewith as  
 9 provided in chapter twenty-two-b of this code and  
 10 abandoned mine lands and reclamation provided in article  
 11 three, chapter twenty-two of this code. All legislative  
 12 findings and policies stated in chapter twenty-two of this  
 13 code in relation to these minerals apply to the operations of  
 14 these divisions 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 sections eight and eight-a, article one, chapter  
 3 twenty-two of this code shall have the responsibility and  
 4 duties in administration of the division of mines and  
 5 minerals as are provided in said chapter twenty-two and  
 6 articles three and four of this chapter.

**§22A-1-3. Director of division of health, safety and training.**

1 The director of the division of health, safety and training,  
 2 as provided in sections nine and nine-a, article one, chapter  
 3 twenty-two of this code, shall have the responsibility and  
 4 duties and administration of the division of health, safety  
 5 and training as are provided in said chapter twenty-two  
 6 and articles one-a, two, five and six of this chapter.

**ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.**

**§22A-1A-1. Definitions.**

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

4 (a) *General.*

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

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

11 (3) Approved: The term "approved" means in strict  
 12 compliance with mining law, or, in the absence of law,

13 accepted by a recognized standardizing body or  
14 organization whose approval is generally recognized as  
15 authoritative on the subject.

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

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

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

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

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

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

45 (10) Permissible: The term "permissible" means any  
46 equipment, device or explosive that has been approved as  
47 permissible by the federal mine safety and health  
48 administration and/or the United States Bureau of Mines  
49 and meets all requirements, restrictions, exceptions,  
50 limitations and conditions attached to such classification  
51 by that agency or the bureau.

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

55 (12) Work of preparing the coal: The term "work of

56 preparing the coal” means the breaking, crushing, sizing,  
57 cleaning, washing, drying, mixing, storing and loading of  
58 bituminous coal or lignite, and such other work of  
59 preparing such coal as is usually done by the operator of the  
60 coal mine.

61 (b) *Division of health, safety and training.*

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

65 (2) Division: The term “division” means the state  
66 division of health, safety and training provided for in article  
67 one, section one of this chapter and article one, chapter  
68 twenty-two of this code.

69 (3) Director: The term “director” means the director of  
70 the division of health, safety and training provided for in  
71 section three, article one of this chapter, and article one,  
72 chapter twenty-two of this code.

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

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

80 (c) *Mine areas.*

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

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

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

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

97 (5) Inactive workings: The term “inactive workings”  
98 includes all portions of a mine in which operations have



99 been suspended for an indefinite period, but have not been  
100 abandoned.

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

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

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

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

118 (10) Slope: The term "slope" means a plane or incline  
119 roadway, usually driven to a coal seam from the surface and  
120 used for the same purposes as a shaft.

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

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

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

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

136 (d) *Mine personnel.*

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

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

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

157 (4) Interested persons: The term “interested persons”  
158 includes the operator, members of any mine safety  
159 committee at the mine affected and other duly authorized  
160 representatives of the mine workers and the department.

161 (5) Mine foreman: The term “mine foreman” means the  
162 certified person whom the operator or superintendent shall  
163 place in charge of the inside workings of the mine and of the  
164 persons employed therein.

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

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

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

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

184 (e) *Electrical.*

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

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

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

195 (4) Cable: The term "cable" means a standard  
196 conductor (single conductor cable) or a combination of  
197 conductors insulated from one another (multiple conductor  
198 cable).

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

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

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

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

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

225 (10) Grounded (earthed): The term "grounded

226 (earthed)" means that the system, circuit or apparatus  
227 referred to is provided with a ground.

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

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

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

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

240 (15) Mine power center or distribution center: The term  
241 "mine power center or distribution center" means a  
242 combined transformer or distribution unit, complete within  
243 a metal enclosure from which one or more low-voltage  
244 power circuits are taken.

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

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

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

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

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

**§22A-1A-2. Division of health, safety and training; purposes; rules and regulations.**

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

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

**§22A-1A-3. Director of division of health, safety and training—Appointment.**

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 nine, article one of chapter  
4 twenty-two.

**§22A-1A-4. Same—Powers and duties.**

1 The director of the division of health, safety and training  
2 shall have full charge of the division. He shall have the  
3 power and duty to:

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

6 (2) Employ such assistants, clerks, stenographers and  
7 other employees as may be necessary to fully and effectively  
8 carry out his responsibilities and fix their compensation,  
9 except as otherwise provided in this article.

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

18 (4) Suspend, for good cause, any such mine inspector  
19 without compensation for a period not exceeding thirty  
20 days in any calendar year.

21 (5) Prepare report forms to be used by mine inspectors  
22 in making their findings, orders and notices, upon  
23 inspections made in accordance with this article.

24 (6) Hear and determine applications made by mine  
25 operators for the annulment or revision of orders made by  
26 mine inspectors, and to make inspections of mines, in  
27 accordance with the provisions of this article.

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

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

59 (9) Call or subpoena witnesses, for the purpose of

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

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

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

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

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

**§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 five years experience in  
4 underground coal mining. The director shall devote all of  
5 his time to the duties of his office and shall not be directly or  
6 indirectly interested financially in any mine. The salary of  
7 the director shall be set by the commissioner, with  
8 reimbursement for traveling expenses incurred in the  
9 discharge of his official duties, which shall be paid out of

10 the state treasury upon a requisition upon the state auditor,  
11 properly certified by the commissioner.

**§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  
5 this subsection, which penalty shall be not more than three  
6 thousand dollars, for each such violation. Each such  
7 violation shall constitute a separate offense. In determining  
8 the amount of the penalty, the commissioner shall consider  
9 the operator's history of previous violations, the  
10 appropriateness of such penalty to the size of the business of  
11 the operator charged, the gravity of the violation and the  
12 demonstrated good faith of the operator charged in  
13 attempting to achieve rapid compliance after notification  
14 of a violation.

15 (2) Any miner who knowingly violates any health or  
16 safety provision of this chapter or health or safety rule or  
17 regulation promulgated pursuant to this chapter shall be  
18 subject to a civil penalty assessed by the commissioner  
19 under subdivision (3) of this subsection which penalty shall  
20 not be more than two hundred fifty dollars for each  
21 occurrence of such violation.

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

32 (4) If the person against whom a civil penalty is assessed  
33 fails to pay the penalty within the time prescribed in such  
34 order, the commissioner shall file a petition for enforcement  
35 of such order in any appropriate circuit court. The petition  
36 shall designate the person against whom the order is sought  
37 to be enforced as the respondent. A copy of the petition shall  
38 forthwith be sent by certified mail, return receipt



39 requested, to the respondent and to the representative of the  
40 miners at the affected mine or the operator, as the case may  
41 be, and thereupon the commissioner shall certify and file in  
42 such court the record upon which such order sought to be  
43 enforced was issued. The court shall have jurisdiction to  
44 enter a judgment enforcing, modifying, and enforcing as so  
45 modified, or setting aside in whole or in part the order and  
46 decision of the commissioner or it may remand the  
47 proceedings to the commissioner for such further action as  
48 it may direct. The court shall consider and determine de  
49 novo all relevant issues, except issues of fact which were or  
50 could have been litigated in review proceedings before a  
51 circuit court under section eighteen of this article, and upon  
52 the request of the respondent, such issues of fact which are  
53 in dispute shall be submitted to a jury. On the basis of the  
54 jury's findings the court shall determine the amount of the  
55 penalty to be imposed. Subject to the direction and control  
56 of the attorney general, attorneys appointed for the  
57 commissioner may appear for and represent him in any  
58 action to enforce an order assessing civil penalties under  
59 this subdivision.

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

73 (c) Whenever a corporate operator knowingly violates a  
74 health or safety provision of this chapter or health or safety  
75 rules or regulations promulgated pursuant to this chapter,  
76 or knowingly violates or fails or refuses to comply with any  
77 order issued under this law or any order incorporated in a  
78 final decision issued under this law, except an order  
79 incorporated in a decision issued under subsection (a) of  
80 this section or subsection (b), section twenty of this article,  
81 any director, officer or agent of such corporation who

82 knowingly authorized, ordered or carried out such  
83 violation, failure or refusal, shall be subject to the same civil  
84 penalties that may be imposed upon a person under  
85 subsections (a) and (b) of this section.

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

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

113 (5) There is hereby created under the treasury of the  
114 state of West Virginia a special health, safety and training  
115 fund. All civil penalty assessments collected under section  
116 nineteen of this article shall be collected by the  
117 commissioner and deposited with the treasurer of the state  
118 of West Virginia to the credit of the special health, safety  
119 and training fund. The fund shall be used by the  
120 commissioner and he is authorized to expend the moneys in  
121 the fund for the administration of this chapter and chapter  
122 twenty-two of the act.

**ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND  
RECLAMATION ACT.**

**§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  
2 not covered by a surface-mining permit, in order to  
3 determine the location, quantity or quality of a natural coal  
4 deposit, making feasibility studies or for any other purpose,  
5 shall file with the commissioner, at least fifteen days prior  
6 to commencement of any disturbance associated with  
7 prospecting, a notice of intention to prospect, which notice  
8 shall include a description of the prospecting area, the  
9 period of supposed prospecting and such other information  
10 as required by rules or regulations promulgated pursuant to  
11 this section: *Provided*, That prior to the commencement of  
12 such prospecting, the commissioner may issue an order  
13 denying or limiting permission to prospect where he finds  
14 that prospecting operations will damage or destroy a  
15 unique natural area, or will cause serious harm to water  
16 quality, or that the operator has failed to satisfactorily  
17 reclaim other prospecting sites, or that there has been an  
18 abuse of prospecting by previous prospecting operations in  
19 the area.

20 (b) Notice of intention to prospect shall be made in  
21 writing on forms prescribed by the commissioner and shall  
22 be signed and verified by the applicant. The notice shall be  
23 accompanied by (1) a United States geological survey  
24 topographic map showing by proper marking the crop line  
25 and the name, where known, of the seam or seams to be  
26 prospected, and (2) a bond, or cash, or collateral securities  
27 or certificates of the same type and form and in the same  
28 manner as provided in section eleven of this article, in the  
29 amount of five hundred dollars per acre or fraction thereof  
30 for the total estimated disturbed area. If such bond is used,  
31 it shall be payable to the state of West Virginia and  
32 conditioned that the operator shall faithfully perform the  
33 requirements of this article as they relate to backfilling and  
34 revegetation of the disturbed area.

35 (c) Any person prospecting under the provisions of this  
36 section shall ensure that such prospecting operation is  
37 conducted in accordance with the performance standards  
38 in section twelve of this article for all lands disturbed in  
39 explorations, including excavations, roads, drill holes, and  
40 the removal of necessary facilities and equipment.

41 (d) Information submitted to the commissioner  
42 pursuant to this section as confidential, concerning trade  
43 secrets or privileged commercial or financial information,  
44 which relates to the competitive rights of the person or  
45 entity intended to prospect the described area, shall not be  
46 available for public examination.

47 (e) Any person who conducts any prospecting activities  
48 which substantially disturb the natural land surface in  
49 violation of this section or regulations issued pursuant  
50 thereto shall be subject to the provisions of sections sixteen  
51 and seventeen of this article.

52 (f) No operator shall remove more than two hundred  
53 fifty tons of coal without the specific written approval of  
54 the commissioner. Such approval shall be requested by the  
55 operator on forms prescribed by the commissioner. The  
56 commissioner shall promulgate regulations governing such  
57 operations and setting forth information required in the  
58 application for approval. Each such application shall be  
59 accompanied by a two thousand dollar filing fee.

60 (g) The bond accompanying said notice of intention to  
61 prospect shall be released by the commissioner when the  
62 operator demonstrates that a permanent species of  
63 vegetative cover is established.

64 (h) In the event an operator desires to mine the area  
65 currently being prospected, and has requested and received  
66 an appropriate surface mine application (S.M.A.) number,  
67 the commissioner may permit the postponement of the  
68 reclamation of the area prospected. Any part of a  
69 prospecting operation, where reclamation has not been  
70 postponed as provided above, shall be reclaimed within a  
71 period of three months from disturbance.

72 (i) For the purpose of this section, the word "prospect"  
73 or "prospecting" does not include core drilling related  
74 solely to 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 permits; permit fees.**

1 No person may engage in surface-mining operations  
2 unless such person has first obtained a permit from the  
3 commissioner 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  
7 permit or modification of a valid existing permit or  
8 underground opening approval relating to those lands to be  
9 mined eight months after that approval.

10 (b) No later than eight months after the secretary's  
11 approval of a permanent state program for West Virginia,  
12 no person may engage in or carry out, on lands within this  
13 state, any surface-mining operations unless such person has  
14 first obtained a permit from the commissioner: *Provided*,  
15 That those persons conducting such operations under a  
16 permit or underground opening approval issued in  
17 accordance with section 502 (c) of Public Law 95-87, and in  
18 compliance therewith, may conduct such operations  
19 beyond such period if an application for a permit or  
20 modification of a valid existing permit or underground  
21 opening approval was filed within two months after the  
22 secretary's approval, and the administrative decision  
23 pertaining to the granting or denying of such permit has not  
24 been made by the commissioner.

25 (c) All permits issued pursuant to the requirements of  
26 this article shall be issued for a term not to exceed five  
27 years: *Provided*, That if the applicant demonstrates that a  
28 specified longer term is reasonably needed to allow the  
29 applicant to obtain necessary financing for equipment and  
30 the opening of the operation, and if the application is full  
31 and complete for such specified longer term, the  
32 commissioner may extend a permit for such longer term:  
33 *Provided, however*, That subject to the prior approval of the  
34 commissioner, a successor in interest to a permittee who  
35 applies for a new permit within thirty days of succeeding to  
36 such interest, and who is able to obtain the bond coverage of  
37 the original permittee, may continue surface-mining and  
38 reclamation operations according to the approved mining

39 and reclamation plan of the original permittee until such  
40 successor's application is granted or denied.

41 (d) Proof of insurance shall be required on an annual  
42 basis.

43 (e) A permit shall terminate if the permittee has not  
44 commenced the surface-mining operations covered by such  
45 permit within three years of the date the permit was issued:  
46 *Provided*, That the commissioner may grant reasonable  
47 extensions of time upon a showing that such extensions are  
48 necessary by reason of litigation precluding such  
49 commencement, or threatening, substantial economic loss  
50 to the permittee, or by reason of conditions beyond the  
51 control and without the fault or negligence of the permittee:  
52 *Provided, however*, That with respect to coal to be mined  
53 for use in a synthetic fuel facility or specific major electric  
54 generating facility, the permittee shall be deemed to have  
55 commenced surface-mining operations at such time as the  
56 construction of the synthetic fuel or generating facility is  
57 initiated.

58 (f) Each application for a new surface-mining permit  
59 filed pursuant to this article shall be accompanied by a fee  
60 of one thousand dollars. All permit fees and renewal fees  
61 provided for in this section or elsewhere in this article shall  
62 be collected by the commissioner and deposited with the  
63 treasurer of the state of West Virginia to the credit of the  
64 operating permit fees fund and shall be used, upon  
65 requisition of the commissioner, for the administration of  
66 this article.

67 (g) Prior to the issuance of any permit, the commissioner  
68 of energy shall ascertain from the commissioner of labor  
69 compliance with section fourteen, article five, chapter  
70 twenty-one of this code. Upon issuance of the permit, the  
71 commissioner of energy shall forward a copy to the  
72 commissioner of labor, who shall assure continued  
73 compliance under such permit.

**§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

4 the existing permit. The holders of the permit may apply for  
5 renewal and the renewal shall be issued: *Provided*, That on  
6 application for renewal, the burden shall be on the  
7 opponents of renewal, unless it is established that and  
8 written findings by the commissioner are made that: (A)  
9 The terms and conditions of the existing permit are not  
10 being satisfactorily met: *Provided, however*, That if the  
11 permittee is required to modify operations pursuant to  
12 mining or reclamation requirements which become  
13 applicable after the original date of permit issuance, the  
14 permittee shall be provided an opportunity to submit a  
15 schedule allowing a reasonable period to comply with such  
16 revised requirements; (B) the present surface-mining  
17 operation is not in compliance with the applicable  
18 environmental protection standards of this article; (C) the  
19 renewal requested substantially jeopardizes the operator's  
20 continuing responsibility on existing permit areas; (D) the  
21 operator has not provided evidence that the performance  
22 bond in effect for said operation will continue in effect for  
23 any renewal requested as required pursuant to section  
24 eleven of this article; or (E) any additional revised or  
25 updated information as required pursuant to rules and  
26 regulations promulgated by the commissioner has not been  
27 provided.

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

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

43 (4) Any renewal application for an active permit shall  
44 be on forms prescribed by the commissioner and shall be  
45 accompanied by a filing fee of two thousand dollars. The

46 application shall contain such information as the  
47 commissioner requires pursuant to rule or regulation.

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

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

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

57 (c) The commissioner shall review outstanding permits  
58 of a five-year term before the end of the third year of the  
59 permit. Other permits shall be reviewed within the time  
60 established by regulations. The commissioner may require  
61 reasonable revision or modification of the permit following  
62 review: *Provided*, That such revision or modification shall  
63 be based upon written findings and shall be preceded by  
64 notice to the permittee an opportunity for hearing.

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

**§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  
2 the contrary, all powers, duties and responsibilities of the  
3 chief of the division of water resources under article five-a,  
4 chapter twenty of this code with respect to all coal mines,  
5 preparation plants and all refuse and waste therefrom  
6 subject to said article five-a, chapter twenty of this code are  
7 hereby transferred to the commissioner. The commissioner  
8 shall have sole authority to issue, amend, transfer, renew or  
9 revoke all permits required under article five-a, chapter  
10 twenty-two of this code with respect to all coal mines,  
11 preparation plants and all refuse and waste therefrom  
12 subject to said article five-a. Each permit application shall  
13 be accompanied by a filing fee of five hundred dollars and  
14 each renewal application shall be accompanied by a filing  
15 fee of one hundred dollars. The procedures for issuance,



16 amendment, transferal, renewal and revocation of such  
17 permits shall be governed by regulations promulgated  
18 pursuant to subsection (b). The commissioner shall  
19 consolidate the various permit programs under article five-  
20 a, chapter twenty of this code and article three of this  
21 chapter applicable to all coal mines, preparation plants and  
22 all refuse and waste therefrom. All provisions of article  
23 five-a, chapter twenty of this code heretofore applicable to  
24 coal mines, preparation plants and all refuse and waste  
25 therefrom shall be continued under this section.

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

42 (c) Notwithstanding any provisions of this chapter to  
43 the contrary, the commissioner shall have the sole authority  
44 to enforce and shall enforce the rules and regulations  
45 promulgated under this article by the commissioner and the  
46 rules and regulations of the water resources board setting  
47 water quality standards for the waters of the state as they  
48 apply to all coal mines, preparation plants and all refuse  
49 and waste therefrom. Rules and regulations adopted by the  
50 commissioner, pursuant to the requirements of article five-  
51 a of chapter twenty of this code shall be enforceable by the  
52 commissioner under the provisions of sections seventeen  
53 and nineteen, article five-a, chapter twenty of this code, as  
54 though the regulations were promulgated by the water  
55 resources board: *Provided*, That the commissioner's  
56 authority to enforce such rules and regulations under  
57 article five-a, chapter twenty of this code shall not preclude

58 the commissioner or any person from invoking the remedies  
59 otherwise provided by article three of this chapter and shall  
60 not preclude the commissioner from enforcing the  
61 provisions of this article.

62 (d) Notwithstanding any provisions of this chapter to  
63 the contrary, any permit of the commissioner issued  
64 pursuant to subsection (a) of this section, or any order  
65 issued under article five-a, chapter twenty of this code, or  
66 for the purpose of implementing the "National Pollutant  
67 Discharge Elimination System" established under the  
68 federal Clean Water Act, shall be appealable only to the  
69 state water resources board and such appeal shall be  
70 governed by the provisions of section fifteen, article five-a,  
71 chapter twenty of this code.

72 (e) This section shall become effective upon a  
73 proclamation by the governor stating that final approval of  
74 the partial transfer of the National Pollutant Discharge  
75 Elimination System established under the federal Clean  
76 Water Act contemplated by this section has been given by  
77 the Administrator of the United States Environmental  
78 Protection Agency.

## **CHAPTER 22B. OIL AND GAS.**

### **ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.**

#### **§22B-1-2. Director—Powers and duties generally; depart- mental 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  
3 enforcement of matters related to oil and gas set out in this  
4 article and in articles three and four of this chapter, subject  
5 to review and approval of the commissioner.

6 (b) The director of the division of oil and gas is  
7 authorized to enact rules and regulations necessary to  
8 effectuate the above stated purposes, subject to review and  
9 approval by the commissioner.

10 (c) The director shall have full charge of the oil and gas  
11 matters set out in this article and in articles three and four  
12 of this chapter, subject always to the direct supervision and  
13 control of the commissioner of the department of energy. In  
14 addition to all other powers and duties conferred upon him,  
15 the director shall have the power and duty to:

- 16 (1) Supervise and direct the activities of the division of  
17 oil and gas and see that the purposes set forth in subsections  
18 (a) and (b) of this section are carried out;
- 19 (2) Employ a supervising oil and gas inspector and oil  
20 and 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  
25 not 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,  
31 stenographers and other employees, as may be necessary to  
32 carry out his duties and the purposes of the division of oil  
33 and gas and fix their compensation;
- 34 (7) Hear and determine applications made by owners,  
35 well operators and coal operators for the annulment or  
36 revision of orders made by oil and gas inspectors or the  
37 supervising inspector, and to make inspections, in  
38 accordance with the provisions of this article and articles  
39 three and four of this chapter;
- 40 (8) Cause a properly indexed permanent and public  
41 record to be kept of all inspections made by himself or by oil  
42 and gas inspectors or the supervising inspector;
- 43 (9) Make annually a full and complete written report to  
44 the commissioner as he may from time to time request, so  
45 that 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  
48 commissioner shall deem necessary to aid in protecting the  
49 health and safety of persons employed within or at potential  
50 or existing oil or gas production fields within this state, to  
51 improve drilling and production methods and to provide for  
52 the more efficient protection and preservation of oil and  
53 gas-bearing rock strata and property used in connection  
54 therewith;
- 55 (11) Perform any and all acts necessary to carry out and  
56 implement the state requirements established by 92  
57 Statutes at Large 3352, et seq., the "Natural Gas Policy Act

58 of 1978,” which are to be performed by a designated state  
59 jurisdictional agency regarding determinations that wells  
60 within the state qualify for a maximum lawful price under  
61 certain categories of natural gas as set forth by the  
62 provisions of the said “Natural Gas Policy Act of 1978”;

63 (12) Collect a filing and processing fee of forty dollars  
64 for each well, for which a determination of qualification to  
65 receive a maximum lawful price under the provisions of the  
66 “Natural Gas Policy Act of 1978” is sought from the  
67 director;

68 (13) Collect a permit fee of two hundred fifty dollars for  
69 each permit application filed: *Provided*, That no permit  
70 application fee shall be required when an application is  
71 submitted solely for the plugging or replugging of a well. All  
72 application fees required hereunder shall be in addition to  
73 any other fees required by the provisions of this article;

74 (14) Perform all other duties which are expressly  
75 imposed upon him by the provisions of this chapter, as well  
76 as duties assigned to him by the commissioner;

77 (15) Perform all duties as the permit issuing authority  
78 for the state in all matters pertaining to the exploration,  
79 development, production, storage and recovery of this  
80 state’s oil and gas in accordance with section thirteen,  
81 article one, chapter twenty-two of this code;

82 (16) Adopt rules and regulations in accordance with  
83 section thirteen, article one, chapter twenty-two of this  
84 code with respect to the issuance, denial, retention,  
85 suspension or revocation of permits, authorizations and  
86 requirements of this chapter, which rules and regulations  
87 shall assure that the regulations, permits and  
88 authorizations issued by the director are adequate to satisfy  
89 the purposes of this chapter and chapter twenty-two of this  
90 code particularly with respect to the consolidation of the  
91 various state and federal programs which place permitting  
92 requirements on the exploration, development, production,  
93 storage and recovery of this state’s oil and gas: *Provided*,  
94 That notwithstanding any provisions of this chapter or  
95 chapter twenty-two of this code to the contrary, the water  
96 resources board shall have the sole authority pursuant to  
97 section three-a, article five-a, of chapter twenty of this code  
98 to promulgate rules and regulations setting standards of  
99 water quality applicable to waters of the state;

100 (17) Perform such acts as may be necessary or  
101 appropriate to secure to this state the benefits of federal  
102 legislation establishing programs relating to the  
103 exploration, development, production, storage and  
104 recovery of this state's oil and gas, which programs are  
105 assumable by the state.

106 (d) The director shall have authority to visit and inspect  
107 any well or well site and any other oil or gas facility in this  
108 state and may call for the assistance of any oil and gas  
109 inspector or inspectors or supervising inspector whenever  
110 such assistance is necessary in the inspection of any such  
111 well or well site or any other oil or gas facility. Similarly, all  
112 oil and gas inspectors and the supervising inspector shall  
113 have authority to visit and inspect any well or well site and  
114 any other oil or gas facility in this state. Any well operator,  
115 coal operator operating coal seams beneath the tract of  
116 land, or the coal seam owner or lessee, if any, if said owner  
117 or lessee is not yet operating said coal seams beneath said  
118 tract of land may request the director to have an immediate  
119 inspection made. The operator or owner of every well or  
120 well site or any other oil or gas facility shall cooperate with  
121 the director, all oil and gas inspectors and the supervising  
122 inspector in making inspections or obtaining information.  
123 (e) Oil and gas inspectors shall devote their full time and  
124 undivided attention to the performance of their duties, and  
125 they shall be responsible for the inspection of all wells or  
126 well sites or other oil or gas facilities in their respective  
127 districts as often as may be required in the performance of  
128 their duties.

129 (f) All records of the division shall be open to the public.

**§22B-1-29. Operating permit and processing fund; special  
reclamation fund; fees.**

1 (a) There is hereby created within the treasury of the  
2 state of West Virginia a special fund to be known as the oil  
3 and gas operating permit and processing fund, and the  
4 director shall deposit with the state treasurer to the credit  
5 of such special fund all fees collected under the provisions  
6 of subdivisions twelve and thirteen, subsection (c), section  
7 two of this article.

8 The oil and gas operating permit and processing fund  
9 shall be administered by the director for the purposes of

10 carrying out the provisions of this chapter.

11 The director shall make an annual report to the governor  
12 and to the Legislature on the use of the fund, and shall make  
13 a detailed accounting of all expenditures from the oil and  
14 gas operating permit and processing fund.

15 (b) In addition to any other fees required by the  
16 provisions of this article, every applicant for a permit to  
17 drill a well shall, before the permit is issued, pay to the  
18 director a special reclamation fee of one hundred dollars for  
19 each well to be drilled. Such special reclamation fee shall be  
20 paid at the time the application for a drilling permit is filed  
21 with the director and the payment of such reclamation fee  
22 shall be a condition precedent to the issuance of said permit.

23 There is hereby created within the treasury of the state of  
24 West Virginia a special fund to be known as the oil and gas  
25 reclamation fund, and the director shall deposit with the  
26 state treasurer to the credit of such special fund all special  
27 reclamation fees collected. The proceeds of any bond  
28 forfeited under the provisions of this article shall inure to  
29 the benefit of and shall be deposited in such oil and gas  
30 reclamation fund.

31 The oil and gas reclamation fund shall be administered by  
32 the director. The director shall cause to be prepared plans  
33 for the reclaiming and plugging of abandoned wells which  
34 have not been reclaimed or plugged or which have been  
35 improperly reclaimed or plugged. The director, as funds  
36 become available in the oil and gas reclamation fund, shall  
37 reclaim and properly plug wells in accordance with said  
38 plans and specifications and in accordance with the  
39 provisions of this article relating to the reclaiming and  
40 plugging of wells and all rules and regulations promulgated  
41 thereunder. Such funds may also be utilized for the  
42 purchase of abandoned wells, where such purchase is  
43 necessary, and for the reclamation of such abandoned wells,  
44 and for any engineering, administrative and research costs  
45 as may be necessary to properly effectuate the reclaiming  
46 and plugging of all wells, abandoned or otherwise.

47 The director may avail himself of any federal funds  
48 provided on a matching basis that may be made available  
49 for the purpose of reclaiming or plugging any wells.

50 The director shall make an annual report to the governor  
51 and to the Legislature setting forth the number of wells

52 reclaimed or plugged through the use of the oil and gas  
53 reclamation fund provided for herein. Such report shall  
54 identify each such reclamation and plugging project, state  
55 the number of wells reclaimed or plugged thereby, show the  
56 county wherein such wells are located and shall make a  
57 detailed accounting of all expenditures from the oil and gas  
58 reclamation fund.

59 All wells shall be reclaimed or plugged by contract  
60 entered into by the director on a competitive bid basis as  
61 provided for under the provisions of article three, chapter  
62 five-a of this code and the rules and regulations  
63 promulgated thereunder.

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

*Bruce O. Williams*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1988.

*Judd C. Mullis*  
.....  
Clerk of the Senate

*Donald L. Kapp*  
.....  
Clerk of the House of Delegates

*Don Touharian*  
.....  
President of the Senate

*W. H. C. [Signature]*  
.....  
Speaker House of Delegates

The within *Approved* this the *28th*  
*March*  
day of ..... 1988.

*Arthur A. Shaffer*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/22/88  
Time 11:30 A.M.

RECEIVED

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SERIALS SECTION