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)

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

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
c 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.

(a) Unless the context, in which used, clearly requires a

different meaning, the following definitions shall apply in
this chapter:
3 (1) “Commissioner” means the commissioner of the department of energy;
4 (2) “Department” means the state department of energy;
5 (3) “Division of abandoned mine lands and reclamation” means the division of abandoned mine lands and reclamation of the department of energy;
6 (4) “Division of health, safety and training” means the division of health, safety and training of the department of energy;
7 (5) “Division of mines and minerals” means the division of mines and minerals of the department of energy; and
8 (6) “Division of oil and gas” means the division of oil and gas of the department of energy.

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

§22-1-7. Divisions within department.

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

(b) The division of mines and minerals shall be responsible for surface and underground mining permits, administration of the division, and coal reclamation inspections under the provisions of articles three and four of chapter twenty-two-a of this code.

(c) The division of health, safety and training shall be
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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
carry out, administer and enforce such provisions of this chapter and chapter twenty-two-a of the code relating to surface and underground mining permits and coal mine reclamation inspections as are expressly conferred upon him by such provisions or delegated to him by the commissioner relating to mines and minerals.

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

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

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

The director of the division of health, safety and training is hereby empowered, and it shall be his duty to administer and enforce such provisions of this chapter and articles one-a, two, five and six of chapter twenty-two-a of this code as expressly relate to health and safety inspections and enforcement and training in surface and underground coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines. The director of the division of health, safety and training shall replace the commissioner and the director of the division of mines and minerals on those 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.

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

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

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

The director of the division of abandoned mine lands and reclamation is hereby empowered, and it shall be his duty to execute and carry out, administer and enforce the provisions of the abandoned mine lands and reclamation 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.

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

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

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

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

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

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

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

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

(d) The employees of the board shall be compensated at rates determined by the board. The salary of the health and safety administrator shall be fixed by the governor:
Provided, That the salary of the health and safety administrator shall not be reduced during his annual term of employment or upon the renewal of his contract for an additional term. Such salary shall be fixed for any renewed term at least ninety days before the commencement thereof. (e) Appropriations for the salaries of the health and safety administrator and any other employees of the board and for necessary office and operating expenses shall be made to a budget account hereby established for those purposes in the general revenue fund. Such account shall be separate from any accounts or appropriations for the department of energy. (f) The health and safety administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident. (g) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals to address the issues raised in such study. The administrator shall be responsible for preparing the annual reports required by subsection (f), section four of this article 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) There is hereby established a state coal mine safety and technical review committee. The purposes of this committee are to:

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

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

(c) Accept and consider petitions submitted by individual mine operators or miners seeking site-specific
rule-making pertaining to individual mines and make
recommendations to the board concerning such rule-
making; and
(d) Provide a forum for the resolution of technical issues
encountered by the board.
(2) The committee shall consist of two members who
shall be residents of this state, and who shall be appointed
as hereinafter specified in this section:
(a) The governor shall appoint one member to represent
the viewpoint of the coal operators in this state from a list
containing one or more nominees submitted by the major
trade association representing coal operators in this state
within thirty days of submission of such nominee or
nominees.
(b) The governor shall appoint one member to represent
the viewpoint of the working miners of this state from a list
containing one or more nominees submitted by the highest
ranking official within the major employee organization
representing coal mines within this state within thirty days
of submission of the nominee or the nominees.
(c) The members appointed in accordance with the
provisions of subdivision (a) and (b) of this subsection shall
be initially appointed to serve a term of three years.
(d) The members appointed in accordance with the
provision of subdivisions (a) and (b) of this subsection may
be, but are not required to be, members of the board of coal
mine health and safety, and shall be compensated on a per
diem basis in the same amount as provided in section seven
of this article, plus all reasonable expenses.
(3) The committee shall meet at least once during each
calendar month, or more often as may be necessary.
(4) A quorum of the committee shall require both
members, and the committee may only act officially by a
quorum.
(5) The committee may review any matter relative to
mine safety and mining technology, and may pursue
development and resolution of issues related thereto. The
committee may make recommendations to the board for the
promulgation of rules and regulations with general mining
industry application. Upon receipt of a unanimous
recommendation for rule-making from the committee and
only thereon, the board may adopt or reject such rule or
regulations, without modification except as approved by the committee: Provided, That any adopted rule or regulation shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and regulations. When so promulgated, such rules or regulations shall be effective, notwithstanding the provisions of applicable statutes or regulations.

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

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

(c) Within thirty days of receipt of the committee's recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee's recommendation to promulgate site-specific regulations applicable to an individual mine adopting such site-specific regulations only if it determines that the
The application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes or regulations. When so promulgated, such rules or regulations shall be effective notwithstanding the provisions of applicable statutes or regulations.

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

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

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

(10) Appropriations for the funding of the committee and to effectuate this section shall be made to a budget account hereby established for that purpose in the general revenue fund. Such account shall be separate from any 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 and training created under the provisions of section seven,
article one, chapter twenty-two of this code, are hereby charged with the duties and responsibilities set out in chapter twenty-two of this code and this chapter, relating to the exploration for and development, production and conservation of coal and all other minerals, except oil and gas and those minerals found in association therewith as provided in chapter twenty-two-b of this code and abandoned mine lands and reclamation provided in article three, chapter twenty-two of this code. All legislative findings and policies stated in chapter twenty-two of this code in relation to these minerals apply to the operations of these divisions and the provisions of this chapter.

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

The director of the division of mines and minerals, as provided in sections eight and eight-a, article one, chapter twenty-two of this code shall have the responsibility and duties in administration of the division of mines and minerals as are provided in said chapter twenty-two and articles three and four of this chapter.

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

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

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

§22A-1A-1. Definitions.

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

(a) General.

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

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

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

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

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

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

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

(8) Miner: The term “miner” means any individual working in a coal mine.

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

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

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

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

(b) Division of health, safety and training.

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

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

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

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

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

(c) Mine areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Cable: The term “cable” means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

(5) Circuit breaker: The term “circuit breaker” means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer (grounding transformer)” means a transformer intended primarily to provide a neutral point for grounding purposes.
§22A-1A-2. Division of health, safety and training; purposes; rules and regulations.

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

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

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

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

§22A-1A-4. Same—Powers and duties.

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

1. Supervise and direct the execution and enforcement of the provisions of this article.
2. Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out his responsibilities and fix their compensation, except as otherwise provided in this article.
3. Assign mine inspectors hired by the commissioner to divisions or districts in accordance with the provisions of section seven of this article as may be necessary to fully and effectively carry out the provisions of this law, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct such mine inspectors in the performance of their duties.
(4) Suspend, for good cause, any such mine inspector without compensation for a period not exceeding thirty days in any calendar year.

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

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

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

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

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

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

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

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

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

§22A-1A-5. Same—Eligibility; salary.

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


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

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

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

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

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

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

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

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

(5) There is hereby created under the treasury of the
state of West Virginia a special health, safety and training
fund. All civil penalty assessments collected under section
nineteen of this article shall be collected by the
commissioner and deposited with the treasurer of the state
of West Virginia to the credit of the special health, safety
and training fund. The fund shall be used by the
commissioner and he is authorized to expend the moneys in
the fund for the administration of this chapter and chapter
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.

(a) Any person intending to prospect for coal in an area not covered by a surface-mining permit, in order to determine the location, quantity or quality of a natural coal deposit, making feasibility studies or for any other purpose, shall file with the commissioner, at least fifteen days prior to commencement of any disturbance associated with prospecting, a notice of intention to prospect, which notice shall include a description of the prospecting area, the period of supposed prospecting and such other information as required by rules or regulations promulgated pursuant to this section: Provided, That prior to the commencement of such prospecting, the commissioner may issue an order denying or limiting permission to prospect where he finds that prospecting operations will damage or destroy a unique natural area, or will cause serious harm to water quality, or that the operator has failed to satisfactorily reclaim other prospecting sites, or that there has been an abuse of prospecting by previous prospecting operations in the area.

(b) Notice of intention to prospect shall be made in writing on forms prescribed by the commissioner and shall be signed and verified by the applicant. The notice shall be accompanied by (1) a United States geological survey topographic map showing by proper marking the crop line and the name, where known, of the seam or seams to be prospected, and (2) a bond, or cash, or collateral securities or certificates of the same type and form and in the same manner as provided in section eleven of this article, in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed area. If such bond is used, it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to backfilling and revegetation of the disturbed area.
(c) Any person prospecting under the provisions of this section shall ensure that such prospecting operation is conducted in accordance with the performance standards in section twelve of this article for all lands disturbed in explorations, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

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

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

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

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

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

(i) For the purpose of this section, the word “prospect” or “prospecting” does not include core drilling related 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 unless such person has first obtained a permit from the commissioner in accordance with the following:
2 (a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after that approval.
3 (b) No later than eight months after the secretary's approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the commissioner: Provided,
4 That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502 (c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary's approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the commissioner.
5 (c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the commissioner may extend a permit for such longer term: Provided, however, That subject to the prior approval of the commissioner, a successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining
and reclamation plan of the original permittee until such successor's application is granted or denied.

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

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

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

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

§22A-3-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment.

(a)(1) Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of
the existing permit. The holders of the permit may apply for renewal and the renewal shall be issued: Provided, That on application for renewal, the burden shall be on the opponents of renewal, unless it is established that and written findings by the commissioner are made that: (A) The terms and conditions of the existing permit are not being satisfactorily met: Provided, however, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface-mining operation is not in compliance with the applicable environmental protection standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the performance bond in effect for said operation will continue in effect for any renewal requested as required pursuant to section eleven of this article; or (E) any additional revised or updated information as required pursuant to rules and regulations promulgated by the commissioner has not been provided.

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

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

(4) Any renewal application for an active permit shall be on forms prescribed by the commissioner and shall be accompanied by a filing fee of two thousand dollars. The
application shall contain such information as the commissioner requires pursuant to rule or regulation.

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

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

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

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

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

§22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

(a) Notwithstanding any provisions of this chapter to the contrary, all powers, duties and responsibilities of the chief of the division of water resources under article five-a, chapter twenty of this code with respect to all coal mines, preparation plants and all refuse and waste therefrom subject to said article five-a, chapter twenty of this code are hereby transferred to the commissioner. The commissioner shall have sole authority to issue, amend, transfer, renew or revoke all permits required under article five-a, chapter twenty-two of this code with respect to all coal mines, preparation plants and all refuse and waste therefrom subject to said article five-a. Each permit application shall be accompanied by a filing fee of five hundred dollars and each renewal application shall be accompanied by a filing fee of one hundred dollars. The procedures for issuance,
amendment, transferal, renewal and revocation of such permits shall be governed by regulations promulgated pursuant to subsection (b). The commissioner shall consolidate the various permit programs under article five-a, chapter twenty of this code and article three of this chapter applicable to all coal mines, preparation plants and all refuse and waste therefrom. All provisions of article five-a, chapter twenty of this code heretofore applicable to coal mines, preparation plants and all refuse and waste therefrom shall be continued under this section.

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

(c) Notwithstanding any provisions of this chapter to the contrary, the commissioner shall have the sole authority to enforce and shall enforce the rules and regulations promulgated under this article by the commissioner and the rules and regulations of the water resources board setting water quality standards for the waters of the state as they apply to all coal mines, preparation plants and all refuse and waste therefrom. Rules and regulations adopted by the commissioner, pursuant to the requirements of article five-a of chapter twenty of this code shall be enforceable by the commissioner under the provisions of sections seventeen and nineteen, article five-a, chapter twenty of this code, as though the regulations were promulgated by the water resources board: Provided, That the commissioner's authority to enforce such rules and regulations under article five-a, chapter twenty of this code shall not preclude
the commissioner or any person from invoking the remedies otherwise provided by article three of this chapter and shall not preclude the commissioner from enforcing the provisions of this article.

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

(e) This section shall become effective upon a proclamation by the governor stating that final approval of the partial transfer of the National Pollutant Discharge Elimination System established under the federal Clean Water Act contemplated by this section has been given by the Administrator of the United States Environmental 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; departmental records open to public; inspectors.

(a) The director of the division of oil and gas shall have as his duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles three and four of this chapter, subject to review and approval of the commissioner.

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

(c) The director shall have full charge of the oil and gas matters set out in this article and in articles three and four of this chapter, subject always to the direct supervision and control of the commissioner of the department of energy. In addition to all other powers and duties conferred upon him, the director shall have the power and duty to:
(1) Supervise and direct the activities of the division of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and oil and gas inspectors upon approval by the commissioner;

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;

(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his duties and the purposes of the division of oil and gas and fix their compensation;

(7) Hear and determine applications made by owners, well operators and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of this article and articles three and four of this chapter;

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by oil and gas inspectors or the supervising inspector;

(9) Make annually a full and complete written report to the commissioner as he may from time to time request, so that the commissioner can complete the preparation of the commissioner's annual report to the governor of the state;

(10) Conduct such research and studies as the commissioner shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(11) Perform any and all acts necessary to carry out and implement the state requirements established by 92 Statutes at Large 3352, et seq., the "Natural Gas Policy Act
of 1978," which are to be performed by a designated state jurisdictional agency regarding determinations that wells within the state qualify for a maximum lawful price under certain categories of natural gas as set forth by the provisions of the said “Natural Gas Policy Act of 1978”; 

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

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

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

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

(16) Adopt rules and regulations in accordance with section thirteen, article one, chapter twenty-two of this code with respect to the issuance, denial, retention, suspension or revocation of permits, authorizations and requirements of this chapter, which rules and regulations shall assure that the regulations, permits and authorizations issued by the director are adequate to satisfy the purposes of this chapter and chapter twenty-two of this code particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage and recovery of this state’s oil and gas: Provided, That notwithstanding any provisions of this chapter or chapter twenty-two of this code to the contrary, the water resources board shall have the sole authority pursuant to section three-a, article five-a, of chapter twenty of this code to promulgate rules and regulations setting standards of water quality applicable to waters of the state;
(17) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation establishing programs relating to the exploration, development, production, storage and recovery of this state's oil and gas, which programs are assumable by the state.

(d) The director shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and the supervising inspector shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the director to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the director, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties.

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

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

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

The oil and gas operating permit and processing fund shall be administered by the director for the purposes of
carrying out the provisions of this chapter.

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

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

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

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

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

The director shall make an annual report to the governor and to the Legislature setting forth the number of wells
reclaimed or plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

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

Todd C. Hollis
Clerk of the Senate

Donald A. Kopp
Clerk of the House of Delegates

Don Thomas
President of the Senate

Speaker House of Delegates

The within is hereby approved this the 28th day of 1988.

Andrew P. Parnell
Governor