WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 579

(By Senator Sharpe)

PASSED March 9, 1991
In Effect 90 days from Passage
AN ACT to repeal sections nine-a, thirteen and thirty-nine, article three, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, eight, nine, ten, twelve, fifteen, seventeen, eighteen, nineteen, twenty-two, twenty-six, twenty-eight and forty of said article, all relating to surface coal mining generally; repealing provisions providing for two acre exemptions, repealing the pilot program for growing of grapes; repealing temporary power to grant permits pending primacy approval; amending definitions; reducing probationary period for surface mining reclamation supervisors and inspectors; relating to approval of a successor in interest to a transfer of a permit; requiring requests for extensions of permits be timely made; increasing minimum tonnage for small operator assistance; correcting a cross reference; measures to avoid acid or other toxic mine drainage; amending notification requirements for blasting; variances for reclamation requirements, termination of permits not commenced within three years, underground workings, extensions; durability testing for durable rock; variances, promulgation of rules; correcting cross reference; safety of citizens on inspections; mandatory notices of violations; extension of abatement periods; civil penal-
ties; suspension of permits; requests for informal conferences or formal hearings; time for decisions on temporary relief requests; completeness and accuracy of permit applications and burden of proof; deletion of limitations on ownership or control on revocation or forfeiture of a permit; permit revisions, requirements; providing that certain operations are not exempt from article; relating to areas unsuitable for mining, right to petition; surface mining operations not subject to article; special permits, removal of coal refuse piles; and permitting authority of commissioner.

Be it enacted by the Legislature of West Virginia:

That sections nine-a, thirteen and thirty-nine, article three, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, five, eight, nine, ten, twelve, fifteen, seventeen, eighteen, nineteen, twenty-two, twenty-six, twenty-eight and forty of said article be amended and reenacted, all to read as follows:

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

§22A-3-3. Definitions.

1 As used in this article, unless used in a context that clearly requires a different meaning, the term:

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

3 (b) “Affected area” means, when used in the context of surface-mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface-mining and reclamation activities. “Affected area” means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit: (1)
ground mining activities; or (2) by underground operations.

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

(d) "Applicant" means any person who has or should have applied for any permit pursuant to this article.

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

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

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

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

(i) "Commissioner" means the commissioner of the department of energy or his or her authorized agent.

(j) "Department" means the department of energy.

(k) "Director" means the director of the division of mines and minerals.

(l) "Disturbed area" means an area where vegetation, topsoil or overburden has been removed or placed by surface-mining operations, and reclamation is incomplete.

(m) "Division" means the division of mines and minerals of the department of energy.

(n) "Imminent danger to the health or safety of the public" means the existence of such condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

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

(p) "Operation" means those activities conducted by an operator who is subject to the jurisdiction of this
(q) "Operator" means any person who is granted or who should obtain a permit to engage in any activity covered by this article and any rule promulgated hereunder and includes any person who engages in surface mining or surface mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to public law 95-87.

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

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

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

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

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

(w) "Surface mine", "surface mining" or "surface-mining operations" means:

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

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

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

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

§22A-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The commissioner shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person shall be eligible for such appointment until he or she has served in a probationary status for a period of six months to the satisfaction of the commissioner.

Every surface-mining reclamation supervisor shall be paid not less than thirty thousand dollars per year. Every surface-mining reclamation inspector shall be paid not less than twenty-five thousand dollars per year.

§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

No person may engage in surface-mining operations unless such person has first obtained a permit from the commissioner in accordance with the following:

(a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after
that approval.

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

(c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the commissioner may extend a permit for such longer term: Provided, however, That subject to the prior approval of the commissioner, with such approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a 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 permit application or application for transfer 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 timely 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-3-9. Permit application requirements and contents.

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

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

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

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

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

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

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

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

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

(9) A description of the legal documents upon which the applicant bases his legal right to enter and conduct surface-mining operations on the proposed permit area and whether that right is the subject of pending court litigation: Provided, That nothing in this article may be construed as vesting in the commissioner the jurisdiction to adjudicate property-rights disputes;

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

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

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

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

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

(15) For those lands in the permit application which
a reconnaissance inspection suggests may be prime
farm lands, a soil survey shall be made or obtained
according to standards established by the secretary of
agriculture in order to confirm the exact location of
such prime farm lands;

(16) A reclamation plan as presented in section ten
of this article;

(17) Information pertaining to coal seams, test
borings, core samplings or soil samples as required by
this section shall be made available to any person with
an interest which is or may be adversely affected:
Provided, That information which pertains only to the
analysis of the chemical and physical properties of the
coal, except information regarding mineral or element-
tal content which is potentially toxic to the environ-
ment, shall be kept confidential and not made a matter
of public record;

(18) When requested by the commissioner, the
climatological factors that are peculiar to the locality
of the land to be affected, including the average
seasonal precipitation, the average direction and
velocity of prevailing winds, and the seasonal temper-

ature ranges; and

(19) Other information that may be required by
rules and regulations reasonably necessary to effectu-
ate the purposes of this article.

(b) If the commissioner finds that the probable total
annual production at all locations of any coal surface-
mining operator will not exceed three hundred thou-
sand tons, the determination of probable hydrologic
consequences and the statement of the result of test
borings or core samplings shall, upon the written
request of the operator, be performed by a qualified
public or private laboratory designated by the commis-
sioner and a reasonable cost of the preparation of such
determination and statement shall be assumed by the
division from funds provided by the United States
department of the interior pursuant to Public Law 95-
87.

(c) Before the first publication of the applicant’s
advertisement, each applicant for a surface-mining
permit shall file, except for that information pertain-
ing to the coal seam itself, a copy of the application for
public inspection in the nearest office of the division of
energy as specified in the applicant’s advertisement.

(d) Each applicant for a permit shall be required to
submit to the commissioner as a part of the permit
application a certificate issued by an insurance com-
pany authorized to do business in this state covering
the surface-mining operation for which the permit is
sought, or evidence that the applicant has satisfied
state self-insurance requirements. The policy shall
provide for personal injury and property damage
protection in an amount adequate to compensate any
persons damaged as a result of surface coal mining and
reclamation operations, including use of explosives,
and entitled to compensation under the applicable
provisions of state law. The policy shall be maintained
in full force and effect during the terms of the permit
or any renewal, including the length of all reclamation
operations.

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

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

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

§22A-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a
surface-mining permit application shall include, in the
degree of detail necessary to demonstrate that recla-
mation required by this article can be accomplished, a
statement of:

(1) The identification of the lands subject to surface
mining over the estimated life of these operations and
the size, sequence and timing of the operations for
which it is anticipated that individual permits for
mining will be sought;

(2) The condition of the land to be covered by the
permit prior to any mining, including: (A) The uses
existing at the time of the application and, if such land
has a history of previous mining, the uses which
preceded any mining; (B) the capability of the land
prior to any mining to support a variety of uses, giving
consideration to soil and foundation characteristics,
topography and vegetation cover and, if applicable, a
soil survey prepared pursuant to subdivision (15),
subsection (a), section nine of this article; and (C) the
best information available on the productivity of the
land prior to mining, including appropriate classifica-
tion as prime farm lands, and the average yield of
food, fiber, forage or wood products from such lands
obtained under high levels of management;

(3) The use which is proposed to be made of the land
following reclamation, including a discussion of the
utility and capacity of the reclaimed land to support a
variety of alternative uses and the relationship of such
use to existing land use policies and plans, and the
comments of any owner of the surface, other state
agencies and local governments, which would have to
initiate, implement, approve or authorize the proposed
use of the land following reclamation;

(4) A detailed description of how the proposed
postmining land use is to be achieved and the neces-
sary support activities which may be needed to
achieve the proposed land use;

(5) The engineering techniques proposed to be used
in mining and reclamation and a description of the
major equipment; a plan for the control of surface
water drainage and of water accumulation; a plan where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section twelve of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section twelve or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface-mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards:

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface-mining and reclamation process to assure the protection of: (A) The quality of surface and ground water systems, both on-and off-site, from adverse effects of the surface-mining operation; (B) the rights of present users to such water; and (C) the quantity of surface and ground water systems, both on-and off-site, from adverse effects of the surface-mining operation or to provide alternative sources of water where such protection of quantity cannot be assured;

(12) The results of tests borings which the applicant
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81 has made at the area to be covered by the permit, or
82 other equivalent information and data in a form
83 satisfactory to the commissioner, including the location
84 of subsurface water, and an analysis of the chemical
85 properties, including acid forming properties of the
86 mineral and overburden: Provided, That information
87 which pertains only to the analysis of the chemical
88 and physical properties of the coal, except information
89 regarding such mineral or elemental contents which
90 are potentially toxic in the environment, shall be kept
91 confidential and not made a matter of public record;
92 (13) The consideration which has been given to
93 maximize the utilization and conservation of the solid
94 fuel resource being recovered so that reaffecting the
95 land in the future can be minimized; and
96 (14) Such other requirements as the commissioner
97 may prescribe by regulation.
98 (b) The reclamation plan shall be available to the
99 public for review except for those portions thereof
100 specifically exempted in subsection (a) of this section.

§22A-3-12. General environmental protection performance
standards for surface mining; variances.

1 (a) Any permit issued by the commissioner pursuant
2 to this article to conduct surface-mining operations
3 shall require that such surface-mining operations will
4 meet all applicable performance standards of this
5 article, and other requirements as the commissioner
6 shall promulgate.
7 (b) The following general performance standards
8 shall be applicable to all surface mines and shall
9 require the operation as a minimum to:
10 (1) Maximize the utilization and conservation of the
11 solid fuel resource being recovered to minimize
12 reaffecting the land in the future through surface
13 mining;
14 (2) Restore the land affected to a condition capable
15 of supporting the uses which it was capable of support-
16 ing prior to any mining, or higher or better uses of
which there is reasonable likelihood so long as the use
or uses do not present any actual or probable hazard
to public health or safety or pose any actual or
probable threat of water diminution or pollution, and
the permit applicants' declared proposed land use
following reclamation is not deemed to be impractical
or unreasonable, inconsistent with applicable land use
policies and plans, involves unreasonable delay in
implementation, or is violative of federal, state or local
law;

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

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

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

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

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

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

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

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and ground water systems both during and after surface-mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface-mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to subparagraph (B) of this subdivision prior to commencement of surface-mining operations, such system to be certified by a person approved by the commissioner to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the commissioner, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commissioner; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) such other actions as the commissioner may prescribe;
(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article;

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

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the commissioner shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface-mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the commissioner; and (B) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, however, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained com-
Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the commissioner, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site: Provided, That this notice shall suffice as daily notice to residents or occupants of the areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent: (i) Injury to persons; (ii) damage to public and private property outside the permit area; (iii) adverse impacts on any underground mine; and (iv) change in the course, channel or availability of ground or surface water outside the permit area; (D) require that all blasting operations be conducted by persons certified by the director of the division of mines and minerals; and (E) provide that upon written request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permit area, the applicant or permittee shall conduct a preblasting survey or other appropriate investigation of the structures and submit the results to the commissioner and a copy to the resident or owner making the request. The area of the survey shall be determined by the commissioner in accordance with regulations promulgated by him;
(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface-mining operations. Time limits shall be established by the commissioner requiring backfilling, grading and planting to be kept current: Provided, That where surface-mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the commissioner may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the commissioner finds in writing that:

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

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

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;
(B) If the commissioner has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subparagraph and has imposed such additional requirements as he deems necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the commissioner not more than three years from the date of issuance of the permit: Provided, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subsection (e), section eight of this article; and

(D) If liability under the bond filed by the applicant with the commissioner pursuant to subsection (b), section eleven of this article shall be for the duration of the underground mining operations and until the requirements of subsection (g), section eleven and section twenty-three of this article have been fully complied with.

(17) Ensure that the construction, maintenance and postmining conditions of access and haulroads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, shall be exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consump-
tion and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved postmining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the commissioner, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the commissioner issues a written finding approving a long-term agricultural postmining land use as part a of the mining and reclamation plan, the commissioner may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the commissioner approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation shall commence at the date of initial planting for such agricultural postmining land use;

(21) Protect off-site areas from slides or damage occurring during surface-mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: Provided, That spoil material may be placed outside the permit area, if approved by the commissioner, after a finding that environmental benefits will result from such;

(22) Place all excess spoil material resulting from surface mining activities in such a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and move-
ment; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the commissioner, the spoil could be placed in compliance with all the requirements of this article, and shall be placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: Provided, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the commissioner may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: Provided further, That such approval shall not be unreasonably withheld if the site is suitable;

(23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhance-
ment of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points.

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

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

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

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

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

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

(e) The commissioner may promulgate rules that
permit variances from the approximate original con-
tour requirements of this section: Provided, That the
watershed control of the area is improved: Provided,
however, That complete backfilling with spoil material
shall be required to completely cover the highwall,
which material will maintain stability following mining and reclamation.

(f) The commissioner shall promulgate regulations for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the commissioner finds that any coal processing waste pile constitutes an imminent danger to human life, he may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any such coal processing waste pile exists and may take or order to be taken such remedial action as may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the commissioner under this subsection may be paid for initially by funds appropriated to the department of energy for these purposes, and the sums so expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the commissioner. For purposes of this subsection "operates" or "operated" means to enter upon a coal processing waste pile, or part thereof, for the purpose of disposing, depositing, dumping coal processing wastes thereon or removing coal processing waste therefrom, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of
§22A-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.

(a) The commissioner shall cause to be made such inspections of surface-mining operations as are necessary to effectively enforce the requirements of this article and for such purposes the commissioner or his authorized representative shall without advance notice and upon presentation of appropriate credentials: (A) Have the right of entry to, upon or through surface-mining operations or any premises in which any records required to be maintained under subdivision (1), subsection (b) of this section are located; and (B) at reasonable times and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under this article.

(b) For the purpose of enforcement under this article, in the administration and enforcement of any permit under this article, or for determining whether any person is in violation of any requirement of this article:

(1) The commissioner, shall at a minimum, require any operator to: (A) Establish and maintain appropriate records; (B) make monthly reports to the department; (C) install, use and maintain any necessary monitoring equipment or methods consistent with subdivision (11), subsection (a), section nine of this article; (D) evaluate results in accordance with such methods, at such locations, intervals and in such manner as the commissioner shall prescribe; and (E) provide such other information relative to surface-mining operations as the commissioner deems reasonable and necessary; and

(2) For those surface-mining operations which remove or disturb strata that serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mining site, the commissioner shall require that: (A) Monitoring sites be established
to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence; (B) monitoring sites be established to record level, amount and samples of ground water and aquifers potentially affected by the surface mining and also below the lowermost mineral seam to be mined; (C) records or well logs and borehole data be maintained; and (D) monitoring sites be established to record precipitation. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the commissioner in order to assure their reliability and validity.

(c) All surface-mining operations shall be inspected at least once every thirty days. Such inspections shall be made on an irregular basis without prior notice to the operator or his agents or employees, except for necessary on-site meetings with the operator. The inspections shall include the filing of inspection reports adequate to enforce the requirements, terms and purposes of this article.

(d) Each permittee shall maintain at the entrances to the surface-mining operations a clearly visible monument which sets forth the name, business address and telephone number of the permittee and the permit number of the surface-mining operations.

(e) Copies of any records, reports, inspection materials or information obtained under this article by the commissioner shall be made immediately available to the public at central and sufficient locations in the county, multi-county or state area of mining so that they are conveniently available to residents in the areas of mining unless specifically exempted by this article.

(f) Within thirty days after service of a copy of an order of the commissioner upon an operator by registered or certified mail, the operator shall furnish to the commissioner five copies of a progress map prepared by or under the supervision of a person approved by the commissioner showing the disturbed
area to the date of such map. Such progress map shall
contain information identical to that required for both
the proposed and final maps required by this article,
and shall show in detail completed reclamation work
as required by the commissioner. Such progress map
shall include a geologic survey sketch showing the
location of the operation, shall be properly referenced
to a permanent landmark, and shall be within such
reasonable degree of accuracy as may be prescribed by
the commissioner. If no land has been disturbed by
operations during the preceding year, the operator
shall notify the commissioner of that fact.

(g) Whenever on the basis of available information,
including reliable information from any person, the
commissioner has cause to believe that any person is
in violation of this article, any permit condition or any
regulation promulgated under this article, the commis-
sioner shall immediately order state inspection of the
surface-mining operation at which the alleged viola-
tion is occurring unless the information is available as
a result of a prior state inspection. The commissioner
shall notify any person who supplied such reliable
information when the state inspection will be carried
out. Such person may accompany the inspector during
the inspection.

§22A-3-17. Notice of violation; procedure and actions;
enforcement; permit revocation and bond
forfeiture; civil and criminal penalties;
appeals to the board; prosecution; injunctive
relief.

(a) If any of the requirements of this article, rules
and regulations promulgated pursuant thereto or
permit conditions have not been complied with, the
commissioner shall cause a notice of violation to be
served upon the operator or his duly authorized agent.
A copy of the notice shall be handed to the operator
or his duly authorized agent in person or served by
certified mail addressed to the operator at the perma-
nent address shown on the application for a permit.
The notice shall specify in what respects the operator
has failed to comply with this article, rules and
regulations or permit conditions and shall specify a reasonable time for abatement of the violation not to exceed thirty days. If the operator has not abated the violation within the time specified in the notice, or any reasonable extension thereof, not to exceed sixty days, the commissioner shall order the cessation of the operation or the portion thereof causing the violation, unless the operator affirmatively demonstrates that compliance is unattainable due to conditions totally beyond the control of the operator. If a violation is not abated within the time specified or any extension thereof, or any cessation order is issued, a mandatory civil penalty of not less than seven hundred fifty dollars per day per violation shall be assessed. A cessation order shall remain in effect until the commissioner determines that the violation has been abated or until modified, vacated or terminated by the commissioner or by a court. In any cessation order issued under this subsection the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(b) If the commissioner determines that a pattern of violations of any requirement of this article or any permit condition exists or has existed, as a result of the operator's lack of reasonable care and diligence, or that the violations are willfully caused by the operator, the commissioner shall immediately issue an order directing the operator to show cause why the permit should not be suspended or revoked and giving the operator thirty days in which to request a public hearing. If a hearing is requested, the commissioner shall inform all interested parties of the time and place of the hearing. Any hearing under this section shall be recorded and subject to the provisions of chapter twenty-nine-a of this code. Within sixty days following the public hearing, the commissioner shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. Upon the operator's failure to show cause why the permit should not be suspended or revoked, the
commissioner shall immediately suspend or revoke the operator's permit. If the permit is revoked, the commissioner shall initiate procedures in accordance with rules promulgated by the commissioner to forfeit the operator's bond, or other security posted pursuant to section eleven of this article, and give notice to the attorney general, who shall collect the forfeiture without delay: Provided, That the entire proceeds of such forfeiture shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund. All forfeitures collected prior to the effective date of this article shall be deposited in the special reclamation fund and shall be expended back upon the areas for which the bond was posted: Provided, however, That any excess therefrom shall remain in the special reclamation fund.

(c) Any person engaged in surface-mining operations who violates any permit condition or who violates any other provision of this article or rules and regulations promulgated pursuant thereto may also be assessed a civil penalty. The penalty shall not exceed five thousand dollars. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface-mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(d) (1) Upon the issuance of a notice or order pursuant to this section, the assessment officer shall, within thirty days, set a proposed penalty assessment and notify the operator in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt or, if the operator wishes to contest either the amount of the penalty or the fact of violation, an informal
95 conference with the assessment officer may be
96 requested within fifteen days or a formal hearing
97 before the reclamation board of review may be
98 requested within thirty days. The notice of proposed
99 penalty assessment shall advise the operator of the
100 right to an informal conference and a formal hearing
101 pursuant to this section. When an informal conference
102 is requested, the operator shall have fifteen days from
103 receipt of the assessment officer's decision to request
104 a formal hearing before the board. (A) When an
105 informal conference is held, the assessment officer
106 shall have authority to affirm, modify or vacate the
107 notice, order or proposed penalty assessment. (B)
108 When a formal hearing is requested, the amount of the
109 proposed penalty assessment shall be forwarded to the
110 commissioner for placement in an escrow account.
111 Formal hearings shall be of record and subject to the
112 provisions of article five, chapter twenty-nine-a of this
113 code. Following the hearing the board shall affirm,
114 modify or vacate the notice, order or proposed penalty
115 assessment and, when appropriate, incorporate an
116 assessment order requiring that the assessment be
117 paid.

(2) Civil penalties owed under this section may be
119 recovered by the commissioner in the circuit court of
120 Kanawha County. Civil penalties collected under this
121 article shall be deposited with the treasurer of the
122 state of West Virginia to the credit of the special
123 reclamation fund established in section eleven of this
124 article. If, through the administrative or judicial
125 review of the proposed penalty it is determined that
126 no violation occurred or that the amount of the
127 penalty should be reduced, the commissioner shall
128 within thirty days remit the appropriate amount to
129 the person, with interest at the rate of six percent or
130 at the prevailing United States department of the
131 treasury rate, whichever is greater. Failure to forward
132 the money to the commissioner within thirty days
133 shall result in a waiver of all legal rights to contest the
134 violation or the amount of the penalty.

(e) Any person having an interest which is or may
be adversely affected by any order of the commis-

sioner or the board may file an appeal only in accor-
dance with the provisions of article four, chapter
twenty-two of this code, within thirty days after
receipt of the order.

(f) The filing of an appeal or a request for an
informal conference or formal hearing provided for in
this section shall not stay execution of the order
appealed from. Pending completion of the investiga-
tion and conference or hearing required by this
section, the applicant may file with the commissioner
a written request that the commissioner grant tempo-
rary relief from any notice or order issued under
section sixteen or seventeen of this article, together
with a detailed statement giving reasons for granting
such relief. The commissioner shall issue an order or
decision granting or denying such relief expeditiously:

Provided, That where the applicant requests relief
from an order for cessation of surface-mining and
reclamation operations, the decision on the request
shall be issued within five days of its receipt. The
commissioner may grant such relief, under such
conditions as he may prescribe if:

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

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

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

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

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

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

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

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

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

§22A-3-18. Approval, denial, revision and prohibition of
permit.

(a) Upon the receipt of a complete surface-mining
application or significant revision or renewal thereof,
including public notification and an opportunity for a
public hearing, the commissioner shall grant, require
revision of, or deny the application for a permit within
sixty days and notify the applicant in writing of his
decision. The applicant for a permit, or revision of a
permit, has the burden of establishing that the appli-
cation is in compliance with all the requirements of
this article and the rules promulgated hereunder.

(b) No permit or significant revision of a permit may
be approved unless the applicant affirmatively demon-
strates and the commissioner finds in writing on the
basis of the information set forth in the application or
from information otherwise available which shall be
documented in the approval and made available to the
applicant that:

(1) The permit application is accurate and complete and that all the requirements of this article and regulations thereunder have been complied with;

(2) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance, as specified in section nine of this article, has been made by the commissioner and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) The area proposed to be mined is not included within an area designated unsuitable for surface mining pursuant to section twenty-two of this article or is not within an area under administrative study by the commissioner for such designation; and

(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted: (A) The written consent of the surface owner to the extraction of coal by surface mining; or (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining; or (C) if the conveyance does not expressly grant the right to extract coal by surface mining, the surface-subsurface legal relationship shall be determined in accordance with applicable law: Provided, That nothing in this article shall be construed to authorize the commissioner to adjudicate property rights disputes.

(c) Where information available to the department indicates that any surface-mining operation owned or controlled by the applicant, is currently in violation of this article or other environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or
is in the process of being corrected to the satisfaction
of the commissioner or the department or agency
which has jurisdiction over the violation, and no
permit may be issued to any applicant after a finding
by the commissioner, after an opportunity for hearing,
that the applicant or the operator specified in the
application controls or has controlled mining opera-
tions with a demonstrated pattern of willful violations
of this article of such nature and duration with such
irreparable damage to the environment as to indicate
an intent not to comply with the provisions of this
article: Provided, That if the commissioner finds that
the applicant is or has been affiliated with, or man-
aged or controlled by, or is or has been under the
common control of, other than as an employee, a
person who has had a surface-mining permit revoked
or bond or other security forfeited for failure to
reclaim lands as required by the laws of this state, he
shall not issue a permit to the applicant: Provided,
however, That subject to the discretion of the commis-
sioner and based upon a petition for reinstatement,
permits may be issued to any applicant if: (1) After the
revocation or forfeiture, the operator whose permit
has been revoked or bond forfeited shall have paid
into the special reclamation fund any additional sum
of money determined by the commissioner to be
adequate to reclaim the disturbed area; (2) the viola-
tions which resulted in the revocation or forfeiture
have not caused irreparable damage to the environ-
ment; and (3) the commissioner is satisfied that the
petitioner will comply with this article.

(d) (1) In addition to finding the application in
compliance with subsection (b) of this section, if the
area proposed to be mined contains prime farmland,
the commissioner may, pursuant to regulations pro-
mulgated hereunder, grant a permit to mine on prime
farmland if the operator affirmatively demonstrates
that he has the technological capability to restore such
mined area, within a reasonable time, to equivalent or
higher levels of yield as nonmined prime farmland in
the surrounding area under equivalent levels of
management, and can meet the soil reconstruction
standards in subdivision (7), subsection (b), section
twelve of this article. Except for compliance with
subsection (b) of this section, the requirements of
subdivision (1) of this subsection shall apply to all
permits issued after the third day of August, one
thousand nine hundred seventy-seven.

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

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

§22A-3-19. Permit revision and renewal requirements;
incidental boundary revisions; 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 pursu-
ant 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, that portion of the application for renewal which addresses any new land area is subject to the full standards of this article, which includes, but is not limited to: (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. If the permittee desires to add the new area to his or her existing permit in order to have existing areas and new areas under one permit, the commissioner may so amend the original permit: Provided, That the application for the new area is subject to all procedures and requirements applicable to applications for original permits under this article.

(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 of 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-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

(a) The commissioner shall establish a planning process to enable objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface-mining operations pursuant to the standards set forth in subdivisions (1) and (2) of this subsection: Provided, That such designation shall not prevent prospecting pursuant to section seven of this article on any area so designated.
(1) Upon petition pursuant to subsection (b) of this section, the commissioner shall designate an area as unsuitable for all or certain types of surface-mining operations, if it determines that reclamation pursuant to the requirements of this article is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) of this section, a surface area may be designated unsuitable for certain types of surface-mining operations, if the operations: (A) Conflict with existing state or local land use plans or programs; (B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; (C) affect renewable resource lands, including significant aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply, food or fiber products; or (D) affect natural hazard lands in which the operations could substantially endanger life and property. Such lands to include lands subject to frequent flooding and areas of unstable geology.

(3) The commissioner shall develop a process which includes: (A) The review of surface-mining lands; (B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface-mining operations; (C) a method for implementing land use planning decisions concerning surface-mining operations; and (D) proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation pursuant to this section.

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

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

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

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

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

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

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

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

(4) Within three hundred feet from any occupied dwelling, unless waived by the owner thereof, or within three hundred feet of any public building, school, church, community or institutional building, public park, or within one hundred feet of a cemetery; or

(5) On any federal lands within the boundaries of any national forest: Provided, That surface coal mining operations may be permitted on the lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface-mining operations: Provided, however, That the surface operations and impacts are incident to an underground coal mine.
(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface-mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be assessed for taxation purposes according to their value and the Legislature hereby finds that the coal has no value for the duration of the designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of the coal shall forthwith notify the proper assessing authorities if the designation or prohibition is removed so that the coal may be reassessed.

§22A-3-26. Surface-mining operations not subject to article.

1. The provisions of this article do not apply to any of the following activities:

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.

(b) The extraction of coal as an incidental part of federal, state, county, municipal or other local government-financed highway or other construction: Provided, That the provisions of the construction contract require the furnishing of a suitable bond which provides for reclamation, wherever practicable, of the area affected by such extraction.

§22A-3-28. Special permits for reclamation of existing abandoned coal processing waste piles.

1. (a) Except where exempted by section twenty-six of this article, it shall hereafter be unlawful for any person to engage in surface mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the commissioner a permit therefor as provided in section eight of this article, unless a special permit therefor shall have been first obtained from the commissioner as provided in this section.

11. Application for a special permit to engage in surface
mining as an incident to the development of land for commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the commissioner and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A site preparation plan, prepared and certified by or under the supervision of a person approved by the commissioner, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of the coal deposit to be mined and removed from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof; and such other information as prescribed by the commissioner;

(2) A development plan for the proposed commercial, residential, industrial or civic use of said land;

(3) The name of owner of the surface of the land to be developed;

(4) The name of owner of the coal to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of coal that would be mined as a result of the proposed development of said land: Provided, That in no event may such number of acres to be mined, excluding roadways, exceed five acres; and

(6) Such other information as the commissioner may require to satisfy and assure the commissioner that the surface mining under special permit is incidental or secondary to the proposed commercial, residential, industrial or civic use of said land.

(b) There shall be attached to the application for the special permit a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section nine of this article.
The application for the special permit shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the commissioner and in the minimum amount of two thousand dollars per acre, for a maximum disturbance of five acres.

The bond shall be payable to the state of West Virginia and conditioned that the applicant shall complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site preparation plan submitted with the application, the bond conditions shall be satisfied and the bond and any cash, securities or certificates furnished with said bond may be released and returned to the applicant. The filing fee for the special permit shall be five hundred dollars. The special permit shall be valid until work permitted is completed.

(c) The purpose of this section is to vest jurisdiction in the commissioner, where the surface mining is incidental or secondary to the preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, minerals must be removed, including, but not limited to, the building and construction of railroads, shopping malls, factory and industrial sites, residential and building sites and recreational areas. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the commissioner that such permit is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article shall not be applicable to the operator holding a special permit: Provided, That the commissioner shall promulgate regulations establishing applicable performance standards for operations permitted under this section.

(d) The commissioner may, in the exercise of his
sound discretion, when not in conflict with the purposes and findings of this article and to bring about a more desirable land use or to protect the public and the environment, issue a special permit solely for the removal of existing abandoned coal processing waste piles. The commissioner shall promulgate specific regulations for such operations: Provided, That a bond and a reclamation plan shall be required for such operations.

§22A-3-40. 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 has authority to issue, amend, transfer, renew or revoke all permits required 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. 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 has 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 has 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, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Somer Heek
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the day of April, 1991.

Governor