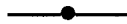


**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1991



**ENROLLED**

**SENATE BILL NO.** 579

(By Senator Sharpe)



**PASSED** March 9, 1991

In Effect 90 days from Passage

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(BY SENATOR SHARPE)

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[Passed March 9, 1991; in effect ninety days from passage.]

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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  
2 clearly requires a different meaning, the term:

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

9 (b) "Affected area" means, when used in the context  
10 of surface-mining activities, all land and water resour-  
11 ces within the permit area which are disturbed or  
12 utilized during the term of the permit in the course of  
13 surface-mining and reclamation activities. "Affected  
14 area" means, when used in the context of under-  
15 ground mining activities, all surface land and water  
16 resources affected during the term of the permit: (1)  
17 By surface operations or facilities incident to under-

18 ground mining activities; or (2) by underground  
19 operations.

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

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

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

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

56 (g) "Breakthrough" means the release of water  
57 which has been trapped or impounded, or the release

58 of air into any underground cavity, pocket or area as  
59 a result of surface-mining operations.

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

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

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

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

72 (l) "Disturbed area" means an area where vegeta-  
73 tion, topsoil or overburden has been removed or  
74 placed by surface-mining operations, and reclamation  
75 is incomplete.

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

78 (n) "Imminent danger to the health or safety of the  
79 public" means the existence of such condition or  
80 practice, or any violation of a permit or other require-  
81 ment of this article, which condition, practice or  
82 violation could reasonably be expected to cause sub-  
83 stantial physical harm or death to any person outside  
84 the permit area before such condition, practice or  
85 violation can be abated. A reasonable expectation of  
86 death or serious injury before abatement exists if a  
87 rational person, subjected to the same conditions or  
88 practices giving rise to the peril, would not expose  
89 himself to the danger during the time necessary for  
90 the abatement.

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

94 (p) "Operation" means those activities conducted by  
95 an operator who is subject to the jurisdiction of this

96 article.

97 (q) "Operator" means any person who is granted or  
98 who should obtain a permit to engage in any activity  
99 covered by this article and any rule promulgated  
100 hereunder and includes any person who engages in  
101 surface mining or surface mining and reclamation  
102 operations, or both. The term shall also be construed  
103 in a manner consistent with the federal program  
104 pursuant to public law 95-87.

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

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

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

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

118 (v) "Prime farmland" has the same meaning as that  
119 prescribed by the United States secretary of agricul-  
120 ture on the basis of such factors as moisture availabil-  
121 ity, temperature regime, chemical balance, permeabil-  
122 ity, surface layer composition, susceptibility to flooding  
123 and erosion characteristics, and which historically  
124 have been used for intensive agricultural purposes and  
125 as published in the federal register.

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

128 (1) Activities conducted on the surface of lands for  
129 the removal of coal, or, subject to the requirements of  
130 section fourteen of this article, surface operations and  
131 surface impacts incident to an underground coal mine,  
132 including the drainage and discharge therefrom. Such  
133 activities include: Excavation for the purpose of

134 obtaining coal, including, but not limited to, such  
135 common methods as contour, strip, auger, mountain-  
136 top removal, box cut, open pit and area mining; the  
137 uses of explosives and blasting; reclamation; in situ  
138 distillation or retorting, leaching or other chemical or  
139 physical processing; the cleaning, concentrating or  
140 other processing or preparation and loading of coal for  
141 commercial purposes at or near the mine site; and

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

163 (x) "Underground mine" means the surface effects  
164 associated with the shaft, slopes, drifts or inclines  
165 connected with excavations penetrating coal seams or  
166 strata and the equipment connected therewith which  
167 contribute directly or indirectly to the mining, prepa-  
168 ration or handling of coal.

169 (y) "Significant, imminent environmental harm to  
170 land, air or water resources" means the existence of  
171 any condition or practice, or any violation of a permit  
172 or other requirement of this article, which condition,  
173 practice or violation could reasonably be expected to  
174 cause significant and imminent environmental harm

175 to land, air or water resources. The term “environ-  
176 mental harm” means any adverse impact on land, air  
177 or water resources, including, but not limited to, plant,  
178 wildlife and fish, and the environmental harm is  
179 imminent if a condition or practice exists which is  
180 causing such harm or may reasonably be expected to  
181 cause such harm at any time before the end of the  
182 abatement time set by the commissioner. An environ-  
183 mental harm is significant if that harm is appreciable  
184 and not immediately repairable.

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

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

9 Every surface-mining reclamation supervisor shall  
10 be paid not less than thirty thousand dollars per year.  
11 Every surface-mining reclamation inspector shall be  
12 paid not less than twenty-five thousand dollars per  
13 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.**

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

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



10 that approval.

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

27 (c) All permits issued pursuant to the requirements  
28 of this article shall be issued for a term not to exceed  
29 five years: *Provided*, That if the applicant demon-  
30 strates that a specified longer term is reasonably  
31 needed to allow the applicant to obtain necessary  
32 financing for equipment and the opening of the  
33 operation, and if the application is full and complete  
34 for such specified longer term, the commissioner may  
35 extend a permit for such longer term: *Provided*,  
36 *however*, That subject to the prior approval of the  
37 commissioner, with such approval being subject to the  
38 provisions of subsection (c), section eighteen of this  
39 article, a successor in interest to a permittee who  
40 applies for a new permit, or transfer of a permit,  
41 within thirty days of succeeding to such interest, and  
42 who is able to obtain the bond coverage of the original  
43 permittee, may continue surface-mining and reclama-  
44 tion operations according to the approved mining and  
45 reclamation plan of the original permittee until such  
46 successor's permit application or application for  
47 transfer is granted or denied.

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

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

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

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

**§22A-3-9. Permit application requirements and contents.**

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

3 (1) The names and addresses of: (A) The permit  
4 applicant; (B) the owner of record of the property,  
5 surface and mineral, to be mined; (C) the holders of  
6 record of any leasehold interest in the property; (D)  
7 any purchaser of record of the property under a real

8 estate contract; (E) the operator, if he is a person  
9 different from the applicant; and (F) if any of these  
10 are business entities other than a single proprietor, the  
11 names and addresses of the principals, officers and  
12 resident agent;

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

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

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

37 (5) A statement of whether the applicant, or any  
38 officer, partner, director, principal shareholder of the  
39 applicant, any subsidiary, affiliate or persons con-  
40 trolled by or under common control with the appli-  
41 cant, has ever been an officer, partner, director or  
42 principal shareholder in a company which has ever  
43 held a federal or state mining permit which in the  
44 five-year period prior to the date of submission of the  
45 application has been permanently suspended or  
46 revoked or has had a mining bond or similar security  
47 deposited in lieu of bond forfeited and, if so, a brief

48 explanation of the facts involved;

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

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

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

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

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

80 (11) A determination of the probable hydrologic  
81 consequences of the mining and reclamation opera-  
82 tions, both on and off the mine site, with respect to the  
83 hydrologic regime, quantity and quality of water in  
84 surface and ground water systems, including the  
85 dissolved and suspended solids under seasonal flow  
86 conditions and the collection of sufficient data for the

87 mine site and surrounding areas so that an assessment  
88 can be made by the commissioner of the probable  
89 cumulative impacts of all anticipated mining in the  
90 area upon the hydrology of the area, and particularly  
91 upon water availability: *Provided*, That this determi-  
92 nation shall not be required until such time as hydro-  
93 logic information on the general area prior to mining  
94 is made available from an appropriate federal or state  
95 agency or, if existing and in the possession of the  
96 applicant, from the applicant: *Provided, however*, That  
97 the permit application shall not be approved until the  
98 information is available and is incorporated into the  
99 application;

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

115 (13) Cross-section maps or plans of the proposed  
116 affected area, including the actual area to be mined,  
117 prepared by or under the direction of and certified by  
118 a person approved by the commissioner, showing  
119 pertinent elevation and location of test borings or core  
120 samplings, where required by the commissioner, and  
121 depicting the following information: (A) The nature  
122 and depth of the various strata or overburden; (B) the  
123 location of subsurface water, if encountered, and its  
124 quality; (C) the nature and thickness of any coal or  
125 rider seams above the seam to be mined; (D) the  
126 nature of the stratum immediately beneath the coal  
127 seam to be mined; (E) all mineral crop lines and the

128 strike and dip of the coal to be mined, within the area  
129 of land to be affected; (F) existing or previous surface-  
130 mining limits; (G) the location and extent of known  
131 workings of any underground mines, including mine  
132 openings to the surface; (H) the location of any  
133 significant aquifers; (I) the estimated elevation of the  
134 water table; (J) the location of spoil, waste or refuse  
135 areas and topsoil preservation areas; (K) the location  
136 of all impoundments for waste or erosion control; (L)  
137 any settling or water treatment facility or drainage  
138 system; (M) constructed or natural drainways and the  
139 location of any discharges to any surface body of water  
140 on the area of land to be affected or adjacent thereto;  
141 and (N) adequate profiles at appropriate cross sections  
142 of the anticipated final surface configuration that will  
143 be achieved pursuant to the operator's proposed  
144 reclamation plan;

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

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

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

166 (17) Information pertaining to coal seams, test  
167 borings, core samplings or soil samples as required by

168 this section shall be made available to any person with  
169 an interest which is or may be adversely affected:  
170 *Provided*, That information which pertains only to the  
171 analysis of the chemical and physical properties of the  
172 coal, except information regarding mineral or elemen-  
173 tal content which is potentially toxic to the environ-  
174 ment, shall be kept confidential and not made a matter  
175 of public record;

176 (18) When requested by the commissioner, the  
177 climatological factors that are peculiar to the locality  
178 of the land to be affected, including the average  
179 seasonal precipitation, the average direction and  
180 velocity of prevailing winds, and the seasonal temper-  
181 ature ranges; and

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

185 (b) If the commissioner finds that the probable total  
186 annual production at all locations of any coal surface-  
187 mining operator will not exceed three hundred thou-  
188 sand tons, the determination of probable hydrologic  
189 consequences and the statement of the result of test  
190 borings or core samplings shall, upon the written  
191 request of the operator, be performed by a qualified  
192 public or private laboratory designated by the commis-  
193 sioner and a reasonable cost of the preparation of such  
194 determination and statement shall be assumed by the  
195 division from funds provided by the United States  
196 department of the interior pursuant to Public Law 95-  
197 87.

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

204 (d) Each applicant for a permit shall be required to  
205 submit to the commissioner as a part of the permit  
206 application a certificate issued by an insurance com-  
207 pany authorized to do business in this state covering

208 the surface-mining operation for which the permit is  
209 sought, or evidence that the applicant has satisfied  
210 state self-insurance requirements. The policy shall  
211 provide for personal injury and property damage  
212 protection in an amount adequate to compensate any  
213 persons damaged as a result of surface coal mining and  
214 reclamation operations, including use of explosives,  
215 and entitled to compensation under the applicable  
216 provisions of state law. The policy shall be maintained  
217 in full force and effect during the terms of the permit  
218 or any renewal, including the length of all reclamation  
219 operations.

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

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

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

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

1 (a) Each reclamation plan submitted as part of a



2 surface-mining permit application shall include, in the  
3 degree of detail necessary to demonstrate that recla-  
4 mation required by this article can be accomplished, a  
5 statement of:

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

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

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

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

39 (5) The engineering techniques proposed to be used  
40 in mining and reclamation and a description of the  
41 major equipment; a plan for the control of surface

42 water drainage and of water accumulation; a plan  
43 where appropriate, for backfilling, soil stabilization  
44 and compacting, grading, revegetation and a plan for  
45 soil reconstruction, replacement and stabilization  
46 pursuant to the performance standards in subdivision  
47 (7), subsection (b), section twelve of this article for  
48 those food, forage and forest lands identified therein;  
49 and a statement as to how the operator plans to  
50 comply with each of the applicable requirements set  
51 out in section twelve or fourteen of this article;

52 (6) A detailed estimated timetable for the accom-  
53 plishment of each major step in the reclamation plan;

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

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

61 (9) The consideration which has been given to  
62 developing the reclamation plan in a manner consis-  
63 tent with local physical environmental and climatolog-  
64 ical conditions;

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

69 (11) A detailed description of the measures to be  
70 taken during the surface-mining and reclamation  
71 process to assure the protection of: (A) The quality of  
72 surface and ground water systems, both on-and off-  
73 site, from adverse effects of the surface-mining oper-  
74 ation; (B) the rights of present users to such water;  
75 and (C) the quantity of surface and ground water  
76 systems, both on-and off-site, from adverse effects of  
77 the surface-mining operation or to provide alternative  
78 sources of water where such protection of quantity  
79 cannot be assured;

80 (12) The results of tests borings which the applicant

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 re-affecting 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 re-affecting 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

17 which there is reasonable likelihood so long as the use  
18 or uses do not present any actual or probable hazard  
19 to public health or safety or pose any actual or  
20 probable threat of water diminution or pollution, and  
21 the permit applicants' declared proposed land use  
22 following reclamation is not deemed to be impractical  
23 or unreasonable, inconsistent with applicable land use  
24 policies and plans, involves unreasonable delay in  
25 implementation, or is violative of federal, state or local  
26 law;

27 (3) Except as provided in subsection (c) of this  
28 section, with respect to all surface mines, backfill,  
29 compact where advisable to ensure stability or to  
30 prevent leaching of toxic materials, and grade in order  
31 to restore the approximate original contour: *Provided*,  
32 That in surface mining which is carried out at the  
33 same location over a substantial period of time where  
34 the operation transects the coal deposit, and the  
35 thickness of the coal deposits relative to the volume of  
36 the overburden is large and where the operator  
37 demonstrates that the overburden and other spoil and  
38 waste materials at a particular point in the permit  
39 area or otherwise available from the entire permit  
40 area is insufficient, giving due consideration to volu-  
41 metric expansion, to restore the approximate original  
42 contour, the operator, at a minimum, shall backfill,  
43 grade and compact, where advisable, using all avail-  
44 able overburden and other spoil and waste materials  
45 to attain the lowest practicable grade, but not more  
46 than the angle of repose, to provide adequate drainage  
47 and to cover all acid-forming and other toxic mate-  
48 rials, in order to achieve an ecologically sound land  
49 use compatible with the surrounding region: *Provided*,  
50 *however*, That in surface mining where the volume of  
51 overburden is large relative to the thickness of the  
52 coal deposit and where the operator demonstrates that  
53 due to volumetric expansion the amount of overbur-  
54 den and other spoil and waste materials removed in  
55 the course of the mining operation is more than  
56 sufficient to restore the approximate original contour,  
57 the operator shall, after restoring the approximate  
58 contour, backfill, grade and compact, where advisable,

59 the excess overburden and other spoil and waste  
60 materials to attain the lowest grade, but not more than  
61 the angle of repose, and to cover all acid-forming and  
62 other toxic materials, in order to achieve an ecologi-  
63 cally sound land use compatible with the surrounding  
64 region and, such overburden or spoil shall be shaped  
65 and graded in such a way as to prevent slides, erosion  
66 and water pollution and is revegetated in accordance  
67 with the requirements of this article: *Provided fur-*  
68 *ther*, That the commissioner shall promulgate rules  
69 and regulations governing variances to the require-  
70 ments for return to approximate original contour or  
71 highwall elimination and where adequate material is  
72 not available from surface-mining operations permit-  
73 ted after the effective date of this article for: (A)  
74 Underground mining operations existing prior to the  
75 third day of August, one thousand nine hundred  
76 seventy-seven; or (B) for areas upon which surface  
77 mining prior to the first day of July, one thousand  
78 nine hundred seventy-seven, created highwalls;

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

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

99 (6) Restore the topsoil or the best available subsoil

100 which is best able to support vegetation;

101 (7) Ensure that all prime farm lands are mined and  
102 reclaimed in accordance with the specifications for soil  
103 removal, storage, replacement and reconstruction  
104 established by the United States secretary of agricul-  
105 ture and the soil conservation service pertaining  
106 thereto. The operator, as a minimum, shall be  
107 required to: (A) Segregate the A horizon of the natural  
108 soil, except where it can be shown that other available  
109 soil materials will create a final soil having a greater  
110 productive capacity, and if not utilized immediately,  
111 stockpile this material separately from other spoil, and  
112 provide needed protection from wind and water  
113 erosion or contamination by other acid or toxic  
114 material; (B) segregate the B horizon of the natural  
115 soil, or underlying C horizons or other strata, or a  
116 combination of such horizons or other strata that are  
117 shown to be both texturally and chemically suitable  
118 for plant growth and that can be shown to be equally  
119 or more favorable for plant growth than the B hori-  
120 zon, in sufficient quantities to create in the regraded  
121 final soil a root zone of comparable depth and quality  
122 to that which existed in the natural soil, and if not  
123 utilized immediately, stockpile this material separately  
124 from other spoil and provide needed protection from  
125 wind and water erosion or contamination by other  
126 acid or toxic material; (C) replace and regrade the root  
127 zone material described in subparagraph (B) above  
128 with proper compaction and uniform depth over the  
129 regraded spoil material; and (D) redistribute and grade  
130 in a uniform manner the surface soil horizon des-  
131 cribed in subparagraph (A) above;

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

137 (9) Where augering is the method of recovery, seal  
138 all auger holes with an impervious and noncombusti-  
139 ble material in order to prevent drainage except  
140 where the commissioner determines that the resulting

141 impoundment of water in such auger holes may create  
142 a hazard to the environment or the public welfare and  
143 safety: *Provided*, That the commissioner may prohibit  
144 augering if necessary to maximize the utilization,  
145 recoverability or conservation of the mineral resources  
146 or to protect against adverse water quality impacts;

147 (10) Minimize the disturbances to the prevailing  
148 hydrologic balance at the mine site and in associated  
149 off-site areas and to the quality and quantity of water  
150 in surface and ground water systems both during and  
151 after surface-mining operations and during reclama-  
152 tion by: (A) Avoiding acid or other toxic mine drainage  
153 by such measures as, but not limited to: (i) Preventing  
154 or removing water from contact with toxic producing  
155 deposits; (ii) treating drainage to reduce toxic content  
156 which adversely affects downstream water upon being  
157 released to water courses; and (iii) casing, sealing or  
158 otherwise managing boreholes, shafts and wells and  
159 keep acid or other toxic drainage from entering  
160 ground and surface waters; (B) conducting surface-  
161 mining operations so as to prevent to the extent  
162 possible, using the best technology currently available,  
163 additional contributions of suspended solids to stream-  
164 flow or runoff outside the permit area, but in no event  
165 shall contributions be in excess of requirements set by  
166 applicable state or federal law; (C) constructing an  
167 approved drainage system pursuant to subparagraph  
168 (B) of this subdivision prior to commencement of  
169 surface-mining operations, such system to be certified  
170 by a person approved by the commissioner to be  
171 constructed as designed and as approved in the recla-  
172 mation plan; (D) avoiding channel deepening or  
173 enlargement in operations requiring the discharge of  
174 water from mines; (E) unless otherwise authorized by  
175 the commissioner, cleaning out and removing tempo-  
176 rary or large settling ponds or other siltation struc-  
177 tures after disturbed areas are revegetated and stabil-  
178 ized, and depositing the silt and debris at a site and in  
179 a manner approved by the commissioner; (F) restoring  
180 recharge capacity of the mined area to approximate  
181 premining conditions; and (G) such other actions as  
182 the commissioner may prescribe;

183 (11) With respect to surface disposal of mine wastes,  
184 tailings, coal processing wastes and other wastes in  
185 areas other than the mine working excavations,  
186 stabilize all waste piles in designated areas through  
187 construction in compacted layers, including the use of  
188 noncombustible and impervious materials if necessary,  
189 and assure the final contour of the waste pile will be  
190 compatible with natural surroundings and that the site  
191 will be stabilized and revegetated according to the  
192 provisions of this article;

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

201 (13) Refrain from surface mining within five hun-  
202 dred feet of any active and abandoned underground  
203 mines in order to prevent breakthroughs and to  
204 protect health or safety of miners: *Provided*, That the  
205 commissioner shall permit an operator to mine near,  
206 through or partially through an abandoned under-  
207 ground mine or closer to an active underground mine  
208 if: (A) The nature, timing and sequencing of the  
209 approximate coincidence of specific surface-mine  
210 activities with specific underground mine activities are  
211 coordinated jointly by the operators involved and  
212 approved by the commissioner; and (B) such opera-  
213 tions will result in improved resource recovery,  
214 abatement of water pollution or elimination of hazards  
215 to the health and safety of the public: *Provided*,  
216 *however*, That any breakthrough which does occur  
217 shall be sealed;

218 (14) Ensure that all debris, acid-forming materials,  
219 toxic materials or materials constituting a fire hazard  
220 are treated or buried and compacted, or otherwise  
221 disposed of in a manner designed to prevent contam-  
222 ination of ground or surface waters, and that contin-  
223 gency plans are developed to prevent sustained com-



224 bustion: *Provided*, That the operator shall remove or  
225 bury all metal, lumber, equipment and other debris  
226 resulting from the operation before grading release;

227 (15) Ensure that explosives are used only in accor-  
228 dance with existing state and federal law and the  
229 regulations promulgated by the commissioner, which  
230 shall include provisions to: (A) Provide adequate  
231 advance written notice to local governments and  
232 residents who might be affected by the use of the  
233 explosives by publication of the planned blasting  
234 schedule in a newspaper of general circulation in the  
235 locality and by mailing a copy of the proposed blasting  
236 schedule to every resident living within one-half mile  
237 of the proposed blasting site: *Provided*, That this notice  
238 shall suffice as daily notice to residents or occupants of  
239 the areas; (B) maintain for a period of at least three  
240 years and make available for public inspection, upon  
241 written request, a log detailing the location of the  
242 blasts, the pattern and depth of the drill holes, the  
243 amount of explosives used per hole and the order and  
244 length of delay in the blasts; (C) limit the type of  
245 explosives and detonating equipment, the size, the  
246 timing and frequency of blasts based upon the physical  
247 conditions of the site so as to prevent: (i) Injury to  
248 persons; (ii) damage to public and private property  
249 outside the permit area; (iii) adverse impacts on any  
250 underground mine; and (iv) change in the course,  
251 channel or availability of ground or surface water  
252 outside the permit area; (D) require that all blasting  
253 operations be conducted by persons certified by the  
254 director of the division of mines and minerals; and (E)  
255 provide that upon written request of a resident or  
256 owner of a man-made dwelling or structure within  
257 one-half mile of any portion of the permit area, the  
258 applicant or permittee shall conduct a preblasting  
259 survey or other appropriate investigation of the  
260 structures and submit the results to the commissioner  
261 and a copy to the resident or owner making the  
262 request. The area of the survey shall be determined by  
263 the commissioner in accordance with regulations  
264 promulgated by him;

265 (16) Ensure that all reclamation efforts proceed in an  
266 environmentally sound manner and as contemporane-  
267 ously as practicable with the surface-mining opera-  
268 tions. Time limits shall be established by the commis-  
269 sioner requiring backfilling, grading and planting to be  
270 kept current: *Provided*, That where surface-mining  
271 operations and underground mining operations are  
272 proposed on the same area, which operations must be  
273 conducted under separate permits, the commissioner  
274 may grant a variance from the requirement that  
275 reclamation efforts proceed as contemporaneously as  
276 practicable to permit underground mining operations  
277 prior to reclamation:

278 (A) If the commissioner finds in writing that:

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

282 (ii) The proposed underground mining operations  
283 are necessary or desirable to assure maximum practi-  
284 cal recovery of the mineral resource and will avoid  
285 multiple disturbance of the surface;

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

292 (iv) The areas proposed for the variance have been  
293 shown by the applicant to be necessary for the imple-  
294 menting of the proposed underground mining  
295 operations;

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

300 (vi) Provisions for the off-site storage of spoil will  
301 comply with subdivision (22), subsection (b) of this  
302 section;

303 (B) If the commissioner has promulgated specific  
304 regulations to govern the granting of such variances in  
305 accordance with the provisions of this subparagraph  
306 and has imposed such additional requirements as he  
307 deems necessary;

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

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

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

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

338 (19) Establish on the regraded areas, and all other  
339 lands affected, a diverse, effective and permanent  
340 vegetative cover of the same seasonal variety native to  
341 the area of land to be affected or of a fruit, grape or  
342 berry producing variety suitable for human consump-

343 tion and capable of self-regeneration and plant succes-  
344 sion at least equal in extent of cover to the natural  
345 vegetation of the area, except that introduced species  
346 may be used in the revegetation process where desir-  
347 able or when necessary to achieve the approved  
348 postmining land use plan;

349 (20) Assume the responsibility for successful revege-  
350 tation, as required by subdivision (19) of this subsec-  
351 tion, for a period of not less than five growing seasons,  
352 as defined by the commissioner, after the last year of  
353 augmented seeding, fertilizing, irrigation or other  
354 work in order to assure compliance with subdivision  
355 (19) of this subsection: *Provided*, That when the  
356 commissioner issues a written finding approving a  
357 long-term agricultural postmining land use as part a of  
358 the mining and reclamation plan, the commissioner  
359 may grant exception to the provisions of subdivision  
360 (19) of this subsection: *Provided, however*, That when  
361 the commissioner approves an agricultural postmining  
362 land use, the applicable five growing seasons of  
363 responsibility for revegetation shall commence at the  
364 date of initial planting for such agricultural postmin-  
365 ing land use;

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

374 (22) Place all excess spoil material resulting from  
375 surface mining activities in such a manner that: (A)  
376 Spoil is transported and placed in a controlled manner  
377 in position for concurrent compaction and in a way as  
378 to assure mass stability and to prevent mass move-  
379 ment; (B) the areas of disposal are within the bonded  
380 permit areas and all organic matter shall be removed  
381 immediately prior to spoil placements; (C) appropriate  
382 surface and internal drainage system or diversion  
383 ditches are used to prevent spoil erosion and move-

384 ment; (D) the disposal area does not contain springs,  
385 natural water courses or wet weather seeps, unless  
386 lateral drains are constructed from the wet areas to  
387 the main underdrains in a manner that filtration of  
388 the water into the spoil pile will be prevented; (E) if  
389 placed on a slope, the spoil is placed upon the most  
390 moderate slope among those upon which, in the  
391 judgment of the commissioner, the spoil could be  
392 placed in compliance with all the requirements of this  
393 article, and shall be placed, where possible, upon, or  
394 above, a natural terrace, bench or berm, if placement  
395 provides additional stability and prevents mass move-  
396 ment; (F) where the toe of the spoil rests on a  
397 downslope, a rock toe buttress, of sufficient size to  
398 prevent mass movement, is constructed; (G) the final  
399 configuration is compatible with the natural drainage  
400 pattern and surroundings and suitable for intended  
401 uses; (H) design of the spoil disposal area is certified  
402 by a qualified registered professional engineer in  
403 conformance with professional standards; and (I) all  
404 other provisions of this article are met: *Provided*, That  
405 where the excess spoil material consists of at least  
406 eighty percent, by volume, sandstone, limestone or  
407 other rocks that do not slake in water and will not  
408 degrade to soil material, the commissioner may  
409 approve alternate methods for disposal of excess spoil  
410 material, including fill placement by dumping in a  
411 single lift, on a site specific basis: *Provided, however*,  
412 That the services of a qualified registered professional  
413 engineer experienced in the design and construction of  
414 earth and rockfill embankment are utilized: *Provided*  
415 *further*, That such approval shall not be unreasonably  
416 withheld if the site is suitable;

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

421 (24) To the extent possible, using the best technology  
422 currently available, minimize disturbances and  
423 adverse impacts of the operation on fish, wildlife and  
424 related environmental values, and achieve enhance-

425 ment of these resources where practicable; and

426 (25) Retain a natural barrier to inhibit slides and  
427 erosion on permit areas where outcrop barriers are  
428 required: *Provided*, That constructed barriers may be  
429 allowed where: (A) Natural barriers do not provide  
430 adequate stability; (B) natural barriers would result in  
431 potential future water quality deterioration; and (C)  
432 natural barriers would conflict with the goal of  
433 maximum utilization of the mineral resource: *Pro-*  
434 *vided, however*, That at a minimum, the constructed  
435 barrier must be of sufficient width and height to  
436 provide adequate stability and the stability factor must  
437 equal or exceed that of the natural outcrop barrier:  
438 *Provided further*, That where water quality is para-  
439 mount, the constructed barrier must be composed of  
440 impervious material with controlled discharge points.

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

445 (2) Where an applicant meets the requirements of  
446 subdivisions (3) and (4) of this subsection, a permit  
447 without regard to the requirement to restore to  
448 approximate original contour set forth in subsection  
449 (b) or (d) of this section may be granted for the surface  
450 mining of coal where the mining operation will  
451 remove an entire coal seam or seams running through  
452 the upper fraction of a mountain, ridge or hill, except  
453 as provided in subparagraph (A), subdivision (4) of this  
454 subsection, by removing all of the overburden and  
455 creating a level plateau or a gently rolling contour  
456 with no highwalls remaining, and capable of support-  
457 ing postmining uses in accordance with the require-  
458 ments of this subsection.

459 (3) In cases where an industrial, commercial, wood-  
460 land, agricultural, residential or public use is proposed  
461 for the postmining use of the affected land, the  
462 commissioner may grant a permit for a surface-mining  
463 operation of the nature described in subdivision (2) of  
464 this subsection where: (A) The proposed postmining

465 land use is deemed to constitute an equal or better use  
466 of the affected land, as compared with premining use;  
467 (B) the applicant presents specific plans for the  
468 proposed postmining land use and appropriate assu-  
469 rances that the use will be: (i) Compatible with  
470 adjacent land uses; (ii) practicable with respect to  
471 achieving the proposed use; (iii) supported by commit-  
472 ments from public agencies where appropriate; (iv)  
473 practicable with respect to private financial capability  
474 for completion of the proposed use; (v) planned  
475 pursuant to a schedule attached to the reclamation  
476 plan so as to integrate the mining operation and  
477 reclamation with the postmining land use; and (vi)  
478 designed by a person approved by the commissioner in  
479 conformance with standards established to assure the  
480 stability, drainage and configuration necessary for the  
481 intended use of the site; (C) the proposed use would be  
482 compatible with adjacent land uses, and existing state  
483 and local land use plans and programs; (D) the com-  
484 missioner provides the county commission of the  
485 county in which the land is located and any state or  
486 federal agency which the commissioner, in his discre-  
487 tion, determines to have an interest in the proposed  
488 use, an opportunity of not more than sixty days to  
489 review and comment on the proposed use; and (E) all  
490 other requirements of this article will be met.

491 (4) In granting any permit pursuant to this subsec-  
492 tion, the commissioner shall require that: (A) A  
493 natural barrier be retained to inhibit slides and  
494 erosion on permit areas where outcrop barriers are  
495 required: *Provided*, That constructed barriers may be  
496 allowed where: (i) Natural barriers do not provide  
497 adequate stability; (ii) natural barriers would result in  
498 potential future water quality deterioration; and (iii)  
499 natural barriers would conflict with the goal of  
500 maximum utilization of the mineral resource: *Pro-*  
501 *vided, however*, That, at a minimum, the constructed  
502 barrier must be sufficient width and height to provide  
503 adequate stability and the stability factor must equal  
504 or exceed that of the natural outcrop barrier: *Provided*  
505 *further*, That where water quality is paramount, the  
506 constructed barrier must be composed of impervious

507 material with controlled discharge points; (B) the  
508 reclaimed area is stable; (C) the resulting plateau or  
509 rolling contour drains inward from the out slopes  
510 except at specific points; (D) no damage will be done  
511 to natural watercourses; (E) spoil will be placed on the  
512 mountaintop bench as is necessary to achieve the  
513 planned postmining land use: *And provided further,*  
514 That all excess spoil material not retained on the  
515 mountaintop shall be placed in accordance with the  
516 provisions of subdivision (22), subsection (b) of this  
517 section; and (F) ensure stability of the spoil retained  
518 on the mountaintop and meet the other requirements  
519 of this article.

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

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

542 (e) The commissioner may promulgate rules that  
543 permit variances from the approximate original con-  
544 tour requirements of this section: *Provided,* That the  
545 watershed control of the area is improved: *Provided,*  
546 *however,* That complete backfilling with spoil material  
547 shall be required to completely cover the highwall,



548 which material will maintain stability following  
549 mining and reclamation.

550 (f) The commissioner shall promulgate regulations  
551 for the design, location, construction, maintenance,  
552 operation, enlargement, modification, removal and  
553 abandonment of new and existing coal mine waste  
554 piles. In addition to engineering and other technical  
555 specifications, the standards and criteria developed  
556 pursuant to this subsection must include provisions for  
557 review and approval of plans and specifications prior  
558 to construction, enlargement, modification, removal or  
559 abandonment; performance of periodic inspections  
560 during construction; issuance of certificates of appro-  
561 val upon completion of construction; performance of  
562 periodic safety inspections; and issuance of notices and  
563 orders for required remedial or maintenance work or  
564 affirmative action: *Provided*, That whenever the  
565 commissioner finds that any coal processing waste pile  
566 constitutes an imminent danger to human life, he  
567 may, in addition to all other remedies and without the  
568 necessity of obtaining the permission of any person  
569 prior or present who operated or operates a pile or the  
570 landowners involved, enter upon the premises where  
571 any such coal processing waste pile exists and may  
572 take or order to be taken such remedial action as may  
573 be necessary or expedient to secure the coal processing  
574 waste pile and to abate the conditions which cause the  
575 danger to human life: *Provided, however*, That the  
576 cost reasonably incurred in any remedial action taken  
577 by the commissioner under this subsection may be  
578 paid for initially by funds appropriated to the depart-  
579 ment of energy for these purposes, and the sums so  
580 expended shall be recovered from any responsible  
581 operator or landowner, individually or jointly, by suit  
582 initiated by the attorney general at the request of the  
583 commissioner. For purposes of this subsection "oper-  
584 ates" or "operated" means to enter upon a coal  
585 processing waste pile, or part thereof, for the purpose  
586 of disposing, depositing, dumping coal processing  
587 wastes thereon or removing coal processing waste  
588 therefrom, or to employ a coal processing waste pile  
589 for retarding the flow of or for the impoundment of

590 water.

**§22A-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.**

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

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

20 (1) The commissioner, shall at a minimum, require  
21 any operator to: (A) Establish and maintain appropri-  
22 ate records; (B) make monthly reports to the depart-  
23 ment; (C) install, use and maintain any necessary  
24 monitoring equipment or methods consistent with  
25 subdivision (1), subsection (a), section nine of this  
26 article; (D) evaluate results in accordance with such  
27 methods, at such locations, intervals and in such  
28 manner as the commissioner shall prescribe; and (E)  
29 provide such other information relative to surface-  
30 mining operations as the commissioner deems reason-  
31 able and necessary; and

32 (2) For those surface-mining operations which  
33 remove or disturb strata that serve as aquifers which  
34 significantly ensure the hydrologic balance of water  
35 use either on or off the mining site, the commissioner  
36 shall require that: (A) Monitoring sites be established

37 to record the quantity and quality of surface drainage  
38 above and below the mine site as well as in the  
39 potential zone of influence; (B) monitoring sites be  
40 established to record level, amount and samples of  
41 ground water and aquifers potentially affected by the  
42 surface mining and also below the lowermost mineral  
43 seam to be mined; (C) records or well logs and  
44 borehole data be maintained; and (D) monitoring sites  
45 be established to record precipitation. The monitoring  
46 data collection and analysis required by this section  
47 shall be conducted according to standards and proce-  
48 dures set forth by the commissioner in order to assure  
49 their reliability and validity.

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

58 (d) Each permittee shall maintain at the entrances to  
59 the surface-mining operations a clearly visible monu-  
60 ment which sets forth the name, business address and  
61 telephone number of the permittee and the permit  
62 number of the surface-mining operations.

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

71 (f) Within thirty days after service of a copy of an  
72 order of the commissioner upon an operator by  
73 registered or certified mail, the operator shall furnish  
74 to the commissioner five copies of a progress map  
75 prepared by or under the supervision of a person  
76 approved by the commissioner showing the disturbed

77 area to the date of such map. Such progress map shall  
78 contain information identical to that required for both  
79 the proposed and final maps required by this article,  
80 and shall show in detail completed reclamation work  
81 as required by the commissioner. Such progress map  
82 shall include a geologic survey sketch showing the  
83 location of the operation, shall be properly referenced  
84 to a permanent landmark, and shall be within such  
85 reasonable degree of accuracy as may be prescribed by  
86 the commissioner. If no land has been disturbed by  
87 operations during the preceding year, the operator  
88 shall notify the commissioner of that fact.

89 (g) Whenever on the basis of available information,  
90 including reliable information from any person, the  
91 commissioner has cause to believe that any person is  
92 in violation of this article, any permit condition or any  
93 regulation promulgated under this article, the commis-  
94 sioner shall immediately order state inspection of the  
95 surface-mining operation at which the alleged viola-  
96 tion is occurring unless the information is available as  
97 a result of a prior state inspection. The commissioner  
98 shall notify any person who supplied such reliable  
99 information when the state inspection will be carried  
100 out. Such person may accompany the inspector during  
101 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.**

1 (a) If any of the requirements of this article, rules  
2 and regulations promulgated pursuant thereto or  
3 permit conditions have not been complied with, the  
4 commissioner shall cause a notice of violation to be  
5 served upon the operator or his duly authorized agent.  
6 A copy of the notice shall be handed to the operator  
7 or his duly authorized agent in person or served by  
8 certified mail addressed to the operator at the perma-  
9 nent address shown on the application for a permit.  
10 The notice shall specify in what respects the operator  
11 has failed to comply with this article, rules and

12 regulations or permit conditions and shall specify a  
13 reasonable time for abatement of the violation not to  
14 exceed thirty days. If the operator has not abated the  
15 violation within the time specified in the notice, or  
16 any reasonable extension thereof, not to exceed sixty  
17 days, the commissioner shall order the cessation of the  
18 operation or the portion thereof causing the violation,  
19 unless the operator affirmatively demonstrates that  
20 compliance is unattainable due to conditions totally  
21 beyond the control of the operator. If a violation is not  
22 abated within the time specified or any extension  
23 thereof, or any cessation order is issued, a mandatory  
24 civil penalty of not less than seven hundred fifty  
25 dollars per day per violation shall be assessed. A  
26 cessation order shall remain in effect until the com-  
27 missioner determines that the violation has been  
28 abated or until modified, vacated or terminated by the  
29 commissioner or by a court. In any cessation order  
30 issued under this subsection the commissioner shall  
31 determine the steps necessary to abate the violation in  
32 the most expeditious manner possible and shall  
33 include the necessary measures in the order.

34 (b) If the commissioner determines that a pattern of  
35 violations of any requirement of this article or any  
36 permit condition exists or has existed, as a result of  
37 the operator's lack of reasonable care and diligence, or  
38 that the violations are willfully caused by the operator,  
39 the commissioner shall immediately issue an order  
40 directing the operator to show cause why the permit  
41 should not be suspended or revoked and giving the  
42 operator thirty days in which to request a public  
43 hearing. If a hearing is requested, the commissioner  
44 shall inform all interested parties of the time and  
45 place of the hearing. Any hearing under this section  
46 shall be recorded and subject to the provisions of  
47 chapter twenty-nine-a of this code. Within sixty days  
48 following the public hearing, the commissioner shall  
49 issue and furnish to the permittee and all other parties  
50 to the hearing a written decision, and the reasons  
51 therefor, concerning suspension or revocation of the  
52 permit. Upon the operator's failure to show cause why  
53 the permit should not be suspended or revoked, the

54 commissioner shall immediately suspend or revoke the  
55 operator's permit. If the permit is revoked, the  
56 commissioner shall initiate procedures in accordance  
57 with rules promulgated by the commissioner to forfeit  
58 the operator's bond, or other security posted pursuant  
59 to section eleven of this article, and give notice to the  
60 attorney general, who shall collect the forfeiture  
61 without delay: *Provided*, That the entire proceeds of  
62 such forfeiture shall be deposited with the treasurer of  
63 the state of West Virginia to the credit of the special  
64 reclamation fund. All forfeitures collected prior to the  
65 effective date of this article shall be deposited in the  
66 special reclamation fund and shall be expended back  
67 upon the areas for which the bond was posted: *Pro-*  
68 *vided, however*, That any excess therefrom shall  
69 remain in the special reclamation fund.

70 (c) Any person engaged in surface-mining operations  
71 who violates any permit condition or who violates any  
72 other provision of this article or rules and regulations  
73 promulgated pursuant thereto may also be assessed a  
74 civil penalty. The penalty shall not exceed five thou-  
75 sand dollars. Each day of continuing violation may be  
76 deemed a separate violation for purposes of penalty  
77 assessments. In determining the amount of the pen-  
78 alty, consideration shall be given to the operator's  
79 history of previous violations at the particular surface-  
80 mining operation, the seriousness of the violation,  
81 including any irreparable harm to the environment  
82 and any hazard to the health or safety of the public,  
83 whether the operator was negligent, and the demon-  
84 strated good faith of the operator charged in attempt-  
85 ing to achieve rapid compliance after notification of  
86 the violation.

87 (d) (1) Upon the issuance of a notice or order  
88 pursuant to this section, the assessment officer shall,  
89 within thirty days, set a proposed penalty assessment  
90 and notify the operator in writing of such proposed  
91 penalty assessment. The proposed penalty assessment  
92 must be paid in full within thirty days of receipt or,  
93 if the operator wishes to contest either the amount of  
94 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.

118 (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.

135 (e) Any person having an interest which is or may

136 be adversely affected by any order of the commis-  
137 sioner or the board may file an appeal only in accor-  
138 dance with the provisions of article four, chapter  
139 twenty-two of this code, within thirty days after  
140 receipt of the order.

141 (f) The filing of an appeal or a request for an  
142 informal conference or formal hearing provided for in  
143 this section shall not stay execution of the order  
144 appealed from. Pending completion of the investiga-  
145 tion and conference or hearing required by this  
146 section, the applicant may file with the commissioner  
147 a written request that the commissioner grant tempo-  
148 rary relief from any notice or order issued under  
149 section sixteen or seventeen of this article, together  
150 with a detailed statement giving reasons for granting  
151 such relief. The commissioner shall issue an order or  
152 decision granting or denying such relief expeditiously:  
153 *Provided*, That where the applicant requests relief  
154 from an order for cessation of surface-mining and  
155 reclamation operations, the decision on the request  
156 shall be issued within five days of its receipt. The  
157 commissioner may grant such relief, under such  
158 conditions as he may prescribe if:

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

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

165 (3) The relief will not adversely affect the public  
166 health or safety or cause significant imminent enviro-  
167 nmental harm to land, air or water resources; and

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

171 (g) Any person who willfully and knowingly violates  
172 a condition of a permit issued pursuant to this article  
173 or regulations promulgated pursuant thereto, or fails  
174 or refuses to comply with any order issued under said



175 article and regulations or any order incorporated in a  
176 final decision issued by the commissioner, is guilty of  
177 a misdemeanor, and, upon conviction thereof, shall be  
178 fined not less than one hundred dollars nor more than  
179 ten thousand dollars, or imprisoned in the county jail  
180 not more than one year, or both fined and imprisoned.

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

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

202 (j) Whenever any person: (A) Violates or fails or  
203 refuses to comply with any order or decision issued by  
204 the commissioner under this article; or (B) interferes  
205 with, hinders or delays the commissioner in carrying  
206 out the provisions of this article; or (C) refuses to  
207 admit the commissioner to the mine; or (D) refuses to  
208 permit inspection of the mine by the commissioner; or  
209 (E) refuses to furnish any reasonable information or  
210 report requested by the commissioner in furtherance  
211 of the provisions of this article; or (F) refuses to  
212 permit access to, and copying of, such records as the  
213 commissioner determines necessary in carrying out  
214 the provisions of this article; or (G) violates any other  
215 provisions of this article, the regulations promulgated

216 pursuant thereto, or the terms and conditions of any  
217 permit, the commissioner, the attorney general or the  
218 prosecuting attorney of the county in which the major  
219 portion of the permit area is located may institute a  
220 civil action for relief, including a permanent or  
221 temporary injunction, restraining order or any other  
222 appropriate order, in the circuit court of Kanawha  
223 County or any court of competent jurisdiction to  
224 compel compliance with and enjoin such violations,  
225 failures or refusals. The court or the judge thereof  
226 may issue a preliminary injunction in any case  
227 pending a decision on the merits of any application  
228 filed without requiring the filing of a bond or other  
229 equivalent security.

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

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

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

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

17 applicant that:

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

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

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

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

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

50 (c) Where information available to the department  
51 indicates that any surface-mining operation owned or  
52 controlled by the applicant, is currently in violation of  
53 this article or other environmental laws or regulations,  
54 the permit shall not be issued until the applicant  
55 submits proof that such violation has been corrected or

56 is in the process of being corrected to the satisfaction  
57 of the commissioner or the department or agency  
58 which has jurisdiction over the violation, and no  
59 permit may be issued to any applicant after a finding  
60 by the commissioner, after an opportunity for hearing,  
61 that the applicant or the operator specified in the  
62 application controls or has controlled mining opera-  
63 tions with a demonstrated pattern of willful violations  
64 of this article of such nature and duration with such  
65 irreparable damage to the environment as to indicate  
66 an intent not to comply with the provisions of this  
67 article: *Provided*, That if the commissioner finds that  
68 the applicant is or has been affiliated with, or man-  
69 aged or controlled by, or is or has been under the  
70 common control of, other than as an employee, a  
71 person who has had a surface-mining permit revoked  
72 or bond or other security forfeited for failure to  
73 reclaim lands as required by the laws of this state, he  
74 shall not issue a permit to the applicant: *Provided*,  
75 *however*, That subject to the discretion of the commis-  
76 sioner and based upon a petition for reinstatement,  
77 permits may be issued to any applicant if: (1) After the  
78 revocation or forfeiture, the operator whose permit  
79 has been revoked or bond forfeited shall have paid  
80 into the special reclamation fund any additional sum  
81 of money determined by the commissioner to be  
82 adequate to reclaim the disturbed area; (2) the viola-  
83 tions which resulted in the revocation or forfeiture  
84 have not caused irreparable damage to the environ-  
85 ment; and (3) the commissioner is satisfied that the  
86 petitioner will comply with this article.

87 (d) (1) In addition to finding the application in  
88 compliance with subsection (b) of this section, if the  
89 area proposed to be mined contains prime farmland,  
90 the commissioner may, pursuant to regulations pro-  
91 mulgated hereunder, grant a permit to mine on prime  
92 farmland if the operator affirmatively demonstrates  
93 that he has the technological capability to restore such  
94 mined area, within a reasonable time, to equivalent or  
95 higher levels of yield as nonmined prime farmland in  
96 the surrounding area under equivalent levels of  
97 management, and can meet the soil reconstruction

98 standards in subdivision (7), subsection (b), section  
99 twelve of this article. Except for compliance with  
100 subsection (b) of this section, the requirements of  
101 subdivision (1) of this subsection shall apply to all  
102 permits issued after the third day of August, one  
103 thousand nine hundred seventy-seven.

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

110 (e) If the commissioner finds that the overburden on  
111 any part of the area of land described in the applica-  
112 tion for a permit is such that experience in the state  
113 with a similar type of operation upon land with  
114 similar overburden shows that one or more of the  
115 following conditions cannot feasibly be prevented: (1)  
116 Substantial deposition of sediment in stream beds; (2)  
117 landslides; or (3) acid-water pollution, the commis-  
118 sioner may delete such part of the land described in  
119 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.**

1 (a) (1) Any valid permit issued pursuant to this  
2 article shall carry with it the right of successive  
3 renewal upon expiration with respect to areas within  
4 the boundaries of the existing permit. The holders of  
5 the permit may apply for renewal and the renewal  
6 shall be issued: *Provided*, That on application for  
7 renewal, the burden shall be on the opponents of  
8 renewal, unless it is established that and written  
9 findings by the commissioner are made that: (A) The  
10 terms and conditions of the existing permit are not  
11 being satisfactorily met: *Provided, however*, That if  
12 the permittee is required to modify operations pursu-  
13 ant to mining or reclamation requirements which  
14 become applicable after the original date of permit

15 issuance, the permittee shall be provided an opportu-  
16 nity to submit a schedule allowing a reasonable period  
17 to comply with such revised requirements; (B) the  
18 present surface-mining operation is not in compliance  
19 with the applicable environmental protection stand-  
20 ards of this article; (C) the renewal requested substan-  
21 tially jeopardizes the operator's continuing responsibil-  
22 ity on existing permit areas; (D) the operator has not  
23 provided evidence that the performance bond in effect  
24 for said operation will continue in effect for any  
25 renewal requested as required pursuant to section  
26 eleven of this article; or (E) any additional revised or  
27 updated information as required pursuant to rules and  
28 regulations promulgated by the commissioner has not  
29 been provided.

30 (2) If an application for renewal of a valid permit  
31 includes a proposal to extend the surface-mining  
32 operation beyond the boundaries authorized in the  
33 existing permit, that portion of the application for  
34 renewal which addresses any new land area is subject  
35 to the full standards of this article, which includes, but  
36 is not limited to: (A) Adequate bond; (B) a map  
37 showing the disturbed area and facilities; and (C) a  
38 reclamation plan.

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

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

50 (b) (1) During the term of the permit, the permittee  
51 may submit to the commissioner an application for a  
52 revision of the permit, together with a revised recla-  
53 mation plan.

54 (2) An application for a significant revision of a

55 permit shall be subject to all requirements of this  
56 article and regulations promulgated pursuant thereto.

57 (3) Any extension to an area already covered by the  
58 permit, except incidental boundary revisions, shall be  
59 made by application for another permit. If the permit-  
60 tee desires to add the new area to his or her existing  
61 permit in order to have existing areas and new areas  
62 under one permit, the commissioner may so amend  
63 the original permit: *Provided*, That the application for  
64 the new area is subject to all procedures and require-  
65 ments applicable to applications for original permits  
66 under this article.

67 (c) The commissioner shall review outstanding  
68 permits of a five-year term before the end of the third  
69 year of the permit. Other permits shall be reviewed  
70 within the time established by regulations. The com-  
71 missioner may require reasonable revision or modifi-  
72 cation of the permit following review: *Provided*, That  
73 such revision or modification shall be based upon  
74 written findings and shall be preceded by notice to the  
75 permittee of an opportunity for hearing.

76 (d) No transfer, assignment or sale of the rights  
77 granted under any permit issued pursuant to this  
78 article shall be made without the prior written appro-  
79 val 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.**

1 (a) The commissioner shall establish a planning  
2 process to enable objective decisions based upon  
3 competent and scientifically sound data and informa-  
4 tion as to which, if any, land areas of this state are  
5 unsuitable for all or certain types of surface-mining  
6 operations pursuant to the standards set forth in  
7 subdivisions (1) and (2) of this subsection: *Provided*,  
8 That such designation shall not prevent prospecting  
9 pursuant to section seven of this article on any area so  
10 designated.

11 (1) Upon petition pursuant to subsection (b) of this  
12 section, the commissioner shall designate an area as  
13 unsuitable for all or certain types of surface-mining  
14 operations, if it determines that reclamation pursuant  
15 to the requirements of this article is not technologi-  
16 cally and economically feasible.

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

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

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

49 (5) The requirements of this section shall not apply  
50 to lands on which surface-mining operations were



51 being conducted on the third day of August, one  
52 thousand nine hundred seventy-seven, or under a  
53 permit issued pursuant to this article, or where  
54 substantial legal and financial commitments in the  
55 operations were in existence prior to the fourth day of  
56 January, one thousand nine hundred seventy-seven.

57 (b) Any person having an interest which is or may  
58 be adversely affected, shall have the right to petition  
59 the commissioner to have an area designated as  
60 unsuitable for surface-mining operations or to have  
61 such a designation terminated. The petition shall  
62 contain allegations of fact with supporting evidence  
63 which would tend to establish the allegations. After  
64 receipt of the petition, the commissioner shall imme-  
65 diately begin an administrative study of the area  
66 specified in the petition. Within ten months after  
67 receipt of the petition, the commissioner shall hold a  
68 public hearing in the locality of the affected area after  
69 appropriate notice and publication of the date, time  
70 and location of the hearing. After the commissioner or  
71 any person having an interest which is or may be  
72 adversely affected has filed a petition and before the  
73 hearing required by this subsection, any person may  
74 intervene by filing allegations of fact with supporting  
75 evidence which would tend to establish the allegations.  
76 Within sixty days after the hearing, the commissioner  
77 shall issue and furnish to the petitioner and any other  
78 party to the hearing, a written decision regarding the  
79 petition and the reasons therefor. In the event that all  
80 the petitioners stipulate agreement prior to the  
81 requested hearing and withdraw their request, the  
82 hearing need not be held.

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

89 (d) After the third day of August, one thousand nine  
90 hundred seventy-seven, and subject to valid existing  
91 rights, no surface-mining operations, except those

92 which existed on that date, shall be permitted:

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

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

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

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

123 (5) On any federal lands within the boundaries of  
124 any national forest: *Provided*, That surface coal mining  
125 operations may be permitted on the lands if the  
126 secretary of the interior finds that there are no  
127 significant recreational, timber, economic or other  
128 values which may be incompatible with the surface-  
129 mining operations: *Provided, however*, That the  
130 surface operations and impacts are incident to an  
131 underground coal mine.

132 (e) Notwithstanding any other provision of this code,  
133 the coal underlying any lands designated unsuitable  
134 for surface-mining operations under any provisions of  
135 this article or underlying any land upon which mining  
136 is prohibited by any provisions of this article shall be  
137 assessed for taxation purposes according to their value  
138 and the Legislature hereby finds that the coal has no  
139 value for the duration of the designation or prohibition  
140 unless suitable for underground mining not in viola-  
141 tion of this article: *Provided*, That the owner of the  
142 coal shall forthwith notify the proper assessing author-  
143 ities if the designation or prohibition is removed so  
144 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  
2 the following activities:

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

6 (b) The extraction of coal as an incidental part of  
7 federal, state, county, municipal or other local  
8 government-financed highway or other construction:  
9 *Provided*, That the provisions of the construction  
10 contract require the furnishing of a suitable bond  
11 which provides for reclamation, wherever practicable,  
12 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  
2 this article, it shall hereafter be unlawful for any  
3 person to engage in surface mining as defined in this  
4 article as an incident to the development of land for  
5 commercial, residential, industrial or civic use without  
6 having first obtained from the commissioner a permit  
7 therefor as provided in section eight of this article,  
8 unless a special permit therefor shall have been first  
9 obtained from the commissioner as provided in this  
10 section.

11 Application for a special permit to engage in surface

12 mining as an incident to the development of land for  
13 commercial, residential, industrial or civic use shall be  
14 made in writing on forms prescribed by the commis-  
15 sioner and shall be signed and verified by the appli-  
16 cant. The application shall be accompanied by:

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

27 (2) A development plan for the proposed commer-  
28 cial, residential, industrial or civic use of said land;

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

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

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

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

43 (b) There shall be attached to the application for the  
44 special permit a certificate of insurance certifying that  
45 the applicant has in force a public liability insurance  
46 policy issued by an insurance company authorized to  
47 do business in this state affording personal injury  
48 protection in accordance with subsection (d), section  
49 nine of this article.

50 The application for the special permit shall also be  
51 accompanied by a bond, or cash or collateral securities  
52 or certificates of the same type, in the form as  
53 prescribed by the commissioner and in the minimum  
54 amount of two thousand dollars per acre, for a max-  
55 imum disturbance of five acres.

56 The bond shall be payable to the state of West  
57 Virginia and conditioned that the applicant shall  
58 complete the site preparation for the proposed com-  
59 mercial, residential, industrial or civic use of said land.  
60 At the conclusion of the site preparation, in accor-  
61 dance with the site preparation plan submitted with  
62 the application, the bond conditions shall be satisfied  
63 and the bond and any cash, securities or certificates  
64 furnished with said bond may be released and  
65 returned to the applicant. The filing fee for the special  
66 permit shall be five hundred dollars. The special  
67 permit shall be valid until work permitted is  
68 completed.

69 (c) The purpose of this section is to vest jurisdiction  
70 in the commissioner, where the surface mining is  
71 incidental or secondary to the preparation of land for  
72 commercial, residential, industrial or civic use and  
73 where, as an incident to such preparation of land,  
74 minerals must be removed, including, but not limited  
75 to, the building and construction of railroads, shopping  
76 malls, factory and industrial sites, residential and  
77 building sites and recreational areas. Anyone who has  
78 been issued a special permit shall not be issued an  
79 additional special permit on the same or adjacent tract  
80 of land unless satisfactory evidence has been submit-  
81 ted to the commissioner that such permit is necessary  
82 to subsequent development or construction. As long as  
83 the operator complies with the purpose and provisions  
84 of this section, the other sections of this article shall  
85 not be applicable to the operator holding a special  
86 permit: *Provided*, That the commissioner shall pro-  
87 mulgate regulations establishing applicable perfor-  
88 mance standards for operations permitted under this  
89 section.

90 (d) The commissioner may, in the exercise of his

91 sound discretion, when not in conflict with the pur-  
92 poses and findings of this article and to bring about a  
93 more desirable land use or to protect the public and  
94 the environment, issue a special permit solely for the  
95 removal of existing abandoned coal processing waste  
96 piles. The commissioner shall promulgate specific  
97 regulations for such operations: *Provided*, That a bond  
98 and a reclamation plan shall be required for such  
99 operations.

**§22A-3-40. Consolidation of permitting, enforcement and  
rule-making authority for surface-mining  
operations; national pollutant discharge elim-  
ination system; effective date of section.**

1 (a) Notwithstanding any provisions of this chapter to  
2 the contrary, all powers, duties and responsibilities of  
3 the chief of the division of water resources under  
4 article five-a, chapter twenty of this code with respect  
5 to all coal mines, preparation plants and all refuse and  
6 waste therefrom subject to said article five-a, chapter  
7 twenty of this code are hereby transferred to the  
8 commissioner. The commissioner has authority to  
9 issue, amend, transfer, renew or revoke all permits  
10 required under article five-a, chapter twenty of this  
11 code with respect to all coal mines, preparation plants  
12 and all refuse and waste therefrom subject to said  
13 article five-a. Each permit application shall be accom-  
14 panied by a filing fee of five hundred dollars and each  
15 renewal application shall be accompanied by a filing  
16 fee of one hundred dollars. The procedures for issu-  
17 ance, amendment, transferal, renewal and revocation  
18 of such permits shall be governed by regulations  
19 promulgated pursuant to subsection (b). The commis-  
20 sioner shall consolidate the various permit programs  
21 under article five-a, chapter twenty of this code and  
22 article three of this chapter applicable to all coal  
23 mines, preparation plants and all refuse and waste  
24 therefrom. All provisions of article five-a, chapter  
25 twenty of this code heretofore applicable to coal mines,  
26 preparation plants and all refuse and waste therefrom  
27 shall be continued under this section.

28 (b) Notwithstanding any provisions of this chapter to

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

45 (c) Notwithstanding any provisions of this chapter to  
46 the contrary, the commissioner has authority to  
47 enforce and shall enforce the rules and regulations  
48 promulgated under this article by the commissioner  
49 and the rules and regulations of the water resources  
50 board setting water quality standards for the waters of  
51 the state as they apply to all coal mines, preparation  
52 plants and all refuse and waste therefrom. Rules and  
53 regulations adopted by the commissioner, pursuant to  
54 the requirements of article five-a, chapter twenty of  
55 this code shall be enforceable by the commissioner  
56 under the provisions of sections seventeen and nine-  
57 teen, article five-a, chapter twenty of this code, as  
58 though the regulations were promulgated by the water  
59 resources board: *Provided*, That the commissioner's  
60 authority to enforce such rules and regulations under  
61 article five-a, chapter twenty of this code shall not  
62 preclude the commissioner or any person from invok-  
63 ing the remedies otherwise provided by article three  
64 of this chapter and shall not preclude the commis-  
65 sioner from enforcing the provisions of this article.

66 (d) Notwithstanding any provisions of this chapter to  
67 the contrary, any permit of the commissioner issued  
68 pursuant to subsection (a) of this section, or any order  
69 issued under article five-a, chapter twenty of this code,

70 or for the purpose of implementing the "national  
71 pollutant discharge elimination system" established  
72 under the federal clean water act, shall be appealable  
73 only to the state water resources board and such  
74 appeal shall be governed by the provisions of section  
75 fifteen, article five-a, chapter twenty of this code.

76 (e) This section shall become effective upon a  
77 proclamation by the governor stating that final appro-  
78 val of the partial transfer of the national pollutant  
79 discharge elimination system established under the  
80 federal clean water act contemplated by this section  
81 has been given by the administrator of the United  
82 States environmental protection agency.



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

*Somer Heck*  
.....  
Chairman Senate Committee

*Ernest C Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell E. Adams*  
.....  
Clerk of the Senate

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

*Keith Brumette*  
.....  
President of the Senate

*Bob C. Ch...*  
.....  
Speaker House of Delegates

The within *approved* this the *3rd*  
day of *April* ....., 1991.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:35 am